The Public Defender of Georgia

The report was published with financial support of the Council of Europe project, “Denmark’s Georgia Programme 2010-2013, Promotion of Judicial Reform, Human and Minority Rights”.

ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

2011

THE PUBLIC
DEFENDER OF
GEORGIA

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Introduction

This publication is the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2011, submitted to the Parliament of Georgia in accordance with Article 22 (1) of the Organic Law on the Public Defender of Georgia.

The Report covers a wide range of rights and freedoms, and provides an overview of civil and political, as well as economic, social and cultural rights, as exercised in Georgia. It highlights general tendencies in the context of human rights, and concrete facts of violations that were found to occur in the period under review.

In the reporting period the Public Defender's Office looked at the practice of certain governmental bodies to analyse it from the perspective of human rights and freedoms, explored the violations that occurred, and followed on them accordingly.

Results of the regular monitoring conducted by the Public Defender exercising the National Preventive Mechanism (NPM) functions, analysis of the cases and submissions demonstrate that adequate protection of the rights of persons within the penitentiary system continues to be a major challenge. In 2011, the Public Defender looked into, and followed on, the concrete facts of ill-treatment of persons in custody, as well as other breaches within the system, related mostly to inadequate protection of the prisoners' right to health, and other fundamental rights. The year under review showed also a high rate of death in custody, which remained practically unchanged since 2010. Analysis of the relevant cases suggests high incidence of tuberculosis within the penitentiary system, which is a leading cause of death among prisoners. At the same time, commendably, the Ministry of Corrections and Legal Assistance of Georgia implemented some of the important recommendations made by the Public Defender. Part of the proposals and observations made by the National Preventive Mechanism (NPM) were taken on board in the process of elaborating the Penitentiary Healthcare Reform Strategy and the relevant Action Plan. We are hopeful that the changes implemented in the system will be instrumental in ensuring better practical implementation of the rights of persons deprived of their liberty.

Participation in the process of constitutional justice is an important part of the work of the Public Defender of Georgia. The Public Defender actively exercises his right to address the Constitutional Court in case he considers that a normative act, or its particular norms, violate the human rights and freedoms laid down in Chapter 2 of the Constitution. In the reporting period the Constitutional Court adjudicated over three constitutional complaints lodged by the Public Defender, of which two were satisfied and one dismissed. The Report offers a short overview of the judgments made by the Constitutional Court of Georgia.

An important focus of the Report is the right to a fair trial. Analysis of complaints and applications referred to the Public Defender's Office, and the monitoring conducted by members of PDO make clear that the exercise of judicial

power is not free of problems either. The most controversial again is the criminal justice. It is not infrequent that procedural actions taken in the course of proceedings, as well as penalties applied offend the right to property laid down in, and protected by the Constitution of Georgia. This problem was extensively explored in the previous report of the Public Defender; regrettably, no effective action has been taken either by the legislature or the judiciary to address this problem. Another persistent problem is the one related to safeguarding the rights of the parties involved in proceedings on administrative offences. The problems found in respect of adjudication on administrative offences stem largely from the obsolete character of the Code of Administrative Offences. Certain deficiencies were found in terms of publicity of proceedings and physical access to courts.

In 2011, the number of submissions to the Public Defender's Office concerning enforcement of judicial decisions was fairly high. Many of the violations occurring in this area seem to result from defects of the law that must be corrected as a matter of urgency.

Violations of human rights by members of law-enforcement bodies represent a recurrent theme in parliamentary reports of the Public Defender of Georgia The reporting period of 2011, too, saw numerous instances of abuse by law-enforcement officers, mostly in the form of degrading treatment and disproportionate use of force.

Many of the violations examined by the Public Defender resulted from excessive use of force by police during the break-up of the protest rallies.

Besides, the Report describes documented cases of disproportionate use of force and excess of authority during arrest. Unfortunately, the same abusive practices continued even after detained persons were placed in police custody.

The reporting period coincided in time with the events related to the Maestro TV Company. Despite the fact that conflicting parties in this case were private persons, the Public Defender looked into the case through the prism of law-enforcers' conduct, and the respective follow-up.

Overview of the developments related to the right to freedom of assembly and manifestations as exercised in Georgia has been another recurrent theme of the parliamentary reports of the Public Defender. The year 2011 was fairly active both in terms of legislative changes, and the exercise of the right to freedom of assembly and manifestations. In particular, the Georgian Law on Assembly and Manifestations saw some changes and amendments. Dozens of protests and demonstrations were held, some of them on a large scale and for quite long. Despite the fact that most of the protests passed without any breaches of fundamental rights, some of assemblies and manifestations evidenced violations of human rights and freedoms, as documented by the Public Defender.

Overseeing protection of freedom of expression is, and has been, one of the priorities for the Public Defender of Georgia. As in previous years, the 2011 reporting period, too, saw problems related to the exercise of freedom of expression. At the same time there have been positive developments stemming from the recent legislative changes.

The Report explores violations of the right to freedom of expression that occurred in 2011, describes concrete facts of interference with the freedom of expression of journalists and members of the public, cases of obstructing the work of journalists, incidents involving threats and assaults against journalists, and their detention. The Report also looks into the standard of investigation of cases concerned with the journalism and journalists' professional activity.

The reporting period saw numerous instances of violation by public officials of the fundamental right to freedom of information, and access to information. Examination of applications submitted to the Public Defender of Georgia by physical persons and legal entities revealed instances of denied access to public information, provision of incomplete information, and delays in providing the requested information.

In the reporting period, a number of important developments pertinent to the protection of religious freedom and improvement of tolerance environment were observed. Recent legislative changes have provided for a possibility for religious associations to pass registration as legal entities of public law. Worthy of notice, too, is the decision taken

by the Constitutional Court, which satisfied the Public Defender's claim and declared unconstitutional the obligation for conscientious objectors to undertake military reserve service. It is to be noted that compared to previous years, in 2011 the number of offences committed on the grounds of religious intolerance such as religious persecution, physical violence and facts of abuse, decreased significantly. There were no submissions to the Public Defender concerning any facts of discrimination on ethnic grounds.

The Report offers a detailed overview of a wide range of social and economic rights: the right to property, the right to adequate housing, the right to social insurance, and others.

Over the reporting period the Public Defender received a number of submissions concerning possible violation, or restriction, of the right to enjoy possession of property. Analysis of the cases referred to the Public Defender's Office exposed numerous instances of violation of the respective rights, which led the Public Defender to address recommendations to relevant agencies demanding restitution of the citizens' impaired rights.

As for the situation pertinent to the rights of internally displaced persons (IDPs), in-depth analysis of the relevant issues is one of the priorities in the work of the Public Defender of Georgia.

In 2011, the number of submissions to the Public Defender's Office made by internally displaced persons was significantly high. Notably, staff-members of the Public Defender's Office and representatives of PDO special project carry out regular monitoring of the situation of IDPs accross Georgia. This report draws on the facts of violations identified in the course of the monitoring, as well as the general analysis of the IDP situation.

Unfortunately, the year 2011 saw no improvement of the situation of ecological migrants. Like in the previous years, the number of submissions referred to the Public Defender by persons affected by, and forcibly displaced as a result of natural disasters (ecological migrants) was notably high.

A special section of the report explores the rights of Meskhetians forcibly deported by the Soviet regime from Soviet Georgia in the 40-ies of the last century, as well as refugees.

In the reporting period, as in the previous years, the Public Defender kept an eye on the activities carried out with a view to ensure protection for victims of domestic violence. Analysis of the practice suggests a notable progress in terms of streamlining the pertinent law: however, practical implementation of the norms prescribed by the law is not without flaws, sometimes serious.

The year 2011 saw many positive changes pertinent to the protection of the rights of the child. Despite the achievements, problems in some areas remained unresolved even though the Public Defender has regularly stressed their relevance. Over the reporting period the Public Defender addressed a number of recommendations to the relevant agencies concerning the need to enhance the standards governing investigation of violence against children, and follow-up on violence.

At the beginning of 2012, the National Preventive Mechanism (NPM) carried out the monitoring of small family-type children's homes and childcare institutions. A special report presenting the results of the monitoring will be published in April 2012.

The reporting period saw some steps taken by the state to address the rights of persons with disabilities, which is a positive development since the previous period. Some of the recommendations made by the Public Defender have been acted on, and monitoring of the rigths of persons with disabilities by civil society organisations and academic institutions has increased. However, many of the problems remain outstanding, and tackling them requires a more systematic approach.

Another important focus of the Report concerns implementation of the right to healthcare in its various aspects. The cases examined by the Public Defender make clear that access to healthcare services remains a serious problem.

Particularly notable in this regard is the situation of the segment of population that do not, or cannot, benefit from medical insurance. Health-related problems often bring the families concerned to the brink of impoverishment.

Lastly, in line with the established tradition, the Report offers the Public Defender's views, proposals and recommendations for legislative, executive and judicial bodies aimed at ensuring redress of violations addressed in the present Report, and their prevention in future.

Right to a Fair Trial

According to Article 5 of the Constitution of Georgia, state authority shall be exercised on the basis of the principle of separation of powers. The legislature, the executive and the judiciary shall exercise their respective powers throughout the territory of Georgia.

Under Article 82 of the Constitution, the judiciary shall be independent and judicial power shall be exercised exclusively by courts. Based on the idea of separation of powers, the legislature is equipped with the authority to adopt such legal provisions that are binding on the judiciary.[1] The Public Defender's Report aims to identify problems in the functioning of the judiciary and suggest recommendations concerning adoption of measures meant to further the protection of human rights.

The Public Defender of Georgia welcomes the changes implemented within the framework of the judicial reform. A significant number of positive steps taken so far are expected to guarantee independence and impartiality of the judicial system. Though, it is to be noted that cases examined by the Public Defender's Office in the reporting period have brought to light a number of problems present in the judiciary, which points to a need to carry on the judicial reform and eliminate the problems existing in the system.

Analysis presented in this chapter of the Report is based on the examination of complaints submitted to the Public Defender's Office, and on the results of monitoring conducted by authorized representatives of the Public Defender. One part of violations appears to be caused by technical malfunctioning of court buildings and inadequate level of awareness among court staff. At the same time, a significant portion of the analysis deals with the substantive aspects relevant to the exercise of judicial functions.

ACCESS TO COURT

According to Article 42, Para. 1 of the Constitution, "Everyone has the right to apply to a court for the protection of his/her rights and freedoms." This provision makes it incumbent on the state to adopt such measures as are necessary to make the independent and impartial court accessible to any person concerned without any undue obstacles.

Access to court not only implies the right of an individual to apply to the court to carry out proceedings on his/her case, but also territorial and physical accessibility of courts.

The monitoring conducted by the Public Defender's Office exposed a number of problematic issues in this regard calling for special attention, while their elimination requires adequate measures to be taken by court administrations.

[1] According to Article 84, "A judge shall be independent in his/her activity and shall be subject only to the Constitution and the law."

In general courts applications, complaints and claims from citizens are received by the court registry. Commendably, in all court premises visited by PDO staff-members registries are located on the ground floor. However, not all of them are fully accessible for certain vulnerable groups such as persons with disabilities unable to move without a special wheelchair. Some of the court buildings (Kutaisi City Court, Batumi City Court[2]) do not have access ramps, which preclude members of the said vulnerable group to enjoy fully their right of access to court.

Worthy of notice are certain problems hindering recourse for legal action. Even though the documents submitted by the parties are registered, according to specialization, by two or more specialists (registry employees), it is not infrequent that citizens have to wait in line for half an hour or longer. Unfortunately, no effective steps have been taken by courts administrations so far to address this problem.

PUBLIC HEARINGS, AUDIO AND VIDEO RECORDING OF COURT PROCEEDINGS

In the course of monitoring conducted by the Public Defender's Office the monitors looked into the issue of publicity of court proceedings. The right to a fair trial implies *inter alia* the right for everyone to a fair and public hearing of his/her case, and judgment pronounced publicly.[3] In some courts (Kutaisi City Court, Akhalkalaki District Court) the access to a courtroom for persons willing to attend a hearing is fairly impeded. PDO monitors were only allowed into the courtroom after ascertaining their identity (name, family name, job), the reason why they wished to attend, and their being on an official mission in the given territorial unit. Notably, such conduct by court officers was only found in the city (district) courts of Kutaisi and Akhalkalaki,[4] which suggests that this is not a systemic problem in the judiciary, though the problem clearly needs to be addressed. PDO monitors had a feeling that court officers were not fully cognizant of their rights. In Kutaisi City Court the officer did not allow a PDO representative to make a record concerning the proceedings in the relevant questionnaire.

Commendably, concurrent with the reform of the judiciary, most of the courts have established their web pages with *ex ante* posting of information on cases to be examined by a respective court. These web pages are instrumental in that they enable parties as well as other persons concerned to get complete information on pending proceedings. The only court from among those visited by PDO monitors that had no web page was Akhalkalaki City Court.

Most courts display in visible public areas the lists of cases for trial, as well as schedules of hearings. At the time of the monitoring such lists were not displayed only in Akhalkalaki City Court.

All courts have their specific regulations for the access of visitors. On the entrance to Tbilisi City Court all visitors undergo a simplified security check, after which they can freely relocate in the court building, and attend any trial of their choice.

Outside the capital, access to the courtroom is possible on an individual basis, after undergoing a certain procedure with the court officer. The procedure involves an identity check, leaving an ID with the court officer and access only to a concrete court session. It is to be noted that courtrooms in most of the district courts are fairly spacious and can sit 20-30 persons, which strips of validity such a motive for restricting access to a courtroom as lack of space.

Examination of cases concerning administrative offences at Tbilisi City Court deserves special attention. Court proceedings on cases of this category are held in a small courtroom in the rear part of the building (to which unauthorized persons are not admitted), with no regard given to the principle of publicity of proceedings. PDO monitors were only admitted to the said courtroom after having presented an authorization from the Public Defender to no one less than a senior manager of the court administration. Needless to say, access to court proceedings for ordinary citizens is out of question, which offends the right to public hearing and publicity of proceedings.

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2 Though the court building is fitted with a special access ramp, courtrooms are located on the second floor, with no lift in the building.

3 Even though the respective norm is set forth in Chapter 5 of the Constitution, it is a constituent element of the right to a fair trial and emanates from Article 42 of the Constitution.

4 Also in Ninotsminda Court served by a magistrate from Akhalkalaki Court.

All court premises (including courtrooms) have CCTV cameras. At the same time, courtrooms are fit with special audio-recording devices to produce an audio-version of the record of the proceedings.[5] Surprisingly however, in most cases minutes of the proceedings are not produced with the use of the available technical equipment. Based on the available information, audio recording of the proceedings is mostly done in adjudication on civil and administrative cases, and almost never – on criminal cases or cases concerning administrative offences.[6] Given that the courts are equipped with modern technical facilities, it is not clear as to what causes such categorization of cases.

Another problem identified in the course of court proceedings is poor hearing in the courtroom, the result being that voices of a judge, or the parties are simply not heard properly. The reason is different in different courts. For instance, in Tbilisi City Court the audibility in the courtroom was reduced as a result of noise in the building corridors, whereas in Kutaisi City Court low audibility is the result of poor acoustics.

LANGUAGE OF PROCEEDINGS

Access to court involves the right of a person to have the assistance of an interpreter if he/she cannot understand the language used in the court. Similarly to the norm, concerning access of public to the proceedings, this requirement is set forth in Article 85 of the Constitution. However, it, too, emanates from Article 42 of the Constitution (right to a fair trial).

The issue concerning the requirement to conduct legal proceedings in the state language, as well as access to an interpreter drew the attention of the PDO monitoring team in the regions of Georgia where ethnic minorities represent a majority of the population. PDO monitors visited Akhalkalaki District Court to attend a trial.

As found in the course of proceedings, the judge did not have full command of the state language, whereas participation of an interpreter in the proceedings was a mere formality (as the interpreter provided interpretation only episodically).

It might well be that in this particular case lack of full command of the state language and inadequate assistance by an interpreter did not appear to represent a major problem for adjudication on the case, as the judge was fluent in the language used by the parties. However, all this may become an impediment for proceedings at higher courts (since court documentation in such cases will not be complete, as the record of the proceedings would logically reflect only those accounts that get through interpretation), which should also be seen as a problem impairing the right to a fair trial.

Members of the PDO monitoring teams attended also other hearings (including at Tbilisi City Court) where, too, interpretation was an issue. Apart from the cases described, no deficiencies were identified in terms of court interpreters' professional qualifications, or conduct of the proceedings in the state language.

TIMELY BEGINNING OF COURT HEARINGS

In the course of monitoring the monitoring team found that differently from Tbilisi City Court, court hearings in other district (city) courts tend not to start on time. Notably, in some instances court sessions were found to start with one-hour delay, or even later. This causes discontent, and justly so, both of the parties and other persons concerned.

It is to be noted that the reason most frequently cited for delayed opening of the proceedings is the courts' caseload. The parties do not receive clear information as to when the proceedings would start. At the time of monitoring a court session started one hour later than scheduled, with the assistant judge citing the court staff meeting as a cause of delay. However, the judge who opened the proceedings excused himself for a late start saying he was sick. Obviously, such controversial explanations by members of the court affect the reputation and authority of the court.

[5] Exception is Akhalkalaki District Court

[6] At the time of monitoring, stenographic record of a hearing concerning an administrative offence was produced with the use of a special audio-system.

On several occasions the examination of criminal cases, too, started with a delay, which in most cases was caused by absence from the court of the prosecution party.

ADJUDICATION ON CASES CONCERNING ADMINISTRATIVE OFFENCES

Examination of cases concerning administrative offences appears to be a persistent problem in Georgia. Lack of progress in addressing this problem casts serious doubts as to conformance of the Georgian judiciary practice with international human rights standards. The problems found in respect of adjudication on administrative offences stem from the obsolete character of the Code of Administrative Offences and the need to adopt a qualitatively new code, but also from lack of adequate attention to this category of cases, which often leads to template-based decisions and disregard for the rights of the parties.

In the reporting period PDO focused on the analysis of summary acts adopted by courts as a result of examination of cases concerning administrative offences. To this end the Public Defender's Office demanded and obtained 169 cases, most of them concerning persons detained on May 26, 2011.

Analysis of cases clearly shows that most of rulings are made on template. Many of them contain no, or inadequate, reasoning. Incorrect qualification of an offence is not infrequent either. The course of proceedings seems to violate the right to defence. The right of a person to defend himself in person or through legal assistance of his own choosing implies allowing a person adequate time and facilities for preparation of his defence. This principle is often neglected, as evidenced for example by the case of Nika S. whom the court gave only 30 minutes to arrange for his defence, for which reason the defendant refused to have assistance of a lawyer.

Detained persons were found to be in disadvantage[7] vis-à-vis the prosecution, which was evidenced by complete disregard for their statements. When taking a decision, the court would only rely on the statements made by patrol police officers, failing to attend in any measure to the testimonies of alleged offenders, and refusing to grant their motions for furnishing additional evidence or interviewing witnesses.

It is to be noted that most of detainees sustain bodily injuries, some of them fairly severe. In view of the severity of injuries sustained by some of the detained persons, their appearance before the court and participation in proceedings rendered virtually impossible the effective exercise of the right to defence.

According to members of the judiciary, closing of hearings within an exceptionally short time is due to a limited statutory period provided for adjudication on this category of cases. However, even though the law allows general courts only a very limited period to adjudicate on administrative offences, such adjudication should not result in violation of other constitutional rights (including the right to defence).

In the course of monitoring representatives of the Public Defender attended court proceedings on cases of administrative offences. Worthy of mention in this context is Kutaisi City Court, where proceedings were conducted with major deficiencies. The court clarified to the parties only their right to challenge the judge, however it provided no explanation to the persons in administrative detention as to any other rights they possessed. The court failed to inquire whether the parties wished to make motions, or provide new evidence. The judge never used his right to ask questions. In all cases the court meted out penalties requested by the organ that made the motion.

CRIMINAL PROCEEDINGS

In the course of monitoring representatives of the Public Defender attended a number of hearings on criminal cases, however this subsection of the report deals only with the assessment of conformance of the established practice of

[7] Dombo Beheer BV v Netherlands, (App. 14448/88), 27 October 1993, Series A No 274-A, (1994) 18 EHRR 213, Para. 33

courts in sanctioning a plea bargain with legal requirements, as none of the proceedings monitored by PDO members involved examination of a case on the merits.

First, it should not be overlooked that most of the courtrooms now have proper infrastructure, with computers for the parties, the judge and the secretary. Courtrooms are equipped also with a projector, enabling proper investigation of photo and video materials (evidence).

Normally, court sessions would be declared open by the court chairman. In the hearings attended by the representatives of the Public Defender, he/she would then inform those present that the court was considering a motion by prosecution to deliver a judgment without trial on the merits (plea bargain), and announce the composition of the court and the secretary. Then he/she would clarify for the parties their right to challenge the judge.

In all cases the secretary of proceedings would inform the court of the identity of the parties present. The chairman would explain to the defence and prosecution parties their right to recusal and self-recusal. Then the judge would inquire about the name, educational status, residence and job of the defendant(s), and explain the rights of defendants in plea-bargaining as stipulated in the Criminal Procedure Code. During the hearings the defendants were asked whether they had good knowledge of the state language (Georgian), and whether they required assistance of an interpreter.

The judges would stress that since the court was considering the issue concerning the authorization of a plea bargain, participation of lawyer was obligatory, and inquired whether the defendants had a lawyer. Then the floor would first be given to the counsel for the prosecution to present a motion before the court, after which the court would ask whether the defendants pleaded guilty, and their position towards establishing a plea bargain.

The judges would explain in detail the essence of plea bargaining, and its outcomes in case the plea bargain were established, as well as the clause contained in the law that stipulates that in the event a plea bargain is not authorized, the information provided by a defendant to investigation cannot be used against him.

The courts would inquire whether there had been any coercion, threats, illegal pledges, violence or any other unlawful acts by police or prosecution in the process of plea-bargaining. The courts would also explain to the defendants the essence of the verdict and the punishment it entailed, as well as their rules of conduct.

Even though the courts meticulously follow the above procedure, in cases of plea bargaining involving minors the participation of a teacher is often reduced to a mere formality. According to the Georgian law, participation of a teacher is mandatory in case other lawful representative of a minor (parent, guardian) is unable to participate, or if his/her participation is limited. Even though court proceedings on minors' cases are not open to public, which restricted our ability to attend, the information provided by lawyers and interviews with convicted minors indicate that in some case s the procedures are followed as a matter of formality.

Unfortunately, this situation concerns not only cases of plea bargaining in respect of minors, but is typical of settings where minors are interviewed, or are otherwise involved in investigative actions with the defendant status, in which case the participation of a minor's teacher is a mere formality.

BINDING CHARACTER OF LEX MITIOR PRINCIPLE

Similarly to the previous reporting period, in 2011, too, the retroactive character of the law remains a controversial issue. Examination of applications and complaints addressed to the Public Defender demonstrates that courts often fail to follow the principles related to retroactive application of the law. Despite the imperative requirement to apply the norms mitigating responsibility, there are cases when the court fails to extend this requirement to respective provisions of the criminal law. Analysis of cases referred to the Public Defender identified also non-use of amnesty.

Article 42 of the Georgian Constitution states that "No one shall be held responsible on account of an action which did not constitute a criminal offence at the time it was committed. The law that neither mitigates nor abrogates responsibility shall have no retroactive force."

The Constitutional Court of Georgia in its judgment of 13 May[8] observed that: "It is necessary to make a distinction between the admissible and necessary scope of application of law. Discretion of the legislature, its margin of appreciation is limited by the Constitution. This is confirmed also by Article 47 of the Law on Normative Acts that states that the legislature can give a normative act the retroactive force; however its authority to do so should not go beyond the boundaries set by the Constitution. To avoid infringement of the rights guaranteed by the Constitution, the said law clearly defines the situations that are not subject to normative discretion of the legislature. Namely, "a normative act that that establishes or aggravates legal liability may not be retroactive." The legislature cannot adopt a norm that would reverse this provision. Discretion of the legislature is also restricted by the constitution-based provision in the same article stating that "If an offence was committed and, afterwards, a law repealed or alleviated liability for such an offence, then the norm as defined by the new law shall apply."

The European Court of Human Rights in its judgment of 17 September 2009 made by the Grand Chamber on the case of *Scoppola v. Italy* observed that in prohibiting the imposition of "a heavier penalty … than the one that was applicable at the time the criminal offence was committed," paragraph 1 of Article 7 does not exclude granting the accused the benefit of a more lenient sentence, prescribed by legislation subsequent to the offence.[9] In the Court's opinion, it is consistent with an essential element of Article 7, namely the foreseeability of penalties.[10] The Grand Chamber observed that the *lex mitior* principle applies to the subsequent law enacted in the period after the time of the commission of the offence and before a final judgment is rendered.[11]

The International Covenant on Civil and Political Rights (Article 15, para. 1) states that "If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby." This principle guarantees the binding effect of the law enacted after the commission of the offence up to the conclusion of responsibility.[12]

FAILURE TO APPLY THE PRINCIPLE OF RETROACTIVENESS TO GENERAL PROVISIONS OF THE CRIMINAL LAW

The report of the Public Defender covering 2010 spoke of the cases where the court applied retroactively the law aggravating responsibility. In the reporting period of 2011 the Public Defender's Office examined cases where the court failed to give retroactive force to the law alleviating responsibility.

Under Article 3, Para 2 of the Criminal Code of Georgia "If a new criminal law commutes the sentence for the action wherefore the convict is serving it, this sentence must be shortened to the extent permitted by the new criminal law."

The Public Defender's Office looked into the case of David Gorgadze convicted by the Criminal Collegium of the Supreme Court of Georgia on August 22, 1996 for the criminal offences under Article 238 (Paras 1, 2, 3 and 4), Article 240 (Paras 1, 2 and 3), Article 152 (Para. 2, subparagraphs 1 and 4) and Article 17,104 (Paras 6 and 7) of the Criminal Code of Georgia. David Gorgadze was sentenced to the last sanction of the law – death penalty.

Under the presidential order No 387 of 25 July 1997, David Gorgadze's sentence was commuted, and death penalty was reduced to 20 years of deprivation of liberty, which he was serving since 12 October 1995.

By the judgment of Rustavi City Court rendered on May 25, 2004, David Gorgadze was convicted for an offence under Article 379, Para. 2 (a) of the Criminal Code of Georgia. According to Article 60 of the Criminal Code, the sentence of the last conviction was summed up with the unserved part of the sentence of the prior conviction (12 years of deprivation of liberty), and David Gorgadze was sentenced cumulatively to 14 years of deprivation of liberty.

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8 For detailed information see the Judgment of the Constitutional Court of Georgia of 13 May 2009 No 1/1/428, 447, 459. Full text of the Judgment is available at: http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=535&action=show

9 Scoppola v. Italy, European Court of Human Rights, 17 September 2009, §107

10 Ibid. § 108

11 Ibid. § 109

12 Principle of Legality in International Criminal Law, *Kenneth S. Gallant,* Cambridge University Press, 2009, p.185.

On March 10, 2008 the Chamber of Criminal Cases of the Supreme Court of Georgia examined David Gorgadze's appeal based on newly discovered circumstances. In the course of the proceedings on appeal, the act committed by David Gorgadze was reconsidered as to its qualification, and defined as offence under Article 236, Paragraphs 1, 2 and 3 of the Criminal Code in force at the material time of the proceedings, instead of the previously defined qualification under Article 238, Para. 2 of the Criminal Code. The court also reconsidered the qualification of the *corpus delicti* stipulated by Article 104, Paragraphs 6[13] and 7[14] and defined it as an offence under Article 109, Para. 1 (c) and (d) of the effective Criminal Code, on account of which in accordance with Article 3, Para. 3 David Gorgadze was sentenced to 14 years' imprisonment.

The Supreme Court of Georgia reduced the previous sentence stipulated for offences under Article 17,104, Paras. 4,[15] 6 and 7 of the Criminal Code from 20 years to 15 years of imprisonment[16] (without modifying the qualification of the acts committed)[17] and awarded the final sentence based on the principle of overlap of penalties.

The Supreme Court amended the judgment made by the Supreme Court on August 22, 1996 and meted out the sentence of 15 years' imprisonment. The sentence awarded by Rustavi City Court on 25 May 2004 was modified to the benefit of the convicted person, too, with 9 years of imprisonment prescribed as penalty.

David Gorgadze appealed to the Supreme Court several times to review the judgment, as he had not been made subject to a statutory exception[18] provided for by Article 56, Para. 3 of the Criminal Code of Georgia that prescribed imposing for an attempted murder three-fourths[19] of the maximum potential sentence for the same crime if complete, as foreseen by the Criminal Code of Georgia (15 years' imprisonment).

The said rule was in effect since enactment of the Criminal Code in force at the material time – i.e. since 1 June 2000 till 29 December 2006, and it defined general principles of sentencing. The Criminal Code in effect before 1 June 2000[20] did not establish any special exception in respect of a sentence for incomplete crime, and attempted crimes were subject to the same sentence as respective complete crimes. According to the case law of the Chamber of Criminal Cases of the Supreme Court of Georgia, the special sentencing rule was applied even in those cases where an offence was committed before 29 December 2006, while conviction was established after the abrogation of the respective provision,[21] or where the judgment of conviction was rendered before 1 June 2000, and the court would afterwards award a more lenient penalty on the basis of new circumstances.[22]

It seems relevant to add that the Constitutional Court of Georgia observed in its judgment of May 13, 2009 that: "Even though the main purpose of the General Part of the Code is to establish the main principles concerning qualification and sentencing in respect of criminal acts provided for in the Special Part, this in no way implies that the norms contained in the General Part do not support and condition one another. Prohibition of retroactivity is a guarantee envisioned for the criminal law as a set of organically interrelated norms. Retroactivity as a concept applies to the whole body of criminal law norms."[23]

The above clearly demonstrates that the Chamber of Criminal Cases of the Supreme Court of Georgia failed to follow the obligation to apply retroactively the law to David Giorgadze's benefit, which led to a breach of principles enshrined

13 Premeditated murder in a manner deliberately presenting a threat to the life of many people
14 Premeditated murder for the purpose of covering any other crime or facilitating its perpetration
15 Premeditated murder of two or more persons
16 According to the practiced established under Regulation of the Presidium of the Supreme Court of Georgia (20 February 1998) the sentence of 20 years' imprisonment awarded to persons previously sentenced to death was to be replaced by 15'year's imprisonment.
17 According to effective Criminal Code, the sentence stipulated for murder of two or more persons is 16-20 years of imprisonment. Obvious in this case is aggravation of responsibility, and giving a new qualification to the offence under Article 109 of the new Criminal Code is impermissible.
18 The said article was in force until 29 December 2006.
19 Article 56 (3) of the Criminal Code of Georgia: "The term extent of the sentence for the attempted crime shall in no way exceed three fourth of the maximum term or extent of the most severe sentence prescribed for completed crimes under the relevant article or part of the article of the Special Part of this Code".
20 The Criminal Code was enacted in 1960
21 Inter alia, decision of the Chamber of Criminal Cases of the Supreme Court of Georgia No 56, 23 April 2007
22 Inter alia, decision of the Chamber of Criminal Cases of the Supreme Court of Georgia No 376, 27 April 2007
23 Judgment Constitutional Court of Georgia, May 13, 2009 II-33

in Article 42, Para. 5 of the Georgian Constitution and Article 15 of the International Covenant on Civil and Political Rights. As a result, the person concerned continues serving the sentence imposed upon him in breach of the human rights law.

NON-APPLICATION OF AMNESTY

In the case of Nikoloz Vakhania referred to the Public Defender's Office, the court failed to apply amnesty, as a norm alleviating the responsibility, in respect of a criminal offence committed by N. Vakhania before the amnesty act was issued. This case, too, is evidence of violation of the principle of retroactive application of a more favourable law.

As noted in the judgment of conviction, rendered by Khelvachauri District Court on 23 April 2010, the case concerned commission of the following offence:

In July 2008 Jakob Khvedelidze and Ana Kereselidze, acting in premeditation, contacted their friend Nikoloz Vakhania who promised to assist them for a fee of 6000 Euros and intentionally plotted a scheme involving forgery and subsequent selling of ID documents. To realize his plan, Nikoloz Vakhania, at a time and in circumstances not established by investigation, passed an ID card and an IDP certificate of his friend, a Georgian citizen, to Jakob Khvedelidze. On August 1, 2008 the latter submitted these, and other, documents to Vake Service of the Civil Registry and received a counterfeit passport of Giorgi Amanatov born on 27 January 1962 in Tbilisi (episode 1).

With a malicious intention to perform further forgery and selling of documents, he got hold of an ID card of his acquaintance, Valeri Vakhania, and an ID card and an IDP certificate of his daughter, Nino Vakhania. Since at the material time of events Nino Vakhania was underage, and under the legislation in force the issuance of a passport to a minor required a notarized consent of a parent, Nikoloz Vakhania produced, through replacement of an image, a counterfeit ID card allegedly belonging to Valeri Vakhania, passed it to his friend who presented it to a notary on July 25, 2008 and obtained a notarized act certifying Valeri Vakhania's consent for his daughter, Nino Vakhania, to obtain a Georgian passport. Thereafter, on August 8, 2008, Nikoloz Vakhania submitted the documents issued to Nino Vakhania, together with Ana Kereselidze's photo, to the Abkazeti Service of the Civil Registry and helped Ana Kereselidze to obtain a fake ID card and passport issued allegedly to Nino Vakhania (episode 2).

By the judgment of Khelvachauri District Court rendered on April 23, 2010, Nikoloz Vakhania was found guilty of the commission of an offence under Article 362, Para, 1 and Article 24-362, Para, 1 of the Criminal Code. According to Article 362, Para, 1 of the Criminal Code, Nikoloz Vakhania was sentenced to three years of imprisonment and a fine of 3000 GEL. Under the Law on Amnesty of 21 November 2008, Nikoloz Vakhania's custodial sentence was reduced by half – i.e. to one year and six months of imprisonment. According to Article 24-362 of the Criminal Code, Nikoloz Vakhania was awarded 2 years in prison and, additionally, a fine of 3000 GEL. Under Article 59, Para, 1.1, the sentence awarded under Article 24-362 (two years of imprisonment) was summed up to add two-thirds of the sentence imposed under Article 362, Para 1. This was further summed up with the unserved part of the sentence meted out by the Chamber of Criminal cases of Tbilisi City Court on March 25, 2009 (3 months and 17 days), a fine of 1000 GEL and disqualification from driving for a period of 3 years. Proceeding from the above, Nikoloz Vakhania was sentenced cumulatively to 3 years, 3 months and 17 days of imprisonment, the fine of 7000 GEL and disqualification from driving for a period of 3 years.

By the same judgement Jakob Khvedelidze was convicted *in absentia* for offences stipulated in Article 362, Para. 1 and Article 344, Para. 1 of the Criminal Code of Georgia.

The judgment of Khelvachauri City Court rendered on 23 April 2010 found Nikoloz Vakhania guilty of the commission of two criminal acts, on 1 and 8 August 2008.

According to Article 3, Para. 1 of the Criminal Code of Georgia, the criminal law, which nullifies criminality of the action or improves the condition of the offender, shall be retroactive. Under Article 77, Para.2 of the Criminal Code,

"the criminal may be released from criminal liability under the act of amnesty and the convict may be released from the sentence or the sentence awarded against him/her may be commuted to a less severe sentence."

Amnesty, by its nature, implies abrogation or alleviation of responsibility and its binding effect is guaranteed by Article 42, Para.5 of the Georgian Constitution, Article 15 of the International Covenant on Civil and Political Rights, and Article 7 of the European Convention on Human Rights.

Article 2, Para.1 of the Georgian Law on Amnesty, issued on 21 November 2008, prescribed reduction by half of the unserved part of custodial sentences imposed on persons convicted under Article 362, Para. 1 of the Criminal Code. The said law applies to offences committed before October 15. 2008.[24] Application of the Law on Amnesty issued on November 21, 2008 was tasked to respective courts.[25]

According to Article 22 of the Criminal Code, perpetrator is the person who committed the offence. According to Article 23 of the Criminal Code, complicity in the crime shall mean joint participation of two or more persons in the perpetration of the crime. Complicity is by nature accessorial, which means that liability of an accomplice is not dependent on perpetration of the *corpus delicti* by the perpetrator.

Article 25 of the Criminal Code defines the basis of perpetrator's and accomplice's liability. Namely, Para.1 of the said article stipulates that "criminal liability shall be imposed upon the perpetrator and accomplice only for their own fault on the basis of a jointly committed wrongful act, in consideration of the character and measure of involvement of each in the commission of the offence."

Complicity is a form of perpetration, and imposition of liability occurs on an individual basis. Hence, amnesty, similarly to other instances of alleviation/abrogation of liability, shall apply both to the perpetrator of an offence, and accomplice(s).

According to the judgment rendered by Khelvachauri City Court on April 23, 2008, Nikoloz Vakhania was found guilty of criminal acts stipulated in Article 362, Para.1 and Article 24-362, Para.1 of the Criminal Code of Georgia. Under the Law on Amnesty of November 21, 2008, the sentence imposed for commission of the offence stipulated in Article 362 of the Criminal Code was reduced by half. However, the court failed to apply the same approach in respect of a sanction imposed for the commission of a wrongful act stipulated in Article 24-362 of the Criminal Code, though the latter act, too, was committed within *ratione temporis* of the above act of amnesty. Therefore, under Article 77, Para.2 of the Criminal Code and Article 2, Para.2 of the Law on Amnesty of November 21, 2008, Nikoloz Vakhania was entitled to a reduction by half of the unserved part of the sentence awarded for commission of an offence provided for in Article 24-362 of the Criminal Code of Georgia. The above demonstrates violation of the *lex mitior* principle, the result being that Nikoloz Vakhania was deprived of an opportunity to benefit from a more favourable law.

RIGHT TO DEFENCE

In the reporting period the Public Defender's Office found a case of impairment by the court of the right to defence.

Article 42, Para.3 of the Georgian Constitution guarantees the right to defence. The right of a person charged with an offence to defend himself through legal assistance of his own choosing is guaranteed by numerous international treaties that Georgia joined.

According to Article 6, Para.3, c) of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone charged with a criminal offence has the right "to defend himself in person or through legal assistance of his own choosing."

The Public Defender's Office examined the case of Nunu Tskhvedadze, in which the judge granted the prosecutor's motion for disqualification of the defence counsel D. Dekanoidze on account that the latter was to be interviewed as a witness, since he was providing legal assistance to the accused Nunu Tskhvedadze in civil proceedings.

[24] Article 4 of the Georgian Law on Amnesty.
[25] Ibid, Article 6, Para 2.

The current law guarantees the defendant's right to defence, whereas disqualification of a defence counsel by the court infringes the defendant's right to defence.

Article 60 of the Criminal Procedure Code of Georgia defines the circumstances precluding the participation of a defence counsel in criminal proceedings and stipulates that "the defence counsel or the representative of the victim may not participate in the criminal proceeding if:

a) S/he has participated in the same case as a judge, juror, prosecutor, investigator, secretary of a court hearing, witness, or an expert;

b) S/he is providing, or has been providing legal assistance to a person whose interests conflict with the interests of the defendant s/he represents.

c) S/he is related in kinship with a judge, prosecutor, investigator, or a secretary of a court hearing participating or having participated in the investigation or examination of the present case."

Defendant's right to defence is protected also by Article 38, Para 5 of the Criminal Procedure Code stipulating that a defendant shall have the right to have a defence counsel of his own choosing.

Besides, the Criminal Procedure Code of Georgia does not preclude a defendant to protect his/her interests through the assistance of several counsels of his/her choosing.

According to Article 43, Para 2 of the Criminal Procedure Code "Client/attorney communications are also confidential when they occur prior to the individual being officially charged."

Despite a provision in the Criminal Procedure Code for recusal of a defence counsel who is participating in the case as a witness and may provide information concerning the circumstances to be established, he/she shall be free of obligation to testify as a witness and to submit information regarding the facts that have become known to him/her in connection with carrying out the duties of a defence counsel.

Georgian law protects also the right of an individual to keep confidential his/her communication with a defence counsel both in criminal, as well as in civil and administrative proceedings, or concerning any legal services provided. Article 5, Para d) of the Law on Advocacy obligates a counsel "to keep professional secret." Under Article 2 of the same law, "advocacy implies provision of legal advice to an individual (client) who has applied to legal counsel for assistance: representing the client in court proceedings concerning a constitutional claim, or criminal, civil and administrative proceedings, arbitration, detention or investigative bodies; preparation of legal documents for third parties and submission of any documents on behalf of a client; provision of legal assistance not related to representation before a third party."

Article 50, Para 1 of the Criminal Procedure Code of Georgia stipulates that "the following persons shall be free of an obligation to testify as a witness and to submit objects, documents, substances or other items containing information significant to the case: a) a defence counsel – regarding the facts that have become known to him/her in connection with carrying out the duties of a defence counsel; b) an advocate/lawyer rendering legal assistance to a person prior to formally assuming the duties of defence or representation (a counsel or a representative) – regarding the facts that have become known to him/her in connection with providing legal assistance."

Interviewing a defence counsel as a witness regarding the facts that have become known to him/her in connection with carrying out the duties of a defence counsel, and rejection of a counsel on these grounds would impair the right of an individual to confidentiality of his/her communication with a defence counsel, which in turn seriously impairs the right to defence.

NON-EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

One of the problems found in the judiciary system is lack of execution of judgments of the European Court of Human Rights. Article 310 of the Criminal Procedure Code stipulates that one of the grounds for a judgment to be subject to revision due to newly discovered circumstances is a decision of the European Court of Human Rights that establishes that a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols has occurred with respect to the case to be revised. However, the issues considered in the judgments of the European Court of Human Rights in some cases *per se* cause grounds for revision of a judgment due to newly discovered circumstances. In the case of *Gorguiladze v. Georgia*[26] the Court found that the composition of the court (judge and two associated non-professional judges) was in contravention of law. In the case of Tengiz Zautashvili examined by the Public Defender's Office, the said person convicted by the court filed a petition with Tbilisi Appeal Court soliciting reopening of proceedings on the above grounds as his case, too, had been examined by a justice and two associated non-professional judges; however, the court rejected the petition as inadmissible.

By the judgment of the Criminal Collegium of the Supreme Court of Georgia delivered on August 9, 2000, Tengiz Zautashvili was convicted for the commission of offences under Article 109 (v) and Article 19-109 (a, v) of the Criminal Code of Georgia and sentenced to 20 years' imprisonment. The sentence was upheld by the Chamber of Criminal Cases of the Supreme Court of Georgia on October 19, 2000.

Tengiz Zautashvili submitted a petition to Tbilisi Appeal Court requesting revision of the judgment on grounds that his case had been examined with participation of two non-professional judges. The applicant referred to the judgment of the European Court of Human Rights in the case of *Gorguiladze v. Georgia* (judgment of 20 October 2009), in which the Court found that in Georgia participation of non-professional judges in criminal proceedings did not have the sufficient legal grounds. By the decision of the Chamber of Criminal Cases of Tbilisi Appeal Court delivered on 10 December 2010 T. Zautashvili's petition on reopening of proceedings on account of newly discovered circumstances was dismissed. T. Zautashvili challenged this decision with the Supreme Court of Georgia. His cassation was dismissed by Ruling No 7ag-11 of the Chamber of Criminal Cases of the Supreme Court with the following reasoning:

"The Chamber of Cassation, having examined the instant case, is of the opinion that Tbilisi City Court made a correct legal assessment of circumstances relevant to the case, while the facts invoked by the complainant cannot be seen as representing the grounds for revision of a judgment in force provided for by the Criminal Procedure Code. In the material time of proceedings, the Criminal Collegium of the Supreme Court of Georgia was governed by the Organic Law on the Supreme Court of Georgia according to which the Colleguim considered cases before it with participation of one justice and two non-professional judges who made up a panel, and whose rights and responsibilities, as well as the procedure of their involvement in the process of administration of justice was prescribed by the law. The same provisions were laid down in Article 434 (1) of the Criminal Procedure Code in force at the material time of events (adopted on February 20, 1998). It is to be noted that under Article 438 of the same Code, the justice and non-professional judges made up a panel that decided on all issues arising during examination of a case by a majority vote, and rendered a judgment. According to the Law on the Status of Judges enacted on 28 December 1990, non-professional judges of the Supreme Court of the Republic of Georgia were elected by the Parliament for a five-year term. The non-professional judges' term of office was extended several times, as stipulated in the Law on Extending the Tenure of Associated Judges of the Supreme Court of Georgia; up until December 31, 2005 the existence of the Criminal Collegium of the Supreme Court of Georgia that tried cases in panels of one justice and two non-professional judges was in full conformity with the law.

Besides, the reference made by the complainant to the judgment of the European Court of Human Rights on the case of *Gorguiladze v. Georgia* is groundless, as under Article 310 (e) of the Criminal Procedure Code of Georgia "the judgment shall be subject to revision due to newly discovered circumstances if a decision of the European Court of Human Rights establishes that a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols has occurred with respect to the case to be revised. In this case, the cited judgment of the European Court of Human Rights does not concern the case of Tengiz Zautashvili."

[26] Gorguiladze v. Georgia, the European Court of Human Rights, 20 October 2009

Article 310 (e) of the Criminal Procedure Code of Georgia establishes special grounds for reopening of proceedings on account of newly discovered circumstances, namely in case there is relevant judgment of the European Court of Human Rights. However, according to Article 333, Para 2 of the Criminal Procedure Code, the entry into force of this provision is scheduled for October 1, 2012.

In the above case the complainant requested reopening of proceedings due to newly discovered circumstances based on Article 310 (b) that states that the judgment shall be subject to revision due to newly discovered circumstances if: "circumstances exist, that confirm the illegal composition of the court that rendered the judgment in force, or prove the inadmissibility of evidence, upon which the judgment is based."

The Supreme Court has examined the case and found that there was no such "circumstance" that would prove illegal composition of the court. According to the Supreme Court, the existence of the law cited above ruled out violation of the relevant provision of Article 6 of the European Convention.

On October 20, 2009 the European Court of Human Rights delivered a judgment on the case of *Gorguiladze v. Georgia*. The applicant was tried by panel of the Criminal Collegium of the Supreme Court of Georgia made up of one judge and two non-professional judges. The issue challenged before the European Court concerned the above composition of the court in the context of Article 6 of the European Convention that imperatively requires a case to be heard by a "tribunal established by law."

In its judgment the European Court stressed the obligation concerning a tribunal established by law, and its importance in a democratic society, and noted the following:[27]

"68. "Law" as provided in Article 6 § 1 of the Convention implies not only the legislation related to the establishment and competence of judicial bodies, but also all other dispositions of domestic law, non-observance of which would render illegal the participation in adjudication of one or several judges. More specifically, the issue concerns the mandate, incompatibility and recusal of non-professional judges… Besides, the term "established by law" concerns not only the legal basis for the existence of a "tribunal," but also its composition in considering every individual case…

69. In accordance with the jurisprudence, introduction of the term "established by law" into Article 6 of the Convention has as its purpose avoidance of a situation where the organization of the judicial system would depend solely on the discretion of the executive, so as to ensure that this issue is regulated on the basis of the law adopted by the Parliament. In the countries of codified law, organization of the judiciary system should not be dependent solely on the discretion of the judiciary authorities either, which nevertheless does not exclude recognition of their mandate to interpret the national law concerning this matter… This notwithstanding, the court that trespasses the judicial competences clearly defined by the law cannot be considered to be "established by law."

70. Returning to the circumstances of the instant case, the Court recalls that non-professional judges of the Supreme Court of Georgia, before this institution was abolished on 25 March 2006, were private persons of other professional occupations who participated in first-instance trials of criminal cases together with a career judge. The institution of non-professional judges was a remnant of the Soviet past, where non-professional judges were people's representatives, providing for the participation of people in the administration of justice. They were fulfilling the functions of non-professional judges within their civic duty (see the Labour Code mentioned in Para.19).

71. The Court accepts the argument made by the Government to the effect that participation of two non-professional judges in examination of the applicant's case was provided for in Article 8 (2) of the Organic Law on the Supreme Court of Georgia. Besides, it was provided for in Article 434 (1) of the Criminal Procedure Code of Georgia. Considering these provisions, one can conclude that existence of such a formation as the Criminal Collegium was envisaged by the existing law.

72. This notwithstanding, only legal existence of a judicial body is not sufficient for it to be recognized as a tribunal "established by law". The thing is that the applicant poses the question on whether the exercise of judicial functions by non-professional judges had a sufficient legal basis within national law. One has to state that except for a short period

[27] Paragraphs 68-74 of the judgment.

between 5 March and 28 May 1999 (see Para.19 (c) above) there was no law regulating this issue. Even if Article 44, Para.2 of the Criminal Procedure Code contained a provision stipulating that the non-professional judge was a citizen of Georgia, who in accordance with the procedure prescribed by the "law" was authorized to participate in the judicial examination of a case, the said law did not exist at the material time of events. In any case, the research conducted by the Court has not found any such law to exist; neither has the Government responded with any argument to the questions raised by the Court to this effect. In reality, both laws that regulated the exercise of judicial functions by non-professional judges – the Law on the Status of Judges and the Law on Changes and Amendments adopted on 5 March 1999 – were abrogated at the material time of events so that no other legal text to replace them was adopted.

73. As to the Government's argument that was based on the 1991 ordinance and laws prescribing extension of the mandate of non-professional judges, the Court notes that the two non-professional judges participating in the applicant's case were selected on 14 June 1991 by the legislative body. At the same time, the 1991 ordinance itself represents only a list of selected persons and contains no precision as to the selection of candidates, their order of appointment, the rights and responsibilities, etc. A similar deficiency is evident in the subsequent laws on changes and amendments that, in the period between 27 June 1997 and 31 December 2005, served as a basis for automatic prolongation of the mandate of non-professional judges. It is to be noted also that differently from the ordinance of 7 March 1996 that indicated the legal basis applied by the legislature for prolongation of the mandate of non-professional judges, the said laws contained no provisions of this type, considering that the legal basis that would regulate the exercise of judicial functions by non-professional judges no longer existed (see § 72).

74. To conclude, the two non-professional judges participating in the applicant's case, administered justice on an equal basis with the professional judge and, considering their number, they had the required majority vote to pass a judgment of conviction. Considering that the exercise of judicial function by these non-professional judges was rooted in the judicial practice that had no sound legal basis in the national law, the panel in which they participated did not constitute "a tribunal established by law."

The European Court of Human Rights clearly pointed to a violation of Article 6 of the European Convention, since participation of non-professional judges in criminal proceedings did not have any legal basis and was not regulated by law. In this case the Court made a distinction in assessing legality of the judicial formation between:

- Legality of the judicial body;
- Legality of appointment and tenure of a non-professional judge.

The Court noted that in the Georgian reality there was no law regulating the exercise of judicial functions by non-professional judges. The Court emphasized that except for the law in force between March 5 and May 28, 1999, there was no law stipulating participation of non-professional judges in a manner conformant with the standard established by the European Convention.

The Law on the Status of Judges in the Republic of Georgia, enacted on December 28, 1990 established sufficient guarantees in respect of non-professional judges, necessary for the purposes of Article 6 of the Convention. However, the said law was abrogated on the basis of Article 90 of the Organic Law on Common Courts of Georgia that was enacted on 13 June 1997. Since then and up until March 25, 1995 non-professional judges participated in trials on the basis of the Law on Extension of the Mandate of Non-Professional Judges of the Supreme Court of Georgia. According to the judgment of the European Court of Human Rights on the above case, the period between June 13, 1997 and March 25, 2005 saw no law to regulate the safeguards pertinent to the participation of non-professional judges in the proceedings. The only exception in this period was the Organic Law on Changes and Amendments to the Organic Law on Common Courts of Georgia, enacted on March 5, 1999 that added to the said law Chapter 6 – "Non-professional judges of common courts". However on May 28, 1999 the above Chapter 6 was abrogated by the Organic Law on Changes and Amendments to the Organic Law on Common Courts of Georgia. Thus, in the period between June 13, 1997 and March 25, 2005 (with the exception of a period between March 5 and May 28, 1999) for the purposes of the European Convention participation of non-professional judges in criminal proceedings was illegal.[28]

[28] It is to be borne in mind that the European Convention on Human Rights entered into force, and became binding, for Georgia on 20 May 1999.

Article 2 of the Criminal Procedure Code of Georgia enacted on 20 February 1998[29] expressly stated that one of the sources of criminal procedure was an international treaty, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and its case law.[30]

The "illegal composition of the court" as defined in Article 310 (b) of the current Criminal Procedure Code shall be appraised by the standard of the European Convention, since it has a direct effect. Therefore, definition of the legality of the composition of the court, too, shall be based on the standard established by the European Court, according to which not only the form of proceedings, but conditions of engagement of and adjudicating judge should be grounded in law.

The Chamber of Criminal Cases of the Supreme Court of Georgia in its judgment of March 22, 2011 shared only partially the approach established by the European Court and founded its assessment of the legality of the composition of the court only on the premise that the collegium as such was established by law.

Within the judicial practice of the Supreme Court, lack of legal regulation in respect of the exercise of judicial functions by non-professional judges does not constitute any grounds to consider illegal the composition of the court. Such an approach appears contrary to the substance of Article 6 and the respective case law. Seen in the context of the protection of human rights, the Supreme Court of Georgia opted for a lower standard in assessing the legality of the composition of the court. Bering in mind that the European Convention on Human Rights and jurisprudence of the European Court are binding on Georgia, its domestic judicial practice should be conformant with the latter.[31] With the high standard of the protection of human rights established by the European Convention, it is impermissible to have a different, more restrictive approach at the domestic level.

Proceeding from the above, it is necessary to define the term "illegal composition" found in Article 310 (b) of the Criminal Procedure Code in a manner consistent with the relevant European human rights standards. To appraise participation of non-professional judges in the proceedings one should look not only at the judicial formation in general, but at the legality of exercise of judicial authority by individual non-professional judges.

REASONING OF COURT DECISIONS

As in 2010, the applications addressed to the Public Defender's Office in the 2011 reporting period, too, highlighted the problems related to the reasoning of judicial decisions.

By the judgment of Khelvachauri District Court (February 8, 2008), Lela Kobaidze was found guilty of offences and convicted under Article 260, Para.3 (a) ("purchase and keeping of narcotic drugs in especially large quantities") and Article 262, Para.4 (a) ("import of narcotic drugs to Georgia") of the Criminal Code of Georgia. She was sentenced to 8 years of imprisonment under Article 260, Para.3 (a), and to 15 years of imprisonment under Article 262, Para.4 (a). According to Article 59, Para.1 of the Criminal Code of Georgia that stipulates that in case of cumulative crime the sentence shall be awarded for each particular crime, these sentences were accumulated, and the final sentence of 23 years' imprisonment was meted out.

According to the judgment delivered by Khelvachauri District Court, the conviction was based on the following facts and matters of law:

"During the trial the defendant, Lela Kobaidze, did not plead guilty of the offences she was charged with and stated that in August 2007 she crossed the border and entered Georgia from Turkey in the morning, at about 7 a.m. She stayed over in Sarpi for about 2.5 hours, as a minibus to Tbilisi was scheduled to leave at 9 a.m. In the meantime she went to a

[29] Effective since entry into force of the European Convention till 25 March 2005, i.e. abolishment of the institution of non-professional judges

[30] The same is stipulated by Article 6 of the Constitution of Georgia, Article 7 of the Law on Normative Acts and Article 6 of the Law on International Treaties of Georgia.

[31] Theory and Practice of European Convention on Human Rights, edited by Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Z waak, 2006, Intersentia, p.308

café where she was joined at her table by a woman of about 45 years of age, who stayed with her for about 45 minutes. She told Lela Kobaidze she was going to Tbilisi, too. After some time she excused herself saying she would go to the toilet, and left to Lela Kobaidze a large plastic bag. Lela waited for approximately 15 minutes and when she was about to leave, she was approached by two men who introduced themselves as police and asked her to present her documents. During the search they found in the plastic bag, left over by an unknown woman, some substance that appeared to be a narcotic drug. In Sarpi Lela Kobaidze was going to see her friend's daughter, which she failed to do as she was arrested.

The Court familiarized itself with all materials of the case, heard the defendant and witnesses and analysed the existing evidence. As a result, the court concluded it could not accept L. Kobaidze 's statement as truthful, as it was at variance with the statement she made earlier in the hearing. Namely, on January 28, 2008 L. Kobaidze testified that after she crossed the border she went to a café, where she was joined by an unknown woman who left a plastic bag, later found to contain narcotic drugs. However, on January 16, after the testimony of Sh. Mchedlishvili, the witness, L. Kobaidze stated that the bag was given to her in Turkey by a Georgian whom she had known since childhood, who asked her to hand over the bag to Giorgi, whom she had called and arranged for a meeting.

This leads the court to conclude that the defendant's testimony lacks consistency and credibility, which is caused by a fear of severe punishment.

L. Kobaidze's guilt stipulated by Article 260, Para.3 (a) and Article 262, Para.4 (a) of the Criminal Code is proved by the following evidence:

According to the statements made by witness Sh. Mchedlishvili in the course of inquiry and during the hearing of the case, at the time of events he and his colleagues were in the territory adjacent to Sarpi border-crossing point (Khelvachauri district) in their line of duty. L. Kobaidze was arrested on the basis of intelligence and found to possess narcotic drugs.

Sh. Mchedlishvili testified that the defendant approached their vehicle, as she thought they were drug traders. He recalled that at the moment of arrest L. Kobaidze told him she had drugs hidden in her bag. She was against calling attesting witnesses, and tried not to attract anyone's attention when being arrested (Case file 28, Record of judicial proceedings).

Also, L. Kobaidze's guilt is proved by the evidence available in the case, namely by:

The search and arrest record compiled on August 22, 2007, stating the fact of confiscation of narcotic drugs from L. Kobaidze (Case file 3-7);

The ruling of Khelvachauri District Court of August 22, 2007 finding the search conducted by police legal and based on the necessity of taking urgent investigative action (Case file 12);

Expert opinion No 2014, dated August 23, 2007 stating that the substance removed from L Kobaidze constituted a narcotic drug – namely, heroine powder (weight 38.985 g) where the weight of heroine was 19.5237 g (Case file 22-26);

The ruling of August 22, 2007 concerning admitting the substance removed from L. Kobaidze as physical evidence (Case file 27).

The judgment of Kutaisi Appeal Court confirmed the decision of the first instance court. According to the court of appeal:

The evidence collected on the case such as: the statements made by the offender and the witness, the record of personal search and the record of arrest compiled on August 22, 2007, expert's statement on the results of chemical examination of the removed substance, and other incriminating materials prove the facts established in the judgement.

The convict does not deny the fact of removal of narcotic drugs; however, in the course of the hearing, conducted on January 16, she said the bag that was later found to contain drugs was given to her by a person she had never met before

who asked her to hand it over to Giorgi. Later, in the course of another hearing, she stated that the bag was left over on the table by an unknown woman when she was in a café in Sarpi.

The Chamber of Appeals cannot accept these statements as truthful, as their lack consistency, coherence and credibility, and are not supported by other evidence. They are clearly at variance with the factual circumstances established on the basis of the materials of the case, namely:

The witness statement made by police officer Sh. Mchedlishvili says that according to the intelligence available to police, on August 22, 2007 Lela Kobaidze was expected to bring narcotic drugs into Georgia from Turkey, via the border-crossing point in Sarpi. At the time of the arrest she herself told the police where she kept the narcotic drugs (record of the hearing).

The record of personal search and seizure conducted on 22 August 2007 ascertains that L. Kobaidze was found to possess 8 batches of brownish powder (total weight 19.5237 g) which, according to the chemical examination, constituted heroin that was hidden in a mayonnaise can put into a red plastic bag. During the search L. Kobaidze refused to have attesting witnesses called to the site (Case file 3-8, 23-26).

Analysis and legal evaluation of the above irrefutable evidence warrants a conclusion that Lela Kobaidze illicitly purchased in Turkey a narcotic drug heroin in especially large quantities (19.5237 g) which she illegally imported into Georgia."

By the decision of the Supreme Court of Georgia of 22 December 2008, L. Kobaidze's cassation was not admitted for examination on the merits, so the judgment of Kutaisi Appeal Court upheld.

The criminal case was examined in 2008; however, L. Kobaidze is still serving her sentence due to an unreasoned decision taken by the court.

The judgments of both the first instance and the appellate court do not contain sufficient proof and reasoning to convincingly demonstrate the fact of commission of an offence stipulated in Article 260, Para.3 (a). In what concerns the charges concerning illegal import into Georgia of a narcotic substance, the only evidence in support of this charge is the intelligence that became known to Sh. Mchedlishvili.

The ruling of the Chamber of Criminal Cases of the Supreme Court of Georgia (20 July 2009, No 63ap-09) defines the necessary standard of proof in respect of Article 262 of the Criminal Code of Georgia.

"According to the provisions of the Special Part of the Criminal Code of Georgia, "illegal import" implies illegal import into Georgia, i.e. the situation where a person crosses the Georgian border."

The Supreme Court of Georgia specifies that in the event of commission of the *corpus delicti* stipulated by Article 262 of the Criminal Code, it is necessary to prove cumulatively the following conditions:

- The fact of illicit purchase of a narcotic substance in a foreign country;
- The fact of crossing the Georgian border in possession of a narcotic substance.

It is to be noted that neither in the course of preliminary investigation, nor judicial inquiry the party for prosecution did not present a single witness to confirm as an established fact that L. Kobaidze had purchased the narcotic substance in Turkey and imported it illegally into Georgia. So, in this part the judgment is based on an assumption.

On May 19, 2011 the Public Defender's Office approached the Information and Analysis Department of the Ministry of Internal Affairs with a request to provide information as to the exact time on August 22, 2007 when Lela Kobaidze crossed the state border to enter Georgia. The timing appeared to be 22 August 2007, at 5.55 a.m.

Lella Kobaidze was arrested on August 22, 2007, at 9.45 a.m., i.e. 3 hours and 50 minutes after she crossed the border. She crossed the state border without having been found to possess any narcotic drugs despite the procedures she went through in accordance with the Law on the Border Police of Georgia.

According to Article 496 of the Criminal Code of Georgia enacted on 20 February 1998,[32] the court shall deliver a well-reasoned judgment, which implies that inferences and conclusions must be grounded on the unity of irrefutable evidence investigated in the trial. Under Article 503, Para.3 of the same Code, the judgment of conviction shall not be based on an assumption.

Article 6 of the European Convention on Human Rights implies an obligation for the courts to state reasons for their judgments. The European Court of Human Rights does not have any fixed standard within which the courts are required to frame the rationale for their decisions. This can only be determined in the light of the circumstances of the case.[33] While courts are not obliged to give a detailed answer to every argument raised,[34] it must be clear from the decision that the essential issues of the case have been addressed.[35] Proper reasoning of court decisions is an indispensable requirement in order for the society, and the applicant, to understand any guilty verdict reached against a concrete person.[36]

Reasoning of judicial decisions mostly implies the following aspects of the proceedings: 1. Evaluation of evidence; 2. Establishing facts; 3. Legal rationale; 4. Procedural matters.[37] With regard to legal issues, the court can only point to relevant provisions of the law (and dismiss a claim based on the law).[38] As to the issues of fact, the court must approach them *ad hoc*, since proper reasoning depends on each and every detail of the case.

In Lela Kobaidze's case, the fact of importing the narcotic drug into the territory of Georgia has not been proved in accordance with the requirements of the law. That Lela Kobaidze brought the drugs into Georgia was only stated by Sh. Mchedlishvili, incidentally, on the basis of intelligence, which *per se* did not constitute evidence.[39] Before arrest, Lela Kobaidze was present in the territory of Georgia for several hours, and could possibly purchase drugs when already in Georgia. There is no irrefutable argument present in the judgment to prove as a fact that she imported the narcotic drugs into Georgia.

This notwithstanding, the district and the appellate courts found Lela Kobaidze guilty of offence under Article 262, Para. 4 (a) of the Criminal Code of Georgia and sentenced her to 15 years' imprisonment. Neither was this failing remedied by the Supreme Court of Georgia that found her cassation appeal inadmissible. As a result, Lela Kobaidze is serving a sentence for an act, that the court wrongly found to be proved "in accordance with the procedure stipulated by law."

EXCESSIVE LENGTH OF PROCEEDINGS

The right to a fair trial, *inter alia*, gives the right to everyone to have his case heard within a reasonable time. The following subsection of the report highlights the problems related to dragged-out proceedings on cases concerning persons in detention, as well as non-custodial cases.

DELAYS AND ADJOURNMENT OF PROCEEDINGS ON CUSTODIAL CASES

Article 1 of the European Convention of Human Rights guarantees that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

32 Effective at the material time of the trial
33 *Ruiz Torija v. Spain*, 9 December 1994 , § 29, European Court of Human Rights
34 *Van de Hurk* v *the Netherlands*, 19 April 1994, § 61, European Court of Human Rights
35 *Boldea* v. *Romania*, 15 February 2007, § 30, European Court of Human Rights
36 Taxquet v. Belgium, 13 January 2009, § 48, European Court of Human Rights
37 Human Rights in Criminal Proceedings, *S. Trechsel,* Oxford University Press, 2006, p. 107.
38 *X. v. Federal Republic of Germany*, 16 July 1981, European Commission of Human Rights
39 Article 110 of the Criminal Procedure Code of 20 February 1998

According to the case-law of the European Court of Human Rights, the "reasonable time" referred to in Article 6 begins to run as soon as a person is "charged."[40] The principle of reasonableness of time applies until the final decision of the court, even if this decision is reached on appeal.[41]

In the case of *Pelissier and Sassi v. France*, the European Court stressed that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities.[42]

In the case of *Farafonova v. Ukraine*, the European Court noted that the defendant cannot be blamed for using the avenues available to him/her under domestic law in order to protect his/her interests, including motions to challenge the judges.[43] In the same case, the Court observed that even if the accused person contributed to the length of proceedings in some respects, his/her behaviour cannot be relied upon to justify the overall length of proceedings.[44]

The Public Defender's Office examined the case of Andro Chkhikvishvili detained on October 18, 2006. On 4 July 2007, Andro Chkhikvishvili was convicted by Tbilisi City Court for offences under Article 180, Para. 2 (a), (c) and Para. 3 (b) and sentenced to 7 years' imprisonment and a fine of 100,000 GEL. The judgment was altered on December 19, 2008 by the decision of the Chamber of Criminal Cases of Tbilisi Appeal Court which revoked from the conviction the charges with regard to Article 180, Para. 2 (a), (c). By the judgment of the Chamber of Criminal Cases of the Supreme Court of July 9, 2009, additional penalty in the form of a fine was lifted, and the case relegated for reconsideration to Tbilisi Appeal Court.

The letter sent by the manager of Tbilisi Appeal Court states that in the period between July 9, 2009 and March 18, 2011 the said case stayed assigned to Judge Mzia Lomtatidze. Thereafter, from March 18, 2011 it was taken over by Judge Michael Bebiashvili, as suggested by the letter of April 7, 2011 addressed to the Public Defender's Office by an assistant judge of the Chamber of Criminal cases of Tbilisi Appeal Court.

Under Article 329 (1) of the new Criminal Procedure Code of Georgia enacted on October 10, 2009, the Criminal Code of 20 February 1998 has become invalid; however under paragraph 3 of the same article, the proceedings shall continue under the previous Criminal Procedure Code in case criminal proceedings were initiated at the time of its validity. Hence, in respect of A. Chkhikvishvili's case the 1998 Criminal Procedure Code shall apply. According to Article 528 (2) of the said law, the appellate court shall examine the case within three months from beginning the examination of an appellate complaint. The law does not specify the time within which the judgment shall be rendered. It only guarantees proceedings within a specified timeframe, while other aspects have to be addressed within general principles of the human rights law.

While assessing the reasonableness of the time of proceedings, one has to consider such circumstances as the age of the accused/convicted person, his/her health status[45] and the period in custody.[46] As stated above, other aspects, too, must be considered, such as e.g. the complexity of the case,[47] the conduct of the competent authorities[48] and undue conduct of the defence party.[49]

The applicant, A.Chkhikvishvili, was born in 1945. According to his application addressed to the Public Defender's Office, he appears to have serious health problems. His case has been pending in the appellate court since July 9, 2009. The case was assigned to Judge Mzia Lomtatidze who had it till March 18, 2011, with no outcome reached in the proceedings for as long as one year and 8 months.

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40 *Inter alia, Eckle v. Germany*, 15 July 1982, § 73, European Court of Human Rights
41 *Inter alia, Wemhoff v. Germany*, 27 June 1968, § 18, European Court of Human Rights
42 *Pelissier and Sassi v. France*, No.25444/94, § 67, European Court of Human Rights
43 *Farafonova v. Ukraine*, No.28780/02, § 32, European Court of Human Rights
44 Ibid, § 35
45 *Beljanski v. France*, 7 February 2002, § 40, European Court of Human Rights
46 *Motsnik v. Estonia*, 29 April 2003, § 40, European Court of Human Rights
47 *Inter alia*, Neumister v. Germany, 27 June 1968, § 21, European Court of Human Rights
48 *Inter alia, Del Federico v. Italy*, 4 July 2002, § 21, European Court of Human Rights
49 *Inter alia*, *Kemmache v. France*, 27 November 1991, § 64, European Court of Human Rights

Georgian legislation does not contain regulatory dispositions that would ensure speeding up of the proceedings. It is necessary to make a provision in the law to enable a defendant/defence counsel to submit a complaint demanding expediting of proceedings. This would contribute to better realization of the standard established by Article 13 of the European Convention, and ensure practicable domestic remedies for exercise of the relevant right.

PROBLEMS RELATED TO PROCEEDINGS ON NON-CUSTODIAL CASES

One of the serious problems encountered in criminal justice is excessive length of proceedings on non-custodial cases. In some instances non-custodial cases lie unattended for years, or proceedings already opened are dragged out.

In the reporting period the Public Defender's Office was approached by a defendant under a non-custodial measure of restraint (bail). According to the applicant, in December 2010 the judge of the Chamber of Criminal Cases of Tbilisi City Court adjourned the hearing of a criminal charge against him on the merits, however, since then the proceedings never resumed (V.Nishnianidze's case). The Public Defender's Office requested and obtained information on non-custodial cases. According to the statistics provided to PDO in the earlier half of December 2011 by the Supreme Court of Georgia, as of October 2011 first-instance court proceedings were not closed on 582 non-custodial cases, of which 61 were criminal cases filed with the court in 2010. As suggested by the by the information provided by Tbilisi City Court in approximately at the same time, of 14225 non-custodial cases referred to Tbilisi City Court between 2008 and 2011, proceedings on 546 cases were not completed. The reason for protracted proceedings, as cited by Tbilisi City Court, is a huge caseload of criminal cases, and besides, non-custodial criminal cases are examined concurrently with custodial cases.

The European Court of Human Rights reflected on the issue of reasonable length of proceedings in a number of cases. In the case of *Farafonova v. Ukraine* (in 2001 the applicant was placed under an undertaking not to abscond, and in 2006 the court found the applicant guilty of hooliganism and sentenced her to 3 years' imprisonment), the European Court observed that much was at stake for the applicant as she suffered a feeling of uncertainty in respect of her future.[50]

It is imperative for the courts to secure for the proceedings to be conducted within a reasonable time in order to relieve the accused of the constant feeling of uncertainty, and avoid the breach of the right to a fair trial within a reasonable time laid down in Article 6 of the European Convention on Human Rights.

PROBLEMS WITH AWARDING A PENALTY IN CASE OF CUMULATIVE CONVICTION

Analysis of the cases examined by the Public Defender's Office suggests that one of the serious problems found in the judicial system is awarding of a penalty in case of accumulation of sentences. In some instances the punishment imposed under cumulative conviction is more severe than prescribed by law. When awarding a sentence under cumulative conviction, the cumulative sentence shall be computed from the day of the last conviction, which is summed up to include the unserved part of the sentence of the prior conviction.[51] Determining the unserved part of the prior sentence is problematic. Another source of uncertainty is the issue of restraint measures, as provisions governing their inclusion in the term of sentence and their correlation with a prior or new sentence are fairly flawed. The Public Defender's Office looked closely into several criminal cases that highlighted a number of problematic aspects.

Article 59, Para.2 of the Criminal Code of Georgia prescribes the way the sentence shall be awarded in case of cumulative conviction:

"When awarding a sentence in case of cumulative conviction, the court shall sum up the sentence of the last conviction to the unserved part of the sentence of the prior conviction in whole."

[50] The case of *Farafonova v. Ukraine*, No.28780/02, § 30, European Court of Human Rights

[51] Except cases when by the time a new offence is committed, the term of suspended sentence awarded under a prior conviction has not expired

Cumulative conviction is one of the forms of cumulative crime seen as a multitude of offences committed. Cumulative crime, as defined in Articles 16 and 59 of the Criminal Code of Georgia, seems a fairly narrow notion that applies only to those cases where several incriminated acts committed before the final judgment are examined within one process. Cumulative conviction, in contrast, constitutes a case where by the time of a final judgment there exists the final sentence in respect of another, prior, offence and/or where consideration of a case occurs within several concurrent proceedings that will end in conviction (cumulative crime in broad terms).

Georgian criminal law regulates several options of cumulative conviction:

- The case stipulated by Article 59 of the Criminal Code, where by the time of a new conviction there exists the final sentence of a prior conviction, that the court has knowledge of.
- The case stipulated by Article 286 of the Criminal Code where the court has no knowledge of the final sentence of a prior conviction.
- The case where several proceedings are carried out concurrently in respect of a person, and/or where by the time of conviction the sentence of a prior conviction is not final (on condition that all sentences will be subject to enforcement).[52]

Article 59 of the Criminal Code of Georgia defines the general rule for accumulation of sentences, and stipulates that all sanctions must be summed up mechanically, after which they are to be transformed into one cumulative sentence. Article 286 of the Criminal Procedure Code does not prescribe any such rule; it stipulates that: "The first instance court decides on awarding a sentence with due consideration given to all convictions."

Article 59 of the Criminal Code of Georgia prescribes that the final sentence awarded in case of accumulation of sentences shall run from the day of the last conviction. This rule applies not only to the situation provided for in Article 59 of the Criminal Code, but also in cases defined by Article 286 of the Criminal Procedure Code.[53] There is, however, an exception from this rule that applies to the situation where the probationary period of conditional sentence of a prior conviction has not expired by the moment of the commission of a new crime. In such case a general rule applies which prescribes that the sentence shall run from the moment of arrest/detention. The rationale behind this exception is that in case a person is not taken in custody as prescribed by law, it is unreasonable to count the sentence from the day of conviction. It seems necessary to expand the scope of this exception and make it applicable to all cases where a convicted person is given more favourable treatment, such as a more lenient, non-custodial, penalty[54] or other measures.[55] Clear and succinct dispositions of the law would provide for better precision and certainty of sentencing under cumulative conviction.

Apart from the need to define clearly the starting point of the sentence, it is important also to streamline dispositions concerning the crediting of sanctions, which at the moment seem quite controversial and lead to unjustified restrictions of human rights.

The Public Defender's Office examined the case of Gocha Chelidze. By the judgment of conviction rendered by the Criminal Collegium of the Supreme Court of Georgia on July 24, 2003 Gocha Chelidze was found guilty of offences under Article 239 (3), Article 187 (2) and Article 109 (o) of the Criminal Code of Georgia. In accordance with Article 59 of the Criminal Code, the sentences were accumulated and Gocha Chelidze was cumulatively sentenced to 23 years' imprisonment. On December 14, 2004, the convict G. Chelidze was tried again under Article 143 (2 – a,c,z,t), Article 143 (3 – a), Article 144 (2 – a,c,d,e), Article 144 (3 – a), Article 378 (2 and 4), Article 236 (1 and 2) and Article 379 (2 – a and b) of the Criminal Code and sentenced to 23 years' imprisonment summed up to the unserved part of the sentence of the prior conviction. By the final decision of the Panel for Criminal Cases of Tbilisi Appeal Court, G. Chelidze was sentenced cumulatively to 30 years' imprisonment.

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52 In reality, there may arise a situation where one sentence is not known to another judge examining the case, and accumulation of previously awarded sentences will be done by a third judge (in case of the third proceedings carried out).

53 Judgment No 27[1] of the Supreme Court of Georgia, 20 January 2009

54 For instance, Article 73 of the Criminal Code of Georgia allows replacing imprisonment with a lighter sentence.

55 For instance, release on parole.

By the judgment of conviction rendered by Tbilisi City Court on February 8, 2007, Gocha Chelidze was found guilty of the commission of offences under Article 19-109 (c, l, and o), Article 19-379 (2 – b), 379 (2 – a and b), Article 236 (1, 2), Article 237 (3 – a and b), Article 237 (4 – b) of the Criminal Code of Georgia, and sentenced to 30 years' imprisonment.

By the judgment of conviction rendered by Tbilisi City Court on April 18, 2007, Gocha Chelidze was found guilty of the commission of offences under Article 378 (1) of the Criminal Code of Georgia and sentenced to one-year imprisonment. The court added this sentence to the unserved part of the sentence of the prior conviction awarded by the Panel for Criminal Cases of Tbilisi Appeal Court on December 14, and imposed the final sentence of 26 years, 1 month and 4 days of imprisonment.

By the judgment of conviction rendered by Gardabani District Court on November 27, 2007, Gocha Chelidze was found guilty of the offence under Article 378[2] (2- b) and sentenced to 3 years' imprisonment. The court summed up this sentence to the unserved part of the sentences of the prior convictions imposed by Tbilisi City Court on February 8, 2007 (30 years' imprisonment) and April 18, 2007 (one-year imprisonment) amounting cumulatively to 30 years, 2 months and 11 days, and meted out the final sentence of 33 years, 2 months and 11 days of imprisonment.

Given the complexity of the case and intricacy of all circumstances involved, the present report only highlights the most important facts related to this case.

On 8 February 2007, Gocha Chelidze was tried for several criminal acts committed on July 2, 2004. By the judgment of conviction he was sentenced to 25 years' imprisonment. However, given that under the Criminal Code of Georgia in force before December 29, 2006 the maximum custodial sentence in case of cumulative conviction constituted 30 years, the court could not impose a more severe sanction. Therefore, Tbilisi City Court meted out the final sentence of 30 years' imprisonment. The sentence was not challenged.

On April 18, 2007, Gocha Chelidze was tried for an act committed on January 6, 2004, and sentenced to one-year imprisonment. In this case the court was not aware of the sentence awarded on February8, so the court summed up the sentence to the sentence imposed on December 14, 2004.

By the judgment of conviction awarded by Gardabani District Court on November 27, 2007, Gocha Chelidze was found guilty of the offence under Article 378[2] (2- b), committed on February 10, 2007 and sentenced to 3 years' imprisonment. Gardabani City Court accumulated the convictions. Namely, the court summed up the latest sentence of 3 years' imprisonment to the unserved part of the cumulative sentence, made up of the sentence of 30 years' imprisonment awarded on February 8, 2007 and the sentence of one-year imprisonment awarded on April 18, 2007, and awarded the final sentence of 33 years, 2 months and 11 days of imprisonment, which the convict started to serve from November 27, 2007 onwards. This sentence was contested on appeal, but Tbilisi Appeal Court upheld it by the decision of January 24, 2008.

According to Article 50 of the Criminal Code of Georgia, in case of accumulation of convictions the maximum term of imprisonment under a cumulative sentence shall not be in excess of 40 years. As noted above, the law in effect before December 29, 2006 provided for the maximum term of custodial sentence not to be in excess of 30 years. According to the Constitution and the Criminal Code, criminality of an act as well as the measure of its punishability shall be determined on the basis of the law applicable at the time when it was committed.[56] Considering that Gocha Chelidze was convicted and sentenced to imprisonment for the acts committed before December 29, 2006, the cumulative sentence in respect of the convictions imposed on February 8, 2007 and April 18, 2007 should not have been in excess of 30 years. The incriminated act underlying the conviction of November 27, 2007 might have been subject to 40 years' imprisonment; however the sum total of prior convictions should not have been in excess of 30 years.[57] Therefore, the sentence of over and above 33 years awarded on November 27, 2007 was contrary to the law.[58]

Another important issue in the instant case is one of the starting points for the sentence to run. The starting point for the imposition of the 30 years' maximum sentence in the case at issue should have been April 18, 2007, that should

[56] Article 42, Para 5 of the Constitution of Georgia and Article 2 of the Criminal Code of Georgia
[57] Which means that as of 18 April 2007 the maximum term of imprisonment imposable on Gocha Chelidze was 30 years.
[58] On condition of crediting the served sentence (between 18 April and 27 November 2007).

have been summed up to the sentence awarded on November 27, 2007, so that the final sentence imposed should have been 32 years, 7 months and 2 days of imprisonment.

In the instant case, due to a lack of clarity of the relevant legal disposition and the judicial error, the convict was awarded 7 months and 9 days of imprisonment in contravention of the law. It is necessary to include in the substantive and procedural codes of the criminal law regulatory provisions applicable to the cases where cumulative conviction concerns convictions under several enforcement proceedings, in order to ensure detailed legal regulation of matters similar to those highlighted in the above case. In the instant criminal case, Gocha Chelidze's human rights, as provided for in the Georgian Constitution and international law, have been violated, which was caused *inter alia* by absence of relevant legal dispositions.

Article 42, Para.5 of the Constitution of Georgia and Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantee the principle of legality in criminal law, according to which no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. At the same time, any penalty imposed should lie within the limits defined for a concrete sanction, and should not be heavier than the maximum punitive measure prescribed by the law.[59] The judge who summed up separately the sentences awarded under the convictions of February 8 and April 18, 2007, violated in so doing the above mentioned human right, since he applied retroactively the new regulation governing accumulation of sentences, which is contrary to the law.[60]

In addition to the impaired principle of legality under criminal law, the instant case exemplifies also violation of the principle prohibiting double jeopardy, laid down in Article 42, Para. 4 of the Georgian Constitution and Article 4 of Protocol No. 7 to the European Convention on Human Rights. This principle prescribes that no one shall be punished again for an offence for which he has already been finally acquitted or convicted.[61] In the case of Gocha Chelidze, he was awarded extra 7 months and 9 days of imprisonment, which means that he is serving again the already served part of the sentence, which is clearly inadmissible[62] and in conflict with the law.

In addition, there are other dispositions in the law that clearly need to be addressed. For instance, it is not clear as to when criminal proceedings start in respect of a convicted person, what procedure applies in such a case for imposition of restraint measures, how the running of the term of the current sentence is suspended therewith. All these aspects appear to be fundamentally important, as they determine in a large measure the decision concerning imposition of a sentence, as well as other important issues. According to Article 62, Para.3 of the Criminal Code: "The time of detention pending trial shall be included into the term of the sentence." The law must clarify as to which sentence the time of this restraint measure (detention pending trial) shall be deducted from. Also, it is necessary to define as to when the prior sentence stops running in order to clearly determine what part of it will be added to a new sentence. Lack of clarity in the law with regard to these issues led to a situation evident in the case of Irakli Kereselidze submitted to the Public Defender's Office, where a convict was "exempted" from serving a certain part of the sentence, and afterwards the court had to "restore the justice" at the expense of violating other fundamental rights.

By the judgment of conviction of May 24, 1996 imposed by the Supreme Court of Georgia, Irakli Kereselidze was found guilty of the commission of offences under Articles 238, 19-190 and 104 of the Criminal Code of Georgia (1960) and sentenced to death. He was arrested on August 24, 1995. By the presidential order of July 25, 1997 (No 387), Irakli Kereselidze's death sentence was commuted and reduced to 20 years' imprisonment.

On March 29, 2002 Irakli Kereselidze committed a new criminal act that constitutes an offence under Article 361 and 19-379 (2 – (a), (b)) of the Criminal Code. He was convicted on April 12, 2006 by Tbilisi City Court and sentenced to 4.5 years' imprisonment. This sentence was summed up to 9 years, which was part of the unserved part of the sentence

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59 For more details on the rights guaranteed under Article 7 of the European Convention for the Protection of Fundamental Rights and Freedoms see the Judgment of the European Court of Human Rights on the case of *Streletz, Kessler and Krenz v. Germany,* 22 March 2001, $ 50. For more details on the standard laid down in the Constitution of Georgia see the Decision of the Constitutional Court of Georgia of 13 May 2009, No 1/1/428,447,459 - II 1-20

60 Ibid. Decision of the Constitutional Court of Georgia of 13 May 2009, No 1/1/428,447,459 - II - 33

61 The case of *Zolotukin v. Russia*, 10 February 2009, § 78-84, the European Court of Human Rights

62 The European standard prohibits double jeopardy not only in respect of punishment, but also in respect of criminal prosecution and conviction, Ibid. *Zolotukin v. Russia*, 10 February 2009, § 83

of the prior conviction (May 24, 1996), with the final sentence awarded being 13 years and 6 months of imprisonment. The sentence started running from the day of the commission of the last offence, i.e. March 29, 2002.

On April 20, 2007, the Supreme Court of Georgia examined an I. Kereselidze's appeal against the sentence of conviction awarded on May 24, 1996 and altered the respective judgment. The sentence of 20 years was reduced to 15 years' imprisonment. However, the court failed to indicate the start and the end dates of the sentence.

On February 20, 2008, the Supreme Court of Georgia rectified the inaccuracy and defined the start and the end of the sentence. In the substantive part of the decision the court stated: "The sentence of 4 years and 6 month of imprisonment under the judgment of conviction of 12 April shall be summed up to 4 years' imprisonment, which is part of the unserved term of the sentence awarded under the conviction of April 20, 2007, the final cumulative sentence awarded to I. Kereseledze therewith being 8 years and 6 months of imprisonment, which started running from March 29, 2002.

On December 3, 2008, Tbilisi Appeal Court examined I. Kereselidze's appeal against the judgment rendered by Tbilisi City Court on April 12, 2006 and upheld it. In the substantive part of the decision the court pointed out that the sentence of 4 years and 6 months of imprisonment awarded under the conviction of April 12, 2006 was summed up to 9 years' imprisonment, which is part of the unserved term of the sentence awarded under the conviction of May 24, 1996, the final cumulative sentence awarded to I. Kereseledze therewith being 13 years and 6 months, which would start running on March 29, 2002 and end on September 29, 2015.

On April 3, 2009, Tbilisi Appeal Court rectified the inaccuracy present in the judgment of 3 December 2008. The Court made an alteration of the substantive part of the decision to indicate that I. Kereselidze's sentence started running from the day of the first-instance court decision, i.e. from April 12, 2006.

On April 7, 2009, the Supreme Court of Georgia heard I. Kereselidze's cassational appeal against the judgment rendered by Tbilisi Appeal Court on December 3, 2008 and altered the latter: as a result, the sentence of 4 years and 6 months of imprisonment awarded for the offences committed on March 29, 2002 was replaced by a sentence of 3 years' imprisonment summed up to the 4-year unserved part of the sentence awarded under the conviction of April 20, 2007 (imposed for the offences committed in 1995), the final cumulative sentence awarded to I. Kereseledze therewith being 7 years' imprisonment which started running on from April 12, 2006.

In Irakli Kereselidze's criminal case three judicial instances had to issue rulings to rectify the errors and inaccuracies present in the judgments. The problem in this case concerned the error made by the first instance court in computation of the date for the sentence to start running. This notwithstanding, in the final accumulation of sentences the court did not violate the applicant's rights, as in the final analysis he was exempted of serving 4 years' prison sentence.

The problem in this case concerned the judgment of December 3, 2008 issued by Tbilisi Appeal Court, and its ruling of April 3, 2009 meant to rectify the inaccuracy. The said acts of the court sentenced I.Kereselidze under cumulative conviction to 13 years and 6 months of imprisonment. According to the said judgment, the sentence started running on March 29, 2002 and would end on September 29, 2015. However, the ruling of April 3 altered the starting date of the sentence from March 29, 2002 to April 12, 2006, i.e. the date of the first-instance judicial decision. In other words, in consideration of the appeal, the appellate court aggravated the sentence awarded by the first-instance court, which decision contravenes the criminal procedure law and fundamental human rights.

Under Article 615 of the Criminal Procedure Code, effective at the material time of the trial, the court was allowed to introduce into its judgment of conviction a clarifying clause not affecting the court's conclusion concerning the qualification of the act committed by the convict, the penalties imposed, acceptance of a civil suit and determination of the claimed amount.

Under the judgment meted out by Tbilisi Appeal Court, the term of sentence to be served was extended to 4 additional years, which in effect constituted breach of the principle prohibiting *reformation in peius*, guaranteed by Article 540 of the Criminal Procedure Code effective at the material time of the proceedings. In the course of the proceedings on I.

Kereselidze's appeal, his situation deteriorated, which was contrary to the law. This is guaranteed by Article 42, Para 1 of the Constitution of Georgia that guarantees everyone the right to apply to a court for the protection of his rights and freedoms.[63] No procedural dispositions concerning the exercise of a specific right should be in any way detrimental for the subject concerned, since the guarantees so established are meant to protect human rights, and not to restrict them additionally.

Another controversial issue in the context of the Georgian law relates to the grounds for reopening of proceedings due to newly discovered circumstances. In case any of the grounds referred to in Article 310 of the Criminal Procedure Code of Georgia applies, this would cause alleviation of the responsibility within a concrete conviction. In case the said conviction serves, in turn, as a basis for another conviction, in the context of cumulative conviction there is no avenue that would allow to change this second act of the court, because due to the established practice[64] of the Georgian courts, it is only possible to reopen a completed case due to newly revealed circumstances in a limited number of cases, if the grounds specified in the law are present. To better regulate these matters it is imperative to revisit provisions regulating the issue of newly revealed circumstances in case of cumulative conviction.

As evidenced by the above cases, the Georgian criminal law and the practice of criminal proceedings appear to be fairly problematic in the context of imposition of sentences in cases of cumulative conviction.

Despite the fact that proceedings on both of the cases described in detail above were completed before the reporting period, their legal effects – namely imprisonment – are persistent today, too, and respective convicted persons are serving sentences part of which was imposed on them in contravention of the law.

BENEFIT OF DOUBT

Presumption of innocence constitutes one of fundamental principles of criminal proceedings. Any doubt arising while evaluating evidence that cannot be resolved under the procedure established by law shall be settled in favour of the defendant (convict).[65] However, the cases examined by the Public Defender's Office highlight in some occasions the breach of this principle.

The Constitution of Georgia in Article 40, Paragraph 1 provides that: "An individual shall be presumed innocent until the commission of an offence by him/her is proved in accordance with the procedure prescribed by law and under a final judgment of conviction". Article 40, Para.3 lays down that: "An accused shall be given the benefit of doubt in any event."

This disposition (*in dubio pro reo*[66]) applies in criminal law to the facts of the case where the available evidence suggests several possible inferences. In such a case, presumption of innocence dictates adjudication in favour of a defendant.

Article 71 of the Criminal Code stipulates that a person shall be relieved of criminal liability in case a period of time specified in Para.1 of the same article has passed since the perpetration of the crime. The term of limitation shall cover the period from the day of wrongdoing before bringing an accusation against the person.[67]

Relevant to computation of the term of limitation is perpetration of the *corpus delicti* or an attempt to commit an offence, as the period of limitation starts running from that moment. Differently from this rule, the ongoing crime starts with act or omission and is only completed with the termination (suppression) of the act. In case of unlawful possession of a firearm the period of limitation shall start running only upon the termination of the respective body of crime, i.e. when the possession of the firearm is terminated. In case it is not possible to establish with precision the

63 See the judgment of the Constitutional Court of Georgia of 21 December 2004, No 2/6/264.

64 *Inter alia*, the judgments of the Chamber of Criminal Cases of the Supreme Court of Georgia of 6 June 2009, No 39/saz-09, and of 10 September 2009 No 41/saz/09.

65 Criminal Procedure Code of Georgia, Article 5, Para.3.

66 See the dissenting opinion of Judge Popovich on the case of *Achour v. France*, 29 Parch 2006, the European Court of Human Rights.

67 Criminal Code of Georgia, Article 71, Para.2.

time of termination of an offence, any doubt should be resolved in favour of a defendant and criminal proceedings against him shall be dropped. This approach is evident in the judgment of Kutaisi Appeal Court rendered on January 15, 2009.[68]

By the judgment of conviction rendered by Zugdidi District Court on April 6, 2011, Koba Giorgadze, Nugzar Shengelia and Zaur Chkadua were found guilty of the commission of offences under Article 23-303 (1), Article 177 (1 – (a), 3 – (a)) and article 210 (1) of the Criminal Code of Georgia. By the same judgment Gocha Ubilava was found guilty of the commission of offences under Article 23-303 (1) and Article 177 (1 – (a), 3 – (a)) of the Criminal Code of Georgia. The same judgment authorized a plea agreement between the Prosecutor of Samegrelo-Zemo Svaneti Region and Maro Gvichiani, convicted under Article 210 (2 – (b)) of the Criminal Code of Georgia.

The judgment states that the offenders committed larceny and unlawful felling of trees at the time and under circumstances not known to the court. The exact time of the perpetration of wrongdoing is unknown. Therefore, it is not possible to determine whether the term of limitation has expired for any of the offenders, as there is not a single instance of one particular offence perpetrated by a particular person.

Such an approach is often applied by the common courts of Georgia, in which case the question concerning time barring of an offence remains unresolved, leaving the way open for possible violations of human rights. All doubts that the courts may have as to the time of the offence should be resolved in favour of a defendant. An alternative would be to identify a likely time of the perpetration within the term of limitation.[69]

Analysis of the cases examined by the Public Defender's Office suggests a multitude of problems in the judicial system. As highlighted above, a judicial error by a single judge may result in longer period of imprisonment than prescribed by the law, which is clearly impermissible. Therefore, it is particularly important to consider the recommendations made by the Public Defender in order to prevent similar breaches of human rights in future. Also, it is imperative to carry on the reform of the judiciary in order for the court to become a guarantor for the justice to prevail.

RECOMMENDATIONS:

Recommendations to the Chairman of Tbilisi City Court:

a) **To make necessary arrangements to divert the flow of visitors queuing to submit documents to the court registry;**

b) **To make necessary arrangements in order for proceedings on cases concerning administrative offences to be held in courtrooms easily accessible for all persons willing to attend.**

Recommendations to the Chairman of Akhalkalaki District Court:

a) **To pay special attention to provision of qualified interpretation services for the proceedings and, to this end, to make preliminary selection of relevant professionals;**

b) **To give the necessary instructions to the court officers in order to secure unhindered access of the public to courtrooms;**

c) **To display information concerning scheduled court hearings in visible areas of the court premises in order to secure better publicity of the proceedings.**

[68] Case No 1/b-864-2008

[69] The said doubt may be present in respect of retroactive application of the law.

Recommendations to the Chairman of Kutaisi City Court:

a) To give the necessary instructions to the court officers not to restrict the right of people present in the courtroom to make certain records (in writing);

b) To give the necessary instructions to the court officers in order to secure unhindered access of the public to courtrooms.

Recommendations to common courts:

a) To secure unhindered access to courtrooms for members of the public willing to attend the proceedings;

b) To secure permanent deployment and use of a special audio-system for production of stenographic record of proceedings for all categories of hearings;

c) To arrange for necessary measures in order to secure physical accessibility of court premises for persons with disabilities.

Enforcement of Court Judgments

In a state ruled by law, where the binding character of the acts of the courts is provided for by the legislation, there exists a presumption of their voluntary execution. The judicial decision constitutes an act of justice issued by the court in lieu of a court hearing and is subject to obligatory enforcement, as guaranteed by the Constitution.

According to Article 82, Para 2 of the Constitution of Georgia, acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country. At the same time both the Constitutional Court of Georgia,[70] and the European Court[71] observed in a number of cases that execution of valid judicial decisions is an integral part of the right to a fair trial.

Over 2011, similarly to 2010, the number of submissions to the Public Defender's Office concerning the issue of enforcement of judicial decisions was fairly high. Examination of cases highlighted the "traditionally occurring" problems, but also some new ones. The 2010 Report of the Public Defender highlighted the problems related to legislative regulation of the terms and procedures of coercive enforcement action such as e.g. attachment of the monetary funds held in the respective account of the state budget, or elaboration of a mechanism for coercive retrieval from a debtor organization of information necessary for enforcement of a judgment or, in cases stipulated by Article 30 of the Georgian Law on Enforcement Proceedings, defining concrete conditions for the search of a debtor, securing debtor's appearance and other procedures involved therein.[72] The Public Defender made recommendations on the ways to address each of the above problems. Regrettably, no meaningful steps have been taken by the state authorities in 2011 to follow on the Public Defender's recommendations. Since detailed analysis of these problems is provided in the 2010 Report, they will not be discussed in the present report. The problems identified last year still persist, and the recommendations made remain valid.

TAX LIEN /HYPOTHECATION

In 2011 the Public Defender received numerous submissions from the citizens concerning protracted enforcement procedures in respect of the judgments made by the courts in their favour, and the ensuing violation of their rights. Analysis of the applications exposed a problem related to the tax lien/mortgage registered on a debtor's property. To be more specific, in 2011 the Public Defender was on numerous occasions approached by unsecured creditors[73] complaining of delays in enforcement of the court judgments made to their benefit. Close examination of the submissions falling under this category revealed one and the same problem in many of the cases referred. Typically, the act of court would impose on a respondent organization a liability for the payment of an amount due to applicants (applicants in most

[70] See the decision of the Constitutional Court of Georgia on the case of "JSC Sakgazi and Anajgupi v. the Parliament of Georgia, No 1/14/184/228.

[71] The case of *Brumarescu v. Romania*, No 28343/95, the European Court of Human Rights.

[72] See the 2010 Report of the Public Defender on the Protection Human Rights and Fundamental Freedoms in Georgia.

[73] A creditor whose claim is not secured by a pledge of property (mortgage), lien or other means of securing liability.

cases were employees of the respondent organization). The acts of the courts were presented to respective territorial units of the National Bureau of Enforcement of the Ministry of Justice of Georgia for enforcement. However, the creditors would receive a letter from the National Bureau of Enforcement stating that it was not possible to enforce the act of the court because there was a tax lien/hypothecation registered against a debtor's property (movable and immovable). Therefore, based on the Georgian law, the Enforcement Bureau was not in a position to carry out an enforcement action to the benefit of the applicants before the claims made by the state were satisfied.

Analysis of the applications addressed to the Public Defender shows that unsecured creditors are unduly limited in their right to benefit from the acts of the court, which *per se* precludes effective administration of justice.

Article 82^3 of the Georgian Law on Enforcement Proceedings prescribes the order of priority for meeting creditors' claims. Paragraph 1 of this article states that priority shall be given to claims for enforcement that are secured by the tax lien/mortgage. Paragraph 2 further stipulates that claims for enforcement that are not secured by the mortgage are a second priority, among them claims on payment of alimony, claims arising from labour relations, claims on compensation of damage caused by disfigure or other health injury as well as lose of breadwinner etc. This means that satisfaction of unsecured creditors' claim is only possible after full and complete satisfaction of the tax authorities' claim.

Article 238 of the Tax Code defines measures to ensure payment of tax liabilities. According to this legal disposition, meeting tax liabilities shall be ensured by the following measures:

- tax lien (or hypothecation);
- enforcement of levy on property in possession of a third person;
- seizure of property;
- sale of seized property;
- order for collection of tax and penalty amounts from bank accounts;
- withdrawal of cash from taxpayer's cash-desk.

The said article further prescribes that the sequence of measures to ensure meeting of tax liabilities shall be determined by the tax authority.

Article 239 of the Tax Code defines the content of the tax lien/hypothecation, and conditions of its application and removal as well as the statute of limitation. Under para.1 of Article 239, "tax lien/hypothecation is the right of the state to secure payment of tax liabilities from property of the delinquent taxpayer/tax agent or other responsible person". According to paragraph 8 of the same article, the statute of limitation for the tax lien/hypothecation shall be 6 years the running of which shall be suspended in the following 3 cases:

- in the period of proceedings on a bankruptcy case;
- in the period of restructuring of an entity;
- in the period of tax-related dispute.

Under the existing regulations, the 6-year year statute of limitation for the tax lien/hypothecation can be extended by the period necessary to eliminate the grounds for the suspension of the tax lien/hypothecation.

It is to be noted that the main controversy of the regulation lies in the 6-year statute of limitation for the tax lien/hypothecation that under certain circumstances can be extended further.

Submissions addressed to the Public Defender indicate that due to the measures prescribed by the law to secure payment of tax liabilities (tax lien/hypothecation), the acts of the court made to the benefit of unsecured creditors

remain unenforced for years. After registering tax lien/hypothecation against a debtor's property the tax authority, as a rule, would not lay an attachment on the same property and, hence, does not sell the attached (seized) property. In view of the order of priority stipulated by the law for satisfaction of the creditors' claims, unsecured creditors are devoid of the opportunity to benefit from coercive enforcement procedures. Notably, in overwhelming majority of enforcement-related cases addressed to the Public Defender, the debtor organizations are legal entities of private law with 100% interest owned by the state.

The Law on Enforcement Procedures allows no possibility to secure enforcement of the acts of the court made to the benefit of unsecured creditors, in case the debtor's property is under the registered tax lien/hypothecation. Therefore, in such a case the enforcement agency is not authorized to take enforcement action in order to satisfy the legitimate interests of an unsecured creditor. One can argue that the tax lien/hypothecation appears to serve as grounds for *de facto* suspension of the enforcement of the acts of the court presented to the relevant body by unsecured creditors.

As stated above, in cases like this the law appears to give tax authority priority over private interests. It is within the competence of the state to provide for distribution of powers among the parties, even if they end up in unequal conditions. However, with such distribution of powers it is imperative for the state to ensure that the regulation it establishes is equally fair for everyone, and not detrimental for some. With fair regulation in place, the legislation is expected to provide for effective protection of the parties and the avenues for them to exercise the rights guaranteed by law.

Clearly, Article 82^3 of the Law on Enforcement Procedures which gives precedence to interests of the state, restricts the unsecured creditors' right to a fair trial. An important factor to bear in mind in case any of the rights laid down in the Constitution are restricted, is proportionality of the restriction and reasonableness of the time for which it is introduced. This principle requires correlation to be established between the legitimate end and the means to achieve it. It is imperative for the imposed restriction to be reasonably consistent with the meaning of the respective right. As observed by the European Court of Human Rights: "*Delay in the enforcement of a court judgment can only be justified if it does not lead to impairment of the essence of the right which Article 6 of the European Convention seeks to protect.*"[74]

The current legislative regulation serves to protect the interests of the state, while leaving unsecured creditors without any mechanism for effective enforcement of the acts of court. An unsecured creditor can linger for 6 years without having any chance to see enforced a judgment made for his benefit, while a six-year statute of limitation for the tax lien/hypothecation appears to be an unreasonably long legal obstacle both on the way of unsecured creditors, and the interests of administration of justice. It is to be emphasized that imposing a 6-year long restriction on the enforcement action to be carried out may lead to total disregard by the state of fundamental human rights and undermine the very essence of the right to a fair trial.

In the case of *Apostol v. Georgia*, the European Court of Human Rights observed: "*The right to a court is not merely a theoretical right to secure recognition of an entitlement by means of a final decision, but also includes the legitimate expectation that the decision will be executed. The effective protection of litigants and the restoration of legality presuppose an obligation on the administrative authorities to comply with a binding judgment.*" Everyone who secured a benefit through court has a legitimate expectation to be able to enjoy the right thus granted.

Thus, in order for unsecured creditors to benefit from the right to a fair trial it is imperative that the legislation offers them more effective protection. To address the problem it is important to design legal regulations enabling unsecured creditors to benefit, under certain conditions, from the coercive enforcement procedures despite the tax lien/hypothecation registered against a debtor's property. Such regulation would spare them the problems related to the terms of the tax lien/hypothecation and contribute towards better administration of justice.

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[74] The case of *Burdov v. Russia*, No 59498/00, the European Court of Human Rights.

RECOMMENDATIONS

Recommendations to the Parliament of Georgia

a) To include into the Law on Enforcement Procedures the terms and procedures of attachment of the monetary funds held in the respective account of the state budget, applied as a coercive enforcement action in case the debtor budget-supported organization fails to fulfil voluntarily the liability imposed on it by the act of the court;

b) To define in the Law on Enforcement Procedures a mechanism to allow coercive retrieval from a debtor organization of the information necessary for the enforcement of the act of the court;

c) To consider in the Law on Enforcement Procedures exceptions to enable an unsecured creditor to benefit from the procedures for enforcement of the act of the court despite the existence of the tax lien/ hypothecation registered against the debtor's property;

d) To define concrete cases to apply the search of a debtor, provided for in Article 30 of the Law on Enforcement Procedures (i.e. those cases where the enforcement of the act of the court is not possible without the presence of the debtor), secure debtor's appearance, its duration and other action involved therein.

PUBLIC DEFENDER AND CONSTITUTIONAL OVERSIGHT

INTRODUCTION

Participation in the process of constitutional justice is an important part of the work of the Public Defender of Georgia. The Public Defender is authorized to initiate abstract constitutional oversight.

The Public Defender can lodge a constitutional complaint with the Constitutional Court on the norms related to the referendum and elections as well as the elections (referendum) conducted or to be conducted on the basis of these norms, or in case when the human rights and freedoms laid down in Chapter 2 of the Georgian Constitution are violated in a normative act or its particular norms.[75]

It is to be noted that the Public Defender actively applies this leverage to address the Constitutional Court in case he considers that a normative act or its particular norms offend the human rights and freedoms enshrined in Chapter 2 of the Constitution.

As a rule, the Public Defender addresses the Constitutional Court in cases where the examination of complaints and applications submitted the Public Defender suggests a conflict between a certain normative act, or its norms, and the Constitution. At the same time, under the Organic Law on the Public Defender of Georgia,[76] any person can apply to the Public Defender if the applicant contests conformity of the normative acts with Chapter 2 of the Constitution of Georgia. In such cases the Public Defender's Office examines the application and decides if it necessary to lodge a complaint with the Court.

According to amendments made by the Georgian Parliament to the Organic Law on the Public Defender of Georgia on 11 November 2011,[77] in particular cases the Public Defender is authorized to exercise the *Amicus Curiae* function in the Constitutional Court of Georgia.

Over the reporting period the Constitutional Court adjudicated over three constitutional complaints lodged by the Public Defender, of which two were redressed and one was dismissed. This chapter offers a short overview of the judgments made by the Constitutional Court on the said complaints.

75 Organic Law of Georgia on the Public Defender of Georgia, Article 21, subparagraph (i) (as of 11 November 2011)
76 Organic Law of Georgia on the Public Defender of Georgia, Article 14, Para 1, subparagraph (d) (as of 11 November 2011)
77 Organic Law of Georgia on the Public Defender of Georgia, Article 21, subparagraph (e) (as of 11 November 2011)

JUDGMENT OF THE CONSTITUTIONAL COURT AS TO UNCONSTITUTIONALITY OF CERTAIN PROVISIONS OF THE GEORGIAN LAW ON ASSEMBLY AND MANIFESTATIONS

With its judgment of April 18, 2011, the Constitutional Court of Georgia partially satisfied the Public Defender's constitutional complaint and found a number of norms of the Georgian Law on Assembly and Manifestations, as well as of the Code of Administrative Offences of Georgia, to be in conflict with the Constitution.

In view of the particular importance of the issue, as well as possible changes to the established practice of the Constitutional Court as a result of adjudication, the case was examined by the Plenum of the Constitutional Court.

As stated above, the case concerned the constitutionality of certain norms set out in the Law on Assembly and Manifestations, the Code of Administrative Offences and the Law on the Investigative Service of the Ministry of Finance of Georgia in relation to Articles 19, 24 and 25 of the Constitution. These constitutional provisions are meant to protect the right to freedom of speech and expression, the right to freedom of information, as well as the right to assembly and manifestations.

The Constitutional Court of Georgia partially satisfied the constitutional claim made by the Public Defender.

In particular, among the norms found unconstitutional by the Court were those that banned holding an assembly or manifestation within 20 meters from the entrance to some public institutions and administrative bodies, including courts. The Court accepted the claimants' opinion that such blanket ban did not conform with the Constitution, since in certain cases it made holding an assembly or manifestation practically impossible. In addition, the Court observed that the right to hold an assembly can be restricted when it interrupts the normal functioning of an institution, or when the restriction is caused by emergency security measures.

The Court also found unconstitutional and repealed the norms of the law that prohibited initiation of an assembly or manifestation by one person only, as well as organization of a protest by a non-citizen and assigning the status of the person responsible for the protest to such a person.

The Court repealed the norm that required immediate termination of an assembly in case of blockage of a road or other violations of the law. The Court noted that participants of an assembly must be given an opportunity to bring the assembly (manifestation) in conformity with the requirements of the law, and that an assembly can only be terminated forcefully in the event of disobedience to a lawful demand of a representative of the authorities.

The Court found the norms prohibiting organized/deliberate blockage of carriageway to be in conformity with the Constitution. It held that the blockage of street by pedestrians shall only be allowed if it is caused by large numbers of people participating in an assembly or manifestation. Also, the restriction on movement of vehicles in a group in a manner leading to deliberate congestion of a carriageway, and its blockage was found not to conflict the Constitution.

According to the judgment, the norm prohibiting making of inscriptions, painting and symbols on facades of administrative buildings and adjacent territories is also consonant with the Constitution. The Court held that disfiguring facades of administrative buildings and adjacent territories with various inscriptions and symbols would jeopardize public order and safety.

The Court upheld the contested provision of the Law on the Investigative Service of the Ministry of Finance of Georgia that prescribes a blanket ban on participation in assemblies and manifestations for officers of the said service. Considering the special nature of tasks, competences and powers assigned to the service by the law, the Court found the above ban to be in conformity with the Constitution.

Together with the Public Defender, co-claimants in the described case were persons who believed that the contested norms offended their constitutional rights and freedoms.[78]

78 For detailed information see the Judgment of the Constitutional Court of Georgia of 18 April 2011 No 2/482, 483, 487, 502. Full text of the Judgment is available at: http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show.

ARTICLE 42, PARA 5[1] OF THE CRIMINAL CODE AND INDIVIDUALIZATION OF PUNISHMENT

On July 11, 2011 the Constitutional Court of Georgia delivered a judgment denying the Public Defender's constitutional claim.

The constitutional claim challenged the constitutionality of Article 42, Para.5[1] vis-à-vis the principle of individualization of punishment.

In criminal law, a person can be considered guilty only through an effective judgment of conviction delivered by the court. When adjudicating in a case, the court would examine a wrongful act committed by an individual, assess the measure of culpability of the person, and render its decision accordingly. The punishment can only be awarded to a person having committed an offense. The contested norm prescribes imposition of a penalty not on the person found guilty by the court, but on his/her lawful representative. In our view, this provision comes into conflict with the principle of individualization of punishment.

Even though the principle of individualization of punishment is not expressly set forth in the Georgian Constitution, it stems inherently from its principles, as stipulated in Article 39 of the Constitution. In its ruling No 1/51, passed on July 21, 1997 the Constitutional Court declared the principle of individualization of punishment to be of fundamental importance. The Constitution of Georgia sets a high standard of protection of human rights and freedoms, hence the principle of individualization of punishment stems from the principles of the Constitution.

Under the contested norm, in case an offense is committed by an insolvent juvenile, fine – i.e. punishment for purposes of the criminal law - shall be imposed on his/her parent(s) (trustee, guardian), which means that criminal liability is imposed on the parent(s) (trustee, guardian) of an insolvent juvenile without their being involved in any manner in the wrongful act. Thus, the said norm offends the requirement stipulated in the first sentence of Article 42, Para. 5 of the Constitution. Criminal liability (fine) is imposed on a parent without his/her having committed an offence and been convicted only because his/her juvenile son/daughter has no independent source of livelihood. This, in our view, is tantamount to laying criminal responsibility on a person without fault for an offence committed by someone else, which is in clear conflict with Article 40, Para. 1 of the Georgian Constitution. The underlying principle ensuing from Article 40 and Article 42, Para. 5 of the Constitution is that there shall be no punishment unless the person's culpability for a specific act has been established clearly. However, the contested norm imposes punishment on the parent (trustee, guardian) who neither appears to have committed a wrongful act, nor found guilty of an offence.

The Constitutional Court noted that recovering a fine from the parents (trustee, guardian) cannot be equated with awarding a punishment, though it confirmed that this measure does have a negative effect on the person concerned. The judgment of the Constitutional Court is important in that it has linked up the contested norm with Article 42, Para. 5 and Article 40, Para. 1 of the Constitution and confirmed once again that individualization of punishment (the principle of personal responsibility) is the principle protected by the Constitution.

Despite denial of the Public Defender's claim by the Court we consider that constitutionality of the contested norm is still open to question. Even though the Court could not go beyond the subject of the dispute, it is to be noted that the substance of the norm conflicts also other constitutional provisions, namely those contained in Article 21 (the right to property) and Article 42, Para. 1 (the right to apply to a court). The parent (trustee, guardian) does not have the right to challenge a measure that negatively affects him/her and restrict his/her right to property.[79]

CONSCIENTIOUS OBJECTION TO MILITARY RESERVE SERVICE

On December 21, 2011 the Constitutional Court upheld the Public Defender's constitutional claim concerning constitutionality of Article 2, Para. 2 of the Law on Military Reserve Service in conjunction with Article 14 and Article 19, Para. 3 of the Constitution of Georgia.

79 For detailed information see the Judgment of the Constitutional Court of Georgia of 11 July 2011 No 3/2/416. Full text of the Judgment is available at: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1404703 or http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=644&action=show.

The Constitutional Court acknowledged the right to conscientious objection to military reserve service.

The claim concerned unconstitutionality of the provisions of the Law on Military Reserve Service establishing an obligation to pass military reserve service for those persons who refuse to undertake military service on the grounds of freedom of religion.

According to the law, the main purpose of the military reserve service is to support the armed forces, and provide for mobilization in combat and/or emergency situations. Reserve training and especially participation in certain operations in emergency or combatant situations is directly related to military training and performing combatant roles.

Participation in operations for elimination of the consequences of emergency situations is probably the only setting where a person concerned does not have to take arms and perform combatant tasks. Reserve service includes a course in combat instruction/training. Hence, persons who under the law are obliged to pass military reserve service may have conscientious objection to such a service on the grounds of their religion or non-religious principles and convictions.

According to the Law on Military Reserve Service, persons including students could not be exempted from the military reserve service on the grounds of conscientious objection in the absence of the grounds established in Article 8 of the said law.

According to Article 8, Para.1 (h) of the Law, among persons exempted from the military reserve service are persons who passed alternative non-military labour service. The way the provision is formulated suggests that it only concerns those who were conscripted to the military service and completed instead alternative non-military labour service, which they requested on the grounds of conscientious objection. The above provision further suggests that when called up to perform military reserve service, conscientious objectors do not have an entitlement to request assignment to non-military alternative labour service.

At the same time, under the Law on Conscription and Military Service and the Law on Military Reserve Service, military reserve service is deemed to be part of compulsory conscription and not military service. According to Article 3 and 4 of the Law on Non-Military Alternative Labour Service, non-military alternative labour service is an alternative only to military service. Hence, the law precludes conscientious objectors called up to perform military reserve service to request assignment to non-military alternative labour service.

Article 19 of the Constitution guarantees to every person the right to freedom of conscience, religion and belief, as well as the right to freedom of expression. The Constitution contains safeguards for both internal and external dimensions of the right to freedom of conscience and belief. The right to freedom of conscience and belief implies, *inter alia*, the right to freely choose and hold particular religious or non-religious beliefs and convictions. This entails the right to act in accordance with his/her personal belief, or choose not to participate in any action contradicting his/her convictions.

Hence, the right to refuse performing compulsory military service and to substitute it with non-military alternative labour service is a crucial aspect of the right to freedom of conscience and belief protected by Article 19 of the Georgian Constitution, as well as by international human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

The European Court of Human Rights in its Grand Chamber judgment of 7 July 2011 in the case *Bayatyan v. Armenia* firmly stated that conscientious objection enjoys autonomous protection within the scope of freedom of religion, and ensures respective mutual obligations.

Even though the contested provision of the Georgian Law on Military Reserve Service is general and neutral, and it is no way meant to suppress religious minorities, it nevertheless appeared to affect freedom of belief in that it required persons to perform such actions that were in conflict with their religion and belief. For purposes of the right to freedom of religion, both military service and alternative military service should be understood in a similar way, since in both cases the underlying grounds for conscientious objection are identical.

The right to conscientious objection as one of the forms of freedom of thought, conscience and religion may be subject to restriction, if its manifestation endangers public safety, security and the rights of other persons, though according to Article 19, Para.3 of the Constitution the restriction of these rights is permissible only if their manifestation infringes upon the rights of others.

Besides, the contested norm appeared to violate also Article 14 of the Constitution, as the law placed equal burden on the one hand, on persons who were essentially unequal, i.e. reservists with conscientious objection, and on the other hand - on reservists without the latter. In other settings, i.e. outside military reserve service, conscientious objectors were allowed to undertake alternative service in case of initial conscription and thus substitute for military service, whereas when conscripted into reserve, the people of the same beliefs and convictions were disallowed to perform alternative service.

It is to be noted that in 2011 Georgian courts examined five cases concerning conscientious objection by members of Jehovah's Witnesses to military reserve service on the grounds of their religion. In two cases members of Jehovah's Witnesses were awarded payment of an administrative fine for evasion of reserve service, whereas the remaining three cases are pending in the courts of appeals.

As stated above, the Constitutional Court of Georgia satisfied the Public Defender's constitutional claim against the Parliament of Georgia, and found the provision of Article 2 Para. 2 of the Law on Military Reserve Service that prescribes compulsory military reserve service for persons who refuse undertaking military reserve service on the grounds of freedom of conscience and belief to be incompatible with Article 14 and Article 19, Paras 1 and 3 of the Constitution and hence, unconstitutional.[80]

[80] For detailed information see the Judgment of the Constitutional Court of Georgia of 22 December 2011 No 1/1/477. Full text of the judgment is available at: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1560250.

LAW-ENFORCEMENT BODIES AND HUMAN RIGHTS

Violations of human rights by members of law-enforcement bodies represent a recurrent theme in parliamentary reports of the Public Defender of Georgia The reporting period of 2011, too, saw numerous instances of abuse by law-enforcement officers, mostly in the form of degrading treatment and disproportionate use of force.

Many of the violations examined by the Public Defender resulted from excessive use of force by police during the break-up of the protest rally on 26 May 2011.

Besides, the report describes documented cases of disproportionate use of force and excess of authority during arrest. Unfortunately, the same abusive practice continued even after detained persons were placed in police custody.

The reporting period coincided with the events related to the Maestro TV Company. Despite the fact that conflicting parties in this case were private persons, the Public Defender looked into the case through the prism of law-enforcers' conduct, and the respective follow-up.

The case of Jimsher Elizbarashvili and Jimsher Chachibaia

In the reporting period the Public Defender was addressed by Jimsher Elizbarashvili and Jimsher Chahchibaia, both convicted by the court, who complained that they had been ill-treated and otherwise abused in police custody.

On October 10, 2010, J. Elizabarashvili was arrested at the entrance to his home by members of the Criminal Police Department of the Ministry of Internal Affairs for suspected offence under article 236, Paras 1 and 2 of the Criminal Code of Georgia. According to the arrest report, J. Elizbarashvili had an injury in the head area, namely, in the left side of his forehead.

According to J. Elizbarashvili, in the course of investigation he and his father, Jimsher Chachibaia, were subjected to physical violence. At the scene of arrest investigator Badri Darbaidze hit him in forehead with a pistol butt and injured him. The injury was documented in the arrest report. Ill-treatment continued after J.Eizabarashvili and his father were transferred to the premises of the Ministry of Internal Affairs, where they were physically assaulted by police officers, among them Tariel Alavidse who was particularly abusive. J. Elizbarashvili also stated in his application that he had complained about ill-treatment to the prosecutor of Tbilisi Prosecutor's Office (identity not available), however the prosecutor advised him to refrain from mentioning malpractice by police, as this could hinder the plea bargain process. Therefore J. Elizbarashvili denied his previous allegations of ill-treatment by police.

Allegations concerning physical violence by police officers, including Tariel Alavidze, were made by J. Elizbarashvili's father, J. Chachibaia. According to the latter, on October 10, 2010, during the home search, police officers handcuffed

and physically assaulted him. They threatened to throw him out of the window, then held him on the ground and started kicking and beating him, making further threats of sexual abuse against him and his son unless they confess crime.

The records of visual examination made up upon placement of the applicant and his father in the temporary detention isolator also noted bodily injuries. According to the records, J. Elizbarashvili displayed a bleeding abrasion in the forehead area, a small hematoma in the right temple area, slight swelling in the eyebrow and right jaw area, multiple excoriations on the neck and in collar-bone area. According to the same record, J. Elizbarashvili alleged that he had sustained those injuries as a result of physical assault by police after his detention. J. Chachibaia displayed bodily injuries, too: namely, excoriations on the neck and in collar-bone area, as well as minor bluish bruises on legs and knees.

The Public Defender addressed the Chief Prosecutor's Office of Georgia with a demand to open investigation into allegations of physical and psychological ill-treatment by police of J. Elizbarashvili and J. Chachibaia. The investigation into the said facts is currently underway.

Excessive use of force against demonstrators on 26 May 2011

On May 26, 2011 the units of the Ministry of Internal Affairs dispersed a protest rally on Rustaveli Avenue, in front of the Parliament building. The way the protest was dispersed was in violation of international standards and the Georgian law, which caused violation of the rights of a significant number of people.

The protesters had a permit to hold a rally on May 25 that expired at midnight – i.e. 00.00 on May 26, 2011. Tbilisi's municipal authorities warned protesters that they would break up the demonstration in order to make way for the planned Independence Day military parade on Rustaveli Avenue and Freedom Square on 26 May and offered the protesters another rally venue, which they refused. Despite the fact that there were legitimate grounds for terminating the protest, the force used by police was disproportionate in a number of cases, which was confirmed by the footages disseminated by media, and explanatory statements given to representatives of the Public Defender. Excessive use of force was particularly evident in the cases when law enforcement officers physically assaulted and detained the protesters who put up no resistance to them or had already been put under their control.

Representatives of the Public Defender visited the persons arrested during the dispersal of the protest rally on 26 May, and placed under administrative detention into temporary detention isolators. In interviews with representatives of the Public Defender part of the detainees stated that they sustained injuries both at the time of detention and afterwards. Some of them said that they received injuries before they were brought to Tbilisi Police Headquarters, whereas others indicated that physical assault by police continued afterwards, too.

Representative of the Public Defender visited Zakharia Zurashvili placed in temporary detention isolator No 2 of Tbilisi. Mr. Zurashvili reported that on May 26, 2011 he participated in the protest rally on Rustaveli Avenue. At about 00.20, he left Rustaveli Avenue together with other protesters in a black Toyota vehicle as riot police moved on the demonstrators beating them. They went to Sabcho Square and were hiding in a courtyard nearby where police found them and detained at about 2 a.m. Mr. Zurashvili said he put up no resistance to police, however law-enforcers physically and verbally abused him. Later he was transferred to Tbilisi Police Headquarters. Police continued assaulting him, both physically and verbally both in the vehicle and afterwards, at the premises of the said police. Due to his health condition caused by the sustained injuries, he was transferred to Chapidze Emergency Cardiology Centre, where he stayed till 12.00 of 26 May 2011. The record of visual examination stated Z. Zurashvili displayed multiple hematomas on the left arm and right thigh. According to the same record, he sustained injuries before detention, and had no complaints.

On 2 June 2011, representatives of the Public Defender visited the temporary detention isolator in Ozurgeti, where the interviewed Vladimir Bulbulashvili and Aidmar Lagvilava, detained by police at the time of dispersal of the demonstration. According to V. Bulbulashvili, at the time of dispersal took shelter on the second floor of Rustaveli Cinema, where he was found by a member of riot police, who hit him in the eye area despite no resistance. This

was followed by further beating, this time by 5-6 members of riot police using rubber truncheons, after which V. Bulbulashvili was handcuffed and escorted to bus, during which time he continued to be physically abused. Physical abuse after detention was noted by Aidmar Lagvilava, too. The records of visual examination compiled at Zugdidi temporary detention isolator point to bodily injuries sustained by V.Bulbulashvili and A.Lagvilava, though in both cases it is stated that they had been received prior to detention.

Representatives of the Public Defender visited Chokhatauri temporary detention isolator where they interviewed Amiran Chubunidze, Lega Oniani, Giorgi Matiashvili, Giorgi Gurgenadze, Gigza Gavashelishvili, Irakli Kvaratskhelia, Avtandil Rizhamadze and Dimitry Titvinidze detained on 26 May at the time of break-up of the protest rally. All of them stated that law-enforcers were physically assaulting them both at the time of dispersal and afterwards, when they were detained. Despite the fact that they were handcuffed and could not put up any resistance, police continued abusing them. According to D. Titvinidze, he was continuously ill-treated, even after he was transferred to Tbilisi Police Headquarters. The records of visual examination compiled at Chokhatauri temporary detention isolator point to bodily injuries sustained by all the above persons, though in all cases they had been allegedly received prior to detention.

According to the account of events provided by Mzechabuk Chachkhiani, Zurab Makashvili, Vepkhia Devnozashvili, Giorgi Dundua, Gocha Lashkhi and Varden Kutaladze, detained on May 26, 2011 and placed in Lanchkhuti temporary detention isolator, they were injured both at the time of dispersal of the demonstration and afterwards. Members of police force assaulted them physically and verbally, both at the time of detention and later, when brought to the court. The records of visual examination point to bodily injuries of different categories in all detained persons, however according to the same records, they had been sustained prior to detention (at home) and no complaints were made against law-enforcement officers.

The Public Defender addressed the Chief Prosecutor of Georgia with a recommendation to open investigation into the facts of excessive use of force by police on May 26, 2011. However, the Chief Prosecutor's Office held that the action by police contained no signs of crime and only amounted to administrative infraction. The investigation forwarded the relevant materials to the General Inspectorate of the Ministry of Internal Affairs for follow-up.

Information provided by the Ministry of Internal Affairs affirms that 16 police officers taking part in the dispersal of protest rally on the Rustaveli Avenue on May 26, 2011 received various administrative penalties, including dismissal from office in four cases. The follow-up by the Ministry of Internal Affairs is a step forward, though thorough examination of violations revealed that signs of crime were present in a number of cases.

Article 17 of the Constitution states that "*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.*"

Respect by police for human honour and dignity in the discharge of authority is guaranteed also by the Law on Police.

Apart from relevant domestic norms, the rules governing treatment of detained persons are laid down in numerous international conventions binding on Georgia. These norms are part of the domestic law and, as such, are meant to guarantee protection of individuals in various settings and conditions, including in detention, from torture, inhuman, cruel or otherwise degrading treatment.

Conditions for the use of coercion by police are provided for in Article 11 of the Law on Police, which stipulates that police can use physical coercion if non-coercive methods prove ineffective and fail to ensure execution of official duties. Under Article 10 of the same law, police can use physical coercion with due regard for the principle of proportionality and necessity. Hence, even if the use of physical coercion by police is caused by necessity, the force used must be strictly proportional and not excessive. However, the applications addressed to the Public Defender oftentimes show the opposite.

Analysis of the cases addressed to the Public Defender clearly indicates that the use of force by police often goes beyond the permissible limits and displays signs of crime in some cases. Every concrete fact of excessive use of force must be thoroughly examined and investigated by relevant bodies. Violations in the work of law-enforcement bodies must be identified in a timely manner and evaluated adequately in order not to repeat them in future.

THE ROLE OF POLICE IN THE INCIDENT ROUND TV MAESTRO

The Public Defender was addressed by the staff of the TV Company Maestro requesting a probe into the incident of 30 November 2011 leading to violation of their rights.

On November 30, 2011, the journalists and director of the TV Company Maestro, Ilia Kikabadze, were prevented by police from entering the building. Police refused to give any reasons.

According to the information provided to the Public Defender's Office by the Ministry of Internal Affairs, on November 30, 2011 Ilia Kakabadze, TV Maestro's Director General, called the Patrol Police Department of the Ministry of Internal Affairs to inform it of the attack allegedly carried out against TV Maestro. A team of the patrol police Vake-Saburtalo unit went to the site of the alleged attack.

The copy of the report provided by the Ministry of Internal Affairs pointed that upon arrival at the Maestro headquarters patrol-police inspectors spoke to Erasti Kitsmarashvili and Levan Chikvaidze, and both stated that there had been no attack. They stated there had been some discrepancies related to the management of the company, and both sides were planning to apply to the court. The report further stated that patrol police officers told the parties not to assault each other either physically or verbally and, instead, to apply to the court in order to settle their dispute.

The footage provided to the Public Defender's Office clearly shows that after having compiled the report the law-enforcers did not leave the scene and stayed there for several hours. Patrol police officers refused to allow the staff to enter the building. As seen from the available footage, patrol police officers were deployed both in the yard of TV Maestro's premises, and outside. The footage further shows that law-enforces used physical coercion to force the journalists to leave the territory. A video filmed after some time shows that Ilia Kikabidze, TV Maestro's Director General presented to law-enforcers a certificate issued by the Public Register confirming that he was director of the company. This notwithstanding, police officers refused to let him enter the building.

Based on the Terms of Reference of the Patrol Police Department and according Articles 1 and 2 of the Law on Police, as well as Article 1 of the Statute of the Patrol Police Department approved by Order 634 (16 May 2006) of the Minister of Internal Affairs, the Patrol Police Department is charged with the function of protecting public order. According to Article 16, paragraph (a) of the Statute, the Patrol Police Department is tasked, within its competence and the assigned territory, to protect public order and reveal, suppress and prevent crime, and other wrongful acts.

Patrol police that arrived on the scene of the incident on November 30, 2011, had full right to stay there in order to protect public order, despite the fact that no signs of crime were found to occur there. However, in the case concerned one would question the legitimacy of the action by patrol police who prevented the employees of the company to enter the building, as well as its necessity.

The footage disseminated by journalists clearly indicates that after the public learned about the occupation by Erasti Kitsmarashvili of the office of the company, people started arriving on the site. Certain tension was also noticeable. However, it should be noted that both the march of people to the TV Maestro's office as well as the tension were caused by refusal to let employees to enter the building.

Needless to say, protection of public order and prevention of crime represent a legitimate aim and grounds for restriction of the rights, and law-enforcement agents are authorized to carry out the relevant measures. However, in the given case restriction of entry for employees of the TV Company was in no way a proportionate measure to prevent crime, the more so if one considers that the incident concerned a media outlet whose unimpeded operation is a matter of public interest.

The Public Defender sent the available documents to the General Inspectorate of the Ministry of Internal Affairs for follow-up, and received a response on March 1, 2012. According to available information, the General Inspection has not carried out any disciplinary sanctions against the concerned employees of the Ministry.

RECOMMENDATIONS:

Recommendations to the Chief Prosecutor of Georgia:

- To have every single fact of excessive use of force by police examined without delay and investigated by prosecuting authorities, and to make accessible for the public the relevant information after completion of the investigation considering the interest of the public to such facts.

Recommendation to the Minister if Internal Affairs;

- To have adequate measures taken by the Ministry to prevent, to the extent possible, disproportionate use of force and degrading treatment by police.

Freedom of Assembly and Manifestations

INTRODUCTION

Overview of the developments related to the right to freedom of assembly and manifestations as exercised in Georgia has been a recurrent theme of the parliamentary reports of the Public Defender, and with good reason, given the wide-ranging legislative changes on the one hand, and mere numbers of assemblies and manifestations in Georgia, on the other. The year 2011 was no exception in this respect.

Analysis of the trends and developments seen in 2011 shows that compared to 2010, the year 2011 was fairly active both in terms of legislative changes, and the exercise of the right to freedom of assembly and manifestations. In particular, the Georgian Law on Assembly and Manifestations saw some changes and amendments. The Constitutional Court of Georgia rendered a decision[81] in connection with the Public Defender's constitutional claim, which established the unconstitutionality of certain norms of the Georgian Law on Assembly and Manifestations.

The reporting year was that of activism in terms of practical implementation of the respective rights. Dozens of protests and demonstrations were held, some of them on a large scale and for quite long. Despite the fact that most of the protests passed without any breaches of fundamental rights, some of assemblies and manifestations evidenced violations of human rights and freedoms, as documented by the Public Defender.

Worthy of particular notice among these violations were the events of January 3, 2011, when law enforcers broke up the so-called "veterans' protest". Although this particular case did not fall within the Public Defender's reporting period of 2010, it was nevertheless extensively explored in the 2010 Report from the perspective of human rights violations due to its high public profile, and severity of the violations that occurred.

The month of May 2011 saw the start of continuous protests, which ended up in the well-known events of May 26. The Public Defender of Georgia also examined the case concerning the strike at the Hercules factory in the city of Kutaisi. In 2011, as in the previous years, the Public Defender documented facts of excessive use of force by police when dispersing assemblies and manifestations. There were also cases of assaults against journalists during assemblies and manifestations.

Given the relevance and high public interest to these issues, during the reporting period the Office of the Public Defender of Georgia carried out a number of activities. Worthy of particular mention among them was the round-table meeting with the theme "The Right to Assembly and Manifestations: Legislation and Practice" which was held on December 9, 2011 on the occasion of the International Human Rights Day.[82] Among the participants of the meeting were members of the Venice Commission, international experts, representatives of the diplomatic corps, the Deputy

[81] Decision No 2/482,483,487,502, 18 April 2011, the Constitutional Court of Georgia.

[82] The event was organized by the Public Defender of Georgia, the Office of the UN High Commissioner for Human Rights, and the Council of Europe, with the support of the United Nations Development Program (UNDP).

Chairman of the Constitutional Court of Georgia, MPs, judges, and representatives of the Ministry of Internal Affairs, the Chief Prosecutor's Office, as well as international and local NGOs. The purpose of the event was to highlight once again the main problems in this area, and to hear the views of international experts.

This section of the Report will look at the changes and amendments made to the legislation on assembly and manifestations during the reporting period, and explore systemic problems related to the exercise of the right to freedom of assembly and manifestations.

LEGISLATION ON FREEDOM OF ASSEMBLY AND MANIFESTATIONS

"Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies... It has been recognized as one of the foundations of a functioning democracy… As such, freedom of peaceful assembly facilitates dialogue within civil society, and between civil society, political leaders and government."[83]

The existing international and regional standards on freedom of assembly and manifestations emanate from three basic documents – the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

In particular, the right to freedom of assembly and association is laid down in Article 20 of the Universal Declaration of Human Rights, according to which *"Everyone has the right to freedom of peaceful assembly and association."* A similar provision is set forth in Article 21 of the International Covenant on Civil and Political Rights. As for the Convention for the Protection of Human Rights and Fundamental Freedoms, according to Article 11, *"Everyone has the right to freedom of peaceful assembly…"*

In Georgia, the freedom of assembly and manifestations is guaranteed by Article 25 of the Constitution of Georgia, whereas modalities involved in the exercise of this right are regulated by the Georgian Law on Assembly and Manifestations.

Safeguarding the right to freedom of assembly and manifestations is a complex issue, and requires a concerted effort of different agencies concerned. It is critical that the state take all the necessary positive action to secure full exercise of the right to freedom of assembly and manifestations. At the same time, the state must refrain, to the extent possible, from gross and unwarranted interference in the exercise of this freedom. The primary guarantee for this to translate into practice is the existence of an adequate legislative framework.

The transformation of the Georgian legislation concerned with the freedom of assembly and manifestations started in 2009. The Public Defender's parliamentary reports of the second half of 2009[84] and 2010[85] dealt extensively with the deficiencies of the Georgian Law on Assembly and Manifestations. They also looked at the changes made to the relevant legal acts on July 17, 2009, and reviewed the interim opinions of the members of the Venice Commission on the aforementioned changes.[86]

On March 1, 2010, the Georgian authorities sent a new draft of amendments to be made to the Georgian Law on Assembly and Manifestations to the Venice Commission. On March 12-13, 2010, the Commission came up with an

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83 Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR p.13. See <http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf .

84 See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia (second half of 2009), Freedom of Assembly and Manifestations, p. 136.

85 See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia (2010), Freedom of Assembly and Manifestations, p. 170.

86 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>; Comments on the Law on Assembly and Manifestations of the Republic of Georgia by Ms. Finola Flanagan, Opinion no. 547 / 2009, < http://www.venice.coe.int/docs/2009/CDL(2009)152-e.pdf>.

interim opinion on the proposed amendments.[87] The draft amendments were found to rectify a number of shortcomings in the legislation on assembly and manifestations, which *per se* was positively assessed by the Venice Commission in its interim opinion.

At the same time, since the Public Defender of Georgia considered that the changes made to the Georgian Law on Assembly and Manifestations on July 17, 2009, contradicted the Constitution of Georgia, on September 7, 2010, he filed a constitutional complaint (No. 502) to the Constitutional Court of Georgia concerning the contested norms in the legislation on assembly and manifestations.[88] On November 5, 2010, with Decision No. 1-1/2/502, the Constitutional Court of Georgia referred the case to the Plenum, in accordance with the Georgian Organic Law on the Constitutional Court of Georgia.

The subject in dispute was the constitutionality of some norms of the Georgian Law on Assembly and Manifestations, the Code of Administrative Offences of Georgia, and the Georgian Law on the Investigation Service of the Ministry of Finance of Georgia in relation to Articles 19, 24, and 25 of the Georgian Constitution, that guarantee the freedom of speech, the freedom to express and disseminate opinions, and the right to hold assemblies and manifestations.

With its judgment of April 18, 2011,[89] the Constitutional Court of Georgia partially satisfied the Public Defender's constitutional complaint and found a number of norms of the Georgian Law on Assembly and Manifestations, as well as of the Code of Administrative Offences of Georgia, to be in conflict with the Constitution.

In particular, among the norms found unconstitutional by the Court were those that banned holding an assembly or manifestation within 20 meters from the entrance to some public institutions and administrative bodies, including courts. The Court accepted the claimants' opinion that such blanket ban did not conform with the Constitution, since in certain cases it made holding an assembly or manifestation practically impossible. In addition, the Court observed that the right to hold an assembly could be restricted when it interrupts the normal functioning of an institution, or when the restriction is caused by emergency security measures.

The Court also found unconstitutional and repealed the norms of the law that prohibited initiation of an assembly or manifestation by one person only, as well as organization of a protest by a non-citizen and assigning the status of the person responsible for the protest to such a person.

The Court repealed the norm that required immediate termination of an assembly in case of blockage of a road or other violations of the law. The Court noted that participants of an assembly must be given an opportunity to bring the assembly (manifestation) in conformity with the requirements of the law, and that an assembly can only be terminated forcefully in the event of disobedience to a lawful demand of a representative of the authorities. The Constitutional Court left a number of disputed norms in force.

On June 13, 2011, members of the Parliament of Georgia initiated a draft law that provided for a significant revision of the Georgian Law on Assembly and Manifestations. The Public Defender of Georgia prepared his observations and proposals regarding the draft law, which were sent to the Chairman of the Parliament of Georgia on June 22, 2011.

The observations related to the following provisions of the proposed draft law:

1. According to Article 2, Para. 2 of the draft law, members of the armed forces, law enforcement bodies, and special and militarized establishments were banned from taking part in an assembly or manifestation. The Public Defender of Georgia considered that the proposed norm failed to answer the question whether the ban pertained to the moment of discharge of official duties or any period, including the period when the employees concerned were not discharging their official duties. Accordingly, he considered that the restriction

[87] 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.

[88] Citizens' political association "Movement for United Georgia", citizens' political association "Conservative Party of Georgia", citizens of Georgia Zviad Dzidziguri and Kakha Kukava, the Georgian Young Lawyers Association, citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v. the Parliament of Georgia; September 7, 2010, Complaint No. 502.

[89] http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

could only be imposed when participation in an assembly questioned the possibility for police or military personnel to maintain neutrality in serving all groups of the society.

2. Article 1 of the proposed draft law provided for formulating Article 2, Para. 3 of the Georgian Law on Assembly and Manifestations in the following way: "3. Restriction of the rights recognized and protected by this law shall be directed to: a) the exercise of the public good protected by Paragraph 4, Article 24 of the Constitution of Georgia…" In our view, it was necessary to specify in the norm that the restriction established by the proposed norm pertained to the content of an assembly/manifestation rather than to the form of expression.

3. The Public Defender's observations also concerned the wording of Article 5, Para. 2 of the Georgian Law on Assembly and Manifestations, as proposed by the draft law, which precluded submitting a notification about an assembly/manifestation to a self-government body by one (physical) person (or his/her mandator), as well Paragraph 3 of the same article which prohibited considering citizens and non-citizens below the age of 18 as persons responsible for an assembly/manifestation. These restrictions were similar to the regulation found unconstitutional by the Constitutional Court of Georgia.

4. The wording proposed in Article 9 of the draft law brought back into the law the ban to hold assemblies and manifestations within 20 meters from the entrance to certain institutions, found unconstitutional by the Constitutional Court of Georgia. In our opinion, restrictions established by one or another body should be conditioned by the necessity of preventing interruption and blocking of its functioning.

5. One of the important proposals submitted by the Public Defender concerned Article 9 (1) of the initiated draft law which established that "The relevant body is obliged to strike a proper balance between the freedom of assembly and the rights of persons who live, work, trade, and have a business in the locality where an assembly takes place. The aforementioned persons must not be prevented from carrying on their business. To this end, it shall be possible to impose restrictions of the time and location and offer alternative options. Such restrictions may be imposed in the case of two assemblies or manifestations that are not connected with each other."

In the proposed wording, the concept of "the relevant body" lacked clarity and required specification. The second sentence of the above norm "The aforementioned persons must not be prevented from carrying on their business" constituted, in fact, a blanket ban and ruled out striking a balance and a case-by-case assessment of a concrete situation, which might cause undue restriction of the right to freedom of assembly and manifestations. Accordingly, we demanded that the norm be formulated in such a way as to eliminate the defects.

6. The Public Defender's observations also dealt with Article 11, Para.1 of the law, which allowed local self-government bodies, in the case of a partial or full blockage of a carriageway by participants of an assembly or manifestation, and the government of Georgia, in special circumstances, to take a decision to open the road and/or restore traffic movement.

The Public Defender of Georgia was of the opinion that the foregoing disposition raised certain questions as regards the separation of competences between local self-government bodies and the government of Georgia, as well as qualification of events as falling under the category of "special circumstances". Accordingly, the Public Defender addressed the Parliament with a proposal to make up a list of circumstances in which the government of Georgia would be authorized to take a decision to open a road and/or restore traffic movement.

7. The Public Defender of Georgia also addressed the Parliament of Georgia with a proposal to change the wording of Article 13 as framed in the draft law. In particular, Article 13 defines the cases where an assembly or manifestation is subject to immediate termination. The Public Defender noted that occurrence of violations during an assembly should not automatically become the grounds for its termination. Accordingly, the regulations concerning suppression of violations and termination of an assembly must be formulated clearly. It was also necessary to ensure that a warning given to the person responsible for the assembly in cases provided for in Paragraphs 2, 3 and 4 of Article 13 could only become the grounds for termination of the protest in case of massive violations by protesters.

The aforementioned changes were finally incorporated in the law on July 1, 2011. It should be noted that the Parliament of Georgia took most of the proposals and observations of the Public Defender of Georgia into account.

On October 14-15, 2011, the Venice Commission adopted its Final Opinion on the Amendments to the Law of Assembly and Manifestations of Georgia.[90] Although the opinion contained some criticism, on the whole, the Venice Commission assessed positively the amendments made to the law. In particular, the Commission declared that it *"expresses its satisfaction about the fact that several significant recommendations contained in its previous opinions have been followed by the Georgian authorities."*[91] However, according to the opinion of the Venice Commission, *"There remain some important issues (notably the impossibility to hold spontaneous assemblies) which the authorities should address."*[92]

With the new amendments, *"It is prohibited to block entrances to buildings, railways and highways during an assembly or manifestation."* In the opinion of the Venice Commission, it should be made absolutely clear in the law that the provisions of Articles 11 (1) ("it is impermissible to make a decision to open a carriageway and/or restore traffic if an assembly or manifestation cannot be held otherwise due to the numbers of people participating in it, and if all the rules established by this law are complied with) which appear to require the authorities to allow an assembly to block the highway "*due to the number of people participating in it"* and Article 11 (2) which appear to allow interference "*for a short period of time"* with the "rights of those who live, work, shop, trade and carry on business in the locality" override this prohibition. The Venice Commission declared that the absolute prohibition is excessive and has to be removed.

Blanket restrictions, however, have been maintained 20 meters around the entrance to the prosecutor's office, the police (all police stations), penitentiaries, temporary detention facilities and law-enforcement bodies, also railways, airports and ports. The Commission had previously expressed its view that the need to decide on a case-by-case basis ought to have been provided also in relation to these buildings, as it would allow the Georgian authorities to ensure a balance between the need for these institutions to function and be safe, which is an important element of public order and safety, and the individual right to freedom of assembly.

In addition, Paragraphs 4 and 5, Article 9 of the Georgian Law on Assembly and Manifestations confer on the administrative authority or the court where the assembly is taking place the power to impose restrictions within an area extending to a maximum of 20 meters from the entrance. The Venice Commission underlines that restrictions on the exercise of the right to assemble should only be imposed by the competent executive authority or by the law-enforcement agency, which is not the case in the foregoing provision.

The Venice Commission also considered the 15-minute time limit prescribed by Paragraph 2, Article 13 of the Law on Assembly and Manifestations to be overly short. Namely, under this article, *"In case of non-massive violations of the provisions contained in Paragraph 1 and Paragraph 2(a-d) of Article 11, as well as violation of the provisions of Paragraph 2 (d) and Paragraph 3 of Article 11, and the warning by an authorized representative thereon, the organizer has to appeal to participants and to take all reasonable efforts to put an end to the violations within 15 minutes."* In the opinion of the Venice Commission, these new provisions are welcome, as they are in line with the presumption in favour of assemblies by allowing the demonstration to continue if the violations are removed, although the time-limit for doing so seems excessively short (fifteen minutes) and may be insufficient in some cases to remove violations, even if the organisers wish to do so.

The Interim Opinion of the Venice Commission stated that the law should provide also for the possibility for non-citizens to be participants, or among the organizers, of a manifestation. However, the new Article 5, Para. 3 states that "responsible persons [i.e. "organizers"] shall not be the citizens of other countries or/and persons under 18 years of age". This provision of article 5, Para.3 might be seen as too restrictive, since the international standards provide that aliens receive the benefit of the right of peaceful assembly. It is therefore important that the law does not extend the right to peaceful assembly to citizens only, but covers foreign nationals, including as organizers.

[90] The Final Opinion on the Amendments to the Law on Assembly and Manifestations of Georgia – Adoped by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) – Opinion no.547/2009, CDL-AD(2011)029 – Strasbourg, 17 October 2011.

[91] Ibid, p. 10.

[92] Ibid.

We are hopeful that the amendments made to the Georgian Law on Assembly and Manifestations will positively impact the situation in Georgia in this respect, and the state will carry on the process of harmonization of the law with international standards.

EXERCISE OF FREEDOM OF ASSEMBLY AND MANIFESTATIONS

In general, the best guarantee for freedom of assembly and manifestations is effective practical implementation of the law. Effective exercise of this freedom cannot be secured solely through the existence of a legislative framework fully consonant with international standards, if the relevant bodies fail to implement in practice the standards established by the law. Unfortunately, many problems identified in this context in the previous years were found to persist in the reporting period, too.

As already highlighted in the introduction, during 2011 the Public Defender of Georgia examined several cases of assemblies and manifestations where the rights of concrete persons and groups exercising this freedom were violated. It should be emphasized that deficiencies found in the practice of the law have been highlighted by the Public Defender in his previous reports. In 2011, too, the Public Defender of Georgia documented cases of disproportionate, or excessive, use of force by police during dispersal of assemblies and manifestations, as well as cases of assaults against journalists. This subsection of the Report will deal with systemic problems existing in terms of practical implementation of the law, as well as individual cases that caused infringement of the right to freedom of assembly and manifestations.

Lawfulness of police' demands during assemblies and manifestations

"Freedom of peaceful assembly is a fundamental human right… Assemblies can serve many purposes, including the expression of diverse, unpopular or minority opinions… The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralist society in which groups with different beliefs, practices, or policies can exist peacefully together."[93]

The Public Defender's parliamentary report of 2010 dealt extensively with the dispersal of war veterans' protest that took place on January 3, 2011, near the memorial located in the Heroes' Square in Tbilisi.[94] The examination of these facts revealed several controversial issues. In particular, even though the choice of the location did not contradict the requirements of the law, police demanded termination of the protest. They considered the tent put up on the site to be an "unlawful" object, though it did not block the carriageway or pedestrian part of the road. Participants of the protest action were physically assaulted by police.

Similar incidents were found to occur during the protests of workers in the area close to the Hercules metallurgical works in Kutaisi. The workers went on a strike in the area adjacent to the factory, demanding better working conditions. Some of them even resorted to the extreme form of protest – hunger strike.

The protests involved two incidents – on September 13 and 15, 2011.

On September 13, 2011, during the protest, the protesters put up a tent. Several minutes later, police arrived and demanded that the strikers take it down. They dismantled the tent and put it in the police car. 10-15 minutes later they returned the tent to the owners. After the incident, the strike went on, though, as the strikers explained, they did not try to put the tent up again.

As for the events of September 15, 2011, protesters reported that around 21:30, about 30 patrol police crews arrived on the protest site. Police officers demanded the protest to break up, detaining part of the protesters. As reported by Revaz Topuria, the lawyer of the Georgian Young Lawyers Association, he together with Tamaz Dolaberidze, President of the Trade Union of Metallurgy, Mining and Chemical Industry Workers of Georgia, were searching for detained persons

[93] Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR p.7

[94] See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2010, p. 173.

in Kutaisi temporary detention isolator and various police stations for several hours with no result, and could only find them after they had been released. As reported by the lawyer and the protesters, they spent several hours in the Kutaisi City Police where they were made to sign undertakings not to participate in the strike and go back to work, and warned that if they choose otherwise, they would be held to account in a manner prescribed by law.

To look into the case, representatives of the Public Defender got explanatory statements the protesters themselves, the member of the Georgian Young Lawyers Association who provided legal assistance for the strikers, and the President of the Trade Union of Metallurgy, Mining and Chemical Industry Workers of Georgia, Tamaz Dolaberidze. It is to be noted that only three of the detained protesters agreed to report to the Public Defender in writing, asking to keep confidential their identity, while others only confirmed this information orally. In order to explore fully the circumstances of this case, the Public Defender's representatives tried to meet the administration of the Hercules factory and obtain their opinion on the incident, but the administration refused to meet with them. Based on analysis of the available materials, the Public Defender of Georgia documented several violations.

The demand to remove the tent

According to explanatory statements given to the Public Defender of Georgia and the footage disseminated by media, during the protest and when putting up the tent there were no violations of the Labour Code of Georgia, or the Law on Assembly and Manifestations.

The materials obtained by the Public Defender show that the protests were staged in some 50-60 meters from the entrance to the Hercules factory. According to the protesters, they put up a tent for those who were on hunger strike. On September 13, 2011, police removed the tent giving no explanation.

Article 11 (1) of the Georgian Law on Assembly and Manifestations defines the actions that are prohibited during a protest. In particular, according to Paragraph 4, *"It is impermissible to block the carriageway unless an assembly or manifestation cannot be held otherwise due to the number of people participating in it. It is also impermissible to block the carriageway with motor vehicles, different constructions, and/or objects."* According to the materials available to the Public Defender, the tent put up by the protesters neither interrupted traffic movement nor blocked the entrance to the factory. In addition, the law enforcers who arrived on the site did not explain to the protesters the legal grounds for their demand to remove the tent, which is a violation of the protesters' rights.

The demand to terminate the protest

As for the developments that took place on September 15, the materials available to the Public Defender suggest that the protest was held in full conformity with the Georgian Law on Assembly and Manifestations.

In particular, the law provides for the obligation of initiators of a protest action to address the local self-government body with a written notification in case the protest is expected to be held on the carriageway, or interrupt the traffic.

As noted above, the video footage clearly shows that the protesters were holding the protest at some distance from the entrance to the Hercules factory. The site does not have any lines marking the areas for transport or people; it is, in fact, a field. Therefore, the protesters were neither blocking the entrance to the building nor interrupting the traffic.

Since the protest was not held in any of the areas specified by Paragraph 1, Article 5 of the Law on Assembly and Manifestations, it is obvious that there was no need to notify the local self-government body.

As for the obligation of the protesters, as employees, to notify the administration of the planned strike, according to the protesters, they had addressed the factory administration in writing in accordance with the procedure established by Article 49 of the Georgian Organic Law – the Labour Code of Georgia, after which they held a warning strike on September 2.

Accordingly, the legitimacy of the actions by police who demanded termination of the protest comes under question. According to the reports, police were called to the site by the administration of the factory. As noted above, the Public

Defender's representatives tried to meet with the administration of the Hercules factory, in order to look into the case from the two different perspectives and clarify some legal matters, but this was not possible because of administration's refusal.

On September 15, 2011, several protesters were arrested on the site. According to the reports, law enforcers never explained the grounds for detention either at the time of arrest, or afterwards. Besides, while the arrested protesters were held in the police premises, no legal documents were drawn up apart from the so-called undertakings.

On September 19, 2011, the Public Defender of Georgia addressed the Chief Prosecutor of Georgia with a recommendation and sent him the relevant documents for follow-up. However, so far no official response has been received by the Public Defender about the action taken.

Excessive use of force by police during dispersal of protests in May 2011

In May 2011, continuous protest rallies started in the cities of Tbilisi and Batumi. In Batumi, the rally ended on May 21 after it was broken up and several persons detained, while in Tbilisi riot police dispersed the protest on May 26.

According to the reports and information available to the Public Defender, the organizers of the protest submitted a notification to the Tbilisi City Hall. They had a permit to hold a rally that expired on May 25, at midnight. Tbilisi's municipal authorities warned protesters that they would break up the demonstration and offered them another rally venue, which they refused. After that riot police moved on the demonstrators in Rustaveli Avenue and broke up the rally using force. Police used rubber truncheons and non-lethal weapons.

The Public Defender of Georgia examined the footage disseminated by media, reports by journalists, and visited persons detained on administrative or criminal charges. Close examination of the relevant materials showed that even if the protest had gone beyond the norms established by the Georgian law and there were legal grounds to terminate it, the force used by police was disproportionate in some cases.

Disproportionate use of force by police

On May 26, 2011, the law enforcers used different types of weapons to disperse the demonstration, in particular, water cannons, tear gas, rubber truncheons, and non-lethal weapons.

As a result, dozens of protesters sustained physical injuries. According to their explanatory statements, some of them were not allowed to leave the protest site. According to the available information, part of the journalists present on the site were not allowed to carry out their professional activity. According to the disseminated information, law enforcers damaged the journalists' equipment, assaulted them physically and verbally, and kept them detained for some time.

It is not argued that each state must regulate the limits of assemblies and manifestations and the methods of their control within its domestic law. This is further stressed in the Guidelines on Freedom of Peaceful Assembly developed by the Organization for Security and Co-operation in Europe (OSCE). According to this document, *"The use of force must be regulated by domestic law, which should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings) and the level of force acceptable to deal with various threats. Governments should develop a range of responses which enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where more peaceful interventions have failed."*[95]

The European Court of Human Rights noted that the state must use proportionate measures in dispersing assemblies and manifestations. In particular, the law enforcement structures should plan the dispersal operation is such a way as to minimize the risk to protesters.[96]

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[95] Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR p.11

[96] *Makaratzis v. Greece*, No 50385/99, the European Court of Human Rights, 2004, § 60

The Law on Assembly and Manifestations defines the basic rules to be observed during the assemblies and manifestations. Considering that at the time of the May 2011 protests the law did not contain the most recent amendments, the events that occurred are analysed in this Report on the basis of the law that was in force on May 26, 2011.

Since the May protests caused a blockage of the carriageway and pedestrian part of the road, the organizers of the protest had submitted a notification to the Tbilisi City Hall. Pursuant to the Georgian Law on Assembly and Manifestations, upon submission of a notification the local self-government body shall designate an authorized representative to observe the progress of the protest and, in case it goes beyond the limits established by the law, or if protesters violate the requirements established by the law, to warn the participants/organizer and to demand to bring the protest in conformity with the law, or terminate it peacefully.[97]

On May 26, for the first time among the cases examined by the Public Defender of Georgia, the aforementioned requirement of the law was met. As stated above, the authorized representative warned protesters that since the term indicated in the notification submitted to the local self-government body had expired, they were supposed to terminate the protest to make way for the planned military parade in Rustaveli Avenue on May 26. The protesters were offered another venue to continue the protest. They were also warned that in case of disobedience, the protest would be broken up by law enforcement.

Since the protesters refused to terminate the rally, riot police moved on the demonstrators. According to the footage at the disposal of the Public Defender of Georgia and eye-witnesses' reports, the force used by police against the protesters was disproportionate in a number of cases.

According to Article 10 of the Georgian Law on Police, a police officer can use physical coercion with due regard to the principles of proportionality and necessity. Therefore, even if physical coercion by police is caused by necessity, the force used must be strictly proportionate. However, the submissions referred to the Public Defender paint a different picture. This issue is analyzed in detail in the section "Law Enforcement and Human Rights,"[98] therefore it is not necessary to dwell on it in this part of the Report.

When discussing the actions by police during the dispersal of the rally, one has to consider whether the protesters were allowed to leave the area peacefully. Despite the statement made by the Ministry of Internal Affairs claiming that several so-called corridors were left for the protesters to allow them to egress from the territory, reports by some of the protesters and journalists indicate that in a number of cases they were prevented by police from leaving the area. The evidence suggests that in most cases the police made no distinction between the protesters who wanted to leave the area peacefully, and those who put up resistance.

According to the OSCE guidelines, an absolute cordon permitting no egress from a particular area violates individual rights to liberty and freedom of movement. This is a disproportionate and illegal measure. As noted by the UK's Joint Committee on Human Rights, "it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area."[99]

In accordance with the OSCE guidelines, law enforcers should distinguish between peaceful and non-peaceful participants. Isolated incidents of sporadic violence and violent acts of some participants in the course of a demonstration are not sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly. Law enforcement officials should not treat a crowd as homogenous if detaining participants or (as a last resort) forcefully dispersing an assembly.[100]

Unfortunately, during the dispersal of the protest of May 26, 2011, police failed to observe this principle. They pursued demonstrators, detained and physically assaulted them regardless of whether they resorted to violence or put up any resistance. That the law enforcers did not distinguish between peaceful and non-peaceful participants is confirmed also

97 Articles 11[1] and 13 of the Georgian Law on Assembly and Manifestations (as of May 26, 2011)

98 See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia (2011), Freedom of Assembly and Manifestations.

99 Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR p.68

100 Ibid, p. 68.

by the fact that, during the dispersal, the law enforcers physically assaulted part of journalists and even detained some of them for a certain period. Moreover, as already noted, there were also cases of physical assault against persons who had already been detained and, hence, under control of police.

Detention of protest participants and treatment after detention

According to the OSCE guidelines, *"The detention of participants during an assembly (on grounds of their committing administrative, criminal or other offences) should meet a higher threshold given the right to liberty and security of person… Detention should be used only in the most pressing situations when failure to detain would result in the commission of serious criminal offences."*[101]

As noted above, during the breakup of the protest of May 26, 2011, a number of persons were detained on the protest site on administrative charges. Representatives of the Public Defender of Georgia visited them in the temporary detention isolators. It should be noted that detained protesters were placed in temporary detention isolators both in Tbilisi and in other parts of Georgia. The visits revealed a number of problems.

According 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."*

According to the explanatory statements available to the Public Defender, part of the protesters were assaulted physically both at the time of detention, on the ground, and afterwards.[102] Representatives of the Public Defender of Georgia visited in Tbilisi temporary detention isolator No.2 Zakaria Zurashvili, who was at the rally on Rustaveli Avenue in Tbilisi on May 26, 2011. Z. Zurashvili stated that he did not resist the police when detained. Nevertheless, he was assaulted both verbally and physically. Later, he was transferred to the Tbilisi Police Headquarters. Police officers continued assaulting him physically both in the car and in police premises.

The journalists detained during the dispersal point to similar incidents. The Public Defender of Georgia received explanatory statements by journalists Malkhaz Chkadua of InterPressNews, and Tengo Okujava of ExpressNews. According to them, they were on the ground on May 26, 2011, covering the protest rally. When the break-up of the protest started, they were assaulted physically and, later, detained by police. They told members of the special police force that they were media representatives and were carrying out their professional activity on the ground, and presented their press cards. This notwithstanding, the law enforcers hit Malkhaz Chkadua in the head with a truncheon several times, held on the ground and handcuffed him. They hit Tengo Okujava in the head several times, too. Police continued beating Malkhaz Chkadua and Tengo Okujava after having detained them. They were first transferred to the yard of the Old Tbilisi Police Division in Tabukashvili Street where they were held on the ground in the rain together with other detained persons. From there, they were transferred to Tbilisi Police Headquarters, and later released.

The journalists of the *Asaval-Dasavali* newspaper, Giorgi Mamatsashvili and Beka Sivsivadze also reported physical assaults against detained persons. According to their explanatory statements, they were assaulted physically and verbally by members of the special police unit. Both of them presented their press cards. However, police took them in the direction of the Freedom Square, where they were held on the ground and handcuffed. There were other people detained there, too, whom members of police force were assaulting physically.

Monitoring of the condition of detained protesters revealed other violations, too, that are described in detail in the special report of the National Preventive Mechanism of the Public Defender of Georgia.[103] However, even though these violations go beyond the scope of assemblies and manifestations, it seems necessary to address them briefly, since they are directly relevant to the rights of participants of the May 26 protest rally.

According to Article 42 of the Constitution of Georgia, *"Everyone has the right to apply to a court for the protection of his/her rights and freedoms."* The same article further states that *"The right to defence shall be guaranteed."*

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101 Ibid, p. 53.

102 See the Chapter on Freedom of Assembly and Manifestations (Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2011),

103 The Special Report of the National Preventive Mechanism of the Public Defender of Georgia on the Monitoring of Penitentiary Establishments and Temporary Detention Isolators, first half of 2011.

The European Committee for the Prevention of Torture (CPT) pays particular attention to three rights of persons detained by the police: the right to notify a third party of their choosing (a family member, friend, consulate) of their detention, the right to a counsel, and the right to demand a medical examination by the doctor of their choosing (in addition, any medical examination by the doctor brought by the police). In the opinion of the CPT, these are the three main safeguards applied at the initial stage of deprivation of liberty to protect detainees from abuse and ill-treatment.

Several dozens of persons detained on the night of May 26, 2011, were placed in different temporary detention isolators in eastern and western Georgia. Their whereabouts were for some time unknown to their family members. It was only possible to locate them after members of the National Preventive Mechanism of the Public Defender of Georgia and the Public Defender's representatives carried out the regular monitoring across Georgia. The monitoring showed that investigators contacted the detainees' families and notified them of the detention of their relatives only in isolated cases.

Also, the Public Defender's representatives documented facts of frequent transfers of detained persons from one temporary detention isolator to another, which restricted their right to defence, while their family members had no clue to find out where they were. In particular, on May 26, 2011, the Public Defender's representatives visited persons placed in the Tbilisi (No. 2), Mtskheta, and Kaspi temporary detention isolators and the Regional Temporary Detention Isolator of the Shida Kartli Region. As found out later, persons placed in the Tbilisi TDI No. 2 had been transferred to other facilities on the same day. As a result, their lawyers were not able to visit them.

In connection with these violations, the Public Defender of Georgia addressed the Minister of Internal Affairs of Georgia with a respective recommendation and demanded restoration of detainees' impaired rights.

JOURNALISTS' RIGHTS DURING PROTEST ACTIONS

Violations of the rights of journalists during protest actions have been documented in the reports of the Public Defender of Georgia on many occasions.[104] The Public Defender has given many recommendations regarding effective discharge by journalists of their professional duties during protests. However, problems in this area were evidenced again during the protests of May 26, 2011.

The OSCE Guidelines on Freedom of Peaceful Assembly draw special attention to the media's access to protests. In particular, the document states that *"The role of the media as a "public watchdog" is to impart information and ideas on the matters of public interest – information which the public also has a right to receive… Media professionals should therefore be guaranteed as much access as is possible to an assembly and to any relating policing operation."*[105]

The information available to the Public Defender shows that on May 26, 2011, during the dispersal of the protest on Rustaveli Avenue, journalists were prevented from carrying out their professional activity. Law enforcers seized their equipment, assaulted some of them physically and verbally, and detained some on unclear legal grounds. To explore these facts, on May 26-28, 2011, representatives of the Public Defender of Georgia met and obtained accounts of events from some of the journalists who reported breaches of their rights.

Physical assault

"Law-enforcers are responsible for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means… Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police."[106]

[104] See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2010, p. 184.
[105] Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR p.12
[106] OSCE Representative on Freedom of the Media, Special Report: Handling of the Media during Political Demonstrations, Observations and Recommendations (June 2007)

It is not argued that in the context of riot control by law enforcers, there may be cases where it is difficult for police to distinguish between media representatives and protesters. This may hinder the performance by journalists of their professional tasks and cause law enforcers to obstruct their work. To avoid this, representatives of the media are required to follow concrete guidelines when covering protest events. In particular, *"Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration… Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers."*[107]

In the statements provided to the Public Defender of Georgia, a number of journalists reported that law enforcers had assaulted them physically thus preventing them from carrying out their professional activity. The absolute majority of journalists reported having identification badges/press cards. However, this did not stop law enforcers who continued assaulting the journalists after they identified themselves clearly as such; moreover, the police seized or destroyed the identification badges of some.

The journalists of the *Asaval-Dasavali* newspaper, Giorgi Mamatsashvili and Beka Sivsivadze, who were performing their professional duties at the protest site, were assaulted physically. According to Giorgi Mamatsashvili, Beka Sivsivadze was hit with about 38-39 rubber bullets. Both of them presented their press cards to members of the special police force, after which the latter took away the accreditation card of one journalist and threw away the press ID of the other. Journalists Malkhaz Chkadua of InterPressNews and Tengo Okujava of ExpressNews, too, were physically assaulted. Although they presented their press cards to the police, one of the officers hit Malkhaz Chkadua in the head with a truncheon several times, made him lie on the ground, handcuffed him and carried on assaults.

Law enforcers physically assaulted journalist Darejan Paatashvili of InterPressNews. Despite her presenting the press card to police and wearing a special press worker's vest, police officers tore her press ID off her neck; one of them grabbed her on the neck and took away her camera.

In the explanatory statements given to the Public Defender of Georgia, employees of the *First Caucasian* TV station, Grigol Lokhishvili and Gogita Kharebava, also reported physical assault. Gogita Kharebava sustained an injury in the back and head area from a member of special police force. Tamaz Kokreishvili, a journalist of the web-site *netgazeti.ge,* was physically assaulted, too. In particular, despite a press worker's vest that clearly identified him as a journalist, he was beaten by police with a truncheon on legs and back.

All the above clearly shoes that most of the journalists covering the protests, who addressed the Public Defender, had special badges or press IDs that identified them as journalists. However, law enforcers not only failed to protect their right to cover the event, but in some cases obstructed their work and grossly breached their rights themselves.

Seizure and damaging of equipment

The European Court of Human Rights observed on many occasions that Article 10 of the Convention not only protects the content of information and ideas, but also the means they are expressed. The Court's jurisprudence affords journalists a broad area of protection, which includes the preparatory works of their programs and publications, such as research and investigations done by them.[108] This also implies searching for information on the spot with the aim of imparting it to the public afterwards.

The Guidelines of the Council of Europe Committee of Ministers on Protecting Freedom of Expression and Information in Times of Crisis emphasize that "*media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information.*"

With regard to covering by media of the course, or dispersal, of a protest, one has to consider to what extent representatives of the media are allowed access to the necessary information, on the one hand, and to what extent they are allowed to impart information, on the other. In the explanatory statements provided to the Public Defender, the

[107] Ibid;
[108] The Sunday Times v. UK (No 2) A 217 (1991), Dammann v. Switzerland (2006) Paragraph 52

absolute majority of journalists reported seizure and damaging of their technical equipment and destruction of the materials.

In particular, Nato Gogelia, a journalist of the *Guria News*, was approached by police when filming the protests with a camera. One of them grabbed her camera, took the memory card out, and damaged the camera. Law enforcers also seized video cameras from Grigol Lokhishvili and Sergo Gelashvili, of the *First Caucasian* TV company. Later, they returned the cameras, but the footage of the dispersal was deleted (the memory card was removed). Law enforcers took away a flip camera from Darejan Paatashvili, the correspondent of InterPressNews. They also took away a video camera and a photo camera from the journalists of the Batumelebi Ltd's web-site *netgazeti.ge,* Tamaz Kupreishvili and Nestan Tsetskhladze.

It should be noted that coercing a journalist to refrain from obtaining or imparting information is a criminal act punishable by Article 153 (infringement of freedom of speech) and Article 154 (unlawful interruption of journalistic activity) of the Criminal Code of Georgia. *"A premeditated attempt to seize, damage, or break a journalist's equipment, with the aim of preventing the event from being covered, is a criminal act and those responsible for committing it must be held accountable as provided by law. Seizure of printed materials, videos, clips containing voices, or other reports by the authorities is a direct censorship, which is prohibited by international standards."*[109]

Later, the journalists filed a complaint against the Ministry of Internal Affairs of Georgia with the Panel of Civil Cases of Tbilisi City Court, demanding compensation for the damage incurred. The Court satisfied their complaint partially and imposed the payment of equipment costs on the Ministry of Internal Affairs of Georgia. The court heard the case on December 12, 2011, and imposed on the Ministry of Internal Affairs of Georgia payment of compensation of GEL 30 for the damage caused to the health of Tamaz Kupreishvili, GEL 17 for the damage caused to Nato Gogelia, and GEL 12 for the damage caused to Konstantine Stalinski, as well as a compensation of GEL 1,940.40 for the damage caused to the *Batumelebi* newspaper for the loss of two cameras. This, *per se*, is a positive fact, though, unfortunately, the journalists incurred not only material damage during the dispersal of the protest; they lost critically important information.

Detention of media representatives by police

Explanatory given to the Public Defender of Georgia and the disseminated information evidenced detention by police of several media representatives during the dispersal of the protest rally on May 26, 2011. Most of them were later released – some after being transferred to police premises, and others directly from the protest site. In most cases they were released after their editors informed the police they were journalists or, in some cases, after solicitations by their acquaintances.

As noted above, media representatives were detained regardless of the fact that they had presented their press cards and ID badges.[110] It is important to add, that no records were drawn out by police to document detention of journalists. However, they were *de facto* deprived of their liberty. Law enforcers handcuffed tem, thus using the means of restraint.

Under Article 12 (a) of the Georgian Law on Police, handcuffs and other means of restraint shall be used against a person who has committed a crime or an act dangerous for the public, and who resists or may resist a police officer, or tries to escape, during the convoy of a detainee or arrestee, and if the person can cause damage to himself or another persons with his actions. It is obvious that the representatives of the media were deprived of liberty unlawfully, in contravention of national and international standards. As noted above, law enforcement officers are under an obligation to protect the journalists' freedom to work, and to this end they are required to prevent any encroachment on their rights. It is all the more impermissible for law enforcement agencies and public officials to commit such acts.

[109] Ibid;

[110] Among the detainees were the journalist of InterPressNews, Malkhaz Chkadua, and the journalist of ExpressNews, Tengo Okujava; the journalists of the *Asaval-Dasavali* newspaper, Giorgi Mamatsashvili and Beka Sivsivadze; the employee of the First Caucasian TV station, Sergo Gelashvili; and the journalist of the web-site *netgazeti.ge* of the *Batumelebi* newspaper.

In connection with the violations described herein, the Public Defender of Georgia addressed the Chief Prosecutor of Georgia on May 30, 2011, though so far no response has been provided on the follow-up.

INADEQUATE FOLLOW-UP ON THE ACTIONS BY POLICE DURING THE PROTEST

"Law enforcement personnel should face civil and/or criminal liability as well as disciplinary action if the use of force is not authorized by law, or more force was used than necessary in the circumstances. Law enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted."[111]

The European Court of Human Rights has stressed in its judgments that cases of ill-treatment by police must be investigated properly.[112] The Court's case law prescribes that the investigation should be independent, effective and thorough, and conducted within reasonable time.[113]

This problem has been one of relevance for Georgia for years, and the reports of the Public Defender, accordingly, have dealt with this issue. The reason for a renewed focus on this issue is failure by the relevant authorities to follow on adequately on the recommendations made by the Public Defender of Georgia.

In connection with the three cases analyzed in the foregoing section of the Report,[114] the Public Defender addressed recommendations to the Chief Prosecutor of Georgia. Two recommendations were followed on, while measures taken to address the violations incurred in one case are not known to the Public Defender (the dispersal of the protest in the area adjacent to the Hercules factory in Kutaisi).

However, the Public Defender of Georgia considers that the action taken is not sufficient:

a) On January 5, 2011, the Ministry of Internal Affairs of Georgia stated that Otar Gvenetadze, officer of the Ministry, who had taken part in the dispersal of the veterans' protest on Heroes' Square in Tbilisi, was dismissed from office for breaching the norms of police ethics.

b) The Public Defender of Georgia addressed the Chief Prosecutor of Georgia with a demand to investigate the facts of excess of authority by members of law enforcement on May 26, 2011. On May 30, the Public Defender addressed the Chief Prosecutor of Georgia with a recommendation to follow up on the abuse of journalists' rights during the dispersal of the protest rally of May 26, 2011.

On August 12, 2011, the Public Defender was notified that the Office of the Chief Prosecutor of Georgia had conducted an investigation and found that the actions by law enforcers did not contain any signs of crime, and constituted only a breach of discipline. The investigation referred the relevant materials to the Ministry of Internal Affairs of Georgia for follow-up. As a result, 16 police officers taking part in the dispersal of the May 26 protest on Rustaveli Avenue were subjected to disciplinary action. They received different disciplinary sanctions, including dismissal from the office in four cases.

The follow-up by the Ministry of Internal Affairs of Georgia was important, though not sufficient.

Overall, the follow-up on the dispersal of the "veterans' protest" was assessed positively by the Public Defender of Georgia. However, in this particular case, other circumstances need to be explored, too. In particular, it is necessary

111 Guidelines on Freedom of Peaceful Assembly – Strasbourg – Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – the European Commission for Democracy through Law (the Venice Commission), OSCE/ODIHR

112 *Stoica v. Romania*, no 42722/02, the European Court of Human Rights, 2008, § 67.

113 *Mikheyev v. Russia*, no 77617/01, the European Court of Human Rights, 2006; Assenov v. Bulgaria, no 24760/94, the European Court of Human Rights, 1998; Zelilof v. Greece no 17060/03, the European Court of Human Rights, 2007; Yüksel v. Turkey, no 40154/98, the European Court of Human Rights, 2004, Muradova v. Azerbaijan, 22684/05, the European Court of Human Rights, 2009.

114 The dispersal of the "veterans' protest" on January 3, 2011, the use of disproportional force and violation of journalists' rights on May 26, 2011, and the dispersal of the protest on the area adjacent to the Hercules factory on September 13 and 15, 2011.

to establish on what grounds patrol police demanded termination of the protest; who inflicted the injuries to Shota Iamanidze and Malkhaz Topuria, detained during the protest; and what was the legal status of persons in plain clothes present on the ground who, in certain cases, detained the protesters. It is necessary to evaluate all the related circumstances in order to conclude whether signs of crime were present in the action by police.

As for May 26, 2011, sanctions were imposed only on those who exceeded their authority while dispersing the protest. It is necessary that the investigation continue into all the facts that came to the knowledge of the Public Defender of Georgia and were accordingly made known to the Office of the Chief Prosecutor of Georgia for follow-up. Part of the documented violations contained signs of crime, and, accordingly, law enforcement bodies should follow on them adequately and hold the perpetrators to account.

The state has a positive obligation to ensure the protection of human rights and freedoms, and to take adequate measures to respond to violations. In accordance with Paragraph 1, Article 1 of the Georgian Law on the Police, *"The police of Georgia is a system of law enforcement, special, police, and militarized establishments exercising executive powers which, within the competence granted by the Georgian legislation, ensure the protection of public security and order, human rights and freedoms from unlawful interference."* Therefore, when the main guarantor of public security and order, human rights and freedoms appears to violate the law, it is all the more imperative to take prompt, effective and adequate action.

PROBLEMS RELATING TO PROCEEDINGS ON ADMINISTRATIVE OFFENCES

The 2009 and 2010 reports of the Public Defender of Georgia provided comprehensive analysis of the problems relating to proceedings on administrative offences.[115]

In the reporting period, the Public Defender examined the rulings of the Administrative Panel of Tbilisi City Court in respect of persons detained on May 26, 2011, which were connected with the concrete cases at our disposal. Their detailed analysis is presented in the section dealing with the right to a fair trial. The analysis suggests that the problems highlighted in the reports of the second half of 2009 and of 2010 still persist.

RECOMMENDATIONS:

To the Chief Prosecutor of Georgia:

- **The Office of the Chief Prosecutor of Georgia should continue investigation into all the facts related to the dispersal of May 26, 2011 that came to the knowledge of the Public Defender of Georgia, and were accordingly made known to the Office of the Chief Prosecutor of Georgia for follow-up. Part of the documented violations contained signs of crime, and, accordingly, law enforcement bodies should follow on them adequately and hold the perpetrators to account.**

To the Minister of Internal Affairs of Georgia:

- **The Ministry of Internal Affairs should make arrangements in order for members of the corresponding structural unit of the Ministry to receive special training on riot control that would enable them to identify perpetrators, control large numbers of people and terminate demonstrations proceeding in violation of the law with minimal, and proportionate, use of force**

To the Chief Prosecutor of Georgia:

- **The Office of the Chief Prosecutor of Georgia should investigate the circumstances relevant to the unlawful dispersal of the protest strike in the area adjacent to the Hercules factory in Kutaisi.**

[115] The Public Defender's parliamentary report of the second half of 2009, Right to a Fair Trial, p. 113; The Public Defender's parliamentary report of 2010, Freedom of Assembly and Manifestations, p. 270

To the Chief Prosecutor of Georgia:

- **The Office of the Chief Prosecutor of Georgia should carry out effective investigation into the dispersal of the "veterans' protest" on January 3, 2011 in order to establish:**

a) **On what grounds patrol police demanded termination of the protest;**

b) **Who inflicted the injuries to Shota Iamanidze and Malkhaz Topuria, detained during the protest;**

c) **What was the legal status of persons in plain clothes present on the ground who, in certain cases, detained the protesters; and to**

d) **Assess all the relevant circumstances in order to establish whether signs of crime were present in the action by police.**

Freedom of Expression

INTRODUCTION

In the territory of Georgia the right of everyone to freely receive and impart information, express and impart ideas orally, in writing, or otherwise is guaranteed by Article 24, Para.1 of the Georgian Constitution. According to Para.2 of Article 24, "Mass media shall be free. The censorship shall be impermissible".

Freedom of speech and expression is protected also by the Law on Freedom of Speech and Expression that lays down that, "The state recognizes the freedom of expression as an inherent and supreme human value."

Overseeing protection of the right to freedom of expression is, and has been, one of the priorities for the Public Defender. As in the preceding years, the year 2011, too, saw problems related to the exercise of freedom of expression. At the same time, there have been positive developments, too. On April 19, 2011 the Parliament of Georgia made amendments to the Georgian Law on Broadcasting that made information concerning media ownership public and transparent.

Despite the fact that the legislature has taken some commendable steps toward refining the law related to media freedom, the practice still carries many problems. In 2011, the exercise of freedom of expression was not free of violations of various nature. In some cases, certain persons faced restriction of their freedom of expression, in others journalists experienced interference with their professional activity, detention, physical and verbal abuse. As before, in 2011, too, investigation into assaults against journalists and their abuse remained a problem.

It is to be noted that, compared to previous years, the press freedom index for Georgia has gone down. According to the survey published by the "Reporters without Borders", an international NGO, in terms of press freedom in 2011 Georgia scored as 104th, compared to 99th in 2010.[116] The survey conducted by the Freedom House ranks Georgia among semi-free countries.[117]

This section of the Report explores violations of the right to freedom of expression that occurred in 2011, describes concrete facts of interference with the freedom of expression of journalists and members of the public, cases of obstructing the work of journalists, incidents involving threats and assaults against journalists, and their detention. The report also looks into the standard of investigation of cases concerned with the journalism and journalists' professional activity.

[116] http://en.rsf.org/press-freedom-index-2011-2012,1043.html
[117] http://freedomhouse.org/report/freedom-press/2011/georgia

RESTRICTING FREEDOM OF EXPRESSION

The Public Defender of Georgia examined the case of Giorgi Tsulaia, chairman of the regional branch of the Free Georgia political movement in Imereti Region. On May 18, 2011, around 13:30, Giorgi Tsulaia made an inscription on a waste container in Pushkin Street, in Kutaisi.

As reported by Giorgi Tsulaia, after he made an inscription, he was approached by patrol police officers who detained him. Giorgi Tsulai did not put up any resistance to police, which is confirmed by filmed footage.

According to the documents presented to the Public Defender's Office, namely the report of administrative detention, Giorgi Tsulaia was wilfully making inscriptions on a waste container in Pushkin Street, Kutaisi. Despite an order by police to stop, he disobeyed. As stated in the report of administrative detention, Giorgi Tsulai was detained on the basis of Article 150 (1) (*Defacement of urban design*) and Article 173 (*Insubordination to the lawful orders of representatives of the law enforcement bodies or military servants*) of the Code of Administrative Offences of Georgia.

Notably, Giorgi Tsulaia's application as well as the available footage do not suggest any order by police to stop the wrongdoing.

This notwithstanding, on 18 May 2011, Kutaisi City Court made a ruling stating: "*Based on the investigation and evaluation of the materials relating to the administrative offence case and statements made by the persons involved, the court has ascertained the commission of an administrative offence under Article 173 of the Code of Administrative Offences, and established Giorgi Tsulaia's guilt in perpetrating the act.*" Accordingly, the court found Giorgi Tsulaia guilty of an offence under Article 173 of the Code of Administrative Offences of Georgia and imposed a penalty in the amount of GEL 400. The submitted documents suggest that the court did not even discuss whether an offence provided for by Article 150 of the Administrative Code had taken place at all.

According to Article 24 of the Constitution of Georgia, "*Everyone has the right to freely receive and impart information, to impart his/her opinion orally, in writing or by any other means*". The right to freedom of expression is protected also by Article 10 of the European Convention on Human Rights, which states: "*Everyone has the right to freedom of expression. This right shall include freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers.*"

The exercise of these freedoms may be subject only to such restrictions as are prescribed by law, serve a legitimate aim, and are necessary in a democratic society.

It is to be emphasized that freedom of expression is a broad notion. A person may express his/her opinion in different forms, and by different means, including pictures[118], images, books, caricatures, cartoons, films, interviews, information brochures[119] of any form and content. Article 10 protects not only the substance of the information and ideas but also the form in which they are expressed.[120]

According to the jurisprudence of the European Court of Human Rights, freedom of expression is applicable not only to the information or ideas that are favourably received, or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. At the same time, when freedom of expression is related to political activity or a matter of high public interest, the boundaries of restrictions established by Para.2 of Article 10 of the European Convention on Human Rights narrow.[121]

The act performed by Giorgi Tsulaia in Kutaisi on 18 May, i.e. making an inscription on a waste container, falls within the purview of protection of Article 10 of the European Convention on Human Rights. His detention by law enforcers is a direct interference with his right to freedom of expression.

As stated above, Giorgi Tsulaia was detained on the basis of Article 150 (1) (*Defacement of urban design*) and Article

118 *Muller v Switzerland (App. 10737/84), 24 May 1988, Series A No 133, (1991) 13 EHRR 212*

119 *Open Door Councelling and Dublin Well Woman v Ireland Apps. 14234/88 and 14235/88), 29 October 1992, Series A No 246 (1993) 15 EHRR 244;*

120 *Oberschlick v. Austria judgment of 23 May 1991, Series A no. 204, p. 25, para. 57.*

121 *Wingrove v. the United Kingdom, judgment of 25 November 1996, Reports 1996-V, p. 1957, § 58*

173 (*Insubordination to the lawful orders of representatives of the law enforcement bodies or military servants*) of the Code of Administrative Offences of Georgia. In order for the restriction to be lawful, it must be established in law.

According to Article 150 (1) of the Code of Administrative Offences of Georgia, "*Wilful making of inscriptions, painting and symbols on facades of buildings, shop windows, fences, posts, trees, also displaying posters, slogans, banners in places not intended therefore*…" constitutes an administrative offence. This disposition provides an exhaustive list of places where making of inscriptions, paintings or symbols would be an administrative offence. Therefore, applying Article 150 (1) to the act performed by Giorgi Tsulaia seems unjustified.

As for insubordination to the lawful order, or demand, of the patrol police, it is to be noted that the footage clearly shows that Giorgi Tsulaia stopped making an inscription on the waste container once patrol police arrived. Although he did not put up any resistance to the police, he was nevertheless detained under Articles 173 and 150 (1) of the Criminal Procedure Code. However, considering that the act he performed does not fall within the offences listed in Article 150 (1), the order by police to stop making an inscription on the waste container cannot be invoked as a ground to qualify his act as gross insubordination to the lawful order.

The restriction that is not prescribed by law cannot be considered as justified interference within the meaning of Article 10, Para.2 of the European Convention on Human Rights. Since the Georgian law does not provide for any restrictions or limitations that would apply in this particular case, there is no need to look into other grounds that would justify interference with Giorgi Tsulaia's exercise of freedom of expression. In the instant case, detention of the applicant by patrol police constituted undue interference with his right to freedom of expression guaranteed by international law and national law.

RIGHTS OF MEDIA REPRESENTATIVES

Media is a cornerstone of democracy, and a factor for its development. Alongside the executive, the legislature and the judiciary, it is often called the fourth power. It is imperative to secure media freedom using all instruments to promote its normal functioning so that it could perform effectively its role of a "public watchdog".

For media freedom to be secured, the following steps must be taken:

1. The state should not interfere with the operation of media, except where prescribed/allowed by international standards;
2. The state must protect journalists from any forms of violence;
3. The state must create conducive environment for media freedom.[122]

As stated above, the right to freedom of expression is protected by Article 10 of the European Convention on Human Rights that states: "*This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*". When exercising freedom of expression, media representatives/journalists undertake certain duties and responsibilities whose scope depends on a particular situation. This is confirmed by the jurisprudence of the European Court of Human Rights.[123] At the same time, Article 10 of the European Convention protects journalists' freedom of expression in case they act *bona fide* and impart accurate and reliable information.[124]

Article 10, Para.2 of the European Convention lays down 3 critical principles to be observed in restricting the right to freedom of expression. In order for restriction to be seen as justified, it has to be prescribed by law; it should serve a legitimate purpose, and be necessary in a democratic society. Coverage by journalists of issues of high public interest may also become subject to such restrictions.

[122] Thomas Hammarberg, Commissioner for Human Rights, *Human Rights and Changing Media Landscape*, Council of Europe Publications, December 2011, p. 44

[123] *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49 *in fine*

[124] *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Monnat*, § 67; and *Pedersen and Baadsgaard v. Denmark*[GC], no. 49017/99, § 78, ECHR 2004-XI

Although international/regional human rights instruments, as well as the Georgian law allow for freedom of expression to be restricted under certain circumstances, any restriction must be grounded in law or other regulations. At the same time, the state is required to use all available means to enable journalists to carry out their work effectively. The state also undertakes to ensure security and safety for journalists, and to respond adequately and promptly in cases involving violence against journalists, be it by state agents or private persons, in order to identify perpetrators and bring them to account.

Illegal interference with journalists' professional activities

As mentioned above, according to paragraph 2 of Article 24 of the Constitution of Georgia, "*Mass media shall be free. The censorship shall be impermissible.*" Under Article 153 of the Criminal Code of Georgia, violation of the right to freedom of speech, which implies illegal interference with exercising the right to freedom of speech and/or to receipt and dissemination of information that has resulted in a substantial damage, and/or has been perpetrated by using one's official position shall be punishable. Under Article 154 of the same Code, illegal interference with journalists' professional activities is ascribed to the number of criminally punishable actions.

Regrettably, as in the preceding years, the facts of interference with journalistic activities have been documented in the reporting period as well. The Public Defender of Georgia examined the facts of interference with the professional activities of a journalist of *Kakheti Information Centre* on the part of Kakheti Patrol Police Department's officer, taking place in Telavi on 30 September 2011, and of interference with the professional activities of the *liverpress.ge* journalists Tamar Zantaraia and Nino Toloraia on the part of officers of the Ministry of Defence of Georgia, taking place in Zugdidi on 26 December 2011.

In the first case, according to the available information, on 30 September 2011, the *Kakheti Information Centre* journalist was covering the presentation in Telavi of a parliamentary deputy contender from the political movement Industry Saves Georgia. When the journalist had finished his work in the hall, he started video filming the people gathered in front of the theatre building, where a patrol police car was standing. One of the patrol police officers demanded from the journalist not to shoot the territory where the patrol car was parked. The patrol force officer was trying to take the camera away from the journalist, for which reason the latter left the area.

As regards the second case, according to Tamar Zantaraia and Nino Toloraia, on 26 December 2011, they were covering a meeting organized and held in Zugdidi theatre building by the Ministry of Defence of Georgia. As the journalists state, they were not allowed to the building by an unknown man. When the meeting was over, the journalists were interviewing citizens within the area adjoining the building about the meeting and were fixing those coming out from the building by their camcorders. In the course of filming, they were approached by about 4 military men, who warned them to stop the shooting.

Later, according to the journalists, the representatives of the Ministry of Defence of Georgia erased the video tape recording made by the journalists.

The Public Defender of Georgia addressed the Office of the Chief Prosecutor of Georgia on the case. However, investigation of the fact that took place in Kakheti has not been initiated on the grounds that no one had applied to law-enforcement agencies; while, in connection with the Zugdidi incident, the press service of the Ministry of Defence of Georgia presented its apologies through *netgazeti.ge* .[125]

It is praiseworthy that the Ministry of Defence has acknowledged its officers' misconduct, although, the Public Defender thinks that the mentioned action is not sufficient for securing journalists' rights. The elements of a criminally punishable action are evident in the given cases. Accordingly, the Public Defender considers that an investigation should be initiated and the respective measures taken against the persons who have grossly violated the legislation of Georgia and abused the rights of journalists.

[125] http://netgazeti.ge/GE/86/law/7608/

Facts of threats against journalists

Facts of threats against journalist have also been found to occur during 2011.

The Public Defender of Georgia was addressed by the journalist of *the Human Rights Centre* Gela Mtivlishvili and the journalist of the TV-and-Radio Broadcasting Company *Trialeti* Vladimer (Lado) Bichashvili. According to the furnished information, on 6 November 2011, Gela Mtivlishvili received on his personal e-mail a message of threat from the former prosecutor of Kakheti Regional Prosecutor's Office. As regards Lado Bichashvili, according to his statement, beginning from 2 November 2011, unknown persons used to send short offending messages to him and his managers from the phone number 598-238651. Lado Bichashvili mentioned that the messages also contained threats.

Both journalists link the said facts to their journalistic activities. Notwithstanding the fact that Gela Mtivlishvili addressed the Chief Prosecutor's Office of Georgia and the Public Defender of Georgia also requested detailed information on the case progress, up to this day we lack any data on the decisions made and measures taken. On 10 November 2011, Gori district department of the Ministry of Internal Affairs of Georgia set out investigation of the facts of threatening Vladimer Bichashvili, with the elements of offence stipulated by Article 151 of the Criminal Code of Georgia. Within the limits of said case, Vladimer Bichashvili was interrogated as witness.

It is the duty of a democratic state to provide each journalist with an opportunity to comply with the obligation imposed thereon when carrying out professional activities. The said obligation proceeds from both the journalist's right to engage in professional activity, to receive and impart information within the bounds of law, as well as from the society's right to constantly receive information of interest to it. Correspondingly, when the representatives of mass media are being persecuted and/or physically abused because of their professional activities, the State should adequately respond and take all necessary measures in order to establish the truth through the prompt and fair investigation.

Arrest of media representatives

As mentioned above, freedom of expression is a right in itself that includes the freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers. Article 10 of the European Convention on Human Rights (ECHR) protects not only ideas and information content but also their communication means and forms[126]. In addition, journalistic activities are protected both during on-site looking for information and in the course of preparatory work, as well as upon making information public.

Any arrest of media representatives, especially if such an arrest is associated with information of high public interest, is violation of Article 10 of the ECHR. The said measure can be justified only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence .[127]

No person, especially a media representative, shall be afraid of arrest for obtaining and disseminating information within the bounds of law. In spite of this, more than one fact of arrest of media representatives/journalists was found to occur in 2011.

In particular, on 26 September 2011 mass media informed on arresting the journalist of the broadcasting company *Maestro* Shalva Ramishvili by strangers in Kvareli district, upon performance of journalistic activities. In connection with the above, on 29 September 2011 representatives of the Public Defender of Georgia heard Shalva Ramishvili's explanations of the incident.

As the explanations evidence, on 18 September 2011 Shalva Ramishvili, with retinue, was in Kvareli district to prepare a plot for the TV programme - *Without Accreditation*. According to Shalva Ramishvili, when he and the shooting team were

[126] *Oberschlick v. Austria judgment of 23 May 1991, Series A no. 204, p. 25, para. 57; Jersild v. Denmark, judgment of 23 September 1994, Appl. no 15890/89, para 31*

[127] *CUMPĂNĂ AND MAZĂRE v. ROMANIA, App. 33348/96, 17 December 2004 [GC], (2005) 41 EHRR 200, ECHR 2004-X, Para 115*

within the territory of the President of Georgia's house located in Kvareli, they were approached by persons dressed in civilian clothes, who made them sit in the car and leave the said territory. According to the explanations, the persons dressed in civilian clothes for some time disallowed Shalva Ramishvili and his retinue to get out of the car. The said persons neither identified themselves nor drew up a respective report.

In addition, as Shalva Ramishvili states, the persons dressed in civilian clothes seized from him and the accompanying journalist the video equipment, without completion of respective papers, a part of which was further returned. According to Shalva Ramishvili, notwithstanding the fact that he and his retinue after some time had been set free, the "civilians" were still blocking their movement on Kvareli motor road, in the direction of the President of Georgia's house. As Shalva Ramishvili and Giorgi Mosiashvili – the accompanying person – state, in the persons dressed in civilian clothes they recognized officers of the Ministry of Internal Affairs.

In connection with the mentioned fact, the Public Defender of Georgia applied to the Office of Chief Prosecutor of Georgia with a recommendation to set out investigation, which the Office of Chief Prosecutor disregarded and to which it has never responded.

The rights of journalists were once more violated on 26 May 2011, during disruption of an action of protest. In particular, the facts of interference with their professional activities, physical coercion, seizure of equipment, as well as, in some cases, of their arrest were evidenced. Since the legal status of journalists on 26 May 2011 has been discussed in detail in the chapter of *Assemblies and Manifestations* of this Report, we shall not dwell on the subject.

In 2011, the so-called "press photographers' case" has evoked a great public interest. In spite of the fact that the case is not directly associated with the freedom of expression, we considered its inclusion in the said chapter worthwhile.

On 7 July 2011, the Ministry of Internal Affairs informed about arresting four press photographers – Zurab Kurtsikidze, a European Press Agency photographer; Giorgi Abdaladze, a contract photographer with the Ministry of Foreign Affairs; Irakli Gedenidze, President Mikhail Saakashvili's personal photographer; and Gedenidze's wife Natia—on espionage charges. The case was classified as "secret" and the evidence never declassified, raising a great hue and cry against it.

On 16 July 2011, the Public Defender of Georgia visited the detained press photographers at Prison No 8 of the Penitentiary Department. The Public Defender individually spoke with Irakli Gedenidze, Giorgi Abdaladze, and Zurab Kurtsikidze. During the talk all the three photojournalists mentioned that they had been normally treated and that no physical or psychological pressure had been applied to them. G. Abdaladze and Z. Kurtsikidze requested making public materials of the criminal case being tried against them; G. Abdaladze went on a hunger strike with the said request.

Unfortunately, the Public Defender of Georgia cannot, within the jurisdiction given to him by law, familiarize himself with the criminal case materials before the court judgment enters into force, and if the case is classified as "secret", to consult them is practically impossible. Based on the above, we cannot be judges of the feasibility and lawfulness of classifying the case materials.

Investigative agencies may, where appropriate, classify the case materials as "secret". Concurrently, given that the accused were photojournalists, the public was, naturally, interested in getting additional information on investigating the case.

We consider that in some cases maintenance of a balance between the State and public is rather hard. In addition, it is necessary that upon decision-making the State would take all appropriate and possible measures so to maximally provide for both the state and public interest. In the given case, the investigating agency had to accurately assess the content of specific evidence and to individually decide on the issue of their classification.

It is exactly based on the above we call upon the investigative agency to dissociate documents of the case materials from other materials that did not contain state secrets, especially as it has made a part of the case materials public.

INADEQUATE MEASURES

Impunity breeds further violence, and practically blesses the most brutal type of censorship without saying so (Miklós Haraszti). If the state fails to ensure efficient and swift investigation of the facts of interference with the journalists' professional activities, the effectiveness of law enforcement agencies and judicial authority is called in question.[128]

As mentioned above, the media plays a special role in democratic processes. The state as the principal guarantor of an individual's rights is obliged to safeguard a journalist from violations of any kind. Violence and threats against media representatives, their assault encroaches on their rights and significantly interferes with acts of a journalist as a *Public Watchdog*.

Journalists' safety consists of the following main components: physical safety, legal safety, information safety, economic safety, and psychological safety.[129] In case any of these is violated, the government shall be obliged to promptly and professionally investigate the given fact and to bring any perpetrator to justice.

The said obligation is based on the necessity to protect the rights of individual journalists and on the need for effective and free media in a democratic state

Notwithstanding the above, investigation of matters connected with the professional activities of journalists in Georgia in some cases is delayed; in other cases the investigative agency terminates examination of the case due to the absence in it of elements of crime. At the same time, a form and degree of liability of offenders is frequently inadequate to the offence committed and harm incurred.

In particular, the Chapter "*Freedom of Expression*" of the 2010 Annual Report of the Public Defender of Georgia, dealt with the fact of taking away of a camera from *Trialeti* TV Company's journalist Vladimer Bichashvili and his cameraman during demolition of the monument to Stalin in front of the building of Gori Municipality. [130]

In connection with the above, the Public Defender's staff addressed the Chief Prosecutor's Office of Georgia. Irrespective of the investigation into the facts of misuse of power by individual officers of the Shida Kartli Regional Chief Police Department of the Ministry of Interior of Georgia initiated on 9 July 2010 (with elements of offence as per Article 333.1 of the Criminal Code of Georgia), by letter of 21 March 2011 we were informed that the trial of the case was suspended on 25 January 2011 on the basis of Article 105.1(a) of the Criminal Procedure Code of Georgia.[131]

Investigation was also suspended on the fact of physical assault of the General Director of *Trialeti* TV Company Jondo Nanetishvili. As indicated in the 2010 parliamentary report, Jondo Nanetashvili submitted to the Office of Public Defender of Georgia a health certificate issued on 8 October 2010 by LEPL Military Hospital of the Ministry of Defence of Georgia, under which he had been diagnosed as having a closed craniocerebral injury, neck-bone injury, traumatic cervicalgia, excoriations of both hands. As for a certificate of health issued on 7 October 2010 by Zaza Panaskerteli Kareli Hospital, it states that Jondo Nanetashvili had injuries in the chest-wall and neck area, excoriations of both hands, and concussion of the brain. According to the medical conclusion, he was a patient with an acute clinical course.

On 8 October 2010, the Mtskheta-Mtianeti Regional Prosecutor's Office commenced an investigation of the fact of abuse of powers by officers of the Shida Kartli Patrol Police Department of the Georgian Interior Ministry. Later, however, the investigation on the said case was suspended due to the absence of actions stipulated by the criminal law.

According to Article 18 (e) of the Organic Law of Georgia on the Public Defender, *in carrying out an examination, the Public Defender shall be entitled to: e) have access to criminal, civil and administrative case files where a final decision has been rendered by*

[128] Thomas Hammarberg, Comissioner for Human Rights, *Human Rights and Changing Media Landscape*, Council of Europe Publications, December 2011, p. 31

[129] Ibid, p. 37

[130] Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2010, Freedom of Expression, p. 181

[131] Article 105.1(a) of the Criminal Procedure Code of Georgia: Investigation shall be suspended and criminal prosecution shall not be initiated or be suspended unless an action provided for by criminal law exists.

court. Based on the given norm, the Office of the Public Defender of Georgia has repeatedly applied to the Office of Chief Prosecutor of Georgia with a request for copies of the criminal case materials. However, the copies have never reached the Public Defender.

The 2010 report also dealt in detail with the case of Tedo Jorbenadze, the coordinator of a journalistic investigation of the newspaper *Batumelebi*.[132] The investigative force of the Autonomous Republic of Ajara initiated a pre-trial investigation on the fact of abuse of authority by officers of the Ministry of Internal Affairs, with the elements of crime as prescribed by Article 333.1 of the Criminal Code of Georgia.

In spite of this, according to journalists, the investigation was ineffective. On 20 November 2011, as the newspaper *Batumelebi* informs, the newspaper director Ms Mzia Amaghlobeli identified the person who used to blackmail the coordinator of the investigative team of their newspaper Tedo Jorbenadze. The Public Defender of Georgia within the scope of his jurisdiction lacks an opportunity to consult the criminal case before the court judgment becomes effective or the investigation ends. In this case, any interference in the course of investigation is excluded. Consequently, the Public Defender of Georgia re-addressed the Chief Prosecutor's Office of Georgia with a request to examine the information provided by the newspaper *Batumelebi* representatives for establishing the truth and achieving the effective result. No response to the said request has been received from the Prosecutor's Office up to this day.

The adequate and swift responding to any facts of violence committed against journalists should be one of the priorities for the State. Competent agencies shall take all the appropriate measures in order to not only suppress, but also prevent such offences. Frequently, the taking of inadequate measures has an adverse impact on the country's situation in this respect, which, in turn, stems the tide of democracy in the country.

[132] Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, second half of 2009, Freedom of Expression, p. 143

Freedom of Information

Freedom of information occupies one of the principal places among human rights and freedoms. The proper realization of the principle of freedom and accessibility of information determines to a great extent the country's degree of democracy. The fundamental character of the above-mentioned postulate is further consolidated by a definition of the Constitutional Court of Georgia, according to which, *under conditions of an information vacuum [...], the existence of a democratic society and viability of the democratic constitutional and legal order state are impossible.*[133]

In spite of regulated legal bases/institutes in Georgia, the fundamental right to freedom of and access to information has been repeatedly violated by public authorities in the 2011 reporting period. As a result of analysis of applications submitted to the Public Defender of Georgia by natural and legal persons related to the given issue, the facts of violation of the access to public information, of incomplete and/or delayed provision of information have been revealed.

It should be concurrently mentioned that the competent public authorities have failed to give proper attention to the following recommendations contained in the Chapter "*Freedom of Information*" of the 2010 Annual Report of the Public Defender of Georgia – *The Situation of Human Rights and Freedoms in Georgia*:

1. *Competent agencies should take the proper steps for initiating procedures of ratification of the Council of Europe Convention on Access to Official Documents;*

2. *The Parliament of Georgia should implement such legal amendments that would oblige public institutions to report on 10 December of every year to the Parliament of Georgia and President of Georgia on compliance with the regulations established by Article 49 of the General Administrative Code of Georgia.*

Correspondingly, we shall focus in this Chapter on both an analysis of the causes of specific cases of non-compliance with the principle of freedom and accessibility of information during the 2011 reporting period, as well as on the urgency of following the above recommendations contained in Chapter "*Freedom of Information*" of the 2010 Annual Report of the Public Defender of Georgia – *The Situation of Human Rights and Freedoms in Georgia*.

The principle of freedom and accessibility of information has been recognized by a whole number of international and national laws concerning human rights.

A positive obligation of governments to safeguard everyone's right to seek, receive and impart information and ideas through any media and regardless of frontiers has been reflected in the United Nations' Universal Declaration of Human Rights,[134] the International Covenant on Civil and Political Rights,[135] as well as in the European Convention on Human Rights and Fundamental Freedoms.[136]

133 Ruling of the Constitutional Court of Georgia, #2/2-389 of 26 October 2007
134 Article 19 of the United Nations' Universal Declaration of Human Rights of 10 December 1948.
135 Article 19 of the United Nations' International Covenant on Civil and Political Rights of 16 December 1966.
136 Article 10 of the European Convention on Human Rights and Fundamental Freedoms.

It should be mentioned here that irrespective of the right of access to information declared in the above-listed acts, before 18 June 2009, or before the adoption by the Council of Europe of its Convention on Access to Official Documents, there was no international binding instrument that would govern specific regulations of effective implementation of the right of access to official documents for all by the Parties to Convention.

The Council of Europe considers *that exercise of the right of access to official documents*

- *Provides a source of information to the public;*
- *Helps the public to form an opinion on the state of society and on public authorities;*
- *Fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping them affirm their legitimacy.*

Considering, therefore, that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests, the Council of Europe in the Convention on Access to Official Documents has regulated individual matters related to the publicity of official documents and identified the possible limitations to both realization and restriction of the said right (right of access to official documents).

By now, the Council of Europe Convention on Access to Official Documents of 18 June 2009 has been signed by 9 (nine) Member States of the European Council, among them is Georgia.[137] It is, however, be mentioned that Georgia has not ratified the Convention until now and, as mentioned above, the competent authorities have not taken the appropriate steps to initiate necessary procedures for ratifying the given document.

Based on the above, the Public Defender of Georgia holds that for the proper realization of the principle of freedom and accessibility of information Georgia should ratify the Council of Europe Convention on Access to Official Documents of 18 June 2009 in order that the document-established standards safeguarding access to information will, as an additional legal lever, become binding on the local public authorities.

As is known, the major guarantor of the principle of information freedom and accessibility from among the effective national legal acts is the supreme law of Georgia – Constitution.[138] According to the decision by the Constitutional Court of Georgia, "*Article 10 of the European Convention on Human Rights and Freedoms safeguards the seeking, processing and further communication of ideas. According to this article, everyone has the right to receive and impart ideas and information through any available sources without interference by the state. The Constitution of Georgia provides a wider guarantee of freedom of information, imposing on the state not only a negative obligation of non-interference with obtaining of information by a person, but also a positive obligation of providing the person with public information available to it. The Constitution of Georgia restricts the said right only if the requested information contains state, professional or commercial secrets.*"[139]

The mechanism for proper realization of the principle of freedom and accessibility of information guaranteed by the Constitution of Georgia has been defined in Chapter III of the General Administrative Code of Georgia adopted on 25 June 1999, which unambiguously establishes that any information available at a public agency shall be open, or accessible to everyone, unless in the cases provided and established by law it is classified as secret.

Therefore, irrespective of the circumstance that the regulations of freedom and accessibility of information are clearly reflected and found in Georgian laws, the Public Defender of Georgia has revealed many facts of violations of provisions stipulated by these laws in 2011, which will be specified (facts of violation of the principle of freedom and accessibility of information and respective analysis) in the subsections to follow.

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137 In accordance with Article 16.3 of the Council of Europe Convention on Access to Official Documents of 18 June 2009, this convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 member states of the Council of Europe have expressed their consent to be bound by the convention in accordance with the provisions of paragraph 2.

138 Articles 24, 37 and 41 of the Constitution of Georgia of 2 August 1995.

139 Judgment of the Second Chamber of the Constitutional Court of Georgia of 14 July 2006 #2/3/364, *The Georgian Young Lawyers Association and the Citizen Rusudan Tabatadze versus the Parliament of Georgia.*

VIOLATION OF THE RIGHT TO ACCESS TO INFORMATION

According to the Georgian Constitution,[140] "Every citizen of Georgia shall have the right to become acquainted, in accordance with the procedure prescribed by law, […] with official documents stored in state institutions unless they contain state, professional or commercial secret."

Despite an imperative character of the aforementioned norm laid down in the Georgian Constitution, which provides for the right of every citizen to get access to information from official sources unless they are classified as secret in accordance with the procedure established by law, the Energy and Water National Regulatory Commission of Georgia – a body that exercises public authority – choose to disregard this legal disposition, and refused to release to the Institute for Information Freedom Development the public information it kept.[141]

The subject of the request addressed to the Energy and Water National Regulatory Commission of Georgia by the Institute for Information Freedom Development concerned the list of staff employed at the said administrative body[142], information concerning their salaries, bonuses and awards, as well as their travelling expenses, actual costs for fuel consumed and established per-month fuel consumption limits, also telecommunications-related costs (without specifying employees' identity).

The Energy and Water National Regulatory Commission of Georgia refused to provide the requested information, stating that one part of the information was not public, whereas the other part constituted personal secret.

Having explored the circumstances relevant to the case, the Public Defender of Georgia has come to an opinion that the list of employees does not fall within the category of information that constitutes personal secret, as this information is not related in any manner to health status, financial status, etc., whereas information concerning salaries, bonuses and travelling expenses of the employees of the Energy and Water National Regulatory Commission concerns person's finance, and as such, constitutes personal information.[143]

As for the information concerning actual costs for fuel consumed and established per-month fuel consumption limits, as well as information on telecommunications-related costs (without specifying employees' identity), requested by the Institute for Information Freedom Development, the Public Defender is of the opinion that such information, in case it does not specify concrete persons, can in no way serve to identify a person.[144] Hence, providing access to such information would not have constituted violation of the rights of employees of the Energy and Water National Regulatory Commission guaranteed by the Constitution of Georgia.[145]

The Public Defender, within his mandate, recommended to the Energy and Water National Regulatory Commission to provide to the Institute for Information Freedom Development the following public information: the list of staff employed at the Energy and Water National Regulatory Commission, information concerning actual costs incurred by employees of the said body for fuel consumed and established per-month fuel consumption limits, also their telecommunications-related costs (without specifying employees' identity).

140 Article 41, Para.1 of the Constitution of Georgia (24 August 1995)

141 According to Article 2, Para.1 (m) of the General Administrative Code of Georgia (25 June 1999), "Public information means an official document (including drawing, model, layout, diagram, photograph, electronic information, video or audio recording) , including those kept by a public agency, and those received, processed, created, or sent by a public agency or public servant within its official authority.

142 According to Article 2, Para.1 (m) of the General Administrative Code of Georgia (25 June 1999), "Administrative agency means any state or local self-government agency or institution (except political and religious associations), and any natural or artificial person that exercises public authority in accordance with law. In determining whether the Energy and Water National Regulatory Commission falls under the concept of administrative agency it is important to look into its functions rather than the source from which its costs are covered – proceeds from regulatory fees or moneys from the state budget. Hence, the Energy and Water National regulatory Commission, legal person under public law, is an administrative body, since it exercises public authority.

143 Important in this regard is the practice of common courts. See, for instance the judgment of Tbilisi City Court of 8 December 2009 on the case of Ana Shalamberidze v. I. Chavchavadze University (No 3/2907-09. See, also, the judgment of Tbilisi Appeal Court of 20 May 2010 on the case of Ana Shalamberidze v. the National Civil Registry Agency (No, 3b/742-10), where the court found that the list of employees of the National Civil Registry Agency with their positions does not constitute personal information within the meaning of the respective law.

144 See the judgment of Tbilisi Appeal Court of 20 May 2010 on the case of Ana Shalamberidze v. the National Civil Registry Agency (No, 3b/742-10)

145 Article 41, Para.2 of the Constitution of Georgia (24 August 1995).

Another example of unlawful restriction of the right of access to public information is the case of N.S. In the instant case, N.S. requested from the Revenue Service under the Ministry of Finance of Georgia information about himself, which does not constitute secret/confidential information. The said public institution refused to make available to N.S. copies of his tests and correct answers. In the opinion of the Public Defender, denial of access to this information was in conflict with the Georgian law concerning access to public information, and interpretation given to it by the Constitutional Court in its decision of October 30, 2008.[146]

Since the Revenue Service violated N.S.'s right of access to public information, the Public Defender addressed a recommendation to Head of the Revenue Service under the Ministry of Finance of Georgia to restore N.S.'s impaired rights.

Apart from the aforementioned case, the Public Defender found violation of the right to receive information from a public institution that is guaranteed by the Constitution,[147] in the case of citizen G.Ts. In the instant case, the violation was caused by the action of the National Bureau for Enforcement under the Ministry of Finance of Georgia that refused to provide to the person concerned information about him kept at the said institution.

These and other cases warrant a conclusion that in certain instances administrative bodies offend the right to freedom of information and access to information protected by the Constitution and the General Administrative Code of Georgia.

INCOMPLETE PROVISION OF REQUESTED INFORMATION

According to the General Administrative Code of Georgia,[148] "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."

Despite the constitutional provisions and regulations prescribed by the General Administrative Code of Georgia, in the 2011 reporting period the Public Defender's Office documented in a number of occasions facts of incomplete provision of information by public institutions, which claimed that they acted in accordance with the law.

An example of incomplete provision of information by public institutions is evident in the case of the Mtskheta-Mtianeti Information Centre, which applied to Dusheti Municipal Council in writing on a number of occasions requesting some public information, with no success however. Based on the findings of examination of the application submitted by the Mtskheta-Mtianeti Information Centre, the Public Defender came to a conclusion that information released by the said public body to the Mtskheta-Mtianeti Information Centre was incomplete. To facilitate redress of the violation, the Public Defender made a recommendation to Head of Dusheti Municipal Council to instruct the officer in charge of public information to release complete information to the Mtskheta-Mtianeti Information Centre based on their request for information.

VIOLATION OF RELEASE TIME OF INFORMATION

According to Article 40 of the General Administrative Code of Georgia, a public agency shall render a decision on providing or denying access to public information immediately or, in case of special circumstances, not later than within ten days. However, examination of applications and complaints concerning possible violation of the right to freedom of information and access to information evidence a pattern of violation in terms of the time of release of

[146] According to the interpretation by the Constitutional Court of Georgia, "Information, provided for in Article 41 of the Constitution can be divided into several groups. One group comprises information concerning the person requesting that information. According to Article 41, Para. 1 of the Constitution of Georgia, the person concerned must be given unimpeded access to such information in accordance with the procedure established by law". Decision Ni 2/3/406, 408 of the Constitutional Court - October 30, 2008.

[147] Article 41, Para. 2 of the Constitution of Georgia (24 August 1995).

[148] Article 37, Para. 1 of the General Administrative Code of Georgia.

the requested information. In this context it seems interesting to look at the case of the Mtskheta-Mtianeti Information Centre.

In the instant case, the Head of Dusheti Municipality invoked as a reason for violation of release time of the information prescribed by the General Administrative Law, the fact that the officer in charge of public information had to carry out serious work to acquire the information requested by the Mtskheta-Mtianeti Information Centre. Part of the information had been sent to the archive, and retrieval of required information from the archive in accordance with archive regulations did take additional time. The reason invoked by Dusheti Municipality (the information requested from Dusheti Municipality had to be acquired from another public institution) cannot be considered as a valid excuse for the aforementioned violation, the more so as the General Administrative Code of Georgia[149] clearly establishes the time limit of 10 days for release of information in case of special circumstances (acquisition of information from another public institution and its processing). It is to be noted that the Mtskheta-Mtianeti Information Centre submitted a request for information on 4 July 2011, while the officer in charge of public information at Dusheti Municipality stated the information would be released on 23 August 2011.

According to Mtskheta-Mtianeti Information Centre, failure by Dusheti Municipality to release the requested public information within the time prescribed by law rendered the information completely useless.

The described case of delayed receipt of information by the Mtskheta-Mtianeti Information Centre is a clear example of how failure to provide information within the time prescribed by law can strip the information of any value.

ANNUAL REPORTS TO BE SUBMITTED TO PRESIDENT AND PARLIAMENT OF GEORGIA

Every year, on 10 December, public agencies[150] shall submit to the President and Parliament of Georgia the Report on Implementation of Regulations provided for in Chapter III of the General Administrative Code of Georgia.[151]

On 16 December 2011, on the basis of the Organic Law on the Public Defender of Georgia, the Public Defender's Office requested from the Administration of the President of Georgia and the Office of the Parliament of Georgia information and other materials on: the number of public agencies that had submitted the report stipulated by Article 49 of the General Administrative Code of Georgia on 10 December 2011. Also, the Public Defender's Office asked the President's Administration and the Office of the Parliament of Georgia to make available 25 reports submitted by public agencies and 25 reports submitted by local self-government bodies.

On February 1, 2012 the officer in charge of public information at the President's Administration informed the Public Defender's Office that as of beginning of February 2012, reports under Article 49 of the General Administrative Code of Georgia had been submitted by 908 public agencies and institutions.

On January 23, 2012, head of organizational department of the Office of the Parliament of Georgia sent to the Public Defender's Office copies of the reports submitted to the Parliament of Georgia in accordance with Article 49 of the General Administrative Code. Simple arithmetic shows that reports were submitted to the Parliament of Georgia by 245 public agencies.

The aforementioned figures indicate that most of public institutions fail to comply with the requirement stipulated by the General Administrative Code of Georgia, otherwise reports submitted to the President's Administration and the Parliament of Georgia would have numbered thousands.

It is to be noted that the reports submitted to the President of Georgia and the Georgian Parliament fall short of the requirements prescribed by Article 49 of the General Administrative Code of Georgia. Also, some public institutions

149 Article 40, Para. 1 (a) of the General Administrative Code of Georgia (25 June 1999).

150 According to Article 27(a) of the General Administrative Code of Georgia (25 June 1999) "Public agency" means a state or self-government agency or institution, or the person who exercises statutory authority on behalf of a public agency pursuant to law or contract, or legal person of Public Law or Private Law that receives funding from the State Budget.

151 Article 49 of the General Administrative Code of Georgia (25 June 1999).

fail to submit their reports within the time prescribed by law. Examination of the reports submitted under Article 49 of the General Administrative Code shows that despite clear requirements as to the information to be included in the reports,[152] the reports are incomplete, chaotic, or otherwise fully out of line with the requirements of the General Administrative Code.

At the same time, examination of the reports submitted to the President and Parliament of Georgia by public schools warrants a conclusion that most of public school administrations are unaware both of the requirements of Article 49 of the General Administrative Code, and the essence of the principle of freedom of, and access to information; a number of public schools submitted to the Parliament and President of Georgia their annual activity reports instead of the reports on implementation of regulations provided in Chapter III of the General Administrative Code.

It is clear that in order to strengthen safeguards for the right of access to information it is important that the legislature follow on the recommendation made to the Parliament by the Public Defender in his 2010 Report: to implement such legal changes that would oblige public agencies to submit to the President of Georgia and the Parliament of Georgia on 10 December every year the Report on Implementation of Regulations provided for in Chapter 3 of the General Administrative Code of Georgia.

RECOMMENDATIONS:

Competent agencies should take the proper steps for initiating procedures of ratification of the Council of Europe Convention on Access to Official Documents, adopted on 18 June 2009.

Recommendations to the Parliament of Georgia:

a) **The Parliament of Georgia should implement such legal amendments that would oblige public institutions to report on 10 December of every year to the Parliament of Georgia and President of Georgia on compliance with the regulations established by Chapter III of the General Administrative Code of Georgia;**

b) **The Parliament of Georgia should take proper action to institute administrative liability under the Georgian law for unlawful refusal to release public information, and partial or full closure of the sessions of collegiate public institutions.**

[152] According to the General Administrative Code of Georgia, On December 10 of every year a public agency shall report to the Parliament and President of Georgia regarding: (a) the number of requests to provide or modify public information provided to the agency and the number of decisions, (b) the number of decisions complying with or denying requests, the names of the public servants rendering those decisions and the decisions of corporate public agencies to close their sessions, (c) the public databases and the collection, processing, storage, and furnishing of personal data by public agencies, (d) the number of violations of this Code by public servants and the imposition of disciplinary penalties upon officials, (e) the legislative acts that served as grounds for denying access to public information or closing a session of a corporate public agency, (f) appeals from the decisions to deny access to public information, and (g) expenses relating to the processing and release of information and appeals from the decision to deny access to information or to close a session of a corporate public agency, including the payments made to adverse party.

Freedom of Religion and Tolerance Environment

INTRODUCTION

In the reporting period, a number of important developments pertinent to the protection of religious freedom and improvement of tolerance environment were observed.

Based on the decision of the Parliament of Georgia, the Civil Code was amended to enable religious associations to pass registration in a form acceptable for them.

The Constitutional Court of Georgia satisfied the Public Defender's constitutional complaint against the Parliament of Georgia. Specifically, the Public Defender requested to declare unconstitutional the provision of the legislation on military reserve service, providing for discrimination on the grounds of belief.

In 2011, the order of the Minister of Corrections and Legal Assistance of Georgia, dated 30 December 2010, was implemented on a full scale: representatives of the clergy of religious minorities were given possibility to access penitentiary institutions without impediments, in accordance with the religious demands of the inmates.

The number of offences committed on the grounds of religious intolerance: religious persecution, physical violence and facts of abuse, decreased significantly.

At the same time, during the recent two years, the reaction of the law enforcement bodies on the offences committed on the grounds of religious intolerance became relatively appropriate. In the reporting period, unlike the previous years, the offences committed on the grounds of religious intolerance were properly qualified. The President and other public authorities highlighted the need for protecting freedom of religion and developing tolerance culture on numerous occasions. They have congratulated non-dominant religious associations on the occasion of their important holidays.

On the other hand, in 2011 the mass problem of ethnic and religious intolerance occurred, mostly following the legislative amendment on registration of religious associations passed by the Parliament.

Restitution of property confiscated from religious associations in the soviet period still remains problematic.

Like in the previous years, Jehovah's Witnesses still faced artificial administrative barriers in their attempt to obtain permission for lawful constructions.

The legal provisions on the tax regime for religious minorities remain unchanged. According to the religious minorities, the attitude of teachers towards the religious minority pupils in public schools, proselytism, indoctrination, display of religious symbols on the territory of schools for non-academic purposes, still remains problematic.

Compared to the previous year, the quality of the coverage of problematic issues related to religious freedom and religious tolerance by TV, radio and printed media, has not improved.

Up to 40 cases of religious persecution and discrimination observed in 2008-2010 remained uninvestigated (please refer to the Public Defender's Reports for 2009 and 2010).

REGISTRATION OF RELIGIOUS ASSOCIATIONS

History

In 2005 the Parliament of Georgia amended Article 1506 of the Civil Code, giving the possibility to religious associations to register as a Fund or Union. Later on, the registration rule was maximally simplified and "Fund" as well as "Union" were replaced with a non-profit, non-commercial legal entity. However, for several religious associations (Catholics, Armenian Apostolic Church, Lutheran and Baptist churches, the Jewish and Muslim Communities) registration as a Legal Entity under Private Law was unacceptable for various reasons. The Public Defender pointed out the necessity to resolve this issue in his reports as well as during discussions in various formats. However, granting only several religious associations with the possibility to register as Legal Entity under Public Law, while establishing certain conditions and barriers for other religious groups, would create a basis for inequality among various minority confessions. On the other hand, registration as a Legal Entity under Public Law was exposed to the danger of control by the state over religious associations, as per the law on a Legal Entity under Public Law.

It is noteworthy that the Council of Religions under the Public Defender's Office held a number of discussions on this issue with experts' participation, mostly in 2010-2011. Representatives of the Patriarchy were also invited to the Council's sessions; however, they refused to discuss this issue in the given format.

Finally, religious associations, within the Council of Religions, agreed on the common position and formulated joint statement for the Government of Georgia and diplomatic corps. The statement defined that: 1. All religious associations should have equal possibility to register and get status acceptable for them 2. This should not result in hierarchy among religious associations and differences in rights and privileges. 3. The state should not be given the possibility to control religious associations while changing the rule for registration.

Considering the above mentioned, the amendment passed by the Parliament to the Civil Code was fairly acceptable for all minority religious associations.

AMENDMENTS TO THE CIVIL CODE

On 5 July 2011, the Parliament of Georgia amended the Civil Code (Article 1509), giving religious associations the possibility to make a choice – religious associations can register as Legal Entities under Public Law; at the same time the law does not limit religious associations to register as non-commercial, Private Legal Entities, or not to register at all and have the status of a non-registered union. According to the amendments, the National Agency of the Public Registry can register religious associations having historical ties with Georgia, or considered to be a religion by the legislation of the Council of Europe member states, as Legal Entities under Public Law. The mentioned two criteria cover quite a wide spectrum of religious confessions existing in Georgia. However, religious associations not complying with the mentioned criteria would not be placed in unequal legal conditions as they can still register as Legal Entities under Private Law. It is notable, that the Law of Georgia on Legal Entity under Public Law does not apply to the religious associations registered as Legal Entities under Public Law and they remain under the regulation of the provisions on the Legal Entity under Private Law.

DEVELOPMENTS PERTAINING TO LEGISLATIVE AMENDMENTS

The legislative amendments were followed by protests from some representatives of the Patriarchy of the Georgian Orthodox Church, political parties, media and society, which frequently turned into xenophobic and Armenophobic manifestations.

On 5 July, 2011 a special session of the Synod of the Georgian Orthodox Church was held to discuss this issue. Finally, the Synod's decision played an extremely positive role in neutralizing the existing situation. The Saint Synod of the Georgian Orthodox Church called its parish to remain peaceful, stating that it supports equality of any person and religious association before the law, as well as freedom of religion.

Although the Synod's position supported elimination of mass escalation of intolerance and Armenophobia, spontaneously the Armenophobic manifestations were still observed. An inscription insulting Armenian people occurred on the wall, in Tbilisi, Avlabari, in front of the Armenian Church Echmiadin. Later on, two intoxicated citizens "invaded" Echmiadin, one of them tore papers from Bible, the other stepped by foot on the chair of episcopacy and verbally abused persons present there. The mentioned two persons were arrested by the law enforcement bodies. They were prosecuted, but later on released on plea bargain. The Eparchy of the Armenian Apostolic Church expressed concern regarding this act of vandalism, stressing at the same time that the Apostolic Church was not willing offenders to be punished severely.

To conclude, it should be noted that the legislative amendment related to registration of religious associations, was a positive step towards ensuring equality of rights, and it was evaluated positively by international organizations as well. However, at the same time, the developments following the Parliament's decision, demonstrated that there is no solid consensus over the principles of tolerance and equality among part of religious majority, opposition political spectrum, NGOs, media and in society at large.

PERSECUTION, DISCRIMINATION AND INTOLERANT ACTS COMMITTED ON THE GROUNDS OF RELIGION

During the reporting period, one complaint on religious persecution, two complaints on discrimination and one complaint on verbal abuse were brought to the attention of the Public Defender. In all the four cases, the problems raised in the complaints were related to the representatives of the religious organization Jehovah's Witnesses.

1. In 2011, only one complaint concerning persecution on the grounds of religious intolerance was addressed to the Public Defender. According to the complaint, in the village Ruisi, Qareli district, while performing missionary activities, the representatives of the religious organization Jehovah's Witnesses, G.Kh., G.Sh., E.Kh and T. Kh., were physically and verbally abused numerous times by the orthodox ecclesiastic person, priest R., who also attempted to seize their religious literature. According to the complaint, one of such attacks took place on 16 December 2011. The priest approached E.Kh., and T.Kh., verbally abused them and tried to seize their personal belongings. The criminal case was opened on the mentioned fact in accordance with Article 156 of the Criminal Code of Georgia (religious persecution).

2. On 4 July 2011, the lawyer of the religious organization Jehovah's Witnesses addressed the Public Defender with a complaint. According to the complaint, on 31 May 2011, Jehovah's Witnesses, N.A., and S.Sh., sustained physical injuries as a result of car accident. They were placed in local (Lagodekhi) hospital. The surgeon of the hospital, I.T., and chief doctor I.L., verbally abused the persons accompanying them, as well as their parents, on religious grounds. Also, according to the provided testimony, later on, while purchasing medicines in the drugstore on the hospital's territory, the chief doctor I.L., verbally abused S.Sh and his mother, calling them "ugly Jehovah's Witnesses."

The Public Defender's Office addressed the Agency for State Regulation of Medical Activities under the Ministry of Labour, Health and Social Affairs of Georgia on the given case. The Public Defender's Office requested the Agency

to look into the circumstances related to the abuse on religious grounds by the doctor, as stated in the complaint of Jehovah's Witnesses. On 16 August 2011, the Agency for State Regulation of Medical Activities under the Ministry of Labour, Health and Social Affairs of Georgia addressed the Public Defender's Office with a letter, informing PDO that explanatory statements were received from all the persons concerned, as well as the doctors involved in the medical treatment. Examination of the case showed no violations in terms of the quality of medical treatment. According to the same letter, given the fact that the Agency oversees the quality of medical treatment provided to patients by physical and legal persons, following on the facts of verbal abuse as indicated in the complaint exceeds its authority.

3. The lawyers of the religious organization Jehovah's Witnesses addressed the Public Defender with a complaint. According to the complaint, their clients R.S., L.A., and T.CH., own the real estate located in Sighnaghi, No 1 Gzirishvili street. In 2009, the mentioned persons got a permit for construction of an office building on the given territory, in accordance with the procedure established by the law. They also agreed the building design with the relevant agencies. However, due to financial problems, they were not able to launch construction within the timeframe specified in the permit. On 22 February 2011, after expiration of the deadline, in accordance with Article 57 of Governmental Decree No 57, they addressed Gamgebeli (head of the local council) of Sighnaghi Municipality, N. Kochlamazishvili, with an application, requesting to issue a new construction permit. The administrative body exceeded the 10 days' time limit defined by the law for deciding over issuance of construction permits. In accordance with Article 54, Para.7 of Governmental Decree No 57 specifying procedure for issuance of construction permits and terms of permits, in case an administrative body does not issue a refusal, the construction permit is considered to be issued, and the person concerned is authorized to request a license. Despite numerous requests, the construction permit was not issued within the reporting period. According to the applicants, they personally met and spoke with N.Kochlamazishvili, however, they were unable to get the permit license. The Jehovah's Witnesses assume that they were denied access to a construction permit and license based on their religion. The Public Defender's Office requested from the relevant agencies detailed information about the grounds for refusal. The case was not completed in the reporting period. Thus, the actions of the Sighnaghi Municipality Gamgebeli might include the signs of discrimination (violation of the Article 142 of the Criminal Code of Georgia).

4. In the reporting period the facts of examining unequal treatment of Jehovah's Witnesses, and satisfying their requests were also observed. Specifically, the lawyers of the religious association addressed the Public Defender with a complaint. According to the complaint, 5 GEL was deducted several times from the wages of nine of their clients, working for LTD "Georgian Manganese," in Chiatura. According to the applicants, the money deducted from their, as well as other workers' wages was transferred to the fund for construction of Orthodox churches and monasteries. The mentioned fact contradicted their religious belief, since they represent the Jehovah's Witnesses. To clarify the situation, the Jehovah's Witnesses addressed the manager of LTD "Georgian Manganese," A.G., asking him to consider their religious belief and transfer the mentioned money to other non-religious charity funds. Initially, A.G. stated that deduction from wages was officially determined by the organization and that he could not change anything. However, finally, the discriminatory attitude by the administration of LTD "Georgian Manganese" changed and they have satisfied the request of the Jehovah's Witnesses.

Despite the fact that in the reporting period the number of offences committed on the grounds of religious intolerance decreased compared to the previous years, the mentioned four facts demonstrate that part of the society and public officials do not perceive religious minorities, especially the Jehovah's Witnesses, as fully-fledged and equal members of the society, which results in direct or indirect discrimination towards them.

LEGITIMATE PROTEST AGAINST THE MILITARY RESERVE SERVICE

In 2011, the courts of different instances reviewed 5 complaints, related to legitimate protest of Jehovah's Witnesses against the military reserve service, on the religious grounds. In 2 cases the Jehovah's Witnesses were charged with

administrative fines (500 GEL) for abstaining from the military reserve service, while in the reporting period the appellate courts did not finalize hearings on the remaining 3 cases.

On 21 December 2011, the Constitutional Court of Georgia announced its decision on the Constitutional Complaint of the Public Defender, admitting the right of an individual to express protest against the military reserve service.

The complaint demanded to declare unconstitutional Article 2, Paragraph 2 of the Georgian Law on the Military Reserve Service. The mentioned provision prescribes the obligatory military reserve service, including for persons refusing to undergo the military reserve service on the religious grounds. The Constitutional Court of Georgia satisfied the Constitutional Complaint of the Public Defender against the Parliament of Georgia and declared unconstitutional the normative content of the law on Military Reserve Service determining the obligatory military reserve service for persons refusing to undergo the service on the religious grounds, in connection with the article 14, Article 19 Paragraphs 1 and 3, of the Constitution.

Please refer to the Chapter on Constitutional Justice for the detailed information on the mentioned issue.

TAX REGIME

Since January 2011, a new Tax Code is in force in Georgia. The new Code, similarly to the previous one, does not qualify the activities of the religious associations as economic activities; therefore, they are exempt from a number of taxes. However, this rule does not apply equally to all religious organizations.

The problems related to the tax regime of religious associations, together with our approaches and recommendations, were discussed is details in the 2010 report.[153] However, unfortunately, the tax legislation has not been amended within the reporting period.

PROBLEMS RELATED TO OWNERSHIP

The restitution of property confiscated from some religious associations in the Soviet period remains problematic over the years. A certain part of the property is in deplorable condition. In the reporting period, the restoration works required for their preservation were not carried out. At this stage, the Armenian Apostolic Church claims the return of six religious buildings (currently non-functional) from the State. The Catholic Church has been requesting to solve the problems related to five Catholic temples, currently owned by the Orthodox Church of Georgia. The Muslim Community also claims the return of several non-functional Mosques (for more details please refer to the Public Defender's 2009 and 2010 Reports).

MEDIA AND TOLERANCE

In the reporting period, the media-related situation has not changed significantly. During the recent 3 years, apart from two printed publications and several websites, media organizations have not demonstrated interest towards the freedom of religion and coverage of media ethical standards on religious diversity. Use of so-called hate speech and manifestations of xenophobia still remained problematic in all types of media.

It should be noted that in 2011, the Tolerance Centre under the auspices of the Public Defender, created a webpage *tolerantoba.ge*, fully dedicated to the religious and ethnic minority issues. The webpage is aimed at developing a foundation for religious and ethnic diversity, through accommodating all types of information on the given issues. At the same time, the public will be acquainted with the religious holidays and traditions via video clips produced specifically for the

[153] The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2010 (page 191)

webpage. Representatives of minorities will take part in production of materials for the webpage. The readers will be able to read narrative texts in three languages: Georgian, English and Russian.

RECOMMENDATIONS:

- **The parliament shall launch work aimed at improving the tax legislation, to ensure equal tax regime for all religious associations in accordance with the principle of equality enshrined in Article 14 of the Georgian Constitution.**
- **The competent bodies shall study without delay the condition of the religious minorities' historic buildings owned by the State and carry out urgent repair works to ensure their conservation. In parallel, relevant measures for defining the owners of disputable buildings and transferring of property shall be carried out.**
- **The Georgian Public Broadcaster (GPB) shall take more efforts aimed at supporting religious tolerance in the country. In this regard, it would be useful to draw special attention to preparation of educational, scientific programmes via TV and radio, covering religious culture, diversity and traditions in Georgia and worldwide, analyzing global and local processes as well as existing challenges in the field.**

Rights of National Minorities and Support to Civic Integration

The present chapter describes problems related to national minorities in Georgia, and looks at the process of civic integration.

In the reporting period, the Public Defender received no complaints related to discrimination on ethnic grounds.

The important initiatives, launched in 2009-2010, in the framework of the National Concept and Action Plan for Tolerance and Civic Integration, were sustained and implemented throughout 2011.

In 2009, the Law of Georgia on General Education was amended. According to the amendments, the rule for passing the unified national exams by Azerbaijani, Armenian, Ossetian and Abkhazian speaking school leavers was simplified, significantly improving the access of ethnic minorities to higher education. In 2011, 250 Azerbaijani speaking and 179 Armenian-speaking citizens overcame the entry threshold. Based on the results of the unified national exams, general skills test in Azerbaijani and Armenian languages, the study of 98 Azerbaijani and 99 Armenian-speaking entrants was financed from the State study grants.

Increasing the number of hours for the Georgian language teaching in non-Georgian schools as well as introducing and developing bilingual education programmes in some public schools can be considered as positive developments. The motivation for learning the State language has increased in the regions densely populated by minorities.

The large-scale activities aimed at development of infrastructure are also worth mentioning. In 2011, the rehabilitated Akhalkalaki-Tsalka-Tbilisi highway was opened, which already plays an important role in social-economic development and integration of the regions.

Since 2010, the GPB provides daily news programmes in minority languages. Apart from First and Second Channels, those programmes are broadcasted by Kvemo-Kartli and Samtskhe-Javakheti regional TV stations. However, the format of news programmes does not ensure complete coverage of the developments pertinent to national minorities, and this problem should be resolved.

During public speeches the President and other governmental officials constantly highlighted the need for protecting ethnic diversity, supporting civic integration and creating equal environment. The State Minister on Reintegration, as well as other central and regional structures are involved in managing the integration process. In this regard activities of the Tolerance and Civic Integration Council under the President of Georgia deserve special mention. The National Security Council of Georgia pays particular attention to the minority-related issues.

At this stage, the Council of National Minorities under the Public Defender's Office still plays a key advisory role for the Public Defender as well as other State agencies involved in the civic integration process.

Despite the positive trends, a number of concrete and systemic problems related to civic integration and protection of minority rights still persist. One of the main challenges is ensuring increased participation of ethnic minorities in political, cultural and social processes. Ethnic minorities are underrepresented at the central level - parliament and executive bodies. The majority-minority attitudes towards each other and negative stereotypes are also problematic.

During the reporting period, attempts of discrediting some politicians on ethnic grounds were still observed. The amendments to the Civil Code on registration of religious associations, adopted by the Parliament, were unfortunately followed by mass manifestations of xenophobia and Armenophobia (please refer to the part on Freedom of Religion and Tolerance Environment).

The representatives of ethnic minorities frequently emphasize the issues related to their historic monuments and preservation of their cultural identity. Azerbaijani and Armenian theatres, the David Baazov Museum, as well as other historic and religious monuments are in alarming condition (please refer to the part on Freedom of Religion and Tolerance Environment).

Special attention should be drawn to the problems of small ethnic communities, their language, identity and preservation of culture.

ACCESS TO EDUCATION/LEARNING THE LANGUAGE

● Learning the State Language

In 2011, the Ministry of Education and Science of Georgia launched a new programme "Georgian Language for Future Success," which envisages sending of postgraduate students to the regions densely populated by national minorities. During the reporting period, in the frames of the programme, 140 young students were sent to the villages of different regions to teach Georgian language to local pupils and other interested parties.

In 2011, implementation of the programme, "Let's Learn Georgian as a Second Language," launched in 2009, continued. In the frames of the programme, 69 teachers were sent to various schools of Kvemo-Kartli and Samtskhe-Javakheti regions. The programme facilitates enhanced knowledge of the language among school pupils as well as teachers. The vast majority of the pupils of the mentioned school (in accordance with the data provided by the Ministry of Education and Science) successfully overcame the barrier of the attestation exams in the Georgian language.

In 2011, the textbook, Georgian as a Second Language for the I-IV level beginners, was elaborated, published and distributed among non-Georgian schools. The textbook is composed of the pupil's book and workbook.

By 2011, the Ministry of Education and Science of Georgia, in the frames of the "Georgian Language Programme," financed so-called "Georgian Language Houses," in Samtkshe-Javakheti, Ninotsminda and Akhalkalaki, while in Kvemo-Kartli - Dmanisi, Marneuli, Bolnisi and Gardabani, Georgian Language Centres were financed.

It should be noted that the mentioned programmes as well as the "Language Houses" operating in the regions densely populated by national minorities play a positive role for civic integration. At this stage, a significant number of interested persons in Kvemo-Kartli and Samtskhe-Javakheti have a possibility to learn the State language.

● Preschool Education System

The effective work of pre-school education institutions is extremely important in reference to the problems related to learning the Georgian language in the regions densely populated by national minorities, for example in Kvemo Kartli. The need is even greater in Kvemo-Kartli, since national minorities, specifically significant number of ethnic Azerbaijani population, take their children to the Georgian schools. Significant number of mentioned pupils does not even speak the Georgian language. Hence, in the same class, teachers have to work with pupils having significant differences in

terms of proficiency in Georgian, which negatively affects the quality of learning. A number of problems occur during the learning process: teachers have problems in verbal communication with pupils, pupils do not understand teachers and teachers have to lower the requirements for the whole class, or offer different programmes for Georgian and non-Georgian speaking pupils.

Considering the afore-mentioned, the pre-school education institutions should play their role in solving the existing problems. It is commendable that since September 2011, the Ministry of Education and Science of Georgia, with UNICEF support, implements the programme "Enhancement of the Georgian language learning at the stage of pre-school education in the regions densely populated by ethnic minorities." Within the framework of the programme, 8 pre-school education centres - 5 centres on the basis on the existing kindergartens and 3 centres on the basis of schools - were established. One out of the mentioned centres was established in Bolnisi, village Nakhidauri of Kvemo Kartli region, on the basis of the existing school. One centre in Marneuli and one in Dmanisi were established on the basis of existing kindergartens. Two centres were established per Akhalkalaki and Ninotsminda on the basis of existing kindergartens and schools. Within the framework of the project, the programme "Georgian as a second language in pre-school education," was elaborated, which includes textbooks for teachers and special education materials for children.

- **Zurab Zhvania Public Administration School**

In 2005 the Zurab Zhvania Public Administration School was established. One of the objectives of the school was to teach the State language to non-Georgian speaking citizens holding (or intending to hold) public offices, as well as to ensure professional development of public officials (or potential public officials) working in ethnic minority regions, mountainous areas or conflict zones. However, since currently only the Georgian language courses operate in the school, its functions are not completely clear.

The school has appropriate infrastructure and conditions for trainees. In 2011, the directors of non-Georgian schools also took the Georgian language courses.

The infrastructure and conditions of the school allow offering more diverse services to areas populated by national minorities, as well as other regions of Georgia. With proper education programmes in place, the school could play an important role in preparation and training of self-governments, heads of village municipalities, Trustees and local municipalities in national minority regions as well as other regions of Georgia.

Although the State implements several education/integration programmes, language houses operate in regions and special beneficial system for entering universities is in place, the problem of qualified human resources, especially Georgian-speaking human resources, in administrative structures, still persists in the regions densely populated by minorities. The Zurab Zhvania Public Administration School in Kutaisi can play an important role in solving the mentioned problem.

- **Translation of Textbooks into National Minority Languages**

One of the problematic issues is translation of textbooks from Georgian into minority languages. Throughout 2007-2010, the National Curriculum and Assessment Centre provided translation of new textbooks for non-Georgian schools. At the initial stage, the textbooks were translated for I, VII and X grade pupils, at the second stage - for II, VIII and XI grade pupils in Abkhazian, Ossetian, Russian, Armenian and Azerbaijani languages and at the third stage - for III, IX and XII grade pupils. The translated textbooks were piloted in 10 Azeri, 10 Armenian and 10 Russian language schools.

The Council of National Minorities under the auspices of the Public Defender and its member organizations monitored the school textbooks translated from Georgian into Azerbaijani language. During the monitoring, a number

of grammatical and content-related inaccuracies were observed, which obviously creates problems in the learning process for teachers as well as pupils.

Multilingual Education

Since 2010, the Ministry of Education and Science of Georgia is implementing a multilingual education programme. Throughout 2010-2011, the multilingual education programme was piloted in 40 schools. According to the programme, schools had the possibility to select suitable model as well as method.

34 public schools, involved in multilingual education programme in 2011, were given targeted subsidies in the amount of 1000 GEL each.

On top of that, enhancing teachers' motivation is extremely important for successful implementation of multilingual programmes. The amount of 1000 GEL, allocated annually for each school, is not sufficient for introducing bilingual education and ensuring its absolute support.

In 2011, the Council of National Minorities under the auspices of the Public Defender monitored the National Concept and Action Plan on Tolerance and Civic Integration. During the meetings of the Council as well as throughout the monitoring process, problems related to improvement of multilingual teachers' education, quality of textbooks and methodology were revealed.

PROTECTION OF NATIONAL MINORITIES' CULTURAL HERITAGE

Legislation

The Constitution of Georgia guarantees the right of each citizen for cultural development, participation in cultural life, demonstration and enrichment of cultural identity (Article 34.1). According to the Constitution, citizens of Georgia are equal in social, economic, cultural and political life, irrespective of their nationality, ethnicity, religion or language. In accordance with the principles and provisions universally recognized by the international law, they have the right to develop their culture, use their mother tongue in private life and publicly, without any discrimination and interference (Article 38.1).

In accordance with the law of Georgia on Culture, the Georgian citizens are equal in cultural life, irrespective of their nationality, ethnicity, religion or language. In accordance with Article 10 of the mentioned law, every person (including, obviously, national minorities) has the right to cultural identity.

It should be noted that the legislation in the field of culture, does not contain clear provisions on anti-discrimination, manifestation of ethnic and religious diversity, its protection and support. During the meetings between the Ministry of Culture and the National Minority Council under the auspices of the Public Defender, the representatives of the Ministry noted that they apply one unified standard for all historic-cultural monuments existing in Georgia. However, it is desirable to have special provisions guaranteeing protection and maintenance of national minorities' material and nonmaterial cultural monuments.

Activities aimed at protecting and promoting the culture of religious minorities

It is noteworthy that each year the Ministry of Culture and Monument Protection enhances implementation of the activities aimed at supporting national minorities and civic integration.

The Ministry implements the programme, "Supporting National Minorities." Within the framework of the programme a number of important events were held throughout Georgia. Namely, the festival "In Open Air" was held in Tsalka, the dancing clothes were presented to the ensemble "Sarvan" under the Azerbaijani Cultural Centre in Marneuli, a

carpet exhibition was held in the Mirza Patali-Akhundov Museum, the writings of Givi Shakhnazari were published and a number of other events were organized.

It is important that in Akhaltsikhe, several streets on the Rabat territory got the status of the immovable cultural heritage monuments. In addition, throughout 2011, the study and inventory of the national minorities' cultural heritage monuments was carried out.

Above that, within the framework of the programme supporting Armenian, Azerbaijani and Russian theatres in Tbilisi, a number of performances and tours were organized in various regions, as well as abroad.

● Museums

In 2011, similarly with the previous years, the Mirza Patali-Akhundov and the David Baazov Tbilisi Museums were functioning with the State support. However, the building of the David Baazov Historic-Ethnographic Museum of the Georgian Jews is still in the hazardous condition.

Notably, alongside the capital, the interest towards museums has increased in regions as well. Among museums operating in regions the following ones should be mentioned: Telavi Historic-Ethnographic Museum, Samtskhe-Javakheti Historic Museum in Akhaltsikhe, Bolnisi and Gardabani Museums of Local Lore, where cultural and ethnographic diversity productions are secured. In 2011, a historical-ethnographic museum was opened in Pankisi Gorge, village Duisi, where productions characteristics for Qist and Georgian mode of life are secured. It should be mentioned that periodically school pupils are taken on excursions to museums to get acquainted with the cultural productions of various ethnicities. The mentioned activities support creation of tolerant attitudes among youth of different nationalities.

It is noteworthy that the performance groups composed of national minority representatives were regularly invited to various creative events held in Kakheti, Samtkshe-Javakheti, Kvemo-Kartli and Tbilisi. Regional Administrations of Kvemo-Kartli and Samtskhe-Javakheti support celebration of various national minority holidays in the villages of the region, thus supporting preservation and promotion of the national minorities' culture.

At the same time, it should be noted that when it comes to the civic integration, the existing cultural potential has not been exercised to its full extent.

Georgia is rich in cultural heritage monuments. Significant number of monuments, including national minorities' cultural heritage monuments, requires protection, inventory as well as inclusion in the cultural heritage monuments' list. At this stage, restoration and rehabilitation of all cultural heritage monuments of Georgia, assignment of the cultural heritage monuments' status and other activities cannot be implemented due to the lack of material-technical resources.

MEDIA AND NATIONAL MINORITIES

● Coverage of topics pertinent to national minorities

In 2011, no significant changes were observed in the coverage of topics pertinent to national minorities by electronic media.

The Georgian Public Broadcaster (GPB) produces 15-minute news programmes in national minority languages. The news programmes are broadcasted by the GPB as well as regional TV stations located in the areas densely populated by national minorities.

It is notable that current daily programmes are not sufficient for providing areas densely populated by national minorities with comprehensive information on the developments occurring in the country. Thus, the system for provision of information to national minorities requires further improvement.

The news programmes produced by the GPB hardly cover topics pertinent to national minorities and their problems.

However, it is noteworthy that the GPB still broadcasts a talk-show "Our Yard," in the Georgian language. The talk-show covers topics pertinent to national minorities, tolerant environment and integration processes in the country. Representatives of minorities regularly take part in the talk-show.

Since March 2011, the programme "Our Georgia" is transmitted by the Georgian Public Radio in a renewed format. The programme covers topics pertinent to civic integration, national and religious minorities. Representatives of the State bodies and NGOs working on civic integration issues take part in the programme. Part of the programme is recorded in the regions densely populated by minorities, giving the possibility to minorities to express their positions on the various important topics.

Several TV stations operate in the regions densely populated by national minorities ("Parvana," "ATV-12, "TV Marneuli," "Bolnisi Television."). In case of proper support, those TV stations can play an important role in providing national minorities with the information on the developments occurring in Georgia in the languages they understand.

● Hate speech and xenophobia

In 2011 a number of hate speech cases were observed. In this regard, xenophobia and racism manifested by famous public figures and politicians was of a special concern.

Use of hate speech is extremely inadmissible, since it supports appearance and circulation of xenophobic and racist views, as well as negative stereotypes and attitudes. Racism and xenophobia, especially when their author is a famous public figure, should be condemned severely.

SMALL NATIONAL MINORITY COMMUNITIES

Support to culture and education of small national minority communities still remains problematic. National minorities living in regions as well as in capital would like to have the possibility to learn their native language in school.

According to the Ministry of Education, this process is hampered by non-existence of the relevant language teaching standards. All subjects and disciplines in public schools are taught in accordance with the teaching standards. Thus, if there is no standard in place, it is impossible to teach any subject in school, including native languages of small national minority communities.

In this regard several positive steps were taken, however, so far, at the minimal level. In 2011, with the support of the Ministry of Education and Science of Georgia, the Ossetian Sunday-school was functioning on the basis of Public School N11. The interested pupils had the possibility to learn the Ossetian language, culture, history and folklore. Before the Ministry elaborates standards for teaching languages to small ethnic communities, it would be desirable to create similar programmes for other small national minority communities, in Tbilisi-based and regional schools, where the relevant demand exists.

Preservation of identity and protection of the cultural heritage monuments of small national minority communities is also problematic. The fact that Kvemo-Kartli municipalities pay attention to celebrating important holidays of small national minority communities, specifically Greek and Assyrian communities, deserves positive evaluation. For this purpose money is allocated from the municipality budget.

CRIMINAL LAW AND RACIAL DISCRIMINATION

According to the Criminal Code of Georgia, various types of offences committed on the grounds of racial, national or ethnic intolerance are punishable, while for certain offences racial, national and ethnic intolerance constitutes an aggravating circumstance. Specifically: premeditated murder with aggravating circumstances (Article 109, paragraph 2, sub-paragraph d); premeditated grievous bodily harm (Article 117, paragraph 5, sub-paragraph d); assault (Article 126, paragraph 2, sub-paragraph g); torture (Article 144 (1), Paragraph 2, sub-paragraph f); disrespect to the deceased (Article 258, paragraph 3, sub-paragraph b).

In addition, according to the law, genocide and offences against humanity are punishable, including offences committed on national and ethnic grounds.

The Criminal Code of Georgia includes infringement of the right to equality (Article 142) and racial discrimination (Article 142.1) as separate type of offences.

In 2011, according to our information, there were no criminal liability cases of Georgian citizens for offences committed on ethnic grounds. This fact is differently explained by the State bodies and representatives of some NGOs. While meeting with the Council of National Minorities, representatives of the State bodies declare that these types of offences have not taken place and, accordingly, no investigations were carried out. On the other hand, representatives of some NGOs think that these types of offences take place in the country, however, due to low level of trust towards relevant institutions, they are not declared publicly and are not appealed in the relevant State bodies. At the same time, it should be noted that despite our interest, in 2011, nobody submitted any information to the Public Defender's Office on the offences that can be qualified as committed on racial grounds.

It is noteworthy that in the 2010 Report the European Commission against Racism and Intolerance (ECRI) encourages the Georgian authorities to enact legislation providing for racist motivation to constitute a general aggravating circumstance applicable to all types of offences under the Criminal Code. Implementation of the mentioned recommendation will obviously play an important role in eliminating and preventing all types of offences committed under racist motivation.

RESTORING HISTORIC SURNAMES

The issue of restoring historical surnames was problematic for national minorities. This matter is of a special importance for representatives of Kurd and Assyrian communities, since during the period of the Russian Empire, they were deprived of their historical surnames, after being displaced from historical homeland. Instead, they were given the surnames of Russian, Armenian or other origins.

This process was further complicated by the problem of accessibility of the relevant archive materials and lack of legislative regulation. In 2011, in a welcome development, the new Law on "Civil Acts" entered into force. The special provision of the Law defines the issues pertaining to restoration of historic surnames (Article 65): 1. A person can request restoration of his/her historic surname if combined evidences certify that his/her surname was generated through changing or adopting other surname by representative of his/her historic surname. 2. Along with other evidences, the grounded scientific assumption certifying circumstance listed in the first paragraph of the present law might be considered as a basis for restoring a historical surname."

RECOMMENDATIONS

Recommendation to the Minister of Education and Science of Georgia:

a. **The Ministry shall put in place a special system for ensuring preparation of national minority school teachers in various subjects;**

b. The number of pre-school education institutions shall be increased in the areas densely populated by national minorities, where population is willing to take their children to Georgian schools. This would give possibility to pupils to acquire basic knowledge of the Georgian language before going to school. In addition, it would be desirable to carry out information campaigns and provide public with the information on the activities and programme of the pre-school education institutions;

c. While translating textbooks from Georgian into minority languages, the Ministry shall ensure involvement of the relevant specialists as well as content-wise editing to avoid inaccuracies;

d. The Ministry shall continue and reinforce implementation of the education programmes for bilingual teachers.

e. The public administration component of the Zurab Zhvania Public Administration School shall be renewed to ensure preparation and capacity development of the Georgian speaking qualified human resources and public officials among national minorities.

f. Supporting teaching methodology or teaching models shall be elaborated for bilingual schools, which would make introduction of bilingual education simpler for teachers.

Recommendation to the Minister of Culture and Monument Protection of Georgia:

a. The Ministry shall pay equal attention to all cultural monuments that are important for our country, including cultural heritage monuments of national and religious minorities.

b. The Ministry shall implement cultural-educational programmes, which would provide information to public on culture and traditions of national and religious minorities.

Recommendation to the GPB:

a. The material-technical support of GPB's national minorities' news programme shall be ensured, which will significantly facilitate provision of information to national minorities with enhanced quality.

b. The news programmes produced in national minority languages shall periodically cover the life of specific national minority communities, their culture and challenges faced by them, etc.

Right to Property

RECOGNITION OF PROPERTY RIGHTS

During the regulation of the legal bases[154] of the recognition of property rights of stakeholders on state-owned land, which is in legitimate possession (usage) or has been arbitrarily occupied, the legislator has clearly identified that, given the above conditions (the legal ownership (usage) or arbitrary occupation), the purpose of the normative regulation of the recognition of property rights is the appropriation of state-owned land and the promotion of land market development.

Despite the aforementioned reason stipulated in the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" of July 11, 2007, throughout the 2011 reporting period, the Public Defender of Georgia observed a number of cases, where bodies authorized to recognize property rights annulled the decisions taken in respect of the recognition of the right of ownership of a specific plot of arbitrarily appropriated state-owned land, neglecting the requirements established by law, and unjustifiably refused to recognize the right to property.

Thus, this chapter will offer a comprehensive analysis of the significant cases related to the recognition of property rights, where the Public Defender has established violations of the rights of specific citizens guaranteed by Georgian legislation, and, at the same time, will identify the basic essence of the problems arising over the issue discussed.

THE LIMITS OF THE LEGAL OBLIGATIONS OF BODIES AUTHORIZED TO RECOGNIZE THE PROPERTY RIGHTS ON ARBITRARILY OCCUPIED LAND

The Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" passed on July 11, 2007, and the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 issued by the President of Georgia on September 15, 2007 clearly regulate the procedures and conditions of the recognition of property rights of stakeholders[155] on state-owned land, which is either in legitimate possession (usage), or has been arbitrarily occupied.

[154] On July 11, 2007, the legislative authorities of Georgia adopted the Law "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons"; On September 15, 2007, Decree #525 issued by the President of Georgia approved "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons".

[155] According to sub-paragraph "e", paragraph 2 of the "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, the concept of stakeholder implies a natural person, as well as his/her successor or assignable; a Legal Entity of Private Law (according to Article 7[4] of this Law, from January 1, 2012, Legal Entities of Private Law lost the right for the recognition of property rights on land in legitimate possession (usage) or under arbitrary occupation, after the date mentioned, Legal Entities of Private Law may obtain property rights in accordance with general regulations established for the privatization of state property) or other organizational entity or its assignable provided for by law.

At the same time, the aforementioned acts strictly define the authorities and legal bases of the activity of government representatives, as well as the rights and duties of the parties involved in the process.

The above-mentioned acts have established that agricultural and/or non-agricultural plots of land[156] in legitimate possession or under arbitrary occupation are subject to the recognition of property rights. Moreover, it is also noteworthy that within the acts, the legislator has provided an exhaustive list of the plots, which, due to their particular significant purpose, cannot be subject to the recognition of property rights.[157]

As for the bodies authorized to recognize property rights, according to the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 issued by the President of Georgia on September 15, 2007[158], the recognition of property rights on arbitrarily occupied land is carried out by the authorized representative agency of the appropriate local self-government through a Standing Commission, while the authority for the recognition of property rights on land in legitimate possession (usage) lies with the Legal Entity of Public Law operating within the field of governance of the Ministry of Justice of Georgia – the National Agency of Public Registry.

Since in this section we discuss the rights and obligations stipulated by the legislation of the body authorized for the recognition of property rights on arbitrarily occupied land – the Commission for the Recognition of Property Rights, it should be noted that, in addition to the acts mentioned above, the Commission performs its functions in compliance with the formal administrative procedures outlined in Chapter VIII of the General Administrative Code of Georgia.[159]

In addition, according to the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 issued by the President of Georgia on September 15, 2007,[160] the Commission, within its authority and in compliance with the rules established by the legislation, is entitled to render decisions, which constitute individual administrative legal acts.

Thus, the body authorized for the recognition of property rights on arbitrarily occupied land – the Commission for the Recognition of Property Rights, exercises the powers granted by law, i.e. it reviews written statements from interested persons and renders relevant decisions based on the review (decisions to grant or to refuse to grants the recognition of property rights on arbitrarily occupied land) in compliance with the regulations stipulated in the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" passed on July 11, 2007, the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 issued by the President of Georgia on September 15, 2007, and the General Administrative Code of Georgia.

Therefore, it is clear that the Commission for the Recognition of Property Rights, in accordance with the administrative legislation of Georgia, is imperatively prohibited from basing the issuance of an individual administrative legal act (decision regarding the recognition of property rights on arbitrarily occupied land during the granting of a request of a stakeholder, or decision regarding the non-recognition of property rights on arbitrarily occupied land during the refusal to grant the request of a stakeholder) on such circumstances and facts, which have not been examined by an administrative agency in accordance with the law.[161]

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156 Sub-paragraphs "a" and "c", Article 3 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

157 Paragraph 2, Article 3 of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, and Paragraph 2, Article 3 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

158 Paragraph 1, Article 5 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

159 Paragraph 1, Article 4 of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, and Paragraph 1, Article 11 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

160 Paragraph 1, Article 10 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons and the Approval of Title Deed" issued by the President of Georgia on September 15, 2007.

161 Para. 2, Article 96 of the General Administrative Code of Georgia of June 25, 1999.

Accordingly, the Commission for the Recognition of Property Rights, during the review of a stakeholder's written statement, while conducting formal administrative proceedings, is obliged to examine all circumstances of any significance to the case, and render an appropriate decision based on their evaluation and comparison.[162] At the same time, it is essential that the individual administrative legal act (decision regarding the recognition of property rights on arbitrarily occupied land during the granting of a request of a stakeholder, or decision regarding the non-recognition of property rights on arbitrarily occupied land during the refusal to grant the request of a stakeholder) be in contextual compliance with the legal bases for its issuance.

Despite the legal obligations described above, Commissions for the Recognition of Property Rights frequently violate the imperative requirements established by the norms, which in turn leads to gross violations of the rights of individual citizens. The validity of this statement is demonstrated by specific examples of rights violations cited in the following sections.

THE UNLAWFUL INVALIDATION OF DECISIONS REGARDING THE RECOGNITION OF PROPERTY RIGHTS

"Ignoring human rights and fundamental freedoms, in particular, property rights, excludes the development of free market economy, the provision of a dignified life for society as a whole, as well as its individual members, and political, economic and social stability. The economic strength of a democratic, legal and social state is based on the respect for the protection of property rights."[163]

Notwithstanding the foregoing interpretation of the Constitutional Court of Georgia, which clearly demonstrates that the provision of a proper implementation of property rights in the country largely determines the level of political, economic and social development of the state, during the 2011 reporting period, the Public Defender of Georgia has established cases of violation of property rights of 271 citizens by the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights.

Under the circumstances of the aforementioned cases, in 2007-2010 (decisions regarding the recognition of property rights were essentially adopted in 2007-2008), the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights recognized title to land plots of citizens residing in Gonio, since it established that the land was legally owned by the applicants.

In 2010, in accordance with the decision, the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights initiated administrative proceedings with regards to the title deeds of a number of citizens residing in the community of Gonio, Khelvachauri municipality, the study of the legality of relevant decision notices regarding recognition of title to the given land plots, and the adoption of appropriate administrative legal acts.

Under the decision issued by the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights on December 3, 2010, during administrative proceedings, the Commission found that the land plots recognized by the citizens' property rights were not legally owned, since the documentation submitted by the applicants failed to comply with the legislative requirements confirming lawful possession existing at the time.

At the same time, in accordance with the above decision, in legal terms, the Commission concluded that the land plots in question were arbitrarily occupied by the applicants. Although the Khelvachauri Commission for the Recognition of Property Rights confirmed that the occupation of the land by the applicants was arbitrary, as a result of discussion, it concluded that according to Sub-Paragraph "c" of Paragraph 2 of Article 3 of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons"[164] and Paragraph 2[165] of

[162] Para 1, Article 96 of the General Administrative Code of Georgia of June 25, 1999.

[163] Decisions #2/1–370, 382, 390, 402, 404 of the Constitutional Court of Georgia. May 18, 2007.

[164] According to Sub-Paragraph "f", Paragraph 2, Article 3 of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, "Historical, cultural, natural, and religious monuments are not subject to the recognition of property rights".

[165] According to Para. 2, Article 5[1] of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession

Article 5[1] of the same Law with regards to individual citizens, the arbitrarily occupied land plots were not subject to the recognition of property rights, since they (the land plots) represented cultural monuments and were located in a resort area.

Thus, under the decision issued on December 3, 2010, the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights invalidated appropriate decision notices and title deeds issued to 271 citizens residing in the community of Gonio, Khelvachauri municipality.

As a result of the review of circumstances of significance to the given case, in the view of the Public Defender, the December 3, 2010 decision of the Khelvachauri Municipality Commission for the Recognition of Property Rights was issued and prepared in violation of the rules established by the Georgian legislation.[166] In other words, there was a violation of the material and formal legality of the individual administrative legal act (the given decision), which is confirmed by the following circumstances:

1. The given decision regarding the invalidation of the recognition of property rights of 271 citizens, or the individual administrative legal act does not come in contextual compliance with the legal bases of its issuance, i.e. it does not meet Sub-Paragraph "c" of Paragraph 2 of Article 3 of the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" and Paragraph 2of Article 5[1] of the same Law with regards to individual citizens. From the point of view of the Public Defender of Georgia, the protective belt of the Gonio-Apsaros architectural-archaeological complex has not, under current legislation, been awarded the status of a cultural heritage monument; accordingly, it does not constitute an agricultural or non-agricultural state-owned land plot, which is not subject to the recognition of property rights (thus, the material legality of the given individual administrative legal act has been violated).

2. During the invalidation of the decisions regarding the recognition of property rights of 271 applicants, the Commission did not individually study or examine circumstances of significance to the given case. At the same time, according to its decision, the Commission issued an individual administrative legal act on the invalidation of property rights without any justification [in the case of all 271 applicants, absolutely identical evidence is indicated, only factual circumstances vary: the identity of the person, title deed and the area of land, on which property rights were recognized when the normative acts employed by the Commission used different wording between 2007 and 2010] (thus, the formal legality of the given individual administrative legal act has been violated).

In addition to the above, from the point of view of the Public Defender of Georgia, even if the recognition of property rights has been implemented with regards to a cultural monument, in individual cases on the basis of the counterbalance of private and public interests, the Commission was obliged to reimburse the stakeholders for property damage caused by the annulment of the administrative legal acts. Moreover, according to the Ombudsman's report, the Commission did not discuss whether it was possible, on the basis of Article 32 of the Law of Georgia "On Cultural Heritage" and in agreement with the Ministry of Culture and Monument Protection, to transfer the right to possession and usage of the land located in the archaeological protection zone to the applicants.

Therefore, clear are the factual and legal preconditions, which prove that the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights acted illegally in the reflection of its decision in the individual administrative-legal act (the invalidation of decisions regarding the recognition of property rights), and substantially breached legislative requirements during the preparation and issuance of the act, which in turn is a violation of the property rights of 271 citizens. Accordingly, the Public Defender of Georgia, within the powers granted to him, addressed the Chairperson of the Khelvachauri Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights with a recommendation to study the given issue and a request to render a legitimate decision.

(Usage) of Natural and Legal Persons" issued on July 11, 2007, "In reviewing an application for the recognition of property rights on arbitrarily occupied land, the compliance of the application with the spatial and territorial planning and the strategic plan for land disposal shall be determined."

166 The Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007, and the General Administrative Code of Georgia on June 25, 1999.

On the example of the violation of property rights of 271 residents of the community of Gonio, Khelvachauri municipality, it can be concluded that the bodies authorized to recognize property rights – Commissions for the Recognition of Property Rights, in separate cases against lawful requirements grossly violate property rights guaranteed under legislative and statutory acts of Georgia, as well as under international agreements.

REFUSAL TO RECOGNIZE PROPERTY RIGHTS WITHOUT PROPER JUSTIFICATION

According to the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons,"[167] the basis for the review of a request for the recognition of property rights is a written application submitted to the Commission by a stakeholder. Moreover, in accordance with the same Law,[168] the clearly defined list of documents, which the stakeholder is required to submit for the approval of his/her request for the recognition of property rights is clearly defined and is as follows: title deed and/or witness testimony proving arbitrary occupation of land; cadastral survey drawing of the land plot; information for the determination of the fee for the recognition of property rights; copies of identification documents of the stakeholder.

Thus, the legislator has clearly declared the terms, which, if adhered to, serve as a basis for the recognition of a stakeholder's property rights on arbitrarily occupied land. Moreover, the Georgian legislation[169] determines that if a stakeholder's request for the recognition of property rights does not meet the legal terms and conditions defined by law, or if the documents attached to the application do not prove arbitrary occupation, the Commission shall render a written decision on the refusal to recognize property rights, which constitutes an individual administrative legal act, and which, according to the regulations[170] of the General Administrative Code, is issued by the administrative agency in compliance with administrative legislation. The above clearly requires administrative authorities to include written justification in individual administrative-legal acts issued by them in written form. Furthermore, the administrative agency is not authorized to base its decision on the circumstances, facts, evidence or arguments, which have not been examined and studied during administrative proceedings.[171]

During the 2011 reporting period, the Public Defender of Georgia has observed a number of cases dealing with the violation by Commissions for the Recognition of Property Rights of the above requirements established by the administrative legislation of Georgia, which had encroached upon the rights of the applicants. However, in this section, the case of Citizen **M. D.** will be considered as an example.

In this case, Citizen M. D. presented to the Commission for the Recognition of Property Rights of the Kobuleti Municipality Assembly (Sakrebulo), Autonomous Republic of Adjara, all documentation required by law, including: witness testimonies; cadastral survey drawing of the land plot; copy of the stakeholder's identification documents; and a certificate issued by the Daba Chakvi Territorial Authority of the Kobuleti Municipality, Autonomous Republic of Adjara. However, despite this, the Commission for the Recognition of Property Rights denied Citizen M. D. the recognition of property rights on arbitrarily occupied land in Daba Chakvi on the grounds that arbitrary occupation of the land could not be confirmed.

167 Para. 1, Article 5[1], the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007. According to Sub-Paragraph "f", Paragraph 2, Article 3, "Historical, cultural, natural, and religious monuments are not subject to the recognition of property rights".

168 Para 3, Article 5[1], the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007.

169 Para. 7, Article 5[1], the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, and Para. 1, Article 16 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

170 Sub-paragraph "d", Para. 1, Article 2 of the General Administrative Code of Georgia on June 25, 1999.

171 Paras. 1 and 5, Article 53 of the General Administrative Code of Georgia on June 25, 1999. Para. 7, Article 5[1], the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, and Para. 1, Article 16 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

As a result of detailed examination of documentation in Citizen M. D.'s case, the Public Defender concluded that the decision of the Kobuleti Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights did not contain any substantiation as to why the documents submitted by Citizen M. D. did not prove as sufficient evidence of arbitrary occupation of the land. In the opinion of the Public Defender of Georgia, the case did not feature discussion by the administrative body on the legal documentation submitted by the applicant, while through said documents Citizen M. D. had confirmed the legal basis for his arbitrary occupation of the land. Consequently, in the opinion of the Ombudsman, the Kobuleti Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights rendered a decision without the examination and study of relevant circumstances, facts, evidence, and arguments in violation of the lawful rights of Citizen M. D.

As legal action, the Public Defender of Georgia addressed the Chairperson of the Kobuleti Municipality Assembly (Sakrebulo) Commission for the Recognition of Property Rights with a recommendation regarding the restoration of the violated rights of Citizen M. D.

Based on the above, taking into account the numerous cases examined by the Public Defender of Georgia throughout the 2011 reporting period dealing with the unjustified refusal of the recognition of the right of ownership by Commissions for the Recognition of Property Rights, it can be concluded that the recommendation provided in the Chapter on "Property Rights" of the Report on the Condition of Human Rights and Freedoms in Georgia issued by the Public Defender in 2010 remains relevant.

RECOMMENDATION

- **In the course of administrative proceedings initiated on the basis of a stakeholder's application, Commissions for the Recognition of Property Rights shall examine all circumstances of any significance to the case. During the reflection of the decision (on the recognition of property rights or on the refusal to recognize property rights), rendered as a result of the evaluation and comparison of these circumstances, in the individual administrative-legal act, the Commission shall indicate in the written justification all factual circumstances, which have been essential during the issuance of the given administrative-legal act.**

Property Rights Violations in Criminal Proceedings

The criminal justice process is largely associated with the restriction of the rights of the accused, which has a legal basis and objectives. At the same time, according to Georgian legislation, the process of criminal investigation may also be accompanied by a restriction of third party rights and freedoms recognized and protected by the constitution.

The use of such restrictions should always be consistent with the reservations set forth by the Constitution of Georgia. Any restriction used in criminal justice proceedings should be prescribed by law. At the same time, the action used to restrict the right of any person should have a legitimate objective and should constitute the sole and proportionate means to achieve this objective. If the restriction does not meet these criteria, it is considered as a human rights violation.

An analysis of complaints and appeals received by the Public Defender's Office demonstrates that, during the employment of procedural actions (or sentences) in the course of criminal proceedings, violations of property rights recognized and protected by the Constitution of Georgia are not uncommon. These problems were discussed in detail in the previous year's report; however, unfortunately, neither legislative, nor judicial authorities have yet taken effective measures in order to eradicate this issue.[172]

During the reporting period, one of the principal issues was the use of sequestration by investigative bodies, and, following the termination of the investigation – the vagueness of legal procedures required for the abolition of the sequestration. With respect to the issue above, a number of applicants have addressed the Public Defender's Office.[173]

Paragraph 2 of Article 199 of the Criminal Procedure Code of Georgia[174] defines the procedures for the revocation of property sequestration upon the termination of criminal prosecution and/or preliminary investigation, in particular:

"Upon the termination of criminal prosecution and/or preliminary investigation or rendering of a verdict of not guilty, under bases stipulated in sub-paragraphs 'a', 'd', and 'p' of Paragraph 1 of Article 28 of the Code, as well as sub-paragraph 'a' of Paragraph 2 of the same Article, sequestration of property shall be revoked."

According to Paragraphs 4 and 5 of the same Article:

4. In case of termination of other bases for the recall of a civil suit or the sequestration of property, this action may be revoked by a justice with the solicitation of a prosecutor or an investigator with the consent of a prosecutor, or by the court considering the case in accordance with its decision.

[172] The report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia," 2010, p. 215.
[173] See the Case of Tatiana Janiki.
[174] Criminal proceedings on criminal prosecution initiated on the basis of Article 329 of the Criminal Procedure Code of Georgia of October 9, 2009, are maintained in accordance with the Criminal Code of February 20, 1998. Sequestration, in fact, is a continuous relationship, which began before the entry into force of the new Code, and, accordingly, the legislation in force at the time of the selection is non-retrospectively used for its regulation.

5. In addition to cases covered by Paragraph 4 of this Article, the sequestration of the defendant's property may also be revoked by the prosecutor's resolution regarding the termination of criminal prosecution and/or preliminary investigation.

The combination of the above Articles establishes a regulation, according to which:

a) The basis for the revocation of sequestration is the termination of preliminary investigation and/or criminal prosecution;

b) Only the court is authorized to revoke a sequestration;

c) In order for the sequestration to be revoked, the prosecutor or the investigator with the consent of the prosecutor must apply to the court.

Therefore, a person who is not a party to the proceedings (a witness) and, at the same time, their property has been sequestered (their property rights have been restricted), does not have the right to request the revocation of the sequestration (address the court in order to protect their rights), even if there is a legal basis. Clearly, such a formulation of the norms violates property rights, and undermines the right of the person to appeal to the Court.

Moreover, the right to property is protected by Article 1 of Protocol No.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Similarly to the Constitution of Georgia, under ECHR, the impairment of this right is permissible only in case of a mandatory requirement, in the presence of relevant legitimate conditions.[175] One such condition is the administration of justice[176] – criminal justice proceedings. Accordingly, the employment of sequestration in a criminal case is designed to provide a variety of legitimate interests. At this time, the right to property is restricted to serve a common goal – the administration of justice.[177] According to the European Court of Human Rights, the limitation of property rights for the purposes of "general interest"[178] stipulated in Paragraph 2, Article 1, Protocol No.1 of the ECHR, allows States a broad scope of evaluation, under which the fight against crime is also considered.[179]

The above restriction may not apply to a witness[180], since a witness is not a bearer of a procedural status, in respect of whom the use of sequestration is provided by the legislation and/or justified. Criminal proceedings are not being implemented against the witness, and there are no legitimate bases for the restriction of property rights. In any case, the termination of the statute of the accused/defendant shall be grounds for the revocation of sequestration. Furthermore, the termination of the statute of the accused precludes the subsequent imposition of charges due to the same circumstances.[181]

During the reporting period, the Public Defender's Office received appeals from citizens with regards to violations of their rights to property in connection to long-term progress of investigation in criminal cases. The study of the cases[182] above shows that protracted investigation may become one of the preconditions for the violation of property rights of citizens, which is accompanied by the withdrawal of official documents from a government body.

As the review of submitted cases has shown, there have been instances, where the investigative agency, in compliance with legal requirements, withdraws original documents from a public institution, which become necessary for individuals to register at the institution. In other words, the withdrawal of documents by investigative agencies from the National

175 Decisions #2/1-370, 382, 390, 402, 405 of the Constitutional Court of Georgia of May 18, 2007, II-15.

176 *mutatis mutandis*, Decision No.2/1/415 of the Constitutional Court of Georgia of April 6, 2009, II-19.

177 *mutatis mutandis*, Decision (Application #8819/79) of the European Commission of Human Rights rendered on March 19, 1981 in the case *X and Y v. Federal Republic of Germany.*

178 For the definition of this concept, see: Judgment of the European Court of Human Rights rendered on June 19, 2006 in the case *Hutten-Czapska v. Poland,* § 164–169.

179 Decision of the European Court of Human Rights rendered on December 7 1976 in the case *Handyside v. United Kingdom*, § 62; Decision of the European Court of Human Rights rendered on February 22, 1994 in the case *Raimondo v. Italy* § 29.

180 This does not refer to persons related to the defendant, who may also be carriers of the witness status, but rather those, who used to be defendants, and, following the termination of criminal proceedings, used the status of witness.

181 *inter alia*, Judgment of the Great Chamber of the European Court of Human Rights rendered on February 10, 2009, in the case *Sergey Zolotukhin v. Russia*, § 78–84.

182 See the Case of Tengiz Ubilava; the Case of Mirza Goletiani.

Agency of Public Registry (or any other administrative body) becomes an inhibiting factor to the implementation of registration. At the same time, the person has in his/her possession documents establishing the right, and due to the fact that the investigative authorities have withdrawn documents necessary for the registration of immovable property, the person is unable to register their right. The issue is a particularly heavy burden for the individual, when the investigation is protracted.

Of the problems associated with the restriction of property rights during criminal proceedings, one issue may be particularly highlighted: when the owner of the property partaking in the proceedings is the victim, while the object of the crime – a vehicle – has been seized by the law enforcement agency. In this case, if the identity of the owner is clearly established, and, at the same time, no investigative action is to be conducted in respect of the seized property, then, in accordance with the Georgian legislation, it shall be returned to the owner. In the case considered by the Public Defender's Office (the case of Sophio Kverenchkhiladze), the investigative authority, in spite of repeated appeals on the part of the injured party, has refused to return the vehicle to its rightful owner without any justification. It is noteworthy that, unlike the rest of the examples above, where the restriction of rights are largely conditional on the vagueness of legislative norms or improper regulation of legal relations, in this case, we are faced with the illegitimate restriction of property rights by investigative authorities.

The cases considered by the Public Defender's Office[183] demonstrate that the employment of asset forfeiture during criminal proceedings by judicial authorities as additional punishment remains a concern.

Article 52 of the Criminal Code of Georgia defined asset forfeiture as a punishment. According to the Article, asset forfeiture signifies the gratuitous seizure for the benefit of the state of the alleged instrumentalities and/or weapons of crime, the object intended for crime and/or the alleged proceeds of crime.

Paragraph 2 of Article 52 of the Criminal Code of Georgia specifies the definition of the instrumentalities of crime, which constitutes property, used to commit a crime or intended for that purpose in any way. In addition, Article 52 of the Criminal Code defines the essential criteria, which must be met in order to implement asset forfeiture. In particular, the instrumentalities of crime may be confiscated only by the Court for a predetermined crime and the forfeiture should be conditional on state and public necessity or the protection of rights and freedoms of individuals, or serve the purpose of preventing a new crime.

According to Article 21 of the Constitution of Georgia, the right to property and inheritance is recognized and inviolable. In addition, the abrogation of the universal right of property, its acquisition, transfer and inheritance is prohibited. According to the Constitutional Court of Georgia:

This norm is not a simultaneous guarantee of private property rights and fundamental human rights. Since it ensures the inviolability of private property, it is aimed at the legislator and obligates him/her to create such a system of norms, which shall not put into question the existence of this institution. The guarantee of the right to property, as a fundamental right, above all, signifies the right of each proprietor to protect himself or herself from undue interference of the State, in particular, to protect their right to appeal to the Court. However, property guarantees are not limited to the right of protection from State interference. It also obliges the State to protect this right, which, primarily, means the appropriate regulation of property clauses in legislation.[184]

The right to property is defined by the legislator. Due to the peculiarities of its nature, the greater the social importance of the object of possession, the more significant is the right to property. A restriction of property rights takes place in all cases, where the State determines the content and scope[185] of property in accordance with Paragraph 2 of Article 21 of the Constitution of Georgia:

"The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of pressing social need in cases determined by law and in accordance with a procedure established by law in such a way that does not violate the essence of property rights."

[183] See the Case of Avtandil Tamazashvili, as well as the Case of Koba Giorgadze, Gocha Ubilava and Others.
[184] Decision #1/2/384 of the Constitutional Court of Georgia rendered on July 2, 2007, II-7.
[185] Decisions #2/1-370, 382, 390, 402, 405 of the Constitutional Court of Georgia rendered on May 18, 2007, II-8

Upon limiting property rights, the State establishes a legal regime; however, its direct participation in specific relations is not mandatory.[186] "Pressing social need" is not a rigid concept universally suited for all societies. It is variable in time and space taking into account political, economic or social givens. Therefore, that which may be considered as "pressing social need" in one society may not be regarded as such in another.[187]

Along with the foregoing, the Constitution of Georgia also includes clauses on confiscation of property. In this case, pressing social need also serves as grounds for the restriction; however, the difference is that the legislator enjoys stricter boundaries of assessment.[188] Moreover, the provision of additional terms defined in the Constitution is required, in particular, appropriate compensation and a court decision or urgent necessity determined by organic law.

The practice of the Constitutional Court of Georgia has established that property rights protect only lawfully acquired property.[189] The legality of the right to property is determined by the lawful acquisition of property. This is a crucial reason for the existence of legitimate property rights. The use by one person of an item, lawfully acquired by another person, as an instrument or weapon of crime does not negate the fact of its legitimate acquisition, and, accordingly, does not delegitimize the right to property.[190]

The decision of the Constitutional Court of Georgia rendered on July 2, 2007, determines the penalty envisioned by Article 52 of the Criminal Code – confiscation of property – is subject to the assessment of Paragraph 2 of Article 21 of the Constitution or the restriction of property rights.[191] The Constitutional Court further indicated that criminal legislation clearly defined the terms, under which asset forfeiture was to be carried out; in particular, the object of possession must have been intended to commit a crime and its confiscation must have been conditional on state or public necessity or the interests of the protection of rights and freedoms of individuals, or serve the purpose of preventing a new crime. According to the Constitutional Court, the General Court:

„...[S]hall thoroughly examine, whether the above conditions exist in reality. Following the examination of specific circumstances, the Court shall determine whether the threat of infringement of the rights of others is real, whether the commission of a new crime using the property in question is inevitable, etc. The Court shall urgently consider whether, through the non-forfeiture of such property, the state, society or specific individuals will incur damage, for the avoidance of which the norm is adopted; furthermore, the Court shall very accurately foresee whether the specified objectives will indeed be achieved through the deprivation of property. The Court shall examine factual bases of the case and substantiate its legal position in relation to the necessity of asset forfeiture. It shall not solely be limited to a formal examination, which, ultimately, leaves the issue open on whether, in specific cases, a legal authority to intervene exists. Compliance with the specified terms by the judges making decisions on the confiscation of property is mandatory in order to ensure that asset forfeiture does not become the purpose. The confiscation, as an additional penalty, of an instrument or weapon of crime or an object intended for crime is justified when it is used as the most effective means to achieve the selected goal. For this purpose, the judge, in addition to meeting other requirements envisioned by the disputed norm, must be able to correctly evaluate the existence of pressing social need for each specific case. Otherwise, the achievement of social goals, as well as the legality of intervention in property rights will become suspicious."[192]

According to the Constitutional Court of Georgia, *ad hoc* substantiation of each specific case of asset forfeiture is mandatory. If the object of crime is at issue, it shall be confiscated with adequate corroboration, in order to ensure that intervention in an area protected by property rights is reasonable and lawful.[193] This notion is additionally derived from a component of the right to a fair trial – the principle of the court's reasoned decision.

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186 Ibid. II-11.
187 Ibid. II-14.
188 Decision #1/2/384 of the Constitutional Court of Georgia rendered on July 2, 2007, II-7.
189 Decisions #2/5/309, 310, 311 of the Constitutional Court of Georgia rendered on July 13, 2005, II-1.
190 Decision #1/2/384 of the Constitutional Court of Georgia rendered on July 2, 2007, II-14.
191 Ibid. II-15.
192 Ibid. II-22
193 In connection with asset forfeiture, *mutatis mutandis* see Judgment (#1/B–672) of the Kutaisi Court of Appeals rendered on August 20, 2009, and Judgment (#26AP–09) of the Chamber of Criminal Cases of the Supreme Court of Georgia rendered on July 12, 2009.

Asset forfeiture in accordance with Article 52 of the Criminal Code comprises instruments or weapons of crime, or objects intended for the commission of crime. The law establishes a standard in relation to all three types of objects and declares that the confiscation of above items is permissible, if they have been used or in any way intended for the perpetration of crime.

A direct and mandatory requirement of the Criminal Code of Georgia is that the instrument of crime be associated with the content of the crime and be used in carrying out the crime. The use of the object subsequent to the crime shall not transform the object into an instrument of crime.

In addition, it should be noted that an instrument of crime is only an object, which is used directly during the commission of the crime, rather than in order to facilitate a variety of circumstances, which, subsequently, may become grounds for liability. For instance, a vehicle that an assassin used to drive to a victim's place of residence, and then proceeded to execute illegal actions at the home, cannot be regarded as an instrument of crime. The instrument of crime must be directly associated with an element of the objective content of the crime. The properties of the content of the crime should allow a specific object to be used in the commission of the offense. For instance, if a person is convicted for theft, and, at the same time, a firearm is extracted from his/her place of residence, the confiscation of the firearm would be inadmissible only within the framework of the above charges.[194]

Despite such legislative regulations, cases in court practice, where deprivation of property occurs in violation of the above requirements, are frequent, which in turn infringes upon citizens' property rights. The necessity for deprivation of property and the threat of infringement upon public interests in case of non-limitation of property rights are not substantiated in legislative acts.

The difficulty of this issue has several times been raised before the Parliament of Georgia by the Public Defender. Nevertheless, the problem remains acute.

Ms Tatiana Janiki's Case – Sequestration

The Public Defender's Office discussed the case of Ms Tatiana Janiki. On October 22 2008, Ms Janiki was charged with an offense stipulated by Paragraph 1 of Article 188 of the Criminal Code of Georgia. In accordance with Article 190 of the Criminal Procedure Code of Georgia of February 20, 1998, the property of her children, as persons related to her, was sequestered.

On September 1 2009, criminal prosecution against Ms Janiki on charges envisioned in Paragraph 1 of Article 188 was terminated by the Old Tbilisi District Prosecutor, and she continued to participate in the criminal case as a witness.

On August 12, 2010, Tatiana Janiki appealed to the Tbilisi City Court and requested the revocation of the sequestration imposed on her children's property. According to a decision rendered by the Tbilisi City Court on February 25, 2011, Ms Janiki's request was denied on the grounds that, in compliance with Paragraph 4 of Article 199 of the Criminal Procedure Code of Georgia, the authority to apply to the Court with a request for the revocation of sequestration is held only by the prosecutor or the investigator, with the consent of the prosecutor. By the resolution of the Tbilisi Court of Appeals rendered on March 17, 2011, the decision of the City Court remained in force.

Mr. Tengiz Ubilava's Case – Withdrawal of documentation by investigative authorities

The Public Defender's Office reviewed the case of Mr. Tengiz Ubilava. The applicant stated that on June 14, 2008, he purchased a plot of land in the village of Gldani, Mtskheta district. The contract for the sale was issued by a notary. On December 7, 2009, Mr. Ubilava appealed to the National Agency of Public Registry with a request to register the purchased land as his property; however, the Agency did not register the immovable property, since the documents associated with it were withdrawn by investigative authorities. The applicant stated that from 2008 to September 2011, the results of the investigation were unknown to him. Therefore, the applicant was unable to build a house on the plot.

194 In connection with this issue, see Judgment No.454AP of the Chamber of Criminal Cases of the Supreme Court of Georgia rendered on January 12 2009.

Mr. Mirza Goletiani's Case – Withdrawal of documentation by investigative authorities

In 2010, Mr. Mirza Goletiani appealed to the Public Defender's Office regarding a violation of the right to property incurred due to an investigation related to immovable property. The applicant stated that during a criminal investigation conducted by administrative authorities, documents pertaining to a plot of land in his possession were withdrawn by the prosecutor. To the above, the applicant was unable to register the plot at the Public Registry and carry out commercial activities on the site.

In connection with the above statements, we have several times applied to the Chief Prosecutor's Office of Georgia; however, we have not yet received an answer.

Ms Sophio Kverenchkhiladze's Case

The Public Defender's Office reviewed Ms Sophio Kverenchkhiladze's case. On March 10 2009, an investigation was initiated at the 8th Department of the Gldani-Nadzaladevi Sub-Division of the Tbilisi Chief Division of the Ministry of Internal Affairs of Georgia on the issue of fraudulent appropriation by Mr. Tariel Gabuchia of a vehicle belonging to Ms Kverenchkhiladze, according to criminal indicators referred to in Sub-Paragraph 'b' of Paragraph 2 of Article 180 of the Criminal Code of Georgia. On April 3, the case was forwarded to the Isani-Samgori District Court for further investigation. Within the investigation, Ms Sophio Kverenchkhiladze and other witnesses were interrogated. A Mercedes-Benz vehicle with the license plate number BDB-122 was seized.

Ms Kverenchkhiladze's attorney, Mr. Anzor Chochishvili on several instances applied to the Ministry of Internal Affairs and appropriate structural units of the Prosecutor's Office of Georgia with a request to return the vehicle to its owner. In all cases, the complainant was denied the return of the vehicle.

Article 80 of the Criminal Procedure Code of Georgia regulates the decision-making procedure on material evidence. According to the second sentence of Paragraph 1 of the Article:

"Prior to the termination of criminal proceedings, the investigative authority may return a vehicle to its owner or proprietor, if it had not been sequestered."

In accordance with Paragraph 2 of Article 80 of the CPC, when the material evidence is a means of transportation – an item, which was withdrawn from the legitimate possession of its possessor (owner) against his/her will – the body conducting the proceedings, whether directly or through an authorized body, shall offer in writing to the proprietor or rightful owner, if such person is known, to return the object in his/her possession. Paragraph 3 of the same Article defines the conditions, under which a vehicle shall not be returned to its proprietor:

- The proprietor or rightful owner of the item is unknown
- Documents proving the lawful origin of the item do not exist
- Returning the item is impossible due to some other reason

The above criminal case was underway with regards to the fraudulent appropriation of property. In the given case, the Mercedes-Benz was withdrawn from the legitimate ownership of Ms Sophio Kverenchkhiladze against her will, since she was expecting an appropriate compensation. This fact, as well as Ms Kverenchkhiladze's property rights on the aforementioned vehicle, is validated by a response issued on April 12, 2010 by Assistant Investigator to the Detective of the 6th Police Department of the Isani-Samgori Division, Ms Lali Nozadze.

On June 9, 2011, the Public Defender appealed to the Chief Prosecutor with a recommendation in connection to the given case. According to reports from the law enforcement agency, on the basis of our recommendation, the vehicle has since been returned to its proprietor.

Mr. Avtandil Tamazashvili's Case – Asset forfeiture / Deprivation of property

In one of the cases reviewed by the Public Defender's Office, the Zugdidi District Court, through its resolution of January 26, 2011, approved a plea bargain between the defendant, Mr. Avtandil Tamazashvili, and the prosecutor. According to the verdict, the defendant had committed a crime stipulated by Sub-Paragraph 'a' of Paragraph 2 of Article 260 of the Criminal Code of Georgia. In accordance with the same verdict, the defendant was deprived of a truck, which was owned by a company in Azerbaijan.

The judgment rendered by the Zugdidi District Court on January 26, 2011, does not give any grounds for asset forfeiture, does not substantiate a connection between the offense and the specific object, and does not specify the social purpose for the forfeiture.

The Case of Mr. Koba Giorgadze, Mr. Gocha Ubilava and others – Asset forfeiture / Deprivation of property

In its judgment, rendered on April 6, 2011, the Zugdidi District Court found Mr. Koba Giorgadze, Mr. Nugzar Shengelia and Mr. Zaur Tchkadua guilty in accordance with Paragraph 1 of Article 23,303, Sub-Paragraph 'a' of Paragraph 2 of Article 177, Sub-Paragraph 'a' of Paragraph 3 of the same Article, and Paragraph 1 of Article 210 of the Criminal Code of Georgia. Within same judgment, Mr. Gocha Ubilava was convicted in keeping with Paragraph 1 of Article 23,303, Sub-Paragraph 'a' of Paragraph 2 of Article 177, and Sub-Paragraph 'a' of Paragraph 3 of Article 177 of the Criminal Code of Georgia.

A judgment rendered on April 6, 2011, approved a plea agreement between the Samegrelo-Upper Svaneti Regional Prosecutor and defendant, Ms Maro Gvitchiani, and the latter was convicted in accordance with Sub-Paragraph 'b', Paragraph 2, Article 210 of the Criminal Code of Georgia. In compliance with the judgment, an Ivego truck with a state license plate number WLW-605 and a Mercedes-Benz with a state license plate number ZMS-876 were transferred to state ownership as instruments of crime.

As indicated in the judgment rendered by the Zugdidi District Court on April 6, 2011, Mr. Nugzar Shengelia entered into criminal communications with Mr. Zaur Tchkadua, Mr. Koba Giorgadze, Mr. Vakhtang Kvaratskhetia, and Mr. Gocha Ubilava, who intended to illegally log coniferous timber in the Khaishi forest district, Mestia region. The perpetrators subsequently intended to proceed with secret unlawful misappropriation of the timber, its processing, and the consequent sale of the resulting raw material. To this end, the individuals listed above, in collaboration with other members of the criminal group, engaged in the illegal felling and embezzlement of coniferous timber at an unidentified time and under unknown circumstances. The timber was then processed at Mr. Tchkadua's sawmill located in the village of Khaishi, as a result of which 28 m^3 of raw material was obtained. At an unidentified time and under circumstances unknown to the investigation, 16 m^3 of the total material was transported to the village of Jvarzeni. On November 10, 2010, Mr. Shengelia, through a preliminary agreement with Mr. Ubilava, Mr. Giorgadze and Mr. Tchkadua, rented a Mercedes-Benz truck with a license plate number ZMS-876[195], belonging to Mr. Merab Kvashilava. The perpetrators transported 12 m^3 of raw material to the village of Jvarzeni. On November 11 2010, the loaded truck was discovered by relevant agencies.

The judgment also states that Mr. Shengelia, in collaboration with Mr. Tchkadua, Mr. Giorgadze, Mr. Kvaratskhelia and persons unidentified by the investigation, engaged in illegal felling and secret embezzlement of coniferous timber on the territory of the village of Khaishi, which they subsequently processed in the same village and obtained 17,574 m^3 worth or raw material. At the direction of Mr. Nugzar Shengelia, Mr. Koba Giorgadze rented an "Ivego" truck belonging to a resident of Senaki, Mr. Badri Lomia, with a state license number WLW-605, onto which the processed raw material was loaded. On November 16 2010, the criminal group forged documents relating to the origin of the timber. On November 17 2010, on the territory of the village of Lia, relevant agencies arrested the truck driven by Mr. Badri Lomia. On the same day (November 17 2010), at the direction of Ms Maro Gvitchiani, another consignment note was forged.

[195] In the resolution part of the verdict, the state license plate number of the Mercedes-Benz vehicle is indicated as ZMS-876, while in the descriptive motivation part, it is stated as – ZMS-875.

According to the April 6, 2011 verdict rendered by the Zugdidi Regional Court, the Ivego and Mercedes-Benz trucks were considered as instruments of crime and handed over to state ownership.

The verdict of the Zugdidi District Court failed to identify the stage, at which the above vehicles were used as instruments or weapons of crime; moreover, it did not substantiate the mandatory requirements stipulated under the decision of the Constitutional Court and Article 52 of the Criminal Code of Georgia.

Due to the above, on June 6 2011, the Public Defender of Georgia, under the status of *amicus curiae*, appealed to the Kutaisi Court of Appeals, which considered of Mr. Giorgadze, Mr. Shengelia, and Mr. Tchkadua's appeal.

By the judgment passed on June 21 2011 by the Kutaisi Court of Appeals the plea bargain between defendants Mr. Giorgadze, Mr. Ubilava, Mr. Tchkadua, and Mr. Shengelia, and Prosecutor Miranda Tsereteli was approved. In the same judgment, the trucks were returned to their rightful owners under the notion of *amicus curiae*.

To be welcomed is the fact that the Kutaisi Court of Appeals agreed with the Public Defender's opinion with regards to this issue, however, unfortunately, cases in juridical practice, where asset forfeiture is implemented incorrectly, are quite frequent.

RECOMMENDATIONS:

Recommendations the Parliament of Georgia:

a) **Amendments to the legislation of Georgia (Criminal Procedure Code) should be implemented in order to ensure the right of the person, whose property has been sequestered, to appeal to the Court to protect their rights;**

b) **Appropriate amendments should be carried out in the legislation of Georgia, which will eliminate obstacles in the process of registration of property rights by the Civil Registry (or another administrative body), in case of withdrawal of relevant documentation by investigative authorities;**

c) **Relevant amendments should be applied to Article 52 of the Criminal Code of Georgia in order to resolve problematic issues presented in this section.**

Recommendations to the Supreme Court of Georgia:

a) **The development of recommendations for Common Court judges should be provided, so that, upon the completion of criminal proceedings, the fate of property sequestered as a result of the final decision shall be decided;**

b) **Recommendations for Common Court judges with regards to asset forfeiture carried out in accordance with Article 52 of the Criminal Code should be developed in order to resolve problematic issues reviewed in this section.**

We address the Chief Prosecutor with a recommendation to prepare an appeal to the Common Courts with regards to the revocation of sequestration in those criminal cases, on which investigation and/or criminal prosecution has been terminated (in cases, where the sequestered property belongs to the person being persecuted).

The Rights of Taxpayers

Some of the principal obligations of tax authorities in accordance with the Tax Code of Georgia are the protection of the Tax Law of Georgia and acting within the authority granted by the said Law, as well as the protection of the rights and legal interests of taxpayers.

The Tax Code of Georgia is a legislative act, which, in compliance with the Constitution of Georgia, specifies the formation and functioning of the general principles of the tax system, regulates the legal status of the person involved in legal relations, taxpayers and authorized agencies, defines the types of tax law violations, determines the liability for violation of tax law, regulates the legal relations associated with the fulfilment of tax obligations.

During the given reporting period, taxpayers have several times appealed to the Public Defender. The complaints reviewed by the Public Defender's Office make clear the fact that, in certain cases, the tax authorities blatantly violate imperative regulations of the legislation of Georgia. The examples below demonstrate the types of violations established by the Public Defender of Georgia as a result of appeals/complaints filed by taxpayers.

THE LEGALITY OF THE IMPLEMENTATION OF INDUSTRIAL INSPECTIONS

According to the Law of Georgia "On the Control of Entrepreneurial Activity,"[196] control in cases stipulated by law and on financial and economic activities of entrepreneurs within the limits prescribed by law, is implemented by tax authorities, as well as the Chamber of Control of Georgia (besides tax relations specified under the Tax Code of Georgia).

Thus, the Law of Georgia "On the Control of Entrepreneurial Activity" is a legislative act, which clearly defines the procedures for monitoring of Entrepreneurial Activities. According to formulations reflected in the Law,[197] the management of Entrepreneurial Activities constitutes actions, regulated by the legislation of Georgia, of the State, local government, as well as other administrative bodies, which aim to verify the financial and economic activities of entrepreneurs, as well as the fulfilment of responsibilities entrusted to them. Moreover, the aims of the management also include the determination of the compliance of the entrepreneur's activities with the legislation of Georgia, and the exposure of offences within said activities, or the imposition of relevant sanctions.

Accordingly, the Law of Georgia "On the Control of Entrepreneurial Activity" grants the controlling body[198] the authority to manage Entrepreneurial Activities; however, at the same time, it imperatively determines the means for

[196] Para. 2, Article 2 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001.
[197] Sub-Paragraph "b", Para. 1, Article 2 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001.
[198] According to Sub-Paragraph "c", Para. 1, Article 2 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001, a controlling body includes a state, local authorities, and other administrative bodies, which is legally authorized to exercise control over industrial activity.

the initiation of examination of entrepreneurial activities, in particular, a judge's order.[199] According to the Law of Georgia "On the Control of Entrepreneurial Activities," a judge issues an order on entrepreneurial activities only in the case when the controlling body submits appropriate information on the violation, under reasonable doubt, of legal requirements by an entrepreneur.[200] It should also be noted that the same Law comprehensively describes cases, when the controlling body is authorized to inspect industrial activities without the order of a judge.[201]

Moreover, according to the above Law, the controlling body, which inspects Entrepreneurial Activities at the request of an operational and investigative authority, obtains the right for inspection through a judge's order.

An investigative and operational-detective agency appears in Court with a petition to implement an examination. The agency submits appropriate information on the violation of legislation by the entrepreneur. The judge reviews the issue independently, at a closed court session, without the involvement of the parties.[202]

The petition on the inspection of the entrepreneur's activities is reviewed in accordance with the procedures stipulated in the Administrative Procedure Code of Georgia. The order on the inspection of the entrepreneur's activities is issued by a judge or magistrate judge of the Regional (City) Court, based on the location of the entrepreneur.[203]

In accordance with the Administrative Procedure Code of Georgia,[204] a judge's order or resolution is issued in three copies; one of which is sent to the submitting controlling body, the second one – to the relevant entrepreneur, or their representative, while the third remains at the Court. A judge's order shall enter into force following the expiry of the time allocated for the appeal of the decision. An appeal against the order precludes the entry into force of the order. As prescribed by this Article, the judge's order may be appealed during a 48-hour period at an appellate court.[205] Thus, an enacted court order serves as a mandatory legal precondition for an entrepreneurial budgetary inspection.

Despite the above-cited regulations clearly and unequivocally declared by the legislation of Georgia, during the 2011 reporting period, the Public Defender reviewed a number of cases, where tax authorities have neglected the above norms while inspecting entrepreneurial activities. In order to make clear the above (the breaching by tax authorities of the legislation while conducting inspections of entrepreneurs' activities), one of the cases reviewed by the Public Defender's Office in 2011, that of **Entrepreneur M. N.**, will be given as an example.

In 2006, an investigator of the Third Division of the Chief Division of the Department of Investigation of the Financial Police of the Ministry of Finance of Georgia addressed the Administrative Board of the Tbilisi City Court with a petition to conduct the inspection of Entrepreneur M.N.'s financial and economic activities on the basis of Paragraph 4, Article 5 of the Law of Georgia "On the Control of Entrepreneurial Activities."[206] The petition was reviewed at a closed court session without the attendance of the parties. According to the decision of the Tbilisi City Court, the petition of the investigator of the Third Division of the Chief Division of the Department of Investigation of the Financial Police of the Ministry of Finance of Georgia was granted. In particular, the Excise Taxpayers' Inspection was granted the right to inspect Entrepreneur M.N.'s financial and economic activities from January 1 2004 to December 31 2005.

In accordance with Entrepreneur M.N.'s budgetary examination report, a letter from the Tbilisi Chief Division of the Financial Police Department of Investigation of the Ministry of Finance of Georgia, as well as the above ruling of the Administrative Board of the Tbilisi City Court served as grounds for the inspection.

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199 According to Para. 2, Article 3 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001, the controlling body is authorized to monitor entrepreneurial activity (including to have access to the enterprise, request documents, suspend the activities of the enterprise, seal property belonging to the entrepreneur, inspect the enterprise, examine the quality of goods produced by the entrepreneur) only on the basis of a judge's decree.

200 Para. 3, Article 3 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001.

201 Para. 1, Article 5 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001.

202 Para. 4, Article 5 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8, 2001.

203 Article 21^1 of the Administrative Procedure Code of Georgia of July 23, 1999.

204 Para. 9, Article 21^1 of the Administrative Procedure Code of Georgia of July 23, 1999.

205 Para. 14, Article 21^3 of the Administrative Procedure Code of Georgia of July 23, 1999.

206 As of February 2006.

According to the decree of the Excise Taxpayers' Inspection of the Tax Department of the Ministry of Finance of Georgia, as per the tax audit report compiled on the basis of the entrepreneurial inspection, GEL 6,831.5 was established as an additionally accrued amount to be paid by Entrepreneur M.N. The Taxpayer Service Division was assigned to reflect the amount on Entrepreneur M.N.'s personal registration card. Consequently, in 2006 the Tax Department issued a tax claim, in accordance with which, Entrepreneur M.N. was charged the amount of GEL 6,831.5.

According to the case materials, submitted by the Tbilisi City Court to the Public Defender's Office, the decree issued by the Administrative Board of the Tbilisi City Court in 2006, on the examination of the activities of the given entrepreneur, was not submitted to Entrepreneur M.N. in compliance with the law.

In keeping with the Administrative Procedure Code of Georgia, if not otherwise prescribed by the Code, administrative proceedings shall employ the provisions of the Civil Procedure Code of Georgia.[207] Thus, the rendering of the Court's decision is managed by the Civil Procedure Code, according to whose regulations,[208] the time period set for the filing of an appeal shall commence from the moment of rendering of a substantiated decision to the party involved. The moment of rendering of a substantiated decision is the submission of a copy of the substantiated decision to the party involved under Articles 70-78 and Article 259[1] of the Code.

As established by the decision rendered by the City Court in 2006, the Court reviewed the petition in a closed session without the attendance of the parties. Accordingly, the time period set for filing an appeal against the ruling should have commenced upon the submission of the Court's decision to Entrepreneur M.N. according to Articles 70-78 of the Civil Procedure Code of Georgia.

In accordance with the General Administrative Code of Georgia,[209] the Excise Taxpayers' Inspection of the Tax Department of the Ministry of Finance of Georgia is an administrative body.

The General Administrative Code of Georgia provides for the principle of legality of the activities of administrative bodies,[210] which binds administrative bodies on a legal basis. The principle of rule of law prohibits derogation from the law on the part of administrative bodies. Moreover, it obligates them to use the law. According to the administrative legislation of Georgia,[211] an administrative body has no right to perform any act contrary to the requirements of the legislation.

Thus, the Excise Taxpayers' Inspection of the Tax Department of the Ministry of Finance of Georgia was authorized to inspect Entrepreneur M.N.'s entrepreneurial activities only on the basis of an enacted court decision.[212] As previously stated, the decision rendered by the Tbilisi City Court in 2006 with regards to the inspection of Entrepreneur M.N.'s entrepreneurial activities, was not issued to the entrepreneur in accordance with the law. Consequently, the actions taken by the Excise Taxpayers' Inspection on the basis of this decision are devoid of legal grounds.

Based on the above, the conclusion of the Public Defender outlined the factual and legal preconditions, which confirm that the Excise Taxpayers' Inspection of the Tax Department of the Ministry of Finance of Georgia examined Entrepreneur M.N.'s entrepreneurial activities in violation of the provisions stipulated by the Law of Georgia "On the Control of Entrepreneurial Activities." which was in force at the time. Accordingly, since the Public Defender of Georgia concluded that the 2006 Act of the Excise Taxpayers' Inspection and the corresponding tax claim, i.e. administrative legal acts, were issued in violation of norms established by the legislation of Georgia, which, in turn, is an infringement of Entrepreneur M.N.'s rights, he addressed LEPL Revenue Service under the Ministry of Finance of Georgia with a request to render a decision in compliance with the law.

207 Para. 2, Article 1 of the Administrative Procedure Code of Georgia of July 23, 1999.
208 Para. 1, Article 369 of the Civil Procedure Code of Georgia of November 14, 1997.
209 According to Sub-Paragraph "a", Para. 1, Article 2 of the General Administrative Code of Georgia of June 25 1999, an administrative body – every state and local government agency or institution, Legal Entities of Public Law (other than political and religious associations), as well as any other person who exercises legal authority on the basis of the legislation of Georgia.
210 Article 5 of the General Administrative Code of Georgia of June 25 1999.
211 Para. 1, Article 5 of the General Administrative Code of Georgia of June 25 1999.
212 Para. 2, Article 3 of the Law of Georgia "On the Control of Entrepreneurial Activity" of June 8 2001, as of February 2006.

Thus, judging by the example above and the review by the Public Defender of Georgia of appeals/claims filed by entrepreneurs throughout the 2011 reporting period, it can be concluded that, in separate cases, tax authorities implement entrepreneurial inspections in violation of the law, which clearly constitutes infringements of the rights of the entrepreneurs.

THE BASES FOR THE ACCRUAL OF TAXES ESTABLISHED BY TAX LEGISLATION OF GEORGIA AND THE PROCEDURES FOR THE LEGALIZATION OF UNDECLARED TAX LIABILITIES REGULATED BY THE LEGISLATIVE ACT OF GEORGIA[213]

In accordance with the current Tax Code of Georgia,[214] for the purposes of taxation, tax legislation of Georgia in force at the time of origin of tax liability is employed. The above legal regulation is relevant, especially considering the fact that the Tax Codices[215] in force during recent years have regulated a variety of bases for the accrual of tax amounts for taxpayers.

In order to establish the legality of the debt accrued to the taxpayer's personal registration card in the case reviewed by the Public Defender of Georgia during the 2011 reporting period, it was essential to utilize the bases for the accrual of those taxes, which are envisioned in the June 13 1997 edition of the Tax Code of Georgia.[216]

It should also be noted that the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization" of December 24 2004, provided for the legal regulation of the procedures, which, for the purposes of detection and recognition of undeclared tax obligations and property, clearly define the terms for the legalization of such income (property), and at the same time, establish the grounds for excluding criminal liability for its concealment.

According to the regulations stipulated in Paragraph 1, Article 4 of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization," upon the entry info force of the given Law, outstanding tax and customs duties incurred by resident and non-resident persons prior to January 1 2004, shall be deemed fulfilled. It was also clearly established that criminal prosecution, administrative or other legal proceedings against the persons should not have taken place. At the same time, Paragraph 2 of the given Article determines that the Article shall apply to taxpayers defined by the Tax Code of Georgia and other legislative acts, as well as tax agents, who had not implemented declarations of tax liabilities and/or payments. Moreover, in accordance with the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization,"[217] the procedures for the legalization of undeclared tax liabilities do not apply to tax obligations and customs duties declared, accrued and registered at relevant state agencies in a manner provided by law, but which have not been paid.

Moreover, the subsequent imperative regulation[218] of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization" is of importance, according to which the controlling authorities ensured by the Georgian legislation (including tax and customs authorities), as well as law enforcement agencies are banned from exercising any form of revision (control, survey, verification) with regards to the duties specified in Paragraphs 1 and 2 of the given Article.

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213 The Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization" of December 24, 2004.

214 Ibid.

215 The Tax Code of Georgia of December 22 2004, and the Tax Code of Georgia of September 17 2010.

216 According to Para. 2, Article 235 of the Tax Code of Georgia of June 13 1997, the tax authority is entitled to credit due payment to each taxpayer and current tax payments in accordance with the Code, on the basis of one or more information sources listed below: a) information contained in the taxpayer's tax returns; b) information on the amounts paid as described in Article 231 of the Code; c) examination materials and other reliable information known to the tax authority.

217 Sub-Paragraph "a", Para. 3, Article 4 of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization" of December 24 2004.

218 Para. 4, Article 4 of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization" of December 24 2004.

The Case of the Enterprise "Savaneli V. G."

During the 2011 reporting period, the Public Defender of Georgia reviewed the application of **the enterprise "Savaneli V.G."** A full review of the case revealed a flagrant breach by relevant tax authorities of the regulations stipulated by the above Law.

The case materials demonstrate that in accordance with Tax Notice #18 filed on January 13, 2009 on the basis of the conclusion of the Borjomi Tax Inspectorate issued on May 7, 2003, and a desk audit report issued by the Akhaltsikhe Regional Centre (Tax Inspectorate) on July 30, 2009, the enterprise "Savaneli V. G." had accrued a budgetary tax payment in the amount of GEL 722 266.67.

As stated above, one of the grounds for the accrual of the tax arrears to the enterprise "Savaneli V. G.""s personal registration card was the conclusion issued by the Borjomi Tax Inspectorate on May 7, 2003. As per the conclusion, on the basis of Letter #22 from the Music Foundation, Ltd. dated April 24, 2003, the "Borjomi" House of Composers' Art incurred the following reductions: in profit tax – principal tax: GEL 2,507, and fine: GEL 6,603; in property tax – principal tax: GEL 1,361, and fine: GEL 4,217; in VAT – principal tax: GEL 32,302, and fine: GEL 118,211; in land tax – principal tax: GEL 21,120, and fine: GEL 47,554. The taxes listed above were accrued to the enterprise "Savaneli V. G."

In accordance with Letter #22 of the Georgian Composers' Union dated April 24 2004, the Music Foundation, Ltd. addressed the Borjomi Zonal Tax Inspectorate with a request that, in connection with the termination of a legal dispute with the enterprise "Savaneli V. G.,", the debt accrued by the Borjomi House of Composers' Art in the period of 1993-1999 be charged to the latter company. As a result, the Music Foundation, Ltd. would take on an obligation to cover by scheduled instalments the debt owed to the Borjomi Zonal Taxation Inspectorate.

The above audit report of the Borjomi Regional Centre (Tax Inspectorate) is not a source of information on the accrual of taxes prescribed by the Tax Code of Georgia.[219] As for the inspection materials and other reliable information available to the tax authorities, the following should be highlighted, above all:

In accordance with the Tax Code of Georgia in force at the time,[220] the responsibility for controlling the accuracy of calculation and timely payment of taxes by natural and legal persons, as well as all aspects of tax administration and collection lies with the tax authorities.

Tax inspections conducted by tax authorities may be either of two types: desk audit or field audit. A field audit may be either scheduled or conducted for the purposes of control.[221] A desk audit cannot be deemed as grounds for the conclusion issued by the Borjomi Tax Inspectorate on May 7, 2003, since it is conducted on the basis of balance sheets, declarations, statements, notices, definitions, conclusions and other data submitted to the tax authority by the taxpayer. Moreover, scheduled and control field audit materials also cannot serve as grounds for the report. In addition, the documentation provided by the LEPL Revenue Service to the Office of the Public Defender of Georgia does not include an act concluded on the results of the tax audit conducted in 2003, signed by an authorized representative of the tax authority and the taxpayer.[222]

In addition to the above, it is crucial that the Georgian tax legislation does not contain a norm, pertaining to which it would be feasible, on the basis of one taxpayer's application, to transfer to a second person tax arrears accrued by the first. This, in itself, is contrary to the principles established by the tax legislation. In accordance with the Tax Code in force at the time,[223] unless otherwise prescribed by the legislation, tax liabilities shall be carried out directly by the taxpayer. In cases specified by the tax legislation, tax obligations may be imposed on another liable person. In particular, the provision concerns the rules for the fulfilment of tax liabilities incurred by natural persons deceased, missing, or

[219] Sub-Paragraphs "a" and "b", Para. 2, Article 235 of the Tax Code of Georgia of June 13, 1997.
[220] Para. 1, Article 217 of the Tax Code of Georgia of June 13, 1997.
[221] Para. 3, Article 217 of the Tax Code of Georgia of June 13, 1997.
[222] Para. 4, Article 217 of the Tax Code of Georgia of June 13, 1997.
[223] Para. 3, Article 30 of the Tax Code of Georgia of June 13, 1997.

handicapped during the reorganization of the enterprise (organization).[224] Based on the above, the enterprise "Savaneli V. G." did not represent any other liable person defined by the Tax Code.[225]

It is noteworthy that the materials submitted to the Public Defender's Office by the LEPL Revenue Service and the enterprise "Savaneli V. G." in relation to the given case, do not contain an enacted court ruling, according to which, the complaint filed by the Music Foundation, Ltd. on the accrual of tax arrears to the enterprise "Savaneli V. G." has been satisfied.

In addition to the above, it is noteworthy that the tax claim regarding the payment of tax liabilities accrued by the Inspectorate conclusion of May 7, 2003, was submitted to the enterprise "Savaneli V.G." on January 13, 2009.

In accordance with the decision rendered on August 14 2009, the Appeals Board under the Ministry of Finance of Georgia concluded that since the exact amount of debt accrued to the enterprise "Savaneli V. G." could not be determined by the submitted documentation, it was necessary to conduct a desk audit and, given corresponding grounds, to send a new tax claim to the taxpayer.

According to the conclusion rendered for the purposes of the given case by the Public Defender of Georgia as a result of an analysis of the above circumstances, the tax arrears credited to the enterprise "Savaneli V. G." as maintained by the Act issued on May 7, 2003 by the Borjomi Tax Inspectorate, were not accrued in compliance with procedures determined by the legislation of the Tax Code in force at the time.[226] Furthermore, as indicated by the Public Defender of Georgia, the tax claim regarding the accrual of the amounts specified above, as well as the location and procedures for payment are made known to the taxpayer only on December 13, 2009, or following the entry of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization."

In this regard, attention should be called to the interpretation of the Supreme Court of Georgia,[227] according to which: "In compliance with the Tax Code, the accrual of tax amounts implies tax accounting, for a specific period of time, of taxpayers, tax agents, and other liable persons at a tax authority. The Grand Chamber agrees with the position of the representatives of the Tax Department and deems that accrual and accounting are interdependent terms and, in combination, should be considered as one term. Moreover, these terms are associated with declaration, or the existence of tax liability. Tax liabilities for an enterprise may arise after it has been audited, and effectively declared, by tax or other fiscal authorities. The declaration is then accrued (registered) as a tax liability. Tax liabilities for an enterprise may arise after the tax authorities have conducted its declaration, which then has accrued (registered) as a tax obligation. If the tax liability has originated by January 1 2004 and this is known to tax or other fiscal authorities, then the liability remains in effect and cannot be covered by the Amnesty Law." Furthermore, the Public Defender considered it essential that the Act issued by the Borjomi Tax Inspectorate on May 7, 2003 did not constitute a tax audit report and neither did it serve as a basis for the accrual envisioned by the Tax Code of Georgia.[228]

Thus, in the opinion of the Public Defender, following the entry into force of the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization," tax authorities did not hold the right to implement a desk audit of a taxpayer – in the given case, the enterprise "Savaneli V. G." –, since the Akhaltsikhe Regional Centre had inspected the amnestied period.

Accordingly, in the opinion of the Public Defender of Georgia, the desk audit report for the enterprise "Savaneli V. G." issued by the Akhaltsikhe Regional Centre (Tax Inspectorate) on July 30, 2009, as well as the segment of the tax claim issued on January 13, 2009, which indicates the conclusion of the Borjomi Tax Inspectorate of July 7, 2003, as grounds for the accrual of the tax arrears, are deemed as a violation of tax laws, since tax legislation does not allow for

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224 According to Article 32 of the 1997 Tax Code of Georgia, the fulfilment of tax liabilities during the reorganization of an enterprise takes place by a successor defined by this Article; according to Article 33, a person responsible for the fulfilment of the tax liabilities of a deceased, missing, or handicapped individual is the success of the deceased person, or a person who manages the property of the handicapped or missing individual.

225 Para. 3, Article 30 of the 1997 Tax Code of Georgia.

226 Para. 2, Article 235 of the Tax Code of Georgia of June 13, 1997.

227 Decision #BS–1117–954–K–04 of the Great Chamber of the Supreme Court of Georgia rendered on April 6, 2005.

228 Article 235 of the Tax Code of Georgia of June 13, 1997.

the possibility of the transfer of arrears accrued by one taxpayer to a second taxpayer on the basis of an application filed by the first. In addition, no enacted court decision can be found with regards to the given case, and, furthermore, the desk audit report facilitated an inspection during a period amnestied under the Law of Georgia "On Amnesty, and Undeclared Tax Obligations and Property Legalization."

Based on the foregoing, as the Public Defender of Georgia considered that the legal rights of the enterprise "Savaneli V. G." had been violated, the Ombudsman, with powers conferred by the Organic Law "On the Public Defender of Georgia," addressed the LEPL Revenue Service with a recommendation on the implementation of appropriate legal action.

Thus, the cases reviewed in this Chapter have clearly demonstrated the fact that, in a number of cases, while implementing tax administration measures, tax authorities blatantly violate tax legislation, which moves us to call on the tax authorities to abide by the concept of rule of law in order to ensure the adequate protection of taxpayers' legal rights.

Right to Adequate Housing

Circumstances hindering the implementation of the right to adequate housing were reviewed in the Public Defender's reports of 2010 and the second half of 2009. The situation existing both in the legislation, as well as in practice was outlined, on the basis of which, the Public Defender of Georgia has issued corresponding recommendations.

In 2011, as in previous years, citizens actively appealed to the Public Defender with requests for shelter. As a result of the analysis of the complaints, it was established that in this respect, the situation is still unsatisfactory.

As in previous years, in 2011, the absence of data on homeless persons, the lack of housing resources, the insufficiency of budgetary funds allocated for this purpose, as well as the failure to include homeless persons in social programs. It is an unfortunate fact that throughout 2011, state and local authorities have not implemented any specific measures to resolve the problems reflected in the Public Defender's reports of 2009-2010, and fulfil the provided recommendations.

Since the problems associated with the implementation of the right to adequate housing are discussed in detail in the previous two reports, this chapter will refrain from elaborating on this matter. Moreover, the issued recommendations remain in force.[229] Nevertheless, in order to once again highlight the intensity of the issue, this chapter will present statistical data on persons without shelter in 2011 by region.

Generally, the right to adequate housing, in its essence, is a socio-economic right. For the purposes of the implementation of the rights in this category, the state is obligated to carry out gradual and effective, and, in some cases, immediate measures. It is evident that the realization of the right to adequate housing is associated with resources available in the country; however, the absence of such resources does not relieve a state from duties in respect of homeless persons imposed by national legislation and international agreements.

Effective policy planning and the resolution of the indicated problems are unfeasible without the systematic study of the current conditions. One of the most important aspects in this regard is the availability of accurate data, which will allow all relevant agencies to adequately plan necessary measures, and calculate the amount of funds and resources required for the elimination of the problem.

As is known, according to Sub-Paragraph "d" of Article 17 of the Law of Georgia "On Social Assistance," *"the Agency (the Social Services Agency) maintains a unified registry of homeless persons registered with local self-governing bodies."*

Article 18 of the same Law determines that the local self-governing bodies will provide homeless persons with shelter and ensure access to information on registered homeless persons to the Agency.

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[229] Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia", II part of 2009, p. 160; Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia", 2010, p. 224.

Accordingly, data collection and its provision to the Social Services Agency (SSA) is an obligation of the self-governments. Unfortunately, as noted above, all recommendations issued by the Public Defender in the reports of 2010 and the second half of 2009, remain unaltered. Among them is the creation of a unified database of persons without shelter. According to information provided by the LEPL Social Services Agency (SSA) under the Ministry of Labour, Health, and Social Affairs of Georgia,[230] this recommendation is yet to be implemented.

Once again, it should be emphasized that failure to comply with the obligations defined by the Law of Georgia "On Social Assistance," on the one hand, leads to the neglect of specific requirements of the Law, and on the other hand, becomes a hindering factor in perceiving the scale of the problem. This is demonstrated by the data recorded in Georgia in 2011. In particular, in 2011, from the self-governing bodies of 5 cities (Gori, Zugdidi, Kutaisi, Batumi, and Tbilisi) the Public Defender of Georgia requested information on the number of homeless persons and the measures taken in this regard by local authorities. As a result of the analysis of obtained answers, it is clear that the number of persons requesting the provision of shelter is quite high in all the cities surveyed. Furthermore, none of the cities has available housing and/or shelter facilities. The only measure implemented in this regard is the "Social Housing in a Supportive Environment" project being carried out by the Swiss Agency for Development and Cooperation (SDC) in partnership with the Municipality of Tbilisi, the Ministry of Labour, Health and Social Affairs of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. However, social housing constructed within the framework of the project will not be able to fully satisfy the requirements of the homeless persons. According to the official responses submitted to the Public Defender's Office, 15 homeless individuals were settled in social housing in Zugdidi in 2011. The amount allotted for the administration of this program in Kutaisi constitutes GEL 16,000. Moreover, it is noteworthy that, as a rule, funds allocated within the local budget to assist those without shelter are either nonexistent or very meagre.

The Municipality of Gori has officially[231] notified the Public Defender that in 2011, 58 families addressed the Gamgeoba of the Gori Municipality with a request for shelter. Since the local self-government of Gori lacks a shelter system or housing facilities to satisfy homeless persons, the requests of none of the families were met. The same letter also indicates that no funds have been allocated for this purpose in the 2012 budget. By the end of 2011, 80 families were registered in the database for homeless persons in the Municipality of Gori.

According to information provided by the Gamgeoba of the Municipality of Zugdidi, no housing facilities are currently available in the municipality. In 2011, GEL 24,000 was allocated from the budget of the Zugdidi Municipality in order to provide rental housing for 20 families living in extremely difficult conditions. In addition to the above families, in 2011, another 20 families applied to the Municipality of Zugdidi. However, according to the response provided, these families cannot be satisfied due to the lack of housing facilities.[232]

The demand is particularly high in Kutaisi. Namely, according to the official response of the Kutaisi City Hall, by 2011, applications to the local authorities for shelter were filed by 226 families, who could not be satisfied due to the fact that there is currently no housing stock available in Kutaisi. In 2011-2012, GEL 16,000 has been allocated for a social housing program in the local budget.[233]

The only region, where specific measures are planned in terms of providing shelter to homeless individuals, is Adjara. In particular, according to reports provided to the Public Defender of Georgia by the Batumi City Hall,[234] 81 families have filed applications to the Batumi City Hall in 2011 with a request for shelter. Of these, 23 applications were submitted to the Batumi City Hall on the part of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara. As made clear by the same report, a social housing construction project is planned by the local self-government of Batumi in 2012, which envisages the provision of 320 families residing in damaged and barrack-type housing with adequate living space. We reserve the hope that the process will be carried out effectively and positively influence the existing situation.

230 Letter No.04/58238 of the Social Services Agency dated January 3, 2012;
231 Letter No.6305 of the Gori Municipality Gamgeoba dated December 23, 2011;
232 Letter No.10–1/1461 of the Zugdidi Municipality Gamgeoba dated December 22, 2011;
233 Letter No.01–8784 of the Kutaisi City Hall dated December 22, 2011;
234 Letter No.04–04/20709 from the city of Batumi dated January 11, 2012.

The statistics provided above further underscores the relevance of the problem and its several aspects, of the most significant of which is the lack of attention towards the problem. This is corroborated by years of outstanding recommendations and the lack of necessary measures to improve the situation. It is essential for all appropriate state agencies to take relevant measures in order to raise and subsequently study the issue.

RECOMMENDATIONS:

- **The local self-governing bodies shall provide to the Social Services Agency data on homeless persons, in accordance with the Law of Georgia "On Social Assistance".**
- **The competent agencies shall plan activities that will enable the determination of the approximate number of persons, who, for various reasons, are living on the streets or in temporary shelters. Based on these data, the State should organize and implement concrete measures in respect to this group.**

Right to Social Security

OVERVIEW

Throughout 2011, as in previous years, the number of persons applying to the Public Defender's Office with social issues was high. The review of the applications revealed several problems, one of which concerns the provision by an authorized representative of a family of incorrect (false) information, which resulted in the suspension of the registration of the family in the Database for Vulnerable Households for a period of 3 years.

Moreover, a problem related to measures taken with regards to the enforcement, by the Executive Bureau, of the decision of the Court and the Revenue Service of the Ministry of Finance of Georgia on the basis of a collection order, was also identified; in particular, an instance when the Executive Bureau has sequestered an individual's state pension regardless the fact that it constituted the latter's only income.

The Chapter on the Right to Social Security in the report of the Public Defender of Georgia for 2010 discussed problematic issues existing in this field, including the issue of assessing the socio-economic status of a family temporarily residing in someone else's property and therefore not included in the state program of social assistance to persons living below the poverty threshold. In addition, the problem concerning the inability of homeless persons to enjoy social benefits was also discussed. Appropriate recommendations were issued for the resolution of the aforementioned issues.

Unfortunately, no effective measures were taken by state agencies in 2011 in order to fulfil the recommendations, thus, all issues remain on the agenda. Since these issues have been comprehensively analyzed in the Public Defender's Parliamentary Report of 2010, they will not be discussed in this chapter, which will instead focus on the new problematic issues arising in 2011 with regards to the right to social security.

SUSPENSION OF REGISTRATION IN THE UNIFIED DATABASE FOR VULNERABLE HOUSEHOLDS

As noted above, one of the problems identified in the 2011 report of the Public Defender concerned the suspension for a period of 3 years of registration in the Database for Vulnerable Households due to incorrect (false) information provided by an authorized representative of a household.

Sub-Paragraph "d" of Article 2 of Decree No.141/N issued on May 20, 2010 by the Minister of Labour, Health and Social Affairs of Georgia "On the Approval of Assessment Procedures of the Socio-Economic Status of Vulnerable Households" defines the concept of an authorized representative of a household. According to the given provision, such a person shall be *"an adult, able-bodied family member or a legal representative of a household, to whom the family entrusts the confirmation of data on their socio-economic status for entry into the 'Household Declaration.'"* Sub-Paragraph 2 of Article 4 of the same Decree determines that, prior to filling out the Household Declaration, an authorized employee of the

Agency shall make clear to the authorized representative of the household that the provided information is subject to verification and in case it is found to be incorrect (false), the registration of the household in the Database may be suspended.

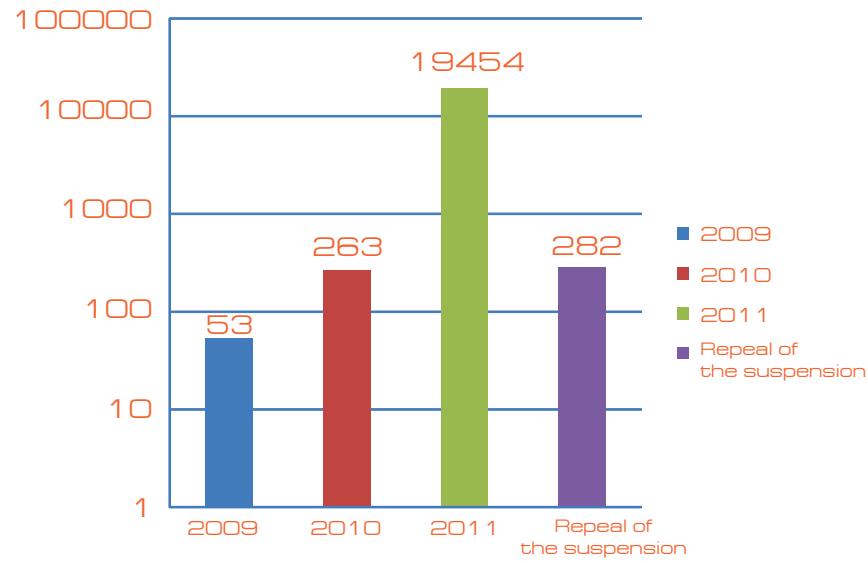
According to Paragraph 4 of Article 8 of Resolution No.126 "On Measures to Reduce the Poverty Level and Improve Social Protection" issued on April 24, 2010 by the Government of Georgia, responsibility for the accuracy of the information provided (in the database) during the filling in of the Declaration lies with the family member(s). In case of provision by a family member or an authorized representative of a household of false information during the assessment of the socio-economic status of the household, the Agency is authorized to suspend the registration of the household in the Database based on Paragraph 2, Article 10 of the above Resolution. In this case, the family loses the right, during the subsequent three years, to apply for re-registration in the Database.

Paragraph 4, Article 10 of Resolution #126 of the Georgian Government issued on April 24 2010, specifies that the above restriction shall apply to all adult, able-bodied members of the family, regardless of whether they have changed their permanent place of residence.

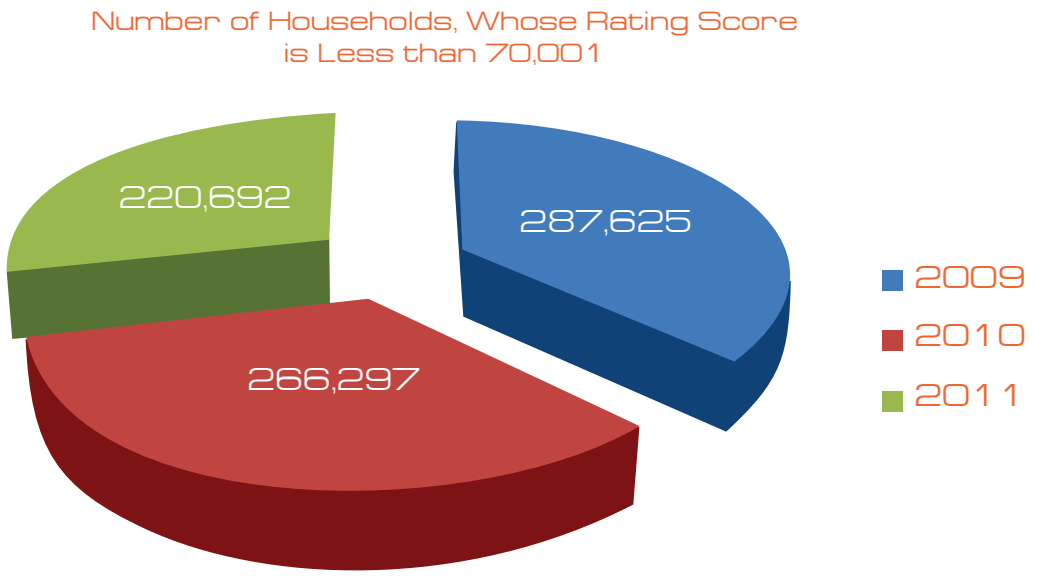
With regards to issues of the development of the "Unified Database for Vulnerable Households" and statistical data available in the Database, the Public Defender of Georgia has appealed to the LEPL Social Services Agency (SSA) under the Ministry of Labour, Health, and Social Affairs of Georgia. The information obtained reveals that, when the SSA prohibits a family from registering in the Database for a period of 3 years on the grounds of provision of incorrect (false) information, along with adult and able-bodied family members, the restriction also applies to minor and disabled family members. Consequently, their right to enjoy all types of social assistance intended for vulnerable households is automatically suspended. In addition, it is of no consequence, whether the family is in actuality eligible for social assistance.

The review of the applications has revealed cases where, following the suspension of social assistance, besides a state pension for disabled persons, the family had no other income to acquire medicine and medical service for these persons. In addition, cases were revealed, where a 3-year suspension of the right to register in the Database has limited the rights of underage members of the family. In such circumstances, families no longer had means to provide children with adequate housing, and create favourable conditions for education and professional development.

According to statistics provided by the LEPL Social Services Agency (SSA) to the Public Defender, during 2009, 2010 and 2011 the following households' rights to request registration in the Unified Database were suspended for a period of 3 years:



Noteworthy are the statistics of the households registered in the Database, who, in 2009, 2010 and 2011 had a rating score lower than 70,001.



Taking into consideration the statistical data, it can be concluded that, in contrast with the previous years, in 2011, the number of households, whose registration in the Database was suspended on the basis of Paragraph 2, Article 10 of Resolution No.126 issued on April 24, 2010 by the Government of Georgia, has dramatically increased.

It is significant that, in accordance with changes implemented on July 5, 2011, Article 10 of Government Resolution No.126 of April 24, 2010, was amended[235] to include Paragraph 2[1]. The provision authorizes the Agency to repeal a household's 3-year suspension of re-registration in the Database. According to information provided by the Ministry of Labour, Health, and Social Affairs of Georgia, in 2011, the suspension of registration in the Database had lifted for 282 households. It is evident that the given provision contributes to the process of restoration of Database registration for households suspended from re-registration. Thus, the introduction of this provision should be assessed positively.

The principal aim of the social assistance intended for persons living below the poverty threshold is poverty reduction and the provision of households on the verge of penury with minimal social and economic conditions. The State must ensure that as many beneficiary households as possible have access to social assistance foreseen by the programme. In addition, the State must assist them in at least the independent acquisition of material resources provided by the assistance programme. The State also has the positive obligation to, over time, further improve and develop the existing system for the implementation of the right to social security.

Such a reduction of the Database is justified only in cases where the livelihoods of the registered households have improved, they have attained a legitimate income, and are able to independently meet the minimal socio-economic requirements provided by the programme; also – if they are ensured assistance by an alternative social programme. The suspension/prohibition, on the basis provided for in the legislation, of a household's registration in the Database is classified as such objective grounds (however, in this case, the duration of the limitation of the right and the range of persons involved are significant). In the remaining cases, the reduction of the Database is grounds for a negative assessment of state policy.

It should be noted that a 3-year suspension of social assistance (ensuing from the duration of the term) is the most severe legal sanction imposed on vulnerable households.

During the application of Paragraph 2, Article 10 of Resolution No.126 issued on April 24, 2010 by the Government of Georgia, attention should be paid to the question of how justified it is to apply the same restrictions on minors and disabled persons as prescribed for adult and able-bodied members of the family.

[235] Resolution No.267 of the Government of Georgia "On the Introduction of Amendments to Resolution No.126 of the Georgian Government 'On Measures for the Reduction of Poverty and the Improvement of Social Security for the Population' of April 24 2010".

According to the interpretation of the Constitutional Court of Georgia: "The State carries no obligation to sustain its citizens, distribute material resources, and, especially, provide them with luxuries. The State is obliged to create an environment where individuals will have the opportunity for self-actualization. The obligation to provide additional assistance arises only in the case where individuals, due to reasons unrelated to them, are incapable to independently sustain themselves or resources provided by them are insufficient for subsistence."[236]

Underage and disabled persons belong to a vulnerable group that requires special care and support from the government. One of the main contingent factors to receive special support is, in one case, the state of a person's health, and in another case – age. In addition, these persons are unable to independently obtain the amount of income, which would be sufficient to ensure a decent standard of living.

According to the report on "Social Protection and Social Inclusion in Georgia", prepared by the European Commission in 2011, households consisting of pensioners (including disabled persons) and minors in Georgia belong to poverty risk-groups. In consequence, these households necessitate additional social and economic resources. The state should pay special attention to these groups and set standards for additional social security for them.

The suspension of social assistance for minors also creates problems associated with restricted access to education. In such cases, these persons cannot enjoy the benefits prescribed by the state in terms of general education, which are attached to the social assistance program intended for families below the poverty threshold. For instance, the Government of Georgia provides annual funding for school textbooks for grades 1 through 12 to those beneficiaries, whose families are registered in the Unified Database for Vulnerable Households and whose rating score is equal to or les than 57,000; while those beneficiaries, whose rating score exceeds 57,000 and is equal to or less than 70,000, the acquisition of textbooks is financed from the first to the sixth grades.[237]

Based on the above, the Public Defender believes that exceptions should exist in the procedures of suspension of the registration of households in the Unified Database, when the same restriction will not extend to the underage and disabled members of the family. These persons should, under certain conditions, have an opportunity to continue to enjoy social assistance envisioned for disadvantaged households. These regulations will facilitate the implementation of social security rights for vulnerable groups.

SEQUESTRATION OF STATE PENSION

In 2011, the Public Defender's Office received regular complaints from citizens, whose pensions had been suspended by 100% on the basis of collection orders issued by the Revenue Service of the Ministry of Finance of Georgia.

According to information requested by the Public Defender's Office from the Revenue Service, a collection order is sent to a bank account for the purposes of writing off and subsequently transferring the tax debt (payment, fine or penalty) to an appropriate budget. In sending a collection order to a bank account, the Revenue Service is guided by Paragraph 1 of Article 243 of the Tax Code of Georgia, according to which, in cases provided for in the Code, a tax authority reserves the right, within the limits of the recognized tax debt, to write off from a person's bank account (except for a savings account) payments, fine and penalty amounts with a collection order and transfer them to the appropriate budget.

In cases reviewed by the Public Defender of Georgia, the Revenue Service was guided by Paragraph 7[238], Article 238 of the Tax Code of Georgia and thus recalled the collection order from retirement accounts. Despite the fact that the Revenue Service had positively resolved the issue, the Public Defender of Georgia considered it expedient to conduct

[236] Decision No.1/2/434 of the Constitutional Court of Georgia in the case *The Public Defender of Georgia v. The Parliament of Georgia.*

[237] Decree #252 of the Government of Georgia "On the Provision of Textbooks to Students in Families Living below the Poverty Threshold" issued on June 27, 2011.

[238] The activities referred to in this Paragraph may be invalidated by the decision of the Minister of Finance of Georgia, an authorized person determined by the Minister of Finance of Georgia, the Head of the Revenue Service, or, in cases specified under Para. 8 of this Article, the Head of the Tax Authority (24.06.2011, #4963)

an additional review of the rules of conduct prescribed by Paragraph 1, Article 243[239] of the Tax Code of Georgia (as a special norm of action of the Revenue Service).

The recall by the Revenue Service of the collection order under existing regulations is undoubtedly an expression of good will; however, noteworthy is the fact that the existence of this right implies a much higher standard of protection, than the State's good will.[240]

Obligations of a State in respect of social rights are primarily derived from the principle of welfare state. Although the principle of welfare state is defined in the Preamble of the Constitution of Georgia as an objective of the State, in no case does it provide a means to assert that this principle is only declaratory policy provision that at a certain time and under specific circumstances does not obligate the State to take any action.[241]

Article 2 of the International Covenant on Economic, Social and Cultural Rights obligates Georgia, as a State Party, to ensure the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

As noted above, Paragraph 1 of Article 243 of the Tax Code of Georgia authorizes tax authorities to write off, through a collection order and within the recognized tax debt, payment, fine, and penalty amounts from a personal account and to transfer them to an appropriate budget. In accordance with the provision, sending a collection order to a savings account is prohibited. Both salary and retirement accounts are among those bank accounts, where the sending of a collection order is permissible.

Despite the fact that the sending of a collection order to a bank account serves the purpose of writing off a tax debt (payment, fine and penalty) and its subsequent transfer to an appropriate budget, it is essential to evaluate whether such action elicits the deprivation of an individual of subsistence resources. In cases reviewed by the Public Defender's Office, through the sending of collection orders to retirement accounts and, thus, suspending 100% of the pension, individuals were indeed deprived of their livelihoods.

With regards to the above-mentioned, on June 13 2011, the Public Defender of Georgia addressed the Chairman of the Parliament of Georgia with a legislative proposal, which entailed the formulation of the provision(s) of the Tax Code by the Parliament of Georgia in a manner that would preclude the suspension of 100% of the pension and depriving citizens of their subsistence resources.

During the reporting period, the Public Defender also received claims from citizens, whose state pensions had been suspended by 100% as a means of enforcement of court decisions by the LEPL National Bureau of Enforcement under the Ministry of Justice of Georgia.

Information obtained from the LEPL National Bureau of Enforcement by the Public Defender's Office revealed that, in each case, following the acquisition of property, the executive sequesters the retirement account. After the applicants address the Bureau of Enforcement with regards to the revocation of sequestration of their retirement accounts, in accordance with Article 45 of the Law of Georgia "On Enforcement Proceedings," the sequestration is fully revoked.

The Law of Georgia "On Enforcement Proceedings"[242] allows for exact levy on the pension during compulsory enforcement proceedings. However, in this case, a regulation established by Article 19 of the Law of Georgia "On State Pension" is taken into account, according to which: the return of excess accrued pension is possible by decision of a competent authority and no more than 20% of the original pension; in addition, the suspension of no more than 50% of the pension is permissible by court ruling.[243]

[239] In this case, provided for by the Code, the tax authority is entitled to write off, through a collection order and within the recognized tax debt, payment, fine, and penalty amounts from a personal account and to transfer them to an appropriate budget.
[240] See Decision #1/2/434 of the Constitutional Court of Georgia rendered on August 27, 2009, dissenting opinions of Judges K. Eremadze and B. Zoidze.
[241] Ibid.
[242] See Sub-Paragraph a.b, Para. 5, Article 17 of the Law of Georgia "On Enforcement Proceedings".
[243] Para. 2; 3, Article 19 of the Law of Georgia "On State Pension".

Article 45 of the Law of Georgia "On Enforcement Proceedings" also identifies the property, on which levy cannot be collected. According to the Law, in addition to items essential for professional activity, life, and economic production, the following is not subject to sequestration:

- Targeted state assistance;
- Property belonging to a member of a family registered in the Unified Database for Vulnerable Households, besides property used as a means to ensure the request, the socio-economic indicator of which is lower then the limit set by the government;
- Income lower than minimum wage.

The entry in the Law of Georgia "On State Pension", and the introduction of relevant amendments and additions[244] to the Law of Georgia "On Enforcement Proceedings" constitute effective steps by the Government to ensure the social rights of citizens. These obligations are imposed on the State by both national, as well as international legislation.

Based on the foregoing, it is imperative that legislative acts clearly identify the relevant regulations, which preclude the possibility of infringement of these rights with respect to the category of persons for whom the state pension is a necessary and the only means for subsistence.

RECOMMENDATIONS:

- **We address the Ministry of Labour, Health, and Social Affairs with a recommendation to develop and submit to the Government a project on changes and amendments to the methodology of the assessment of the socio-economic status of households, which will enable homeless families and those who are sheltered by other families or in others' property, to receive assistance, if necessary.**
- **We address the Government of Georgia with a recommendation to approve with a resolution the changes and amendments to the methodology of the assessment of the socio-economic status of households, be prepared by the Ministry of Labour, Health and Social Affairs, which will enable homeless families and those who are sheltered by other families or in others' property to receive assistance, if necessary.**
- **We address the Parliament of Georgia with a recommendation to ensure the implementation of such changes in the legislation of Georgia, which will preclude the suspension of pensions by 100% and the deprivation of citizens of subsistence resources.**
- **We address the LEPL Social Services Agency (SSA) under the Ministry of Labour, Health and Social Affairs with a recommendation to develop a different standard of social protection for minors and disabled persons under certain circumstances during the suspension of registration in the Unified Database for Vulnerable Households for a period of 3 years.**

[244] See Decree #3884 "On the Introduction of Relevant Amendments and Additions to the Law of Georgia 'On Enforcement Proceedings'" issued on December 17, 2010.

Right to Work in Public Service

During the 2011 reporting period, the Public Defender of Georgia reviewed a number of complaints filed by citizens, dealing with violations of their labour rights, as public officials, guaranteed by the Georgian legislation, upon their dismissal from public service.

This Chapter will review problems impeding the adequate realization of one of the components of the broad concept of the right to work[245] – employment protection rights,[246] and the causing factors of the violation of the above rights by authorized public officials, revealed by the Public Defender in 2011.

It is noteworthy that during the 2011 reporting period, the Public Defender's Office mainly received complaints from former public servants who had been dismissed from the public service sector due to the violation of official duties (disciplinary misconduct) or due to redundancy as a result of institutional reorganization. These claimants believed that during their dismissal from their occupations, the violation of one of the components of the right to work – employment protection rights[247] – was violated.

The validity of the notion that labour-related rights constitute the most problematic area of economic, social and cultural rights is verified by the abundance of applications reviewed by the Public Defender dealing with the potential infringement of the right to work (only one component of the right to work – employee protection rights, should be taken into account).

Following the detailed review by the Public Defender's Office of applications/complaints filed by dismissed public servants in connection with the potential infringement of the right to work, it could be concluded that, in some cases, public servants are dismissed from public service as a result of neglect on the part of authorized persons of norms established by the Georgian legislation, which, in turn, leads to gross violations of labour rights of certain citizens.

245 "The Right to Work is often considered as one particular right of the Recognized Human Rights, while, in actuality, it constitutes a complex normative aggregate (freedom from slavery and similar practices, freedom from forced and compulsory labour, freedom of labour, the right to employment, employment protection rights, protection against unemployment, etc.) and not a single legal concept". See Krzysztof Drzewicki, "The Right to Work and Rights in Work", [in] A. Eide, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights. A Textbook, 2nd Edition, The Hague-London-Boston: Kluwer Law International, 2001.

246 "Some of the most significant components of the Right to Work are Employment Protection Rights, or legislative and other measures for the maintenance and protection of labour relations". See Krzysztof Drzewicki, "The Right to Work and Rights in Work", [in] A. Eide, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights. A Textbook, 2nd Edition, The Hague-London-Boston: Kluwer Law International, 2001

247 "The essence of Employment Protection Rights generally involves the prevention of arbitrary and unfair dismissal ensuing from the stability of relations and other aspects that determine immunity." See Krzysztof Drzewicki, Employment Protection Rights, The Right to Work and Rights in Work", [in] A. Eide, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights. A Textbook, 2nd Edition, The Hague-London-Boston: Kluwer Law International, 2001.

Labour-related rights regulations currently in force in Georgia are established by legislative acts and by-laws,[248] as well as international agreements related to labour law,[249] to which Georgia is a party and which carry the power of direct action in relation to Georgia.

Of the national laws in force in Georgia, the legal bases of the organization of public service,[250] relations associated with the implementation of public service,[251] and the legal status of a public servant[252] (including the rights and remedies of public servants[253]) are declared in the Law of Georgia "On Public Service".

Thus, the Law of Georgia "On Public Service" defines and regulates the legal grounds for the appointment,[254] as well as the dismissal of a public servant by an authorized person or body exercising state power[255] (among them, imperative requirements for the restriction on dismissal of a public servant according to a specific period of time).[256]

Based on the foregoing, it is evident that a public servant may be lawfully dismissed under one of the reasons stipulated by Chapter 10 of the Law of Georgia "On Public Service" and by an authorized person or body exercising state power. However, it should also be mentioned that competent authorities exercising state power – State and local government fiscal (budgetary) institutions, where the activity is considered public service, represent administrative bodies[257] and are bound by regulations established by the administrative legislation of Georgia. Accordingly, the authority exercising state power or an authorized representative of the public service makes a decision – with regards to the dismissal of a specific public servant – through an individual administrative legal act[258] issued on the basis of administrative legislation.

Although the public authority/authorized representative of the public service exercises discretionary authority[259] during the dismissal of a public servant, pursuant to legal requirements, measures foreseen by the administrative legal act issued during the implementation of discretionary powers granted to resolve the issue shall not elicit undue restrictions of a person's legal rights and interests.[260]

Thus, during the exercise of discretionary powers (dismissal of a public servant), a public authority/authorized representative of the public service shall, under their own responsibility, within the limits prescribed by law and taking into account the objectives of the law and the circumstances of each case, renders a relevant decision. Alternatively,

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248 The Constitution of Georgia of August 24, 1995, the Organic Law of Georgia on "The Labour Code of Georgia" of December 17, 2010, the Law of Georgia "On Public Service" of October 31, 1997, the Law of Georgia "On General Education" of April 8, 2005, etc.

249 The United Nations Universal Declaration of Human Rights of December 10, 1948, the United Nations International Covenant on Economic, Social and Cultural Rights of December 16, 1966, the European Social Charter (Revised) of May 3, 1996, the Conventions of the International Labour Organization.

250 According to Para. 1, Article 1 of the Law of Georgia "On Public Service" of October 31, 1997, "Public service is an activity within the fiscal (budgetary) institutions – public authorities – of the State and local self-governments".

251 According to Para. 1, Article 14 of the Law of Georgia "Ob Public Service" of October 31, 1997, the labour legislation of Georgia applies to public servants, taking into account the peculiarities of the Law. In accordance with Para. 2 of the same Article, relations associated with public service that are not governed by this Law, are instead regulated by relevant legislation.

252 According to regulations provided for under Para. 1, Article 4 of the Law of Georgia "On Public Service" of October 31, 1997, "A public servant is a citizen of Georgia who, according to this Law, and in keeping with the occupied position, is engaged in remunerative activity in a state or local self-government institution".

253 In accordance with Para. 1, Article 6 of the Law of Georgia "On Public Service" of October 31, 1997, "A civil servant is a person who is appointed or elected to the office staff of the Treasury Department".

254 Chapter II of the Law of Georgia "On Public Service" of October 31, 1997 (Hiring).

255 According to Article 93 of the Law of Georgia "On Public Service" of October 31, 1997, the decision on the dismissal of a civil servant shall be taken only by an official or body who having the authority to hire civil servants to the respective position.

256 Chapter X of the Law of Georgia "On Public Service" of October 31, 1997, (Dismissal).

257 According to Sub-Paragraph "a", Para. 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999, "An administrative body includes all agencies or institutions of the state and local government".

258 In accordance with Sub-Paragraph "d", Para. 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999, "An individual administrative legal act is an individual legal act issued on the basis of administrative law by an administrative authority, which establishes, modifies, terminates or confirms the rights and obligations of a person or a limited range of persons. A decision rendered by an administrative authority on the denial to satisfy an applicant's issue within its jurisdiction, as well as a document issued or approved by an administrative authority, which may lead to legal consequences, may also be considered as an administrative legal act.

259 According to Sub-Paragraph "k", Para. 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999, discretionary authority is the authority of an administrative body or official, which grants them the freedom to select, on the basis of the protection of public or private interests, the most appropriate decision among several relevant legislative decisions.

260 Para. 2, Article 7 of the General Administrative Code of Georgia of June 25, 1999.

during the dismissal of a public servant, a public authority/authorized representative of the public service, in accordance with the Georgian legislation,[261] is obliged to rely on a real legal basis, examine and explore circumstances of relevance to a specific case during administrative proceedings,[262] and, during the written substantiation of the appropriate administrative legal act, reflect all factual circumstances giving rise to the decision rendered on the basis of discretionary powers[263]

At the same time, the prohibition established by administrative legislation is significant. The prohibition is stipulated by the principle of rule of law and under which an administrative body may not perform any act contrary to the requirements of the legislation.[264] Notwithstanding the foregoing legal obligation, several cases reviewed by the Public Defender of Georgia dealing with the dismissal of public servants reveal the neglect by public authorities of the above legal regulations. Moreover, contradictions with the law can be observed in the reflection of the decision rendered by the public authorities/authorized representative of the public service (decision regarding the dismissal of a public servant) in the individual administrative legal act. There are also essential violations of the requirements established by law with regards to the preparation and issuance of the act (order of dismissal). All of the above gives rise to grounds for the annulment of the individual administrative legal act in accordance with the General Administrative Code of Georgia.[265]

The analysis of cases reviewed by the Public Defender of Georgia in connection to the dismissal of public servants by public authorities gives us reason to conclude that, in some cases, authorized persons make the decision on the dismissal of a certain public servant without any substantiation or consideration of circumstances essential for the purposes of the case. In order to illustrate the validity of this opinion, the following cases will be reviewed: the dismissal of Citizen S. Ts. from the Ministry of Internal Affairs of Georgia due to improper performance of official duties (disciplinary misconduct); the dismissal of Citizen Sh. K. from the Ministry of Labour, Health, and Social Affairs of Georgia and Citizen Kh. Sh. from the Security Office of the Kutaisi Court of Appeal due to redundancy as a result of institutional reorganization.

On June 1 2011, **Public Servant S. Ts.** was dismissed from the Department of Emergency Management under the Ministry of Internal Affairs of Georgia on disciplinary grounds. As a result of the examination of circumstances of relevance to the case, the Public Defender of Georgia concluded that the order on the dismissal on disciplinary grounds of Public Servant S. Ts. from the Office of Internal Affairs by the Department of Emergency Management under the Ministry of Internal Affairs of Georgia, as well as the conclusion of the General Inspection could not determine how the improper performance of duties by the applicant was expressed, in particular, what were the legal implications, in each specific case, of the detection of improper performance of duties or an indifferent attitude on the part of Public Servant S. Ts. It is also significant that, in accordance with the personal records of Public Servant S. Ts. the disciplinary misconduct indicated as a basis of the dismissal was a first-time offence and the applicant had been repeatedly awarded for performing the duties assigned in good faith.

According to Paragraph 6, Article 4 of the "Disciplinary Regulations of the Ministry of Internal Affairs of Georgia" approved on June 24 2003 by Decree #217 of the Minister of Internal Affairs of Georgia, the administrative body also failed to discuss the expediency of the disciplinary action; namely, whether the content and severity of the disciplinary misconduct, as well as the past activities and reputation (moral character) of the Public Servant rendered it inexpedient for S. Ts. to continue working within the system of the Ministry of Internal Affairs. Thus, in this case, in the opinion of the Pubic Defender of Georgia, the formal legality of the administrative legal act (order of dismissal) issued on the dismissal of Public Servant S. Ts. from the Ministry of Internal Affairs of Georgia was violated[266] and, accordingly,

[261] The Constitution of Georgia of August 24, 1995, the General Administrative Code of Georgia of June 25, 1999, the Law of Georgia "On Public Service", Organic Law of Georgia on the "Labour Code of Georgia".

[262] In accordance with Sub-Paragraph "j", Para. 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999, administrative proceedings are an activity of an administrative authority for the purposes of the preparation, issuance […] of administrative legal acts.

[263] Para. 1, Article 96 of the General Administrative Code of Georgia of June 25, 1999, and Para. 4, Article 53 of the General Administrative Code of Georgia.

[264] Para. 1, Article 5 of the General Administrative Code of Georgia of June 25, 1999.

[265] Paras. 1 and 2, Article 60^1 of the General Administrative Code of Georgia of June 25, 1999.

[266] "The failure to observe one of the criteria of the legality of an individual administrative legal act – eligibility, the formal and material preconditions for legitimacy –, as well as the application of legal norms as a result of improper investigation of the

within the powers conferred by the Organic Law "On the Public Defender of Georgia", the Ombudsman addressed the Minister of Internal Affairs of Georgia with a recommendation to restore the violated right of Citizen S. Ts. to work.

On November 5 2010, **Public Servant Sh. K.** was dismissed from the position of Senior Specialist of the Policy Division of the Department of Health under the Ministry of Labour, Health, and Social Affairs of Georgia by reason of redundancy implemented as a result of institutional reorganization. The dismissal of Public Servant Sh. K. was preceded by the decree of the Minister of Labour, Health, and Social Affairs of Georgia "On the Approval of the Number of Established Posts, Structure, and Remuneration at the Central Office of the Ministry of Labour, Health, and Social Affairs of Georgia," according to which, the 3 (three) existing established posts of Senior Specialist at the Policy Division of the Ministry's Department of Health were reduced by one established post.

In relation to the given case, it is significant to note the interpretation made by the Supreme Court of Georgia in one of its decisions, according to which, the Law of Georgia "On Public Service" allows the administration discretion, in a downsizing, to adequately and objectively assess the professional skills, qualifications, labour discipline, etc. of the employees and make a reasoned decision, as it is essential not only for the particular public servant, but for the entire Public Service[267].

As a result of a detailed review of the given case, in the opinion of the Public Defender of Georgia, in reducing the three established posts of Senior Specialist by one post during downsizing carried out at the Policy Division of the Ministry's Department of Health due to institutional reorganization, the Minister of Labour, Health, and Social Affairs of Georgia failed to substantiate the validity of the dismissal of precisely Public Servant Sh. K. of the three Senior Specialists. In other words, the Minister of Labour, Health, and Social Affairs of Georgia failed to corroborate the grounds on which preference was given to two of the three Senior Specialists and Public Servant Sh. K. was dismissed during the reduction of the three existing established posts by one. At the same time, it is noteworthy that the Ministry of Labour, Health, and Social Affairs of Georgia, in dismissing Public Servant Sh. K., was obliged to objectively evaluate the compliance of the employee's (Sh. K.'s) professional skills, qualifications, capabilities and personal qualities with the requirements of the relevant position, and only then make a reasoned decision on the dismissal. Thus, since it became clear that the formal legality of the administrative legal act (order of dismissal) issued on the dismissal of Sh. K. from the Ministry of Labour, Health, and Social Affairs of Georgia was violated, the Public Defender of Georgia addressed the Minister of Labour, Health, and Social Affairs of Georgia with a recommendation to reinstate the violated right of Citizen Sh. K. to work.

In January 2011, **Public Servant Kh. Sh.** was dismissed from the position held at the Security Office of the Kutaisi Court of Appeal by reason of redundancy carried out during institutional reorganization. In accordance with the structure and staff list of the Tbilisi and Kutaisi Courts of Appeal, and Offices of District (City) Courts approved by Decree #1/23 issued by the Supreme Council of Justice of Georgia on November 29 2010, the structure of the Offices of General Courts (except the Supreme Court) was reorganized, which was followed by staff reduction. The staff of the Department of Human Resources and Organizational Issues of the Kutaisi Court of Appeal was reduced by 36 units, the Chancellery and the Department for Citizen Reception – by 5 units, and the 21 existing established posts at the Court Security Office were reduced by 2 units, i. e. the number of established posts at the Court Security Office was defined by 19 units. Noteworthy is the fact that following the announcement of redundancy at the Kutaisi Court of Appeal, two public servants – bailiffs – were dismissed on the basis of personal statements. Despite the fact that the new staff list of the Office of the Kutaisi Court of Appeals provided for 19 established posts, all of which were occupied at the time of the dismissal of Public Servant Kh. Sh., redundancy served as the basis for the dismissal of the latter, since, in accordance with the decision rendered by the Chairperson of the Kutaisi Court of Appeal, two additional public servants were transferred from other structural units (the Department of Human Resources and Organizational Issues and the Chancellery and the Department of Citizen Reception) to the Court Security Office as bailiffs.

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circumstances of a case, may become the basis for the illegality of the act". See P. Turava, N. Tskepladze, "A Manual on General Administrative Law", the Legality and Illegality of Individual Administrative Legal Acts, Tbilisi, 2010, p. 53.

267 Decision #BS-1148-1095(K-09) of the Supreme Court of Georgia rendered on January 26, 2010.

As a result of a detailed review of circumstances pertaining to the given case, the Public Defender of Georgia concluded that the administrative legislation of Georgia granted discretionary authority to the Chairperson of the Kutaisi Court of Appeal to discuss and select the most suitable candidate only among the public servants already employed in the Court Security Office and if their number did not exceed the number of established posts prescribed by the staff list. At the same time, in the opinion of the Public Defender of Georgia, the professional and personal skills of the candidates employed in the Department of Human Resources and Organizational Issues and the Chancellery and Citizen Reception of the Kutaisi Court of Appeal were to be compared with the professional and personal skills of the public servants employed in the relevant services.

Moreover, it should be noted that the order of dismissal of Public Servant Kh. Sh. issued by the Chairperson of the Kutaisi Court of Appeal failed to indicate the reason why preference was given to the remaining 17 public servants employed in the Court Security Office and the two public servants transferred from the Department of Human Resources and Organizational Issues, and the Chancellery and Citizen Reception. Id est, in the order of dismissal of Public Servant Kh. Sh., which constitutes an administrative legal act, the Chairperson of the Kutaisi Court of Appeal did not substantiate the professional skills, qualifications, capabilities, personal qualities, and other skills, which served as a basis for granting a preference to the above public servants as opposed to Public Servant Kh. Sh.

Thus, since it became clear that the formal legality[268] of the administrative legal act (order of dismissal) issued on the dismissal of Public Servant Kh. Sh. from the Kutaisi Court of Appeal was violated, the Public Defender of Georgia addressed the Chairperson of the Kutaisi Court of Appeal with a recommendation to restore the violated right of Citizen Kh. Sh. to work.

Based on the foregoing, it can be concluded that, in certain cases, public authorities/authorized representatives of public service render decisions on the dismissal of public servants in violation of requirements stipulated by law, while the principle of rule of law expressly prohibits derogation from legal regulations. Such (unlawful) actions on the part of administrative bodies results in the unjustified dismissal of public servants and the infringement of their employment protection rights.

It should be noted that, considering the serious problems prevalent in the area of employment, which have instigated a number of economic and technological changes in numerous countries, at Session No.68 of the International Labour Organization (ILO) held on June 2 1982, the C158 Termination of Employment Convention was adopted. Since the principal aim of Convention #C158 of the ILO is to prevent the termination of employment of a worker without lawful, adequate grounds, the Public Defender of Georgia considers that the ratification of the said Convention by Georgia shall provide additional guarantees for the proper realization of one of the components of the right to work of all employers (including public servants) – employment protection rights.

[268] According to the interpretation made in relation to Decision #BS-664-642(K-10) rendered by the Supreme Court of Georgia on November 3 2010, in the process of determination of the formal legality of an individual administrative legal act, it is necessary to focus on its substantiation, moreover, the indicated norm carries an imperative character and considers it unacceptable to adopt the act without the examination of the facts and evidence of relevance to the case.

Some Aspects related to the Implementation of the Right to Health

INTRODUCTION

The realization of social rights is often more dependent on political and social reality, rather than legal criteria. The right to health is a fundamental human right; accordingly, States are legally bound to protect this right and shall take positive actions to ensure it. The recognition of the right by a country's Constitution does not automatically guarantee its effective protection. In addition, it also does not, ensure the universal encompassment of the population in terms of health services and access to appropriate services for all. The realization of the right depends on political will, the level of a country's economic development, the effectiveness of the legal system and the strengths and efforts of other national human rights institutions.

The right to heath and States' responsibilities for health care are reflected in different international instruments. The right to health can be a part of other rights, which could be directly and/or indirectly implied. The right to health is guaranteed by Article 25 of the Universal Declaration of Human Rights,[269] Article 12 of the International Covenant on Economic, Social and Cultural Rights,[270] Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[271] Article 24 of the Convention on the Rights of the Child[272], Articles 11 and 13[273] of the European Social Charter,[274] the Convention on Human Rights and Biomedicine,[275] etc.

The European Convention on Human Rights and its additional protocols do not directly cover the right to health; however, social rights may be indirectly related to the interpretation of civil and political rights. In relation to this issue, the European Court of Human Rights (ECHR) provided the following general interpretation in one of its cases[276]: "*Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.*"

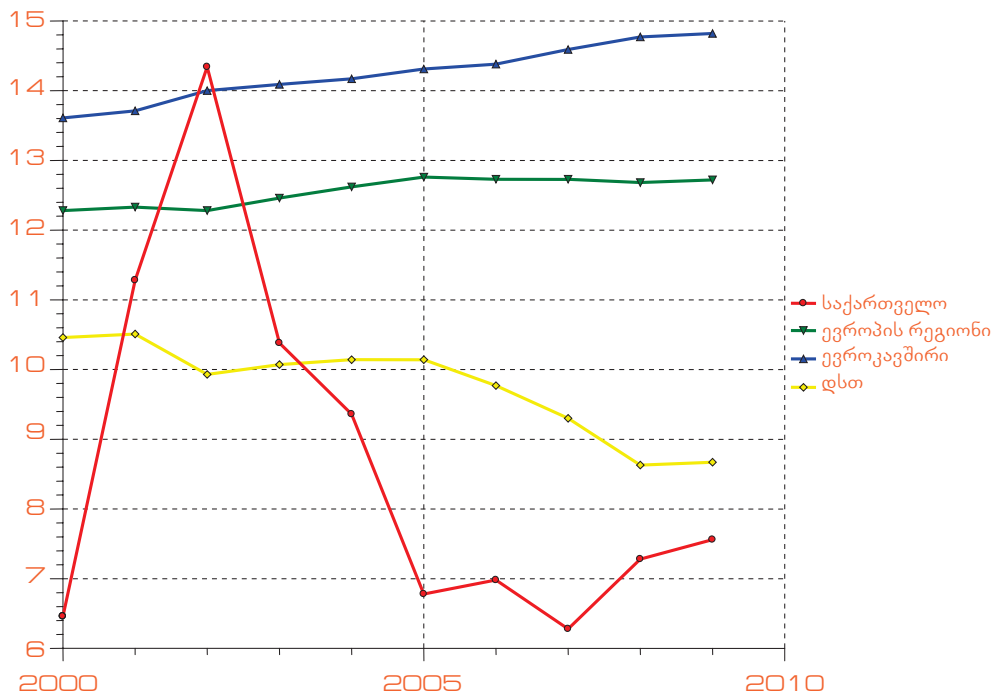
Article 6 of the European Convention, the right to a fair trial, is essentially a procedural guarantee. The protection mechanism provided for by Paragraph 1 of Article 6 was first used by the ECHR in regard to social assistance issues in the cases *Feldbrugge v. The Netherlands*[277] and *Deumeland v. Germany*.[278] In these cases, the fact that the public law elements of benefits provided by the State were dominated by elements of private law played a key role. Thus, entitlement

269 The United Nations Universal Declaration of Human Rights, 1948.
270 The United Nations International Covenant on Economic, Social and Cultural Rights, 1966.
271 The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.
272 The United Nations Convention on the Rights of the Child, 1989.
273 Georgia has made a reservation with regards to this Article.
274 The European Social Charter (Revised), EC, 1996.
275 The Convention on Human Rights and Biomedicine, EC, 1997.
276 *Airey v. Ireland*, 09/10/1979, Series A, No 32, Para. 26.
277 *Feldbrugge v. The Netherlands*, 07/27/1987, Series A, No. 124 A.
278 *Deumeland v. Germany*, 12/10/1984, Series A, No. 100.

to these benefits was considered as a "civil" right. In Feldbrugge's case, the complaint dealt with the right to health insurance benefits. In particular, the applicant was denied the right to certain benefits. Before the Court established a violation of an Article of the Convention, it had to prove that the case concerned a civil right. The decision highlighted the importance of the case as a precedent. In particular, the Court stated the following: "This being the first time that the Court has had to deal with the field of social security, and more particularly the sickness insurance scheme in the Netherlands, the Court must identify such relevant factors as are capable of clarifying or amplifying the principles stated above (in relation to the concept of civil rights)." The Court considered the nature of public and private law in the health insurance system in accordance with the legislation of the Netherlands and concluded that, with regards to the given health insurance benefits, the features of public law, rather than those of public law, were dominant, and the dispute concerned the right protected by Article 6. A similar argument is used in Deumeland's case.[279] In its decision rendered in the case of *Salesi v. Italy,*[280] the Court made reference to the above cases, and noted that "*[T]he development in the law that was initiated by those judgments and the principle of equality of treatment warrant taking the view that today the general rule is that Article 6, Paragraph 1 does apply in the field of social insurance.*"

The right to health holds a significant place in the list of social rights supported by the Constitution of Georgia, and is stipulated in Article 37, which is one of the most comprehensive articles with a broad context. The actual provision of the right to health is dependent upon the activity of the State, in particular, upon the fulfilment of obligations foreseen by public health programs in the field of health care. According to Paragraph 2 of the same Article, the State controls all health care institutions, and the production and trade of pharmaceuticals, which entails the licensing of medical facilities and quality control of their activities. The latter is reflected in the supervision of medical activities (control over the quality of medical services and production of documentation).

One of the key indicators of the prioritization of health for a country is the total expenditure on healthcare. In this case, the so-called Abuja Declaration is used as a basis, according to which countries have agreed that the share of the budget allocated to healthcare costs should constitute at least 15% of total government expenditure. According to estimates of the World Health Organization, in this regard, Georgia is at one of the last places among European and CIS countries.[281]



Graph: *Share of the budget allocated to healthcare in total government spending, WHO, HFA Database, Updated in January 2012.*

[279] Ibid. Para 62-74.
[280] *Salesi v. Italy*, 02/26/1993, Series A, No. 257E.
[281] http://apps.who.int/ghodata/?theme=country#.

Among Georgia's continuing health care challenges are the following: low quality of clinical care, limited access to and unaffordability of essential health services for some segments of population, continuing low public expenditure on health, higher infant and maternal mortality compared to European Union (EU) countries, high abortion rates, high prevalence of tuberculosis, and an emerging HIV/AIDS epidemic concentrated in high-risk groups.[282]

Accordingly, this Chapter, as well as the Report of the Public Defender of Georgia for 2010, analyzes healthcare-related problems existing in the reporting period and the extent to which the State fulfils the obligations imposed on it in terms of the right to health.

In comparison with the previous reporting year, the circumstances in terms of improvement of the legal framework and harmonization with international standards have not changed. According to the recommendations issued in 2010, due to Georgia's transfer to a system of private health insurance, the Public Defender found it expedient to strengthen regulatory mechanisms on the part of the government and improve the legal framework relating to health insurance, especially in order to eliminate discrimination in insurance, and, also, to revise the Georgian healthcare legislation in compliance with the current reforms.

A FEW ISSUES ON HEALTH CARE LEGISLATION

Health care legislation, which consists of several laws, contains the following terminological mishaps: collisions, duplications and technical issues. The problem concerns the terms – "informed consent", "patient", "patient's relative", "legal representative", "health care provider", "medical records", etc.

The issue of confidentiality is presented differently in several laws, which, in fact, do not guarantee it, since the number of persons entitled to the disclosure of medical secrecy is quite broad. For instance, according to Article 42 of the Law of Georgia "On Health Care", "*a medical worker and all personnel of health care institutions is obliged to protect medical secrecy (patient confidentiality), except when disclosure of confidential information is required by a relative or a legal representative of a deceased patient, the Court, investigative bodies, or when it is necessary to ensure public safety and protect the rights and freedoms of others,*" which, essentially, grants an investigator the right to obtain medical records without a patient's consent or a Court decision.[283]

Some changes in the normative acts are also noteworthy, which can be assessed as a legalization of the re-training of penitentiary doctors as "family physicians". In particular, according to Georgian legislation, an individual engaged in independent medical practice and possessing a state certificate in any medical specialty (specialties) is eligible for state certification in any other medical specialty (specialties). According to the law, if a new medical specialty selected by an individual engaged in independent medical practice is not related to the specialty, the certificate for which the individual already possesses, in order to obtain the new state certificate, the individual engaged in independent medical practice shall take a postgraduate (vocational education) course, and, after passing the state certification examination, shall receive the appropriate state certificate. If the new medical specialty selected by the individual engaged in independent medical practice is contiguous to the medical specialty, the certificate for which the individual already possesses, in order to obtain the new state certificate, the individual engaged in independent medical practice shall pass a part of a postgraduate (vocational education) course pertaining to the relevant medical specialty. Its scope and duration, along with the associations of health professionals, is determined by the Professional Development Board. Based on the analysis of the postgraduate education program for "family physicians", family medicine can be considered contiguous to "internal medicine".

The monitoring conducted by the Special Preventive Group of the Public Defender of Georgia revealed that the specialty of prison doctors, in most cases, was "surgery", rather than "internal medicine". Due to this, Decree #01-17/N issued on April 20 2011 by the Minister of Labour, Health, and Social Affairs of Georgia introduced amendments to the April 18, 2007 Decree #136/N of the Ministry of Labour, Health, and Social Affairs of Georgia "On the Determination of the List of Specialties Corresponding to Medical Specialties, Contiguous Medical Specialties, and Sub-Specialties".

[282] Georgia Health System Strengthening Project (HSSP), Mid-Term Evaluation, USAID, 2011.
[283] http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=2575

In particular, in accordance with Article 3 of the Decree, "the medical specialty 'family medicine' shall be defined as a sphere contiguous to the specialties determined by the list of specialties corresponding to medical specialties, contiguous medical specialties and sub-specialties (Annex #1), **except for the following spheres: psychotherapy, psychiatry (with the relevant contiguous specialties), child psychotherapy, laboratory medicine, pathological anatomy – clinical pathology, forensic medicine, medical radiology (with the relevant contiguous specialties), medical rehabilitation and sports medicine, clinical pharmacology, physical medicine and balneology, medical genetics, and homeopathy".**

Medical specialties to which "family medicine" is considered contiguous, in turn, do not constitute spheres related to family medicine, and individuals holding state certificates in "family medicine" must train for these professions by undergoing a postgraduate (vocational education)/residency programme.

The said change essentially means that "family medicine" became contiguous to such specialties, as: surgery, heart surgery, orthopedics-traumatology, neurosurgery, otorhinolaryngology, ophthalmology, etc. This is, however, unequivocally ruled out by the Law of Georgia "On Medical Activity," which defines contiguous specialties as "medical specialties within one medical field, whose educational programs and nature of professional activity is, to some extent, compatible with each other". It is, perhaps, not disputed that the educational programmes and the nature of professional activity for "family physicians" and those for the specialties listed above (surgery, hearth surgery, orthopedics-traumatology, neurosurgery, otorhinolaryngology, ophthalmology, etc.) are not only incompatible, but are radically different from each other. Accordingly, the amendments approved by Decree #01-17/N issued on April 20, 2011 by the Minister of Labour, Health, and Social Affairs of Georgia are potentially dangerous and are likely to adversely affect the quality of patient care.

Such re-training of family physicians is not in line with national legislation. In accordance with the first Article of the Law of Georgia "On Medical Activity," "the purpose of this Law is to provide individuals engaged in independent medical practice the appropriate professional education and practical training, to establish proper state supervision over their professional activities, to protect their rights, as well as to ensure high-quality health services to the population through the establishment of recognized medical standards and ethical norms in medical activities in the country." The above amendment sharply dicreases the medical standards instituted in Georgia.

Furthermore, national legislation in the field of health care calls for adaptation with the existing health care system in the country, which is still in the process of development. Given the current trends, the health care system cannot be regulated only by existing legislation, since the operation of the private health care system is more governed by private law relations, rather than public law elements.

ACCESS TO HEALTH CARE

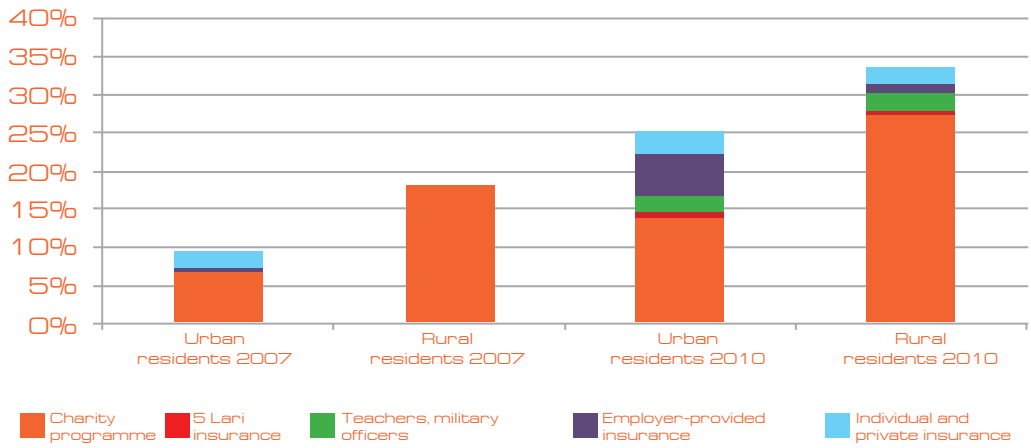
Health Insurance

An effective health care system must ensure access to health care, which is one of the preconditions for the realization of the right to health. As noted above, the universal right to accessible health insurance is guaranteed by Article 37 of the Constitution of Georgia. The terms and conditions of free medical care are defined by the second sentence of Paragraph 1, which states that "free medical care is provided within the rules laid down by law".

Health insurance is guaranteed by the Constitution as a means of access to health care. In the 2010 Parliamentary Report, the Public Defender of Georgia issued several recommendations with regards to the financial access to health care; however, there have been virtually no changes during the 2011 reporting period.

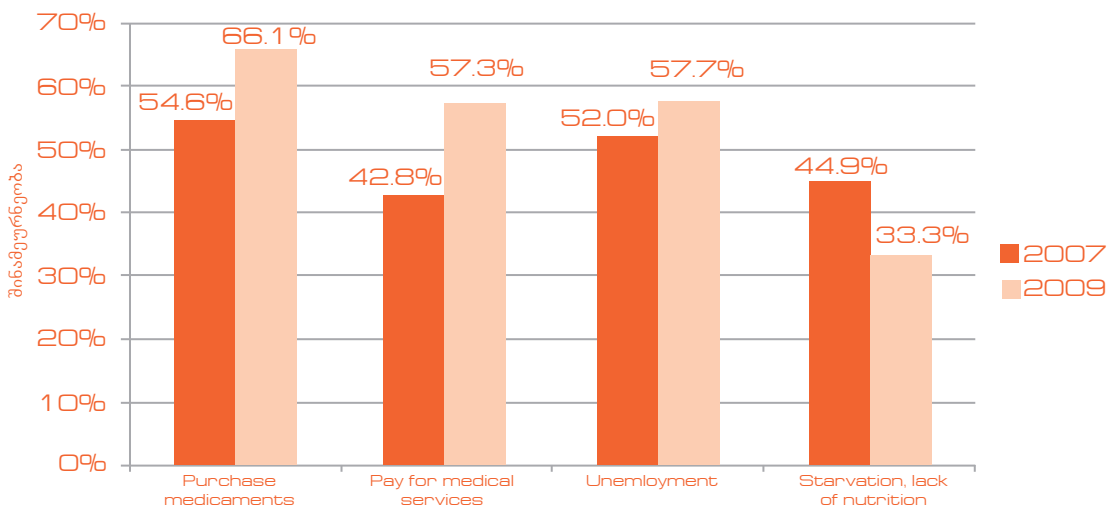
The majority of the population of Georgia remains without insurance, as one of the most significant means of access to health care. At present, only 30% of the Georgian population is insured by any type of insurance. However, in comparison with the previous reporting period, a positive growth trend has been observed and it has been declared that beginning in September of the coming year, the State will insure pensioners and children under 5 years of age.

According to statistics for 2011, a total of 1,408.465 persons are insured, among them, 857,142 persons are insured by state-subsidized insurance, of which 763,311 live in poverty.[284]



According to the graph,[285] a significant majority of insured individuals are insured under insurance contracts granted to persons living below the poverty threshold; the following group is the teachers and military officers, while the group of persons insured under employer-provided insurance contracts is even smaller. A small percentage of the population insured under private insurance contracts does not constitute a problem for a country, if the State is a health care provider. But today, when the role of the State in the provision of health care is minimal, the above percentages and quantitative indicators remain a serious setback in terms of financial sustainability of the health care system. The low percentage of the insured population is associated with independent coverage of medical costs, which increases the catastrophic expenditures on health care and is a negative indicator of the health care financing system. According to data provided by the World Health Organization,[286] Georgia occupies one of the last places in terms of out-of-pocket payment for medical services and its percentage indicator is much higher than the average rate of not only the EU, but also CIS countries.

According to research conducted by the World Bank and the United Nations Children's Fund (UNICEF), access to health is the principal challenge for the Georgian population. The main problem is the purchase of medicine and medical services.



Graph: *The principal problems indicated by households, WB LSMS and UNICEF WMS, 2011.*

[284] The data is provided by the Georgian Insurance Association, 2012.
[285] Georgia Health Utilisation and Expenditure Survey, Molhsa, Geostat, OPM, Curatio International Foundation, 2010.
[286] http://apps.who.int/ghodata/?theme=country#.

The issue of financial accessibility is directly reflected in the applications submitted to the Public Defender of Georgia by the population. As a result of a general analysis of the applications, it was revealed that citizens, who do not fall into any insurance scheme, find themselves at a disadvantage should they require medical service. According to a document prepared by the U.S. Global Health Initiative, titled "Georgia Global Health Initiative (GHI) Strategy", "[i]llness is one of the causes of falling into poverty, as 10 percent more individuals fall below the poverty line after incurring hospitalization expenditures."[287]

The Public Defender's Office reviewed the case of Citizen M. B. According to case materials, M. B. is a socially vulnerable individual (95,620 points), who is, nevertheless, uninsured due to an insufficient number of points to obtain a health insurance policy. Citizen M. B. was in need of uterine extirpation, and suffered from acyclic bleeding and anaemia. M. B. addressed the Ministry of Labour, Health, and Social Affairs of Georgia in 2010 with a request for financial assistance, however, her application was reviewed for a period of one year. Following the eventual review of the application in 2011, M. B.'s request was not satisfied on the grounds that the calculation of expenses for surgical treatment submitted by the citizen exceeded GEL 900. In accordance with Paragraph "d", Article 2 of the Resolution #331 issued by the Government of Georgia on November 3, 2010, only vulnerable persons, whose requested assistance did not exceed GEL 900, may become beneficiaries of the "Referral Programme". Accordingly, Citizen M. B. was unable to receive assistance, despite her vulnerability, due to the fact that the costs for her surgical treatment exceeded the amount specified by law.

The given case is an example of not only a lack of accessibility, but of a problem, which confirms the fact of unequal treatment of persons essentially in an equal position, which was noted by the Public Defender of Georgia in the previous report. Namely, citizens whose rating score ranges between 70,000 and 100,000 are insured in the capital, while individuals residing in the regions and possessing the same status remain without insurance.

At the same time, within the framework of the Component of the "State Referral Programme" "On Medical Assistance during Natural Disasters, Catastrophes, Emergencies, to Citizens Injured in Conflict-Affected Regions, and during Other Incidents Specified by the Ministry of Labour, Health, and Social Affairs of Georgia," the Interagency Commission established for the purposes of rendering relevant decisions on the provision of medical assistance allocated a targeted amount of EUR 1,000 to Citizen D. G. for medical treatment abroad. According to the calculation attached to the application, in order to cover the costs of surgical treatment, the citizen required EUR 3,500-5,000. Thus, Citizen D. G. was unable to undergo medical treatment due to the insufficiency of funds.

Therefore, in comparing these two cases, a "double standard" adhered to by the Interagency Commission during the review of citizens' applications and the decision-making process can be observed. In the first case, an impoverished individual was denied funding for surgical treatment on the grounds that the amount requested did not coincide with the amount determined by the Resolution, while in the second case, the amount was issued, despite the fact that the calculation of the required sum for the surgical treatment did not correspond to the amount allocated by the Commission. However, it should be noted that, due to the insufficiency of the allocated sum, the Citizen was, nonetheless, unable to undergo surgical treatment. Accordingly, such a review of citizens' applications calls into question the effectiveness of both the programme and the decisions taken.

The Public Defender of Georgia also noted in the 2010 Parliamentary Report that the creation of a database of the poorest population and a health insurance programme for persons living below the poverty threshold[288] can be considered as positive trends in the development of health care. However, the insignificant capacity of one of the components of the programme – medication costs, both in terms of amounts and listing, can be considered as a serious drawback. During the current reporting year, the medical insurance programme for the population below the poverty threshold has not improved in terms of coverage of medication costs.

We believe that, taking into account increasing prices on medication, the existing assistance is lower than the minimum standard. Under privileged individuals, despite being able to address primary health care institutions and health care facilities in general, will still not benefit from positive health outcomes due to lack of access to medication. This is

[287] U S. Government, Georgia Global Health Initiative Strategy, http://ghi.gov/documents/organization/175130.pdf

[288] The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2010, p. 233.

confirmed by the report issued by the Mediation Service. Among the problems identified by the Mediation Service during the reporting period, appeals on the part of the insured population with regards to provision of medicines are quite frequent. The applicants state that they require medicaments that are not listed, in addition, they frequently request for a discount on medicines.[289]

In certain cases, as the review of cases submitted to the Public Defender's Office has established, some patients, due to age and a variety of illnesses are incapable of movement and necessitate in-house consultation from family physicians and specialized doctors. Home visits by doctors are feasible, but not covered by insurance companies, since this is not provided for by Resolution #218 issued by the Government of Georgia on December 9 2009. The case of Citizen E. Ch. was associated with this issue. Citizen E. Ch. is an 81-year-old diabetic individual. Due to age and illness, E. Ch. is incapable of movement and lives below the poverty threshold and possesses a health insurance policy provided by the Company "Alpha". In addition to the principal illness, the applicant suffers from associated ailments, due to which an in-house doctor's consultation was required. Since the costs for domestic medical services range from GEL 20 to 26, and the applicant did not have this amount, and consequently, was unable to receive medical consultation. In the opinion of the Public Defender of Georgia, Resolution #218 of the Government of Georgia issued on December 9, 2009, should be amended in a way that would enable, at the decision of a family physician or a district physician, the provision of ambulatory medical care at home.

Lack of access to state insurance is observed in cases of the treatment of patients with oncological illnesses. According to the report of the Mediation Service, the greatest part of applications filed concerns insured individuals with oncological diseases. Prior to the initiation of a chemotherapy course, it is essential to conduct procedures, which are not covered by state insurance. For instance, blood chemistry, cytological examination, etc. Moreover, instances are observed where expenses for chemotherapy exceed established limits. This issue is especially significant in relation to the provision of oncohematological services to children under 18 years of age.[290]

State Health Care Programmes

State health care programmes encompass up to 30 programmes besides state-subsidized insurance, and provide for the (co)financing of equal, but specific health service packages for the entire population of Georgia. Their majority is provided for certain target groups and, with a few exceptions, are not intended for the entire population. The programmes and planned and implemented by the Ministry of Labour, Health, and Social Affairs of Georgia. In certain cases, deficiencies in the planning and implementation of the programmes are observed, which is not in line with the expectations of the citizens in terms of the realization of the right to health.

In 2011, the Office of the Public Defender of Georgia reviewed the case of I. S., who was unable to receive the benefits envisioned by the state programme due to the fact that at the time the applicant required heart surgery, budgetary resources intended for the programme were exhausted. On January 1, 2011, Citizen I. S. was transported by ambulance to a cardiac clinic with an acute myocardial infarction. Following coronary angiography, surgical intervention became necessary, which was conducted on January 13, 2011 at the "Ghia Guli (Open Heart)" Clinic. Citizen I. S. is 64 years old. According to the "State Cardiac Surgery Programme," I. S. was entitled to state benefits; however, the citizen fully and independently covered all expenses associated with the surgical treatment.

According to information provided by the LEPL Social Services Agency (SSA) under the Ministry of Labour, Health, and Social Affairs of Georgia, on the grounds of a deficit existing within the "State Cardiac Surgery Programme" at the end of 2010, the issuance of vouchers was terminated, which entailed the cessation of funding for cardiac surgery. In providing the above information, the SSA relied on Letter #01-16/03/10615 of Deputy Minister of Labour, Health, and Social Resources of Georgia.

It should be noted that, in keeping with Decree #424/N issued by the Minister of Labour, Health, and Social Affairs of Georgia on December 22, 2009 "On the Approval of Health Care Programmes for 2010," the State undertook certain

[289] http://him.ge/uploads/files/901January_June_2011_Report.pdf
[290] http://him.ge/uploads/files/901January_June_2011_Report.pdf

obligations. The Decree generates a basis for demand from interested parties. The requirements necessary for exercising the right granted to an interested party by a normative act must be clearly comprehensible and predictable.

In reviewing the given case, in addition to problems established in terms of the administration of the programmes, deficiencies in the planning and implementation of state programmes were also identified, which directly impacts the realization of the right to health of the Georgian population. A citizen can not determine the exact timeframe until a shortage of funds allocated by the state for medical services arises. We believe that a citizen should receive benefits guaranteed by the State at a time when they are required.

Within the programmes implemented during the reporting year, children's health programmes are featured separately and in combination. The following programmes encompass State liability for children's health:

- Oncological;
- Heart surgery;
- Hospital care for patients with rare diseases and those subject to permanent replacement therapy;
- Rabies care;
- Medical services for children with diabetes;
- Immunization;
- Palliative hospital care for irremediable patients.

A programme of general outpatient services applies to children under 6 years of age. This state programme covers not-so-common child diseases[291]; accordingly, coverage is not high.

In terms of coverage, inpatient and emergency medical assistance to children under 3 years of age should be noted. The programme covers 80% of emergency hospital treatment costs by nosology; however, the upper limit of the age bracket of the beneficiaries of this programme is quite low and cannot ensure full protection of children's' health.

An especially heavy financial burden is imposed on parents, whose children do not fall into any programme and require planned or urgent surgical treatment. According to applications reviewed at the Public Defender's Office of Georgia, the issue is particularly acute when the child is disabled.

In the reporting period, the Public Defender was addressed by Citizen M. T. whose 9-year-old child required emergency surgery. The child holds the status of a disabled person. Following a second cross-checking, the citizen's family was not included in the Database for persons living under the poverty threshold, and, accordingly, M. T. was obliged to obtain expensive medication and fund the surgical treatment independently, which further worsened the dire condition of the family and threatened them with destitution. As a result of mediation on the part of the Public Defender of Georgia, the Ministry of Labour, Health, and Social Affairs of Georgia allocated one-time funding for the treatment of M. T.'s child. Even though the issue of child insurance, and, especially, the issue of insurance of disabled children, remains unresolved, which clearly violates the universality of the rights of child health preserved in numerous international legislative acts.

THE QUALITY OF HEALTH CARE SERVICES

Recommendations on the need to use, in the process of medical services, protocols and guidelines approved by the Ministry of Labour, Health, and Social Affairs of Georgia, as some of the principal components of quality control were developed in the previous report. At present, only 105 protocols and guidelines are available on the web page of the Ministry of Labour, Health, and Social Affairs of Georgia, which is quantitatively a very small number in contrast with

[291] http://www.ncdc.ge/?lang=eng

international standards. In addition, the guidelines and protocols are no longer being constantly reviewed and updated, which should take place in parallel with the rapid pace of medical development.

The lack of clarity in the third and most significant component of medical education – Continuing Professional Development (which, in itself, includes continuing medical education) should be noted separately. The "factual settlement" of the issue was initiated by amendments introduced to the Law of Georgia "On Medical Activity" several years ago. Despite the fact that work on this issue should have continued and, approximately a year later, discussion and legislative initiatives in this area should have been renewed, substantial change is yet to take place, which has an obvious negative impact on the professional competence of medical practitioners. Ultimately, the latter finds its reflection in the quality of provided medical services. In the opinion of the Public Defender of Georgia, together with Professional Medical Associations operating in Georgia, active work should be implemented towards the promotion and development of the Continuing Professional Development system, as well as its reintegration into the legal framework.

In the reporting period, the Office of the Public Defender of Georgia maintained active communication with the State Regulation Agency for Medical Activities under the Ministry of Labour, Health, and Social Affairs of Georgia (especially in terms of quality control of medical services.) Citizens' applications submitted to the Public Defender in connection with the low quality of medical service were reviewed by the Regulation Agency and, by decision of the Professional Development Council of the Ministry of Labour, Health, and Social Affairs of Georgia, several doctors were subject to sanctions applicable under current legislation (professional liability action). Frequently, the case concerned improper management of medical services and professional indifference. Citizen A. P. independently transported their spouse to the hospital at 12 midnight. The patient was bleeding. Following a 3-hour wait, A. P. was obliged to take their spouse home, since no attention was paid to them. The patient passed away two days later.

The case of Citizen L. N. concerns the violation of the procedures of medical recordkeeping. L. N. signed up to the military recruitment list as a volunteer, and underwent an assessment administered by the Military Medical Expert Committee. At the decision of the Gldani-Nadzaladevi Recruitment Commission, L. N. was considered suitable for military service, with minor restrictions. Citizen L. N., despite an appropriate request, was unable to obtain a copy of the Military Medical Expert Committee and related medical records. Following intervention by the Public Defender's Office, we obtained reports from the Chairperson of the Permanent Military Medical Expert Committee and a neuropathologist of the Committee and the results of the Recruitment Commission. The medical reports show that in the medical assessment of Citizen L. N., the Military Medical Expert Committee's neuropathologist made the following entry in the records: "Head trauma suffered 5 years ago. Anisoreflexia." The Committee could not submit these records, since the information was restored by the doctor from personal records, which, due to capital repairs being implemented in the building at the time, could not be recovered. The procedures of medical recordkeeping are regulated by Article 56 of the Law of Georgia "On Medical Activity" and Decrees #108/N and #01-41/N issued by the Ministry of Labour, Health, and Social Affairs of Georgia on March 19, 2009, and August 15, 2011, respectively. We deem that medical documentation produced in violation of the regulations infringes upon the rights of the patient, and the conclusion cannot be considered valid if it is based upon nonexistent objective medical examination records.

Furthermore, in 2011, LEPL State Regulation Agency for Medical Activities examined 161 institutions, including the quality of medical service rendered to 137 patients at 155 health facilities. At sessions in 2011, the Professional Development Council reviewed 87 issues (concerning 107 medical institutions), including the results of the socio-medical examination conducted in 2010. The Council raised the issue of the professional liability of 405 doctors. In accordance with the Council's decision, the state certificates of two doctors were revoked; the state certificates of 100 doctors were suspended for various period of time; and written warnings were issued to 303 doctors.

SEVERAL INDICATORS OF THE OPERATION (ACTIVITY) OF THE HEALTH CARE SYSTEM

Health indicators enable us to assess the level of protection of the population's right to health, i.e. the employment of the indicators constitutes a methodology, in terms of human rights, to measure the progressive realization of the

right. The indicators assess particular health structures, processes, and outcomes, of which the outcome indicator is the most interesting, as it measures the influence of programmes, activities and interventions on the status of health and related issues. Sometimes there is a correlation between structural indicators (is there a strategic plan to reduce maternal mortality?), process indicators (share of births taking place under supervision of qualified medical personnel), and outcome indicators (maternal mortality), however, the result indicator reflects many relating factors and it is difficult to establish a strong causal connection between them.

Infant and child mortality is considered one of the universally recognized indicators for the assessment of the effectiveness of the health system. Infant mortality is affected by the following factors: lifestyle of the population, suitability of food products, a system of support for pregnant women, the level of qualification of obstetrician-gynaecologists and resuscitators, perinatal service functionality, and many others. Therefore, this indicator is "collective" and points to the quality of medical service. According to this indicator, Georgia is significantly behind EU-member states. In keeping with the most recent data provided by the World Health Organization (WHO), the indicator of infant mortality in Georgia equals 20 (per 1,000 live births), and the mortality of children under 5 years of age is 22 (per 1,000 live births);[292] however, according to data provided by the National Statistics Office of Georgia and the National Centre for Disease Control,[293] the mortality rate for children under 5 years of age constitutes 16.4. These indicators are very high in contrast with the indicators exhibited by European countries.

As for the maternal mortality indicator, according to preliminary data obtained from the same source, it constitutes 19.4 per 100,000 live births, which is a significantly improved figure compared to the previous year.

RECOMMENDATIONS:

We address the Government of Georgia and other competent authorities with the following recommendations:

a) **For the purposes of increasing financial accessibility of health care, effective programmes should be developed in order to provide the entire population with universal coverage on basic insurance;**

b) **State-subsidized health care programmes should be improved in terms of medicine coverage;**

c) **For the purposes of enhancing the quality of medical services, new guidelines and protocols should be developed and approved. Moreover, a constant review and update strategy should be developed for these documents, which should be defined as a direct responsibility of medical professional associations;**

d) **The human rights guarantees of doctors and other medical personnel should be further strengthened; medical professions (organized medicine) should be given the means for professional self-administration (reinforced on a legislative base), which is the only justified principle for the clinical autonomy and professional independence of doctors, and which has been a prevalent practice in developed Western countries for centuries; unfortunately, during the last few years, there has been a sharp decline in this regard, which must be stopped immediately and the process must be reversed;**

e) **Effective health care programmes for children's health insurance should be developed;**

f) **Cases of disparity in health insurance policies and corresponding measures should be eliminated. Citizens, living below the poverty threshold and possessing the same rating score, should be insured both in the capital, as well as in the regions.**

[292] http://apps.who.int/ghodata/?vid=9100&theme=country
[293] http://www.ncdc.ge/index.php?do=fullmod&mid=237&level=3&root_id=237

The Rights of Internally Displaced Persons in Georgia

Monitoring the rights of internally displaced persons (hereinafter IDPs) is the main priority of the work of the Public Defender of Georgia. In 2010, the Office of the Public Defender of Georgia published a special *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-affected Individuals in Georgia* (hereinafter special report). This special report presented all the problems that IDPs encounter and underlined the importance of the need to address certain systemic problems that were identified in relation to the implementation of state policy. The 2010 *Annual Parliamentary Report of the Public Defender* also provided a detailed analysis of the human rights situation of internally displaced persons in the country.

As in 2010, the number of IDPs addressing the Office of the Public Defender in 2011 was very high. Together with the Office of the Public Defender, the capacity-building project staff[294] was very actively involved in the monitoring of the human rights situation of IDPs throughout Georgia. The present report is based upon the findings of this monitoring process and upon a general analysis of the situation.

Despite some progress, the findings of the monitoring process and individual complaints filed by IDPs show that the standard of living of IDPs has not improved. The slow pace of the privatization and rehabilitation process has delayed efforts to provide many IDPs with adequate and durable housing. The privatization process itself also has some problems – mainly due to a general lack of awareness, with IDPs signing privatization agreements without knowing either the standards rehabilitation must meet nor their right to be offered other housing alternatives. Another major problem is the frequently unclear and inexplicably delayed legal status of rehabilitated housing, and monitoring also revealed that IDPs living in the regions are not kept informed of whether or not their Collective Centre is to be privatized (and, if so, are not told when this might happen).

No significant improvements were identified in cottage-type settlements in 2011. Supplying running water and heating during the winter remains a challenge, and unemployment continues to be a key problem for IDPs (except for those living in the Tserovani settlement, a certain number of whom are employed). IDPs, however, point to the privatization of cottages as the most important issue.

The results of the post-relocation monitoring which was undertaken in 2011 showed that access to livelihood and employment opportunities for IDPs being re-allocated from Tbilisi has not improved. The state is not implementing any income-generating projects. Local infrastructure in the regions is not giving the IDPs the opportunity to satisfy their basic social and economic needs. Another serious problem for newly evicted or re-allocated IDPs is related to their lack of agricultural land plots.

Amendments were made to the law of Georgia on 'Internally Displaced Persons', and the Action plan is being revised. All the aforementioned topics will be discussed in the following relevant chapter.

[294] Implementing a project (co-funded by the UNHCR and the Council of Europe) to improve the capacity of the Office of the Public Defender (Ombudsman) to address the situation of IDPs and other conflict-affected individuals in Georgia.

AMENDMENTS TO THE LAW AND THE REVISED ACTION PLAN

As already highlighted above, 2011 was "active" in terms of the amendments made to legislation concerning IDPs. It is important to analyze the processes related to government policy concerning internally displaced persons, to those changes which have already introduced in the given direction or those one that are underway.

The 'Law of Georgia on Internally Displaced Persons'

On the 23rd of December 2011, a number of amendments were made to the Law of Georgia on Internally Displaced Persons. The Public Defender of Georgia considers that some aspects of the amended law are not in full conformity with international standards and that the amendments could be seen as a step backwards.

1. The law's title was changed to "the Law of Georgia on Internally Displaced Persons *from the Occupied Territories of Georgia*". This has changed the very definition of IDPs. According to Article 1 of the previous version of the law, an IDP was a person 'who was forced to leave his/her place of habitual residence and was displaced (within the territory of Georgia) as a result of a threat to his/her family member's life, health or freedom due to the occupation of a territory by a foreign country, aggression or a mass violation of human rights or in cases stipulated in paragraph 11 of Article 2.' This definition has been reformulated in the amended law to 'a person displaced from the occupied territory of Georgia is a citizen of Georgia, or a stateless person permanently residing in Georgia, who was forced to leave his/her place of habitual residence as a result of a threat to his/her family member's life, health or freedom due to the occupation of a territory by a foreign country, aggression **and** a mass violation of human rights...' Internal displacement was directly linked to the occupation of the territory. This amendment has narrowed the definition of IDPs and equates internal displacement with forcible displacement from Georgia's occupied territories. This does not meet established international standards. The United Nations' Guiding Principles on Internal Displacement state that 'internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the **effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border**.'[295]

   International law does not oblige states to adopt special legislation concerning IDPs, but Georgia nevertheless numbers among those countries who have adopted special legislation to regulate the issue. This fact has to be welcomed, but it is worth mentioning, however, that such legislation must respect existing international standards. In this specific case, by narrowing the definition of IDPs, the amended law now discriminates against those groups of persons who were forced to flee from territories not considered to have been occupied.

   The Public Defender's 2010 annual report discussed the situation of "IDP status seekers" in detail i.e. the situation of those persons who were displaced from "uncontrolled territories" or from villages adjacent to the conflict zone (villages such as Zardiantkari, Gugutiantkari, Akhali Khurvaleti, Zemo Nikozi). The report also emphasized the fact that being an IDP is directly linked to the realization of the right to return. Despite the fact that most of the families displaced from the adjacent villages are able, technically, to return to their habitual places of residence, the pre-conditions for their voluntary return have not been met. Security concerns remain high. For the realization of the right to return, competent state authorities have the primary duty and responsibility to establish conditions for the 'voluntary, safe and dignified' return of internally displaced persons to their homes or places of habitual residence.[296] It is important to mention that fully realizing the right to return goes beyond the responsibility of Georgia and calls upon all concerned actors to not hinder the implementation of this right and to guarantee that it is realized with

295 UN Guiding Principles on Internal Displacement, E/NC.4/1998/53/ADD.2
296 Ibid. principle 28.1.

certain conditions being met. If the state cannot ensure that all the conditions necessary for return are met, displaced persons have the right to ask to be granted IDP status.

The former version of the law gave this specific group of individuals the opportunity to obtain IDP status. However, the newly-introduced amendments have changed this, since being granted IDP status is now exclusively linked to the territories being occupied by the foreign state; in this case, the villages adjacent to the conflict zone cannot be considered as such. If the former wording of the law granted IDP status to individuals whose displacement was due to "occupation of a territory by a foreign country, aggression **or** a mass violation of human rights," the newly-amended law only does so if all three reasons are present i.e. occupation, aggression **and** a mass violation of human rights.

2. According to paragraph H of Article 1[1] of the 'law of Georgia on Internally Displaced Persons', one-time cash assistance was an amount of money specified by the law that was paid to vulnerable IDPs according to established procedures based upon his or her application. The present wording of the law does not contain this clause. One must therefore assume that the Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees will not provide one-time cash assistance to IDPs, despite the fact that such support was valuable to the most vulnerable IDPs in need of medical assistance.

3. Paragraph 9 of Article 2 of the Law on IDPs determined that persons shall be granted IDP status immediately in case of mass displacement, but this clause was also not included in the law's new wording. Even though removing this paragraph did not directly violate international standards, there is a need for some kind of regulation to consider cases of mass displacement.

In conclusion, **it is necessary to create an alternative legal framework which will regulate the rights and responsibilities of those individuals who were forced to flee from their habitual places of residence due to natural or human-made disasters[297] or mass violations of human rights. It is of crucial importance that a specific normative framework is put in place for those who are displaced from villages adjacent to the conflict zone which would serve as a guarantee for their being provided with durable housing solutions in the future.**

Amendments to the Action Plan for the State Strategy on IDPs in 2009 -2012

The Action Plan began to be reviewed in late 2011 at the initiative of Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. International and national NGOs were very actively engaged in this process. The review is still underway, and an updated Action Plan is expected to be adopted in 2012.

One of the most significant changes made to the document concerns its time frame: the updated Action Plan considers the period 2012-2014. It is clear that the measures the 2009-2012 Action Plan were not duly implemented, which is one of the reasons why the time frame of the existing Action Plan was amended. Reports of the Public Defender of Georgia have already commented upon the delay with which the Action Plan is being implemented.

A draft version of the updated Action Plan mentions that the Plan's aim is to provide long-term and sustainable solutions to the needs of IDPs. It should be noted, however, that finding such sustainable solutions will not be possible without the government making efforts to give IDPs the opportunity to earn a livelihood. The new tendency that needs to be highlighted when discussing the updated Action Plan is therefore related to the creation of a Legal Entity of Public Law (LEPL) which will become the main instrument for planning and implementing livelihood opportunities.[298] It is not yet clear, however, what type of activities the LEPL shall administer, but the government's desire to strengthen socio-economic programmes for IDPs instead of only focusing on providing them with adequate housing is nevertheless to be welcomed – particularly when one remembers that a number of IDPs are still in desperate need of adequate housing.

[297] This topic is discussed in more detail in a chapter on Eco-Migrants.
[298] Draft Action Plan for the State Strategy on IDPs in 2012-2014, para.5.7.

A further amendment to the Action Plan is related to the shift in the social assistance system for IDPs in Georgia: after carrying out activities aimed at improving the integration of IDPs, the currently status-based social assistance programme for IDPs is supposed to shift towards becoming a needs-based system.[299]

The Privatization and Rehabilitation Process of IDP Housing in Georgia

The 2010 *Special Report of the Public Defender of Georgia on the Human Rights of Internally Displaced Persons and Conflict-affected Individuals in Georgia* (hereinafter Special Report) and the 2010 annual report of the Public Defender discussed in detail the privatization and rehabilitation process as well as the problems identified during the monitoring process.

The Public Defender's Special Report made several recommendations seeking to address all the systemic problems identified during the monitoring process undertaken in 2010. More specifically, it made the following recommendations to government agencies:

- Adhering to the standards for the Rehabilitation, Conversion or Construction Works for Durable Housing for IDPs should become mandatory, and common practices should be established throughout Georgia;
- The selection of Collective Centres destined to be rehabilitated or privatized should be carried out according to defined criteria;
- The process of determining the legal status of rehabilitated Collective Centres should be sped up, and all IDPs should be provided with relevant documentation confirming ownership; and
- A list of Collective Centres destined to be privatized should be made available to the public.[300]

These recommendations were only partially taken into account. Standards of rehabilitation, for example, became binding upon construction companies. The updated Action Plan contains a clause which states that the rehabilitation standards approved by the Steering Committee are a guideline for the provision of durable housing, for the rehabilitation of Collective Centres and idle buildings as well for the construction of new blocks of flats.[301] Furthermore, the updated web-site of the Ministry lists those Collective Centres which have been either privatized or rehabilitated, thus giving people the possibility to search through some of the information. However, despite these positive developments, a number of problems remain; these will be discussed in fuller detail in the report.

The above-mentioned reports emphasized the slow pace of the privatization process, which remains one of the most problematic issues. Despite the fact that representatives of Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees usually refer to the fact that the rehabilitation process is underway and that the ownership of housing throughout Georgia is being transferred to IDP families, the slow pace of this process does not meet the time frame already defined by the Action Plan.[302]

In order to determine whether or not the privatization process respects established standards and to scrutinize whether or not there have been positive developments since the publication of the Public Defender's report, a decision was made to undertake a special monitoring and small-scale research exercise which will focus on the aforementioned issues.

This monitoring was undertaken throughout Georgia between July and August of 2011. In total, 252 IDP families were interviewed. Target groups represented those IDP families whose housing was already rehabilitated and which the Ministry plans to privatize, as well as those families who have already been granted ownership of housing (mostly IDPs living in Tbilisi). Face-to-face interviews were undertaken by project monitors. Thus, the present Report includes the findings of this monitoring.

299 Ibid. paras.4.1.,5.3.

300 *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-affected Individuals in Georgia*, 2010 January-July, http://www.ombudsman.ge/files/downloads/en/njyyccudreysvwktqszj.pdf., p.43.

301 Decree of the Government of Georgia No. 575, 11 May 2010, sub-section 2.1.8.

302 Despite the fact that the updated Action Plan (for 2012-2014) gives new dates, we will follow the existing Action Plan (which is still in force).

According to the Action Plan for the Implementation of the State Strategy on IDPs, one of the key principles for finding durable housing for IDPs is the privatization of Collective Centres and the transferral of the ownership thereof to the IDPs themselves.

As indicated in the Strategy, privatization is a voluntary process. The government will only transfer ownership of housing to IDP families living in collective displacement centres if they accept the government's offer. IDPs should be given the opportunity to receive all relevant information on available alternatives from the state. They have the right to request detailed information from government representatives on the aforementioned issues. As privatization is a voluntary process, IDPs can refuse offers made by the state without being deprived of their right to reside in the housing they occupy.

The privatization process began in 2009 following presidential decree No.62, which stated that the ownership of state-owned Collective Centres would be transferred to IDPs for a symbolic price of 1 Georgian Lari (approx. 0.50 Euros). Based upon official statistics published in the 2010 annual privatization report of Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, 268 Collective Centres were privatized during 2010 and 6,317 families were granted ownership of housing.[303] Most of the privatized Collective Centres are located in Tbilisi; the privatization process is also underway in the regions, but progress is extremely slow. According to the Ministry's annual report, people who became IDPs as a result of the fighting in 2008 were to be granted ownership of housing by 2011.[304] This goal was, however, not achieved by then. At this stage, none of the new cottage-type settlements have been privatized and IDPs have not been told when the Ministry plans to begin this process.

According to the Ministry's official figures for 2010, of 1,600 Collective Centres only 544 will become durable housing (i.e. the ones where it was determined that such a transformation was possible). The future of most Collective Centres is yet to be determined. 1,044 of them have still not been rehabilitated, and it is still not known whether or not it would even be possible to rehabilitate them and turn them into durable housing at all.[305] The Public Defender of Georgia has addressed Mr. Koba Subeliani, the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, regarding the various Collective Centres that are in a most dire condition. According to the recommendations, the rehabilitation of Collective Centres that are to be privatized must be sped up and IDP families must be provided with adequate housing in a timely manner. Collective Centres that cannot be turned into durable housing must be vacated and IDPs must be offered adequate alternatives.[306]

Based upon the Ministry's data, of 1,044 Collective Centres 596 could be turned into durable housing and 446 are to be vacated and closed. The main reason for closing Collective Centres is either the fact that the buildings are privately owned or that they are in such a dire condition that they cannot be rehabilitated.[307]

A number of construction projects (mostly blocks of flats) are underway across Georgia: in Poti[308] (where the process of moving IDPs in began in the summer of 2011 and went on for two months; this process will be discussed in greater detail below), in Tskaltubo[309], in Batumi and in Zugdidi (where construction is planned). However, even if the new blocks of flats are built very quickly their number will not meet the needs of IDPs waiting for durable housing. If we take into account the fact that around 446 Collective Centres are to be vacated, that the IDPs living therein are to be relocated and that most IDPs currently residing in private accommodation are in need of durable housing, building new accommodation is obviously only a partial solution to the problem of housing IDPs.

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303 Annual Privatization Report (reporting period: January to December 2010), 'Transfer of ownership of IDP living units in Collective Centres', p.5.

304 Ibid. p.17.

305 IDP Housing Strategy and Working Plan (2010), Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Annex 7: 'The Structure of Collective Centres', p.46-47.

306 Recommendation No.748/04-5 of the Public Defender of Georgia, 1 August 2011.

307 See above, note 9.

308 32 blocks of flats built in Poti – 1,168 flats in total.

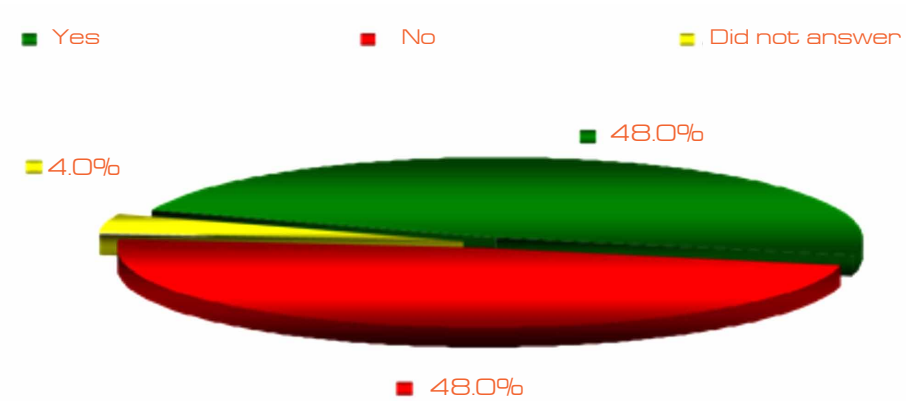
309 10 blocks of flats built in Tskaltubo – 352 flats in total.

Tbilisi

40 Collective Centres were monitored (viz. those whose ownership had already been transferred to IDP families). The questionnaire which was used during monitoring included a number of questions related to the privatization process. The monitoring revealed a number of concerns and problems.

One of the greatest challenges identified during the monitoring exercise remains the IDPs' lack of information or awareness. When asked whether they had information about housing standards, most IDPs responded negatively and stated that the Ministry has not given them accurate information.

Do you have information about housing standards?



Because of this lack of information or awareness, during the allocation of housing most IDPs signed privatization agreements without comparing their terms with the adopted standards. IDPs also noted during their interviews that the Ministry did not give them enough information or explanations concerning the post-privatization process, especially concerning inaccurate details and numbers of family members in the privatization agreements. (When transferring the ownership of housing to an IDP family, one family member signs the privatization agreement and lists the other family members.)

Monitoring revealed a couple of cases in which an IDP family considered the living space whose ownership was being transferred to them to be insufficient and who wished to terminate the privatization agreement. The main reason for this is the IDP's lack of information when considering a privatization agreement. More specifically, the IDPs did not know much about the standards which are to be followed during the allocation of housing. We therefore consider it important that IDPs are given enough time to familiarize themselves with the content of a privatization agreement and that they are given complete information about the consequences of privatization. (They should, for example, be made aware of the fact that the state will not pay their utility bills after the privatization process. It is also important that IDPs are made aware that they can set up so-called "Communities" of houses once the privatization process is complete, etc.)

The fact that most of the IDPs interviewed in Tbilisi are satisfied with the privatization process (92% of interviewed families) is to be welcomed.

Another issue which needs to be addressed concerns the alternatives offered and the voluntary nature of choice. Most IDPs accept the government's offer of housing as they claim to prefer to privatize accommodation they are currently living in even if it is in a dire condition, as leaving for the countryside is not an option for most. This issue is directly linked to that of rehabilitation: section 2.1.1 of the 2009-2012 Action Plan states that the first stage envisages the rehabilitation of Collective Centres and the transfer of living units into the ownership of IDPs. Based upon this specific clause, Collective Centres must be rehabilitated before being privatized. In Tbilisi, however, this was not the case with most Collective Centres. Those Collective Centres that were rehabilitated (Kindergarten No.99 in Gldani, for example) were not vacated during the process and IDPs continued to live in the building during rehabilitation works. IDPs also

noted the bad quality of rehabilitation works. Matters concerning construction or rehabilitation work were discussed in further detail in the Public Defender's 2010 special report.[310]

One of the most problematic Collective Centres in Tbilisi consists of the 3rd and 4th blocks of flats of the Agrarian University Campus on Agmashenebeli Lane, where serious problems were identified during the monitoring: water supply and drainage problems, damage to the roof, cracks in the walls, staircases without a handrail, windows and doors unframed, etc.

IDPs in this Collective Centre stated that they had voluntarily accepted the government's offer to privatize the living space in its present condition, but also stated that the Ministry promised to rehabilitate the building after privatization. The Public Defender recommended to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees that it carry out the rehabilitation works in a timely manner in order to improve the IDPs' living conditions.

Monitoring undertaken in May 2011

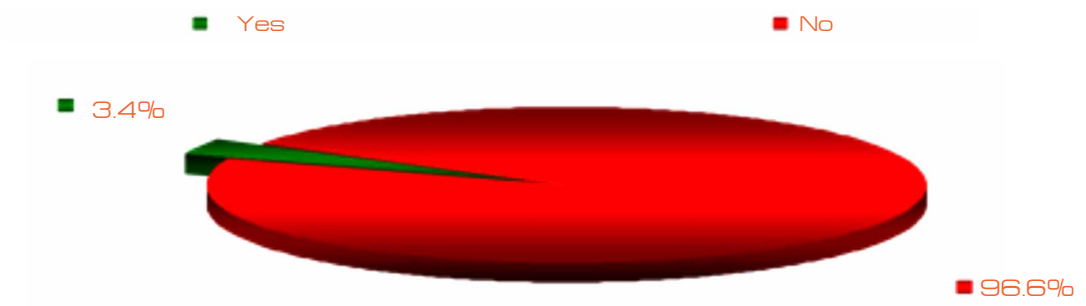
[310] See above, note 7, p.47-50.

It is to be welcomed that the adoption and entry into force of the Law of Georgia "on Condominiums" enabled homeowners to benefit from the support of local municipalities. Whereas the problems of IDPs are the responsibility of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, the situation changes following privatization: IDPs, as residents of such condominiums, have the right to address their local municipality regarding different issues concerning their accommodation. But it should be noted here that IDPs do not know much about living in condominiums: even in those Collective Centres where condominiums were set up, IDPs are not fully aware of how they can benefit or of how these condominiums are run.

Regions

Unlike the situation in Tbilisi, problems are significantly different in the regions. Despite the fact that most of the Collective Centres in the regions have already been rehabilitated, at this stage the number of privatized Collective Centres is very small. The biggest problem is related to the lack of information regarding the privatization process. More specifically, IDPs do not know when their Collective Centre is supposed to be privatized. The data given below shows that 96.6% of IDPs do not know when their home is to be privatized.

Do you have information about housing standards?

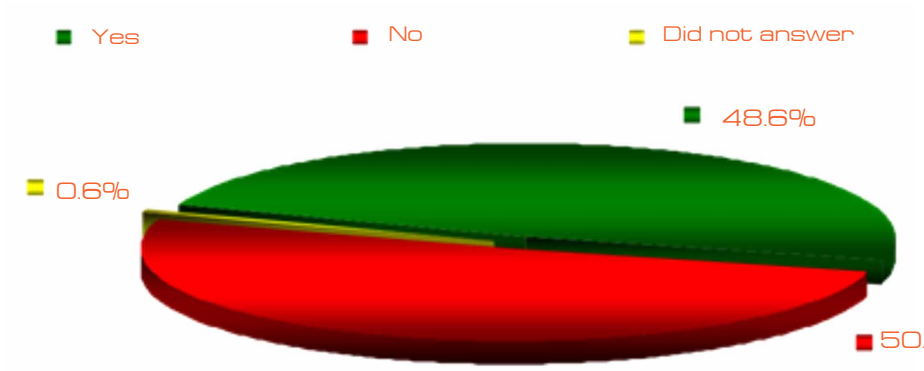


This matter was already discussed in the Public Defender's 2010 special report, but the monitoring shows that the problem remains. In most cases, IDPs do not receive any specific answers from Ministry representatives regarding when their Collective Centre is planned to be privatized. In the western Georgian region of Imereti, the Collective Centres rehabilitated during 2009-10 have still not been privatized,[311] and the situation is the same in the nearby region of Adjara in south-western Georgia (where all the Collective Centres have been rehabilitated but where most of them have not yet been privatized). For reasons which remain unclear, the Ministry is delaying the privatization process. One of the most common challenges for the privatization process is the issue of registration; this matter was also mentioned in the special report, but the problem remains. If we take into consideration the fact that most IDPs do not live in the place of their registration, retaining accurate data is extremely difficult. There are even cases where IDPs are found in two different locations viz. where they are officially registered but also where they currently live. All these problems are hindering the privatization process, as in most cases IDPs ask the Ministry to privatize the accommodation in which they currently reside.

Another key issue is voluntary choice. According to the Ministry, privatization is a voluntary process and IDPs have the right to choose freely: they decide whether to privatize the Collective Centre or not. But monitoring revealed that IDPs are unfortunately not fully aware of this specific issue.

[311] 26 Collective Centres have been rehabilitated in the region of Imereti over the past two or three year, but only 6 of them have been privatized so far.

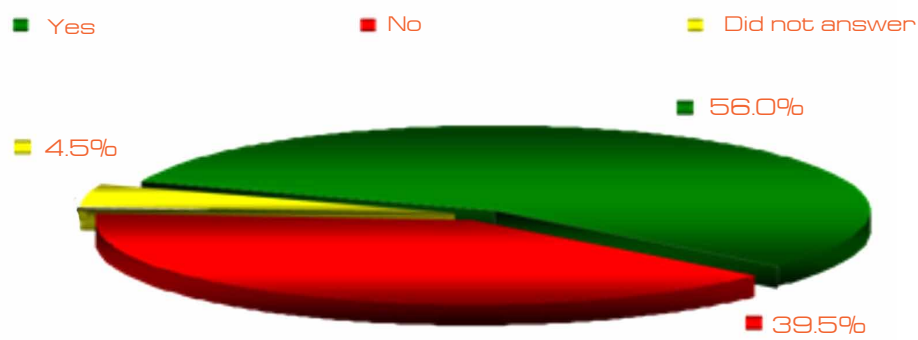
Are you aware that the privatization process is voluntary?



Monitoring also revealed that most of the IDPs living in the regions were not offered any alternative housing. As a rule, IDPs accept the government's first offer – regardless of whether they are satisfied with the accommodation or not.

As for the standards of rehabilitation, IDPs are unaware of them:

Do you know the rehabilitation standards that are to be followed when you are allocated housing?



IDPs are generally dissatisfied with the rehabilitation process. The low quality of rehabilitation work was already highlighted in the special report of the Public Defender, which repeatedly stated that a number of rehabilitated buildings with various problems. This issue unfortunately remains acute. In most Collective Centres, water supply and drainage systems are wrecked and walls are damp and full of holes (as in, for instance, the Collective Centre in the former professional technical school "proftechnikumi" in Poti, or in several Collective Centres located in the former technical university and in the "Nakaduli" sanatorium in the Kareli and Khashuri areas of central Georgia, in a couple of Collective Centres in the north-western Georgian town of Zugdidi and in the so-called "military" settlements in the nearby town of Senaki). A mechanism for fixing defects caused by low quality rehabilitation work is included in the agreements with construction companies, but the fact that this mechanism may only be used within a year following the end of rehabilitation works means that the condition of most Collective Centres remains unsatisfactory. The special report also highlighted this issue, pointing out the need to extend the period of validity of this warranty.

It is to be welcomed, however, that construction companies have of late been correcting (under the supervision of the Municipal Development Fund and the IDP department of the Ministry of Health and Social Welfare of Adjara) some of the defects found in the rehabilitation process of various Collective Centres. More specifically, a new sewage system has been installed in the former "Drug rehabilitation Centre" in Khelvachauri, and some defects have been corrected in the former kindergarten and mechanical factory. A new sewage pipe is also being laid in the former school in Chakvi.

A number of Collective Centres still need to be rehabilitated. Some of them are collapsing and may simply be impossible to rehabilitate. Some are also privately owned, and IDPs living in such Collective Centres are in the worst situation due

to unsatisfactory living conditions and the lack information concerning their possible resettlement. The IDPs ignore what decision will be made concerning them, do not know when they are supposed to be relocated in alternative accommodation and – if their resettlement is not planned – they are unaware of when rehabilitation works are to begin. Some Collective Centres are worth mentioning in particular – such as the "Autocamping" and former tourist centre in Gori, both of which are collapsing and whose conditions are dangerous for the health and well-being of local residents.

Former tourist centre ("Turbaza"), Gori

"Autocamping", Gori

2017

The living conditions of IDPs residing in the "Mziuri" and "Poladi" sanatoriums in the town of Surami are also extremely difficult, as flooding in 2011 ruined the buildings' walls, roofs and foundations. The "Amaghleba" resort located in the village of Amaghleba is also on the verge of collapse, as a conflagration burnt one section of the resort and resulted in a number of IDP families having to find shelter in the other wooden barracks. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees offered the IDPs that they be relocated in the town of Poti in western Georgia, but this has not yet taken place with neither the IDPs themselves nor the Office of the Public Defender being informed of the reasons for this delay. IDPs living in the former "Rioni" tourist centre and "Cottage No.1" are also in an extremely precarious situation. (These Collective Centres were already mentioned in the Public Defender's 2010 special report, in which appropriate recommendations were made but did not, however, lead to any improvements being made.)

The "Mziuri" sanatorium, Surami

The Ministry responded to the Public Defender's recommendation that the Collective Centres mentioned in the special report should be considered in a timely fashion along with other Collective Centres.[312] The Public Defender is, however, unaware of the criteria used by the Ministry during the selection of Collective Centres to be rehabilitated and privatized, nor indeed of how the Ministry plans the schedule of this process. We consider that IDPs currently living in collapsing Collective Centres should quickly be offered alternative accommodation.

POTI'S NEW SETTLEMENT

When discussing the situation in the regions it is important to consider the ongoing relocation of IDPs to the new settlement in Poti. Resettlement began in July 2011 and finished in November of that year.

[312] Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia N01/01-25/6542, 14 September 2011.

In search of durable housing solutions, IDPs were relocated from Collective Centres in the towns of Tskaltubo, Ambrolauri, Tkibuli, Zugdidi and Poti (from 29 Collective Centres in the western Georgian regions of Imereti and Racha and 52 in the nearby region of Mingrelia).[313] According to information provided by the Ministry, a total of 959 IDP families were relocated in Poti's "New Settlement" and the process of allocating accommodation was undertaken according to the "Criteria for IDP durable housing" adopted on the 18th of June 2010 at the 24th Session of the Steering Committee. Housing should thus have been provided to those IDPs who were in extreme need of housing and whose living conditions were particularly dire.

Monitoring showed that the process of allocating accommodation in Poti was indeed voluntary, but also identified certain problems – more specifically, representatives of the Ministry asked IDPs to make up their minds very quickly despite the fact that they had only learnt of their resettlement at the last minute. IDPs living in Tskaltubo, for example, only learned of the upcoming allocation of accommodation barely a day beforehand (and late at night, to boot). It is important that IDPs are given a reasonable amount of time to make a informed decision regarding their possible allocation of housing and thus exercise the right to voluntary choice so well elaborated upon in the State Strategy.

It should also be noted that the list of Collective Centres to be vacated changed quite frequently, which made monitoring extremely difficult in some cases.

Monitoring revealed that the first day of allocation of housing was very disorganized and chaotic. The main reason for this chaos was the resettlement of more IDP families to Poti than had been planned (70 instead of 40). On the second day, the Ministry introduced new electronic lists of accommodation and personal data, which considerably improved the entire process as it gave the Ministry the ability to record and double-check data more easily. Flats were allocated by lottery, but their total number was insufficient as more IDP families were present than had originally been expected.

One of the most serious concerns relating to the situation in Poti is the criteria according to which flats are allocated. The Office of the Public Defender ignores what criteria were used during the selection of IDP families who were to be given durable housing and how the Ministry selected the Collective Centres in the most dire conditions (particularly considering the fact that so many Collective Centres are on the verge of collapse). It is therefore unclear why the resettlement process began with Collective Centres in Tskaltubo. Blocks of flats were already being built in Tskaltubo and it would have been logical to allocate them first before offering IDP families alternative housing in Poti.

Another key issue which needs to be emphasized concerns the challenge of hearing Poti's "New Settlement" in winter, as gas mains have unfortunately not yet been laid in Poti. IDPs can only heat their homes with electricity, an expensive source of energy which naturally results in their incurring high communal bills. As IDPs who install wood-burning stoves in their new homes in an attempt to save electricity are fined, there is an urgent need for gas mains to be laid in Poti's "New Settlement" as soon as possible.

A detailed analysis of the allocation process will be drawn up when the entire process of allocating new housing is over, and the Office of the Public Defender is continuing to monitor the situation with that purpose in mind.

CONCLUSIONS AND RECOMMENDATIONS

Considering the existing situation, Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees – together with other relevant government agencies involved in the privatization and rehabilitation process of Collective Centres – need to undertake the following:

- **Ensure that the privatization and rehabilitation of Collective Centres is accelerated so as to provide IDPs with adequate housing as quickly as possible;**

[313] Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia N05/02-12/10376, 30 December 2011

- **The process of determining the legal status of rehabilitated Collective Centres should be sped up, and all IDPs should be provided with relevant documentation confirming ownership;**
- **IDPs residing in collapsing Collective Centres should be relocated in alternative housing as quickly as possible;**
- **Before signing a privatization agreement, every IDP family should receive detailed information on the results of this process and should be given enough time to familiarize themselves with all the details of these agreements;**
- **For IDPs to make a voluntary and informed choice during privatization, they should be offered several alternatives; and**
- **The resettlement of IDPs should take place according to strictly regulated criteria, and monitoring organizations should know in advance which buildings are to be vacated in order to improve the quality of their work.**

COTTAGE-TYPE SETTLEMENTS

The 2010 special report discussed in detail the problems identified in cottage-type settlements. The Office of the Public Defender decided to conduct follow-up monitoring in order to be able to analyze the existing situation. Accordingly, project monitors conducted monitoring activities in settlements in the villages of Karaleti, Shavshvebi, Berbuki, Sakasheti, Khurvaleti, Mokhisi, Akhalsopeli, Tserovani and Verkhvebi. It is a positive development that considerable numbers of the IDPs residing in these settlements were able to integrate into their new environment. Despite this positive development in terms of local integration, however, a number of problems remain.

Accommodation in newly-built settlements was allocated in 2009, but because of errors made during their construction it was necessary to rehabilitate the IDP cottages as early as 2010 and 2011. Different kinds of work was carried out: walls were repainted and both roofs and floors were repaired. Despite this, however, IDPs remain dissatisfied with the quality of the rehabilitation work – and particularly with that of the building materials used. These problems are, however, mostly the result of the settlements' location. The villages of Skra and Akhalsopeli are, for instance, located in marshland. Besides damaging walls and floors and causing damp, this also has an adverse effect upon the health and well-being of the residents. (According to the IDPs themselves, respiratory diseases are quite common). The 2010 Special Report highlighted the fact that the recommendations of engineers and geologists were ignored when the cottages were built.[314] It should also be noted that most of the problems which have so far been identified are related to "gaps" in the architectural planning which preceded construction.[315]

Heating the cottages in winter is also problematic, since most of them have thin walls which offer poor insulation and thus increase energy consumption.. IDPs in the villages of Mokhisi and Akhalsopeli have no access to a supply of gas. Most IDPs naturally expressed their unhappiness with having to pay expensive utility bills during their conversation with the monitors. According to the IDPs, the average monthly bill is around 200 Georgian Lari (about 100 Euros). IDPs living in the village of Tserovani also pointed out that their gas is supplied by "Kaspi Gaz", a company which charges more than others. This problem will become more challenging when the ownership of these cottages will be given to IDP families as they will then become solely responsible for paying their utility bills.

Another pending issue in the cottage-type settlements (except for Tserovani and Mokhisi) is the problem of their water supply. According to the IDPs, there is only one well in the settlement, which can obviously not afford the residents an uninterrupted water supply. The problem becomes more acute during the summer as the water is then also used for irrigation (in the villages of Skra, Khurvaleti, Berbuki, Sakasheti).

[314] See above, note 7, p.41
[315] Ibid. p. 41

Unemployment also remains a very problematic question. The main source of income for IDP families is either the IDP allowance or the social assistance which they receive from the state. The Tserovani settlement is in a better condition than others in this regard, as several factories have been built nearby and a number of IDPs have found jobs. Most IDPs are, however, still unemployed.

IDPs were pleased with the transfer of agricultural land to them, but are concerned with the location of the land plots, which are far from the cottages in which they live.

Access to healthcare is also problematic in many respects: several IDP settlements have no medical facilities, and there is not even a chemist in the villages of Mokhisi and Akhalsopeli, which forces IDPs living there to travel to the next village several kilometres away to buy even the simplest medicines.

One of the most important issues for IDPs living in cottage-type settlements is the question of privatization. Unfortunately, neither the IDPs themselves nor the Office of the Public Defender of Georgia are aware of when the privatization process is due to begin in the central Georgian region of Shida ("Inner") Kartli.

Considering all the above, one must unfortunately come to the conclusion that all the problems discussed in the 2010 Special Report still remain and that no positive developments can be discerned.

Considering the current situation, it is necessary to:

- Correct all defects described in the present report and undertake rehabilitation works;
- Ensure that the pace of the privatization of cottage-type settlements be accelerated and that IDPs be granted documents proving their ownership of accommodation they occupy; and that
- State agencies implement different livelihood projects to support the local integration of IDPs.

RESULTS OF THE POST-RESETTLEMENT MONITORING

The Public Defender's 2010 *Annual Report on the Situation of Human Rights and Freedoms in Georgia* analyzed in detail the process of evicting and relocating IDPs which took place in Tbilisi. More specifically, the report focused upon two waves of evictions which took place between July and August of 2010 and between November 2010 and January 2011. The eviction and resettlement of IDPs was closely monitored by the Office of the Public Defender together with other partner organizations. After both these periods, monitoring was undertaken in all the alternative accommodation to which IDPs had been transferred (both in western as well as eastern Georgia). This monitoring revealed a number of problems and the Office of the Public Defender made a series of recommendations to relevant state bodies.

Besides the Office of the Public Defender, several recommendations were also made by different international organizations. The UNHCR office in Georgia recommended that Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees refer relocated IDPs (many of whom may have lost their previous access to livelihood) to available services and assistance programs – including vocational training opportunities and income-generating projects.[316] The Representative of the Secretary-General, Mr. Walter Kalin, recommended that the government pay more attention to the creation of opportunities for IDPs to find employment and earn their livelihood.[317] Several foreign governments also made similar recommendations to the Georgian government. More specifically, the Georgian government was advised to ensure that evictions are carried out in full compliance with the guarantees required by international standards, and that those who are evicted are provided with adequate housing and work, access to health services and education.[318] A report published by Amnesty International in 2011 included

316 *Observations on the resumption of the IDP relocation process*, UNHCR Tbilisi, February 2011.

317 *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kalin, follow-up mission to Georgia, A/HRC/16/43/add.3, 23 December 2010, para.34.

318 Human Rights Council, A/HRC/WG.6/10/L.9, draft report of the Working Group on the Universal Periodic Review, Georgia, 3 February 2011, Recommendations 105.91 (Greece), 105.92 (Switzerland), 105.93 (United Kingdom), 105.94 (Spain), 105.95 (Netherlands).

a recommendation for the Georgian government related to the provision of adequate standards of housing. The organization considers that the state should ensure compliance with the principles of international law and adequate standards of housing for all evicted IDPs.[319] Reports written by international experts also emphasized the critical importance of the need for greater attention to be paid to IDP's livelihoods and self-reliance.[320]

The first phase of post-resettlement monitoring was undertaken by the project staff and the Office of the Public Defender in late 2010 and early 2011. As stated above, the Office of the Public Defender made a number of recommendations related to the eviction process and decided to undertake follow-up monitoring. The main purpose of this monitoring exercise was to evaluate the living conditions of IDP families in new accommodation and to double-check whether the problems already highlighted during the first phase of monitoring had been addressed, whether positive developments were discernible in the regions, or if any new problems could be identified which had not been revealed by the first monitoring exercise.

Follow-up monitoring was undertaken in October 2011. Project monitors visited the following locations: Tsalendjikha, the village of Potskho-Etseri, Abasha, the village of Norio, Gurjaani, the village of Bakurtsikhe, Tetritskaro, and the village of Tsintskaro.

The number of families interviewed and their percentage according to region were as follows:

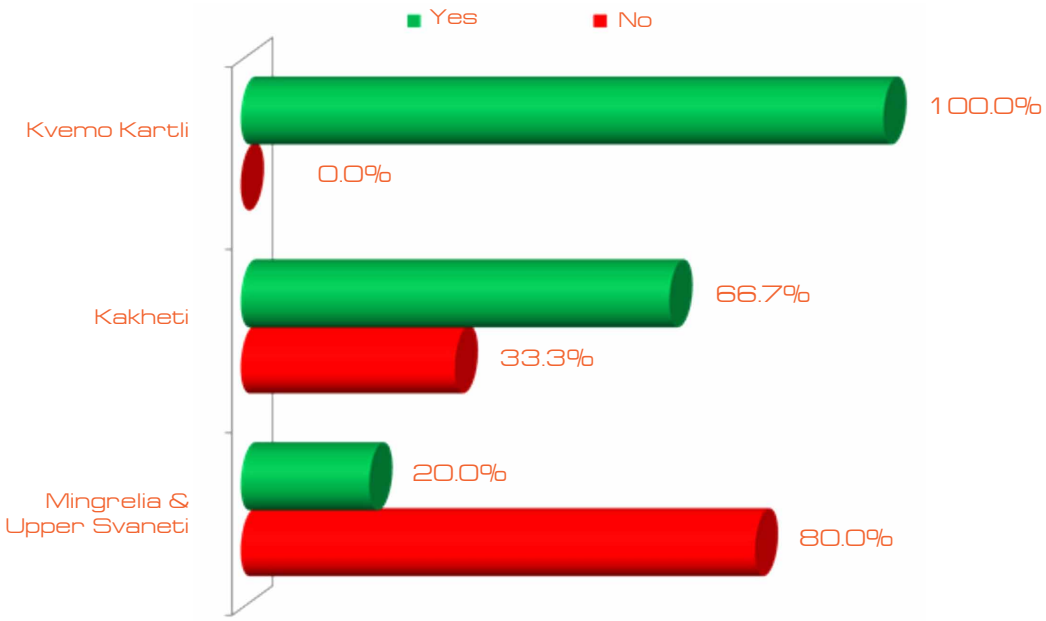
	Number	Percentage
Kvemo ("Lower") Kartli	12	42.9
Kakheti	6	21.4
Mingrelia and Zemo ("Upper") Svaneti	10	35.7
TOTAL	28	100

According to official information, most of the IDPs who were evicted and relocated in 2010 had refused the alternatives the government had offered them. Only a small number of families had accepted the alternative housing arrangements the government had provided, and most of them were resettled in the regions of Kvemo Kartli or Kakheti. During the monitoring exercise, IDP families were asked what the main reason was for their having accepted a particular housing alternative; most of the IDPs answered that they had no other option besides that offered by the government. However, some of the IDPs mentioned that their resettlement to the regions had not been voluntary. Others (mainly IDPs relocated to the village of Tsintskaro) mentioned that the alternative they had been offered was the most acceptable due to its location.

Project monitors tried to identify whether IDP families would accept government offers to privatize their current accommodation. 35.7% of interviewed IDPs stated that they would not want to privatize their accommodation. It is important to see the breakdown of responses according to the regions. Monitoring disclosed that most of the negative answers were given by those IDP families who were resettled in the western Georgian region of Mingrelia, but 2 IDP families in the eastern Georgian region of Kakheti also declared that they would refuse to privatize their accommodation.

[319] Amnesty International, *Uprooted Again: The Forced Evictions of the Internally Displaced Persons in Georgia*, 2011, p.23.
[320] Erin Mooney, *From Solidarity to Solutions: The Government Response to Internal Displacement in Georgia*, Brookings – LSE, November 2011, p. 222.

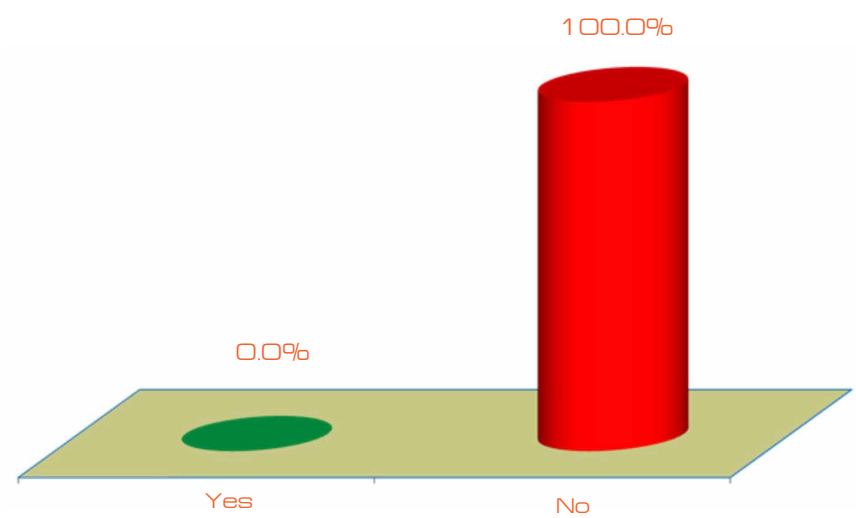
Should the government make you such an offer, would you agree to privatize the accommodation it has provided you with?



Follow-up monitoring showed that the main problem of IDPs living in Potskho-Etseri is their lack of adequate housing conditions: they have no access to healthcare, are far from the closest administrative centre, and are frequently unable to pay for transportation costs. According to the IDPs, problems are mostly due to the bad quality of rehabilitation work: almost all the houses have visible cracks and damp stains on the walls, and to live in such conditions for a long period of time might lead to serious disease. Heating in winter is also a challenge. The key concern for the IDPs residing in Potskho-Etseri is, however, the problem of unemployment. IDPs relocated to Abasha share the same concerns: they consider unemployment to be the main barrier to their integration into the local community. One IDP family living in Abasha also singled out their lack of agricultural land as one of their main concerns.

As stated above, the Office of the Public Defender's 2010 annual report made recommendations to the government that it ensure access to livelihood opportunities and employment. We have tried to double check whether or not the government has implemented any income-generating project, and although unfortunate it would seem that no positive developments could be discerned in the regions.

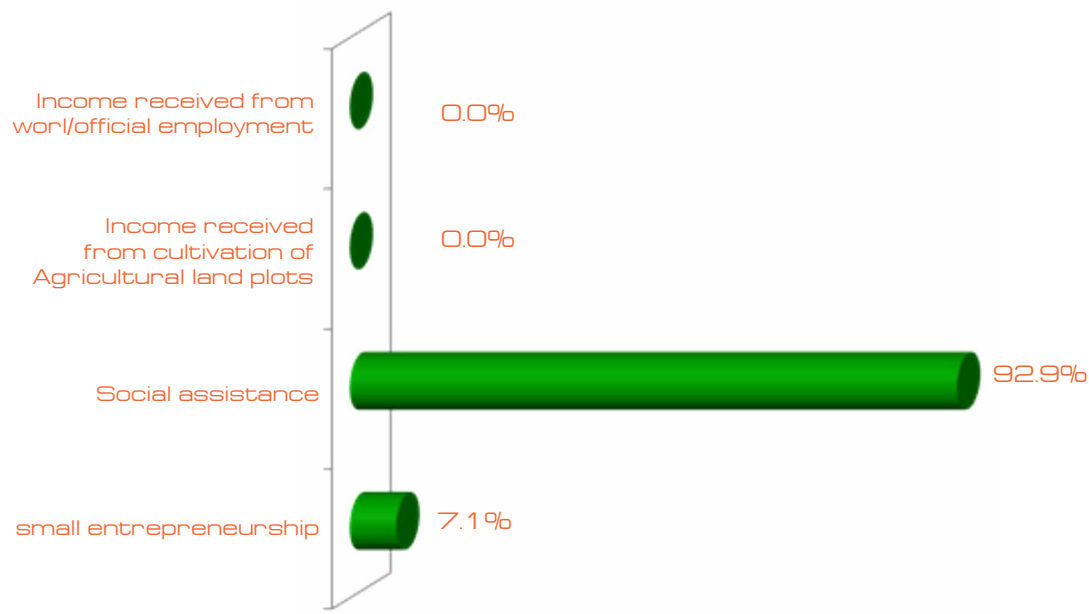
Is the Georgian government implementing any income-generating projects to support the integration of IDPs?



2010

Accordingly, the main source of income for IDP families relocated to the regions is the monthly state assistance they receive.

What is your family's main source of income?



Another recommendation made to Georgia's Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees concerned the granting of plots of agricultural land to IDP families. The Public Defender of Georgia reiterated several times that a durable solution for IDPs can only be achieved when different opportunities for employment will have been created in the IDPs' new places of residence. It is crucial that IDPs are provided with suitable agricultural land plots and that their cultivation thereof be assisted during the initial stage.

According to international standards, increasing the access to land of landless or impoverished segments of the society should constitute a central policy goal in many countries. "Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement."[321]

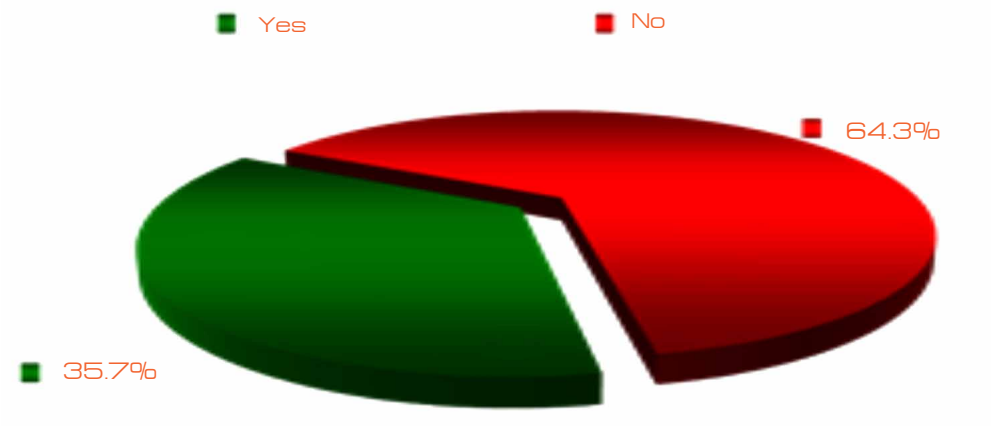
Based on existing international standards, *"evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."*[322]

During the first phase of monitoring, IDPs residing in Bakurtsikhe pointed to the problem of the lack of agricultural land plots. Despite requests made to the local authorities, they have not received any specific response – not even regarding the temporary transfer of such land. The second phase of monitoring showed that the problem of allocating agricultural land plots to IDP families has not yet been resolved.

[321] The Right to adequate housing (art.11(1)): 13/12/91, CESCR General Comment 4, para.8(e).
[322] The Right to adequate Housing (art11.1): forced evictions, 20/05/97, CESCR General Comment 7, para. 17.

Have you been given a plot of agricultural land?

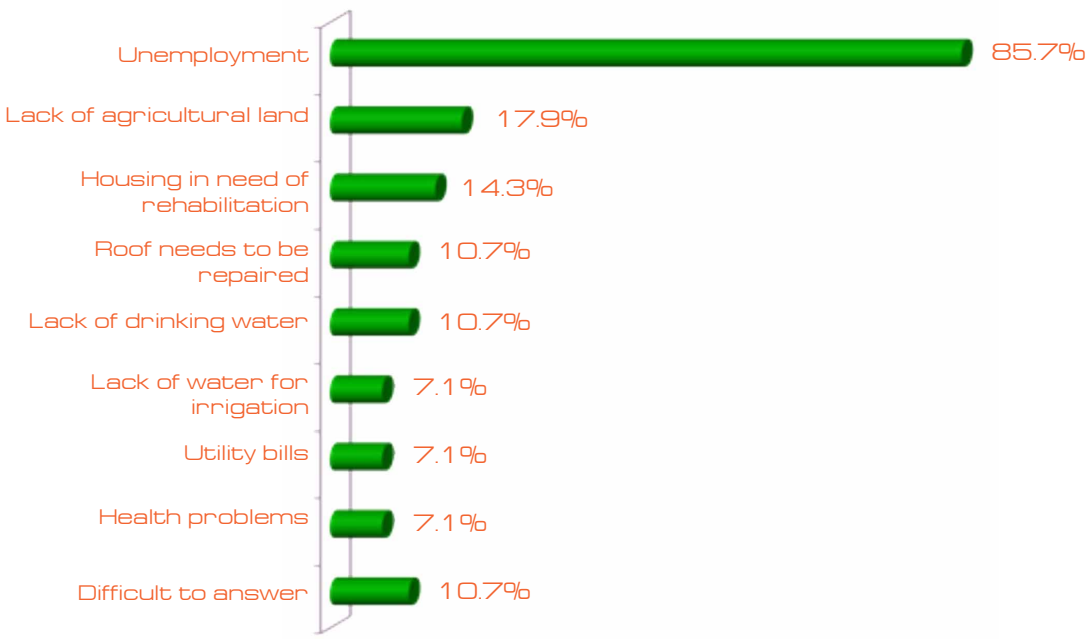
We asked IDPs who answered 'no' to this question what they thought was the main reason for this decision. These reasons are given in the table below:



State (MRA/local municipalities) does not provide agricultural land plots	94.4%
I refused myself	0.0%
Apartment is without land plot	5.6%

Besides seeking to clarify various problematic issues, project monitors also asked IDPs some more general questions in order to identify what their main concerns were after having moved to the regions. As this was asked in the form of an open question, IDPs were free to point out the most serious concerns they thought they faced. The chart below lists those concerns IDPs who had been resettled from Tbilisi to the regions mentioned during their interview.

What is the most problematic issue you have faced after being evicted and resettled?



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The above statistics prove that unemployment is the most challenging problem for IDP families. The situation of the social and economic integration of IDPs has not changed. If we take the indicators given in the *Framework on Durable Solutions for Internally Displaced Persons*[323] and measure the existing reality against the standards elaborated in the document, we may conclude that the government has not provided durable solutions for those IDPs who were evicted and resettled in different regions of Georgia in 2010. According to international standards, when deciding the government must choose those locations which offer access to employment opportunities and will give IDPs the possibility to satisfy their social and economic needs. To achieve this, it is crucial that local infrastructure is sufficiently developed to give IDPs the chance to undertake socio-economic activities, and this relies heavily upon the co-ordinated work of different governmental agencies.

It should be noted that, due to a number of challenges, the project was unable to monitor the situation of those IDP families who are in private accommodation i.e. those IDPs who refused to accept the government's offer of alternative housing and opted for private accommodation instead. Unfortunately, the Office of the Public Defender does not have accurate data concerning that specific group of IDP families, and the Office was therefore unable to include them in its monitoring activities. The number of those IDPs who approach the Office itself is also relatively low. It is, however, anticipated that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees will have accurate data on IDP families who were evicted and resettled during 2010 and 2011 and were transferred to private accommodation. During the implementation of different activities envisaged by the State Strategy and the Action Plan in relation to IDPs in private accommodation, it is crucially important that evicted and resettled IDPs who are in private accommodation are given priority and are provided with adequate alternatives based upon individual assessments of their needs.

In conclusion, based on all the above, it can be stated that the situation of IDPs who were resettled to the regions of Georgia has not changed and remains the same as described in the Office of the Public Defender's 2010 annual report, which discerned no positive developments.

Consequently, the recommendations of the Office of the Public Defender for the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees remain the same:

- **In case IDPs are evicted from different buildings, all the provisions of the "Standard Operating Procedures for the Vacation and Relocation of IDPs for Durable Housing Solutions" shall be implemented;**
- **The government shall ensure that IDPs who have been evicted and resettled have access to livelihood opportunities and employment. Local infrastructure in the regions shall give IDPs the possibility to generate income and satisfy their basic social and economic needs; and**
- **IDPs resettled in the various regions of Georgia shall be granted plots of agricultural land and various livelihood projects shall be implemented.**

In accordance with all the above, one may conclude that – despite significant progress made in terms of finding durable solutions for IDPs – numerous challenges remain to this day whose resolution will require great effort, appropriate levels of funding and the active participation of relevant state agencies.

[323] *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kalin, Addendum – Framework on Durable Solutions for Internally Displaced persons, A/HRC/13/21/Add.4, 29 December 2009.

The Rights of Refugees and Asylum Seekers

INTRODUCTION

According to official figures of 2011, there are 457 individuals with refugee status registered in Georgia.[324] Despite the fact that refugees and asylum seekers almost never file appeals to the Public Defender, the legal status of these individuals is under constant supervision. On February 25 2011, a Memorandum of Understanding was signed between the Public Defender of Georgia and the United Nations High Commissioner for Refugees (UNHCR), which, for the purposes of improving the system of protection of refugees, asylum seekers and internally displaced persons, envisions the strengthening of institutional cooperation between the parties.

Year 2011 was not active in terms of practice; however, during the reporting period, the Parliament of Georgia adopted the bill "On the Refugee and Humanitarian Status", which was to enter into force on March 18, 2012. Accordingly, this Chapter will focus on the positive and negative aspects of this Law.

In Georgia, the legal status of refugees and asylum seekers, the procedures for its granting, termination and suspension, and the rights and obligations ensuing from this status were defined by the 1998 Law of Georgia "On Refugees". The inconsistency of this Law with international standards was several times reflected in the reports of the Public Defender of Georgia.[325] In particular, the most significant problem of this Law was the incompliance of the definition of a refugee with the standards set by international law and the vague definition of social and economic guarantees provided for by law. Despite the fact that the development of the bill "On the Refugee and Humanitarian Status" has been protracted (preparatory work on the bill has been ongoing since 2008 and took approximately 4 years), we believe that its adoption is a step forward in terms of the effective realization of the rights of refugees, asylum seekers, and persons with humanitarian status.

Law of Georgia "On Refugees and Humanitarian Status"

Article 2 of the Law of Georgia "On Refugee and Humanitarian Status" defines the range of persons eligible for refugee status. In particular, *"Refugee status is granted to a persons who is not a citizen of, or stateless person permanently residing in Georgia, and owing to a wellfounded fear of being persecuted for reasons of race, religion, denomination, nationality, membership of a particular social group or political opinion, is in Georgia and is unable or unwilling, owing to such fear, to return to the country of his or her nationality or avail himself or herself of the protection of that country."*

[324] According to information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, in 2011, 77 persons registered as seekers of refugee status, of which 16 were granted the status. In the same year, 226 refugees received Georgian citizenship. Among them were 9 persons, who were denied Georgian citizenship in 2010. In addition, throughout 2011, due to voluntary return to their countries of origin, refugee status was terminated for 19 individuals.

[325] The Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia", 2010, p. 272, the Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia", I half of 2009.

The Law of Georgia "On Refugees" of 1998, set already carried out prosecution as a necessary precondition for the granting of refugee status, which led to its incompliance with the standards established by international law. By contrast, the new Law is fully in line with the definition of a refugee given in the first Article of the 1951 UN Convention Relating to the Status of Refugees. In particular, the Law on "Refugees and Humanitarian Status" also establishes wellfounded fear as one of the preconditions for the granting of refugee status. The 1998 Law of Georgia "On Refugees" did not take this circumstance into account. The definition by law of wellfounded fear of being persecuted for reasons of race, religion, denomination, nationality, membership of a particular social group or political opinion, during State discussions of the issue, provides for the consideration of both subjective and objective conditions and relevant decision-making on the basis of their assessment. This, in turn, increases the feasibility of granting refugee status to a person, which should be assessed positively.

The Law of Georgia "On Refugee and Humanitarian Status" also expands the range of persons under its protection and regulates the procedures for granting of humanitarian status. This is a step forward to ensure the rights for those persons who have crossed the state border of Georgia in search of asylum, but do not meet the requirements established by this Law for the granting refugee status.

We also welcome the fact that the Law of Georgia "On Refugee and Humanitarian Status" helps to protect the principle of family unity, which was not guaranteed by the previous law. Article 7 of the new Law allows the right to family reunification to persons holding refugee and humanitarian status. Article 6 of the same law guarantees the protection of family members of persons holding refugee and humanitarian status by also granting them refugee and humanitarian status. These guarantees were not envisioned by the 1998 Law of Georgia "On Refugees".

Another aspect concerns the protection of the rights of minors. Particularly, in contrast with the 1998 law, the Law of Georgia "On Refugee and Humanitarian Status" has improved the existing situation in this aspect as well. Among the persons/groups that cross the Georgian state border in search of refuge, children belong to the most vulnerable category, especially if they enter Georgia alone, without the supervision of adult family members or relatives. Accordingly, their protection is imperative for effective realization of rights guaranteed to them by the Georgian legislation and international human rights instruments. Article 8 of the Law of Georgia "On Refugees and Humanitarian Status" provides for the appointment of a guardian/custodian for a minor and states that *"if a minor has entered Georgia alone, the application, taking into account all of the circumstances of the case and to the minor's best interests, will be filed by a guardian/custodian appointed to the minor in accordance with Georgian legislation. The Ministry shall immediately and in writing address the relevant guardianship authorities to ensure the appointment of a guardian/custodian to a minor without care, as long as he or she remains in Georgia."*

According to the same law, *"the procedure for granting of refugee or humanitarian status to a minor left without care is implemented in accordance with the age, development level and mental state of the minor."* We welcome the fact that during the filing of the application on the granting of refugee or humanitarian status, the best interests, age and development level of the child are taken into account. However, in this case, the decision on the granting of refugee or humanitarian status should be rendered as soon as possible in order to ensure that the minor enjoys all the legal, social and economic guarantees derived from the status and individual requirements.

The following fact should also be positively evaluated: according to Chapter 5 of the Law "On Refugee and Humanitarian Status", in contrast with the 1998 law, defines in detail the rights and obligations of persons holding refugee, asylum seeker or humanitarian status, and their social and economic guarantees. The *non-refoulement* principle (prohibition of forcible return) is an integral component of international law on refugees and asylum. The principle is interpreted as an inherent right of a person seeking refuge not to be returned to a place where he or she could be persecuted.[326]

In accordance with international law, a State has broad discretion to control the entry of foreign nationals into its territory, as well as their residence and expulsion. Nevertheless, each State must take into account that a forced return of a person endangers his or her basic human rights, such as the right to life, the right to liberty and security, and guarantees for the prohibition or torture, inhuman or degrading treatment or punishment.

[326] The principle of *non-refoulement* of refugees in situations of armed conflict or occupation, Pablo Antonio Fernández Sánchez, Seville, 10 October 2006, p. 2.

The 1998 Law of Georgia "On Refugees" employed the principle of non-refoulement only with regards to persons holding refugee status and did not extend it to asylum seekers. Accordingly, Georgian legislation was unable to provide asylum seekers with necessary protection, which contradicted the standards established by international law.

The fact that Article 21 of the Law of Georgia "On Refugee and Humanitarian Status" provides guarantees against forced return and equally extends the principle of non-refoulement to asylum seekers, and persons holding refugee and humanitarian status is to be welcomed. On the basis of the same Article, the principle of non-refoulement applies to both the country of origin of the victim, as well as any State, *"where his or her life and liberty are in danger for reasons of race, religion, denomination, nationality, membership of a particular social group or political opinion, or due to violence, foreign aggression, occupation, internal conflict, widespread human rights violations or other significant violations of public order."* According to the third paragraph of the same Article, *"it is prohibited to expel or extradite a person holding refugee or humanitarian status to another State where there are reasonable grounds for believing that he or she would be in danger of become a victim of torture or other cruel, inhuman or degrading treatment or punishment."*

The Law of Georgia "On Refugee and Humanitarian Status" also determines the State and local self-government authorities who are responsible for the enforcement and implementation of this law in practice. The Law also establishes the obligation for cooperation between these authorities. In particular, according to the Law of Georgia "On Refugee and Humanitarian Status," the executive bodies of Georgia collaborate with public associations, other States, UNHCR, and other international organizations. Since effective protection of the rights of asylum seekers, refugees and persons with humanitarian status calls for the engagement of different agencies, such collaboration envisaged by the Law should be assessed positively.

Despite the positive trends discussed above, the Law of Georgia "On Refugee and Humanitarian Status" still contains certain **shortcomings** that may hinder the enjoyment of guaranteed rights and freedoms by individuals protected by the Law.

Specifically, according to Article 11 of the Law of Georgia "On Refugee and Humanitarian Status," request for asylum implies an oral or written desire of a person for legal protection in Georgia. According to Paragraph 2 of the same Article, in case of illegal crossing of the state border, an individual shall apply to the first available state agency within a 24-hour period. This entry is very vague and may create certain problems in several aspects. We welcome the fact that the Law does not restrict an individual to apply to a particular institution; however, it is unclear at what point the countdown of the said period begins. It is essential for legislation to accurately define the reference point of time; otherwise, it may lead to certain ambiguities in practice. For instance, this type of problem may arise in the case where an individual crosses the so-called "green border" and may be unaware of the obligation to address a state authority in the designated period of time. Another issue related to the requirements set forth by this Article is the awareness of public authorities. Since the term "public authority" encompasses numerous agencies, we deem it essential that they be informed on their obligations established by the Law "On Refugees and Humanitarian Status" in a timely manner. To be considered is the factor that asylum seekers belong to a particularly vulnerable group. Consequently, it is expedient to develop general guidelines for maintaining a relationship with them, which will assist the representatives of public authorities to provide effective service to asylum seekers.

The preliminary registration date determined by law is also noteworthy. In particular, Article 12 of the Law of Georgia "On Refugee and Humanitarian Status" establishes the procedures for the preliminary review and survey of applications, and registration of asylum seekers. According to the first Article of the norm, an application filed by an asylum seeker in Georgia is preliminarily reviewed by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia within 10 days from the date of filing. In this period, the Ministry carries out a survey of the asylum seeker and makes a decision on his or her registration as an asylum seeker. In case of denial of registration, proceedings on the asylum seeker's case are terminated and the application is no longer considered.

The purpose served by the preliminary review of the asylum seeker's application established by law is unclear. In accordance with existing international standards, following the request for refuge, a person is automatically granted the status of an asylum seeker and he or she is able to enjoy all the rights and freedoms, which are derived from this

status. From the moment of filing an application for asylum, a procedure begins for making a decision on granting the applicant refugee status, which implies a substantive discussion of the case. On the basis of the Law of Georgia "On Refugee and Humanitarian Status," the State is essentially entitled, within a period of 10 days, to reject the granting of asylum seeker status to a person, which rules out the subsequent granting of refugee status in the future. Under such discretionary powers, the State is entitled to deny a person the granting of the status of asylum seeker within 10 days, instead of a 6-month trial period prescribed by law. Under such discretionary powers, the State is entitled to deny a person refugee status within 10 days, instead of a 6-month review period prescribed by law. Since the procedure for the establishment of refugee status, due to its complexity, demands the examination and analysis, on the part of the State, of such factors as the general situation in terms of human rights and freedoms in the country of origin, the subjective and objective aspects of the state of the person seeking to obtain refugee status, the study and analysis of documentation submitted by the applicant, etc., the 10-day preliminary review period may not be a sufficient time period for the exhaustive study of factual and legal circumstances of the case.

Another issue that should be underscored is the time period allocated for the granting of the status. Under Paragraph 1, Article 14 of the Law, the time period established for the substantive examination of the application and relevant decision-making has increased from 4 to 6 months. In addition, the established time period may be extended by no more than 3 months. Since asylum seekers belong to one of the most vulnerable social categories, and require protection of the State, it is essential that the decision rendered by the Ministry be communicated to them as soon as possible. Accordingly, the substantive examination (which may encompass a period of 9 months) delays the procedure for granting refugee status to these persons.

The following issue concerns the procedures for the termination or suspension of refugee or humanitarian status stipulated by Article 17 of the Law of Georgia "On Refugee and Humanitarian Status," for which the Law does not provide completion timeframes. For persons holding refugee and humanitarian status to fully enjoy their rights, it is essential to define the timeframes for the completion of these procedures in order to prevent delay. Thus, the Office of the Public Defender of Georgia addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with a request to provide information regarding these timeframes. According to the Ministry, this issue in the process of development.

It is also imperative to establish procedures for the granting of refugee or humanitarian status to applicants in accordance with Sub-Paragraph "g", Paragraph 2, Article 35 of the Law of Georgia "On Refugee and Humanitarian Status" and for their placement in reception centres, as stipulated by Sub-Paragraph "d" of the same Article, in order to ensure the right to shelter for status-seekers throughout the 10-day preliminary review period. According to information provided by the Ministry, this issue is also currently in the process of development.

It is necessary to focus on yet another issue, provided for by the Law of Georgia "On Refugee and Humanitarian Status". In particular, according to the Law, asylum seekers and persons holding refugee and humanitarian status are entitled to access to medical and social assistance in keeping with the regulations established by Georgian legislation (sub-paragraphs "f" of the first paragraphs of Articles 18 and 19 of the Law of Georgia "On Refugee and Humanitarian Status"). The right to health is of a fundamental nature and is necessary for the effective realization of other human rights. According to case-law of the European Court of Human Rights (ECHR), asylum seekers are members of a particularly underprivileged and vulnerable population group in need of special State protection *(M.S.S. v. Belgium and Greece, Application no. 30696/09, § 251; ECHR 2011) (Oršuš and Others v. Croatia, Application no. 15766/03, § 147, ECHR 2010).* Accordingly, it is indispensable for persons holding refugee and humanitarian status to enjoy all the benefits intended for other vulnerable groups residing in the country. In connection with the above, it should be noted that, unfortunately, some health care programmes approved by the Government of Georgia (for instance, Decree #219 issued by the Government of Georgia on December 9, 2009 "On the Determination of Measures to Be Taken in the Framework of State Programmes for the Purposes of Public Health Insurance and Terms and Conditions of Insurance Vouchers") do not take these persons into account, due to which they do not have access to benefits provided by law for other vulnerable groups.

RECOMMENDATIONS:

Recommendations to the Parliament of Georgia:

a) Relevant amendments should be made to the Law of Georgia "On Refugee and Humanitarian Status" and the 10-day preliminary review period stipulated in Article 12 of the Law should be abolished;

b) A reference point for the commencement of the countdown of the 24 hour period provided for by Paragraph 2, Article 11 of the Law should be specified;

c) The obligation for the development of guidelines by state agencies should be determined, which will assist them to provide assistance to asylum seekers in accordance with the Law of Georgia "On Refugee and Humanitarian Status";

d) The 6-month period intended for the substantive review of applications under Article 14 of the Law should be decreased.

We address the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with the recommendation to develop in a timely manner procedures for the granting refugee or humanitarian status to applicantas according to Sub-Paragraph "g", Paragraph 2, Article 35 of the Law of Georgia "On Refugee and Humanitarian Status" and for their placement in reception centres, as stipulated by Sub-Paragraph "d" of the same Article, as well as for the termination and suspension of refugee or humanitarian status in accordance with Article 17 of the same Law.

We address the Government of Georgia with a recommendation to ensure the inclusion, along with other vulnerable groups, of asylum seekers, refugees and persons with humanitarian status in health care programmes.

Human Rights Situation of Populations Affected by Conflict

The human rights situation for citizens residing in conflict zones has not improved in 2011. The territories of Abkhazia and so-called South Ossetia remain outside the effective control of the Government of Georgia. Given the complex political reality, the human rights conditions cannot be studied in detail. Effective legal protection mechanisms are not available for the population residing in conflict-affected areas, resulting in numerous cases of human rights violations. Unfortunately, the Public Defender of Georgia is deprived of the possibility to verify specific human rights violations on site and to respond accordingly.

According to the principles of international law, despite political reality, the rights of persons residing in conflict-affected areas should be protected. The obligation to protect the rights of populations residing in conflict-affected territories is primarily vested in the occupant state. In accordance with decisions rendered by the ECHR, in cases where the occupant state implements effective overall control over the territory, it has an obligation to secure the entire range of substantive rights set out in the European Convention on Human Rights and additional Protocols.[327]

The Government of Georgia acknowledges positive obligations under international law to protect human rights throughout its territory, including Abkhazia and so-called South Ossetia. However, as stated by the Georgian delegation in the Universal Periodic Review of the UN Human Rights Council, the State is unable to do so due to the occupation of these regions by a third country. The delegation also stressed that no effective mechanisms existed for ensuring protection of human rights in these regions.[328] At the same session, the delegation noted systematic unlawful restrictions discriminately exercised against ethnic Georgians in the occupied regions. The members of the delegation pointed to the following human rights violations: ethnically targeted violence, looting, violation of security and religious rights, hindering of freedom of movement and residence, destruction of property and forced passportisation.[329]

Clearly, the existence of political conflict in the territory of Georgia presents a serious obstacle to the exercise of jurisdiction by the State. Progress on this issue depends on the results achieved at peace talks. The joint Incident Prevention and Response Mechanisms (IPRM) constitute the only on-the-ground process that brings all the sides together to exchange information on local incidents, criminal cases, and human rights violations.[330] The facilitation of IPRM meetings is implemented by the European Union Monitoring Mission (EUMM) and OSCE.[331]

International-level talks are conducted in the Geneva format. One of the last rounds of the Geneva International Discussions took place on December 14 2011. In accordance with a statement issued by the Ministry of Foreign Affairs of Georgia, the request of the Georgian Delegation was an in-depth discussion of the security and stability

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327 *Cyprus v Turkey, (application no. 25781/94)*, Judgment of 10 May 2001, para.77.

328 JHuman Rights Council, Working Group on the Universal Periodic Review, tenth session, A/HRC/WG.6/10/L.9, 3 February 2011, Para. 25.

329 Ibid, Para. 27.

330 Human Rights Watch, 'Living in Limbo, The rights of Ethnic Georgian Returnees to the Gali District of Abkhazia,' July 2011, p.13.

331 <http://www.eumm.eu/en/press_and_public_information/press_releases/2943/>

mechanisms.[332] According to official information, emphasis was made on the violations of freedom of movement in the vicinity of the occupied territories and the continuous practice of arbitrary detentions of the local population.[333] The United Nations has repeatedly called upon all participants in the Geneva discussions to intensify their efforts to establish a durable peace, to commit to enhanced confidence-building measures and to take immediate steps to ensure respect for human rights and create favourable security conditions.[334] The significance of the Geneva discussions is stressed by the Representative of the Secretary-General of the Human Rights of Internally Displaced Persons, Walter Kälin, who has encouraged both sides to make use of the Geneva discussions and other channels of communication to agree on first steps to alleviate unnecessary hardships for the civilian population, while continuing to work towards a more comprehensive solution.[335] The European Parliament has also called on Georgia and Russia to engage in direct talks, without preconditions. [336] The Parliamentary Assembly of the Council of Europe calls on Russia, as well as the de-facto authorities of Abkhazia and South Ossetia to guarantee the safety and security of all persons under their de facto control, not only in South Ossetia and Abkhazia but also in the occupied territories of the Akhalgori district.[337] It is unfortunate that, despite the ongoing negotiations, persons residing in conflict-affected areas do not have access to effective legal protection mechanisms, which results in numerous human rights violations. As noted above, given the complex political reality, it is impossible to implement a detailed study of the human rights situation in the conflict regions.

The 2010 Special Report "On the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia" issued by the Public Defender of Georgia, discussed the violation of freedom of religion of the Georgian population.[338] The Report noted that liturgy in the Georgian language is forbidden in Georgian churches in Abkhazia, and ethnically Georgian clergy are physically assaulted. In 2011, the media often reported on incidents of raids and looting of Georgian churches and monasteries, architectural monuments, and sanctuaries. Although the reporting period does not cover 2012, given the relevance of the issue, it is necessary to note the processes taking place in the beginning of 2012. In particular, the targeted elimination of the Georgian trace on the churches and monasteries and other cultural and historical monuments in the occupied territories has assumed an intense character. The January 20 2012 session of the Temporary Commission on Territorial Integrity Issues of the Parliament of Georgia was devoted to the issue of the condition of Georgian cultural, historical and religious heritage in the occupied territories, and its protection. According to a statement of the representatives of the National Agency for Cultural Heritage Preservation under the Ministry of Culture and Monument Protection of Georgia, the only known fresco of Bagrat III, which was located in the Bedia temple, no longer exists.[339] Despite the fact that these territories remain outside the effective control of the Georgian Government, the obligation to protect monuments of cultural heritage, in accordance with the 1954 Hague Convention on Cultural Property, also falls upon the occupant state. According to Article 5 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, an occupying state shall as far as possible safeguard and preserve the cultural property or the occupied state.[340] According to the 2003 UNESCO Declaration concerning the International Destruction of Cultural Heritage, "States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located".[341]

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332 <http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=59&info_id=14640>

333 <http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=59&info_id=14640>

334 General Assembly Resolution, A/RES/63/307, Status of Internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, 30 September 2009, para.5, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/506/40/PDF/N0950640.pdf?OpenElement>

335 UN news, Displaced from Ossetia conflict need more pragmatism, less politics, says U.N. representative, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9607&LangID=E>

336 European Parliament resolution of 17November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement, para1, sub-paragraph 'L,' <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0514+0+DOC+XML+V0//EN>

337 Council of Europe Parliamentary Assembly Resolution 1648(2009), The Humanitarian consequences of the war between Georgia and Russia, para.25 (1), <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1648.htm>

338 Special Report of the Public Defender of Georgia "On the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia", 2010; http://www.ombudsman.ge/files/downloads/en/njyyccudreysvwktqszj.pdf p. 53.

339 Ibid.

340 JConvention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, <http://www.icrc.org/ihl.nsf/FULL/400>.

341 UNESCO Declaration concerning the International Destruction of Cultural Heritage, Resolution adopted at 21st plenary meeting, on 17 October 2003.

In addition to intentional destruction of cultural monuments, the most acute problem is presented by a lack of security guarantees and illegal detentions. This is confirmed by reports issued by international organizations, according to which, cases of detention on the grounds of "illegal border crossing" are quite frequent. As a rule, detainees are faced either with a fine (from 30,000 to 60,000 roubles) or two years imprisonment.[342]

Several persons applied to the Office of the Public Defender of Georgia in connection with kidnappings. Some of the incidents are reflected in the 2010 Parliamentary Report of the Public Defender of Georgia. Family members of a kidnapped individual also addressed the Public Defender's Office in 2011. The general picture, as a rule, is similar to the other cases; the only difference is the location of the kidnapping (in this particular case, the applicant's child went missing from the village of Tserovani). The Ministry of Internal Affairs was informed on the kidnapping.

As we know, the issue of the release of Georgian citizens illegally held at prisons in the occupied territories is a permanent item on the agenda during meetings organized within the IPRM format. In January, 2012, information was circulated regarding the kidnapping and arrest of priest-monk Jonas.[343] The case of the alleged kidnapping was discussed during the IPRM meeting held in January 2012.[344] After a 25-day detention, the priest was released.[345]

In addition to the foregoing, the human rights violations discussed in detail in the 2010 Parliamentary Report of the Public Defender of Georgia remained a problem in 2011. Namely, ethnic discrimination, violations of liberty and security, hindering of freedom of movement, lack of access to justice, incidents of restriction of rights to education and property.

It is clear that the general situation in terms of human rights in the conflict areas is extremely difficult. As has been repeatedly mentioned in the Parliamentary Reports issued by the Public Defender of Georgia, one of the best resolutions of this issue prior to the peaceful regulation of the conflicts is the presence of effective monitoring missions in the region, which will be a guarantor of the protection and security of the local population living in the conflict zone.

The Public Defender of Georgia considers it imperative for the government as well as international organizations and diplomatic missions to take effective steps to prevent existing human rights violations.

342 See above, 4, p 44.
343 http://24saati.ge/index.php/category/news/justice/2012-02-01/24777.html
344 EUMM news: <http://www.eumm.eu/data/image_db_innova/UN_IPRM%2033_%20Press%20Release_31%20January%202012.pdf>
345 <http://presa.ge/new/index.php?m=politics&AID=13241>

The Rights of Eco-migrants/Persons Affected and Displaced by Natural Disasters

A separate chapter in the 2010 report of the Public Defender was devoted to the legal status of eco-migrants/persons affected and displaced by natural disasters. The need to dedicate a separate chapter to this issue was due to its gravity and problems existing in this area.

Unfortunately, the legal status of eco-migrants has not improved throughout 2011, since no concrete steps were taken in this direction by the government. In 2011, as in previous years, the number of applications submitted to the Public Defender of Georgia by eco-migrants – persons affected or displaced by natural disasters remained high.

An analysis of the applications filed with the Office of the Public Defender of Georgia shows that the majority of the problems of eco-migrants and persons affected by environmental disasters arise due to systemic issues in this area. In particular: an almost non-existent legal framework, insufficiency of financial resources, lack of post-resettlement adaptation and integration programmes, a non-uniform system of aid, etc. Over the years, government approach in this area has been unstable, poorly planned, tailored to individual problems, which in itself speaks of the fact that the government has no uniform and comprehensive policy in this regard. There is no developed legal basis, and often the resolution of the problem takes place in a variegated way.

Due to the urgency of the problem, the Public Defender of Georgia has prepared a special study on this issue.

INTERNATIONAL AND DOMESTIC LAW

Since the 2010 report of the Public Defender discussed international and national legislation in detail, this section will briefly review international practice and focus on the amendments introduced to the Law of Georgia "On Internally Displaced Persons" in 2011. We will also discuss the agencies that are involved in this process.

There is no binding international legal document, which contains the definition of an eco-migrant and the obligations, which are imposed on a State to ensure the social protection of persons in this category. International organizations utilize varying terminology with regards to persons displaced as a result of natural disasters. They are often referred to as persons affected by natural disasters, persons affected by natural hazards, etc. The term "eco-migrants" is used in the lexicon Georgian normative acts.[346]

Migration implies migratory movement both within and outside of a country. One of the causing factors of internal migration are environmental/natural disasters. According to the World Migration Report 2010 of the International

[346] Sub-paragraph "f", Para. 4, Article 42 of the Organic Law of Georgia "On Local Self-Government"; Sub-paragraph "l", Para. 1, Article 82 of the Tax Code of Georgia. Article 1 of the Resolution #34 of the Georgian Government "On the Approval of the Decree of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia".

Organization for Migration (IOM), environmental change is likely to contribute to internal rather than international migration.[347] The Report also states that when movements as a result of the effects of environmental change are taking place (or are likely to in the future), they may not be recognized, categorized, or counted as distinct from other types of movement.[348]

In order to define persons migrating as a result of environmental change, IOM uses the term "environmental migrant", with the following working definition: *Environmental migrants are persons or groups of persons who, for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.*[349]

Given that a significant proportion of people displaced by the effects of environmental change are expected to move within their own countries, strengthening national laws and policies on internal displacement is an immediate capacity-building requirement in order for those affected to be afforded assistance and protection.[350]

According to data provided by IOM, a legal framework regarding internally displaced persons has been developed in approximately 30 countries, one of which is Georgia. However, the notion of internally displaced persons stipulated by the Georgian national legislation does not include persons displaced as a result of natural disasters, which leads to only partial implementation of the guiding principles.

According to the Report of the International Organization for Migration (IOM), it is essential for States to implement capacity-building measures in the following ten areas:

1. establishing a better evidence base;
2. disaster risk reduction;
3. developing adaptation strategies;
4. preparing evacuation plans;
5. filling gaps in the legal and normative framework;
6. implementing national laws and policies on internal displacement;
7. amending national immigration laws and policies;
8. establishing proactive resettlement policies;
9. providing humanitarian assistance;
10. planning for resettlement.[351]

If we look at these criteria, it becomes evident that some aspects are not being implemented in Georgia at all.

The 2010 Report of the Public Defender of Georgia discussed in detail the disparities between the definition of internally displaced persons given in the United Nations Guiding Principles and the concept of IDPs given in the Law of Georgia "On Internally Displaced Persons". On December 23, 2011, the above Law was amended. The amendment also concerned the title of the Law, which has been changed to the following: the Law of Georgia "On Persons Displaced from the Occupied Territories of Georgia". As for the definition of internally displaced persons, it has been narrowed even further and currently only concerns displacement from occupied territories. As a result of the amendment, for the purposes of the Law, *"a person internally displaced from the occupied territories of Georgia (hereinafter, IDP)*

347 *World Migration Report 2010, The Future of Migration: Building Capacities for Change*, International Organization for Migration (IOM), p. 73
348 Ibid pp. 73–74
349 Ibid pp. 79–80
350 Ibid p. 81
351 Ibid p. 74.

is a citizen of Georgia or a stateless person permanently residing in Georgia who was forced to leave his or her place of permanent residence due to a threat to his/her life, health or freedom, or the life, health or freedom of his/her family members, as a result of the occupation of the territory, aggression, mass violation of human rights by a foreign state or as a result of events determined by Paragraph 11, Article 2 of this Law". Consequently, the problem discussed in the 2010 Report remains unresolved.

The legal documentation in this area also remains unaltered, of which Resolution #34 of the Georgian Government "On the Approval of the Decree of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia" issued on February 22, 2008 is the most comprehensive. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia still remains the agency responsible for the condition of persons affected by and displaced as a result of natural disasters.

In practice, this area falls under the competence of the Department of Migration, Repatriation and Refugee Issues under the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. The Department has the following tasks in relation to migration processes: development of draft regulations regarding the definition and implementation of internal and external migration policies; the protection, within its jurisdiction, of the rights of temporarily emigrated Georgian citizens; participation, together with relevant central executive bodies, in the development of international instruments for the protection of the rights of temporarily emigrated Georgian citizens; monitoring of processes associated with labour migration.

It can be said that it is impossible for one department to study such issues exhaustively, especially when this constitutes only a segment of its activities.

Another aspect which merits attention in this section is the prediction and prevention of expected natural disasters. Despite the fact that the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia defines prediction of expected migration from areas at risk of natural disasters as one of its responsibilities, it is still not the agency exclusively responsible for this. The monitoring of geological processes is implemented by the Legal Entity of Public Law, the National Environmental Agency (NEA) established on August 29, 2008 within the system of the Ministry of Environment Protection of Georgia. The NEA is an organization independent from state government agencies, which operates independently under state control.

According to the statute of the Agency,[352] one of the significant directions of its operation is the implementation of annual geomonitoring studies of natural geological processes at various levels, and, in extreme activation of natural disasters, rapid assessment of the situation and the outline of mitigation measures. Its obligations also encompass the identification of the need to resettle the residents of hydrometeorological and geological hazard zones, and the establishment and assessment of resettlement areas for eco-migrants.

The NEA develops special annual bulletins that relate to the natural processes ongoing in the country. The final version of the bulletin is sent to all relevant bodies, government agencies, regional authorities, the Department of Emergency Management under the Ministry of Internal Affairs of Georgia, and other interested organizations. In addition, the bulletin is placed on the web page of the National Environmental Agency. The studies carried out by the NEA, in case of appropriate measures, provide the opportunity to avoid damage caused by natural disasters.

Unfortunately, as noted above, in 2011, as in the previous years, no drastic measures have been taken in the legal aspect. The lack of a defition of eco-migrants and persons affected by natural disaster on the local legislative level remains a problem. Moreover, it is essential to determine the responsibilities, at the legislative level, of local authorities to provide information to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with regards to eco-migrants/persons affected by natural disasters, as well as plan and determine clear standards and a state vision on this issue.

[352] Decree #7 "On the Approval of the Statute of the Legal Entity of Public Law – National Environmental Agency" issued by the Minister of Environment Protection of Georgia on April 13, 2011.

APPROACHES AND SHORTCOMINGS IN PRACTICE

The 2010 Report of the Public Defender expounded on such issues as assessment of damaged houses, variegated approach to aid, and the lack of programmes for post-resettlement adaptation and integration.[353] Unfortunately, all of the issues above remain on the agenda. Moreover, the applications submitted to the Office of the Public Defender of Georgia in 2011 demonstrated that among the main challenges, the issues of privatization of housing transferred to the ownership of eco-migrants, the lack of an adequate database for eco-migrants and persons affected by natural disasters, the insufficiency of financial resources, and detrimental socio-economic conditions remain relevant.

Database for Persons Affected by and Displaced as a Result of Natural Disasters

Despite the fact that the following procedure is not stipulated by legislation, according to the existing practice, data obtained as a result of the examination of the conditions of persons affected by natural disasters are sent by the relevant Municipality to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. On the basis of information received from the regions, the Ministry maintains a database of persons affected as a result of natural disasters.

According to official statistics provided by the Ministry, the number of households affected by natural disasters, including eco-migrants constitutes 35,204. Of which, 4,957 households are assigned the first category of damage, 6,050 households – the second, 17,925 households – the third, and 6,272 – the fourth category.

As of 2011, according to information provided by the Department of Refugees and Accommodation the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara, the number of households resettled from Adjara as a result of various natural disasters amounts to 9,072, which constitutes 38,874 individuals.

As for the current number of persons affected by natural disasters in Adjara, according to official information, a total of 4,144 households have been affected by natural disasters, of which:

29 households are assigned Category I of damage;

166 – Category II;

1,274 – Category III;

2,675 – Category IV.

Although the data do exist, locating uniform information on persons affected by natural disasters is quite a problematic issue.

According to information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the Ministry has no uniform electronic database on persons affected by and resettled as a result of natural disasters. At present, the majority of the data is stored in the form of documentation. As the Ministry reports, work on a uniform electronic database is planned, which will be analogous to the Unified Database for Internally Displaced Persons. The initiative in itself shows a positive trend. The Public Defender of Georgia considers it essential to complete the development of the unified database, which will contribute to increased availability of information.

[353] See the Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia", 2010, p. 355;

Financial Support

It is impossible to effectively resolve the problem without relevant budgetary funds. According to data provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the amount of funds allocated since 2009 for the provision of eco-migrants with adequate alternative residence is meagre, which renders it impossible to carry out effective policy planning and implement relevant measures to eradicate the problem. According to the Ministry, during the last three years, due to the lack of budgetary funds, the acquisition of housing has practically been suspended; accordingly, the number of homes purchased in 2011 has not changed and, similarly to 2004-2010, still constitutes 1,062.

The financial resources allocated by international donors in this respect are also limited. The annual news bulletin issued by the LEPL National Environmental Agency under the Ministry of Environment Protection of Georgia also highlights the issue of the lack of funds. In particular, according to the bulletin, the geomonitoring studies within the framework of targeted state programmes are no longer conducted due to limited finances. Currently, studies are being implemented only on the regional level, in high-risk urban areas.

The limited geomonitoring studies are incapable of fully reflecting the overall complications caused by natural disasters in the country. Consequently, the development of a comprehensive and effective early warning system cannot be achieved, which in turn places under threat the segment of the population and engineering and industrial facilities, which remains beyond proper assessment.[354]

According to the Law of Georgia "On the 2011 State Budget", State Priority #3 was the development and implementation of a unified state policy in relation to migration processes. One of the focal points of the priority, together with the establishment of a basis for unified approaches to migratory movements, is budgetary planning for the organization of eco-migrant resettlement and their adaptation and integration at new places of residence.

Priority #5 of the State 2011 Budget is also associated with persons affected and displaced as a result of natural disasters in that it encompasses prevention of hazardous natural processes. The majority of measures planned within the framework of this Priority belongs to activities to be implemented by the Ministry of Environment Protection. As a result of the analysis of budgets from several years, it becomes clear that budgetary funds for preventive measures are being allocated on a regular basis. It is, however, beyond our capacity to evaluate whether these funds are sufficient. In particular: the funds allocated in the 2009 state budget for the liquidation and prevention of natural disasters amounted to GEL 6 999 5 000; in 2010 the amount constituted GEL 14 649 9 000, and in 2011 – GEL 6 500000 thousand.

In the 2012 Budget, GEL 14 6499 000 was allocated for this purpose. We reserve the hope that these measures will positively impact the ongoing processes.

As for funds allocated directly for the provision of resettlement for persons displaced as a result of natural disasters and their integration at new locations, according to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, no budgetary resources have been allocated in this respect.

Housing Programme for Persons Affected by Natural Disaster

According to the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia,[355] one of the obligations of the Ministry is the implementation of a housing programme for eco-migrants. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is a government body, which, according to its statute, is authorized to purchase residential houses and transfer them into the possession of persons displaced as a result of natural disasters.

[354] News bulletin: "The Results of Natural Geological Processes in Georgia in 2010, and Forecast for 2011", LEPL National Environmental Agency.

[355] Resolution #34 of the Georgian Government "On the Approval of the Decree of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia".

There is no normative base or any written procedural rules in this regard. Nevertheless, as reported by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, there are established rules of practice, in keeping with which the housing allocation programme is carried out. Specifically, during the first stage, in accordance with lists provided by local authorities, the Ministry implements the identification of those households who, in case of consent, may be relocated. According to information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, in distributing the houses, the Ministry attempts to take into account the number of family members within each household. The size and the number of rooms of the allocated residence are dependent on the number of family members. The households are divided into the following categories:

a. Household consisting of 1-3 family members;

b. Household, consisting of 4-8 family members;

c. Household, consisting of 9 or more family members.

Although, as noted above, there is no written regulation of these approaches, accordingly, there is no obligation that the Ministry should always be guided by this principle.

As for the allocation of housing itself, no specific procedures are documented in this regard either, based on which housing would be distributed to persons displaced as a result of natural disasters. According to information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, currently, the distribution of houses is carried out on the basis of random selection (lottery).

According to the Ministry, following the distribution of houses among disaster-affected families, a monitoring phase is initiated. In particular, if a family, to whom the Ministry offers a new residence, does not relocate within 1.5 – 2 months, the Ministry sends written correspondence with which it reminds the family of their commitment to relocate and warns that if they fail to relocate within an additional period of 1 month, the offer will be declared invalid. In accordance with the information provided by the Ministry, the monitoring of a family's resettlement to a new place of residence is carried out by the local self-government on whose territory the alternative housing allocated to persons affected by natural disasters is located.

One of the problems associated with eco-migrant resettlement is presented by the funds necessary for their relocation to new places of residence. Perhaps, the problem is not large-scale, however, given the fact that the affected population is often transferred from one region to another (e.g. from Adjara to Kakheti), which is exacerbated by the poor economic conditions of the families, the significance of this type of assistance becomes clear. According to the Ministry, due to a lack of appropriate financial resources, during resettlement, they are unable to provide transportation for eco-migrants and the shipment of their household items. In cases where the resettlement is carried out from Adjara, the relocation expenses of eco-migrants are covered by the relevant authorities of the Autonomous Republic of Adjara. Evidently, this problem is associated with the lack of funds allocated in this sector. The Public Defender of Georgia deems it imperative to define the Government's obligation to cover all expenses necessary for resettlement and to allocate relevant funds in order to fulfil this obligation.

Another issue related to the resettlement of eco-migrants is the legal status of the transfer of houses to the eco-migrants. As in the above cases, the Georgian legislation does not determine the legal form the houses should be transferred to persons affected by natural disasters – with the right of usage, disposition or ownership. The circumstances or the manner in which it is possible for them to privatize their new places of residence remain undefined.

According to information supplied by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, no eco-migrants own the homes allotted to them by the government. Persons resettled from Adjara and Svaneti in 1987-89 are an exception.

In accordance with established practice, the transfer of a house in the possession of eco-migrants is considered a long-term solution to their problem.

According to the Ministry, the transfer of homes to eco-migrants entails their final transfer of ownership after a certain period of time. However, at present there is no uniform approach that would define the criteria of the transfer of housing to eco-migrants, the period during which the tenants should reside in the new houses, and the requirements that must be met by the housing. According to information provided by the Ministry, work in this direction is currently underway and the development of certain regulations is planned.

The Public Defender considers it necessary for the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to develop, in coordination with relevant agencies, uniform standards and procedures that would define the circumstances and regulations under which the housing can be transferred into the ownership of eco-migrants.

Adaptation-Integration Programmes

The issue in question was discussed in detail in the 2010 Report of the Public Defender of Georgia, however, due to its gravity, we deem it expedient to focus on it once more, especially given the fact that no positive steps have been taken in this regard in 2011.

The facts studied by the Public Defender in 2011 serve as an indicator of the gravity of the problem. Namely, when the representatives of the Ombudsman were in the village of Khikhani, they interviewed a segment of the population and, consequently, discovered that due to an expected landslide threat, in 2008, up to 60 eco-migrant families were resettled from the village of Tkhilvani, Khulo district to the village of Khikhani, district of Marneuli. At present, up to 25 relocated families reside in the village, the remaining 15, according to the other residents of V. Khikhani, have left the village due to difficult socio-economic conditions.

The representatives of the Office of the Public Defender have identified a number of problems which further aggravate the critical conditions of the eco-migrants. Despite the existence of a water supply system, during the past year, the village has not been supplied with drinking water, due to which the local residents have been obliged to obtain potable water from a spring several kilometres away from the village.

A similar problem prevails in terms of natural gas supply. Despite the fact that all necessary piping has been installed in the village, natural gas is not provided to the population.

As a result of the visit, it was discovered that the majority of houses transferred to the eco-migrants are damaged. In particular, water leaks through the ceiling during rain, and in a number of cases, the houses have no windows. The walls of the residences have also been damaged by rainwater.

In order to resolve the problem, letters were sent from the Office of the Public Defender of Georgia to the Gamgeoba of the Municipality of Marneuli and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. A response received from these entities indicates that the gradual resolution of these problems was planned.

The existing situation demonstrated that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, due to a lack of funds, is unable to properly develop and implement in practice post-resettlement programmes for eco-migrants, which, in turn is confirmed by the Ministry itself.

At the next stage of relocation, in practice, eco-migrants are assisted by local governments within the resources available to them.

It can be concluded that, as a result of the analysis of existing practice in respect of eco-migrants – persons affected by and displaced as a result of natural disasters, it is clear that there are problems which require attention and adequate response from the government. First of all, it is imperative to develop a uniform national approach with regards to

assistance measures for households affected by natural disasters. In addition, it is necessary to more actively implement the programmes, which must ensure the adaptation of eco-migrants at resettlement locations and their establishment in the region. An effective approach to the creation of adequate social conditions to eco-migrants must be developed. It is regrettable that the principal source of income for this category of households should be financial assistance received from social programmes. In addition, adequate attention should be paid to preventive measures. Expert studies will provide the state with the possibility to plan effective measures that will reduce the damage inflicted by natural hazards, which will ultimately decrease the number of eco-migrants and persons affected by natural disasters.

RECOMMENDATIONS:

Recommendations to the Parliament of Georgia:

a) **A definition of eco-migrants should be developed on the national legislative level, and a range of persons should be defined to whom the legal status will apply;**

b) **For the purpose of protection of the rights of persons affected and displaced by natural disasters, a unified state approach should be developed, which, primarily, involves the regulation of the issue at the legislative level. It is essential to develop mechanisms and procedures for the resettlement of persons displaced as a result of natural disasters and their provision with adequate social conditions;**

c) **The obligation of local authorities to provide information on eco-migrants/persons affected and displaced as a result of natural disasters to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia should be defined at the legislative level;**

d) **To define the obligation of the State on covering expenses necessary for resettlement of eco-migrants and to ensure allocation of relevant funds for its implementation.**

Recommendation to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

a) **The procedural regulations/guiding principles for the resettlement of persons affected by natural disasters should be defined by the Ministry. Namely, the regulations for the allocation of housing, the transfer of said housing into the ownership of the eco-migrant residents, etc.**

b) **A post-resettlement adaptation-integration strategy for eco-migrants should be developed at the legislative level and its effective implementation in practice should be ensured;**

c) **The Ministry, in cooperation with local authorities, should ensure the development of an electronic database for eco-migrants – persons affected by and displaced as a result of natural disasters;**

d) **The Ministry, in coordination with relevant agencies, should develop unified standards and procedures that would define the circumstances and regulations under which housing can be transferred into the ownership of eco-migrants.**

We address the Government of Georgia with a recommendation to ensure the calculation of funds necessary for the provision of adequate housing to eco-migrants and their gradual allocation to the state budget.

The Situation Pertaining to the Rights of Persons - Meskhetians, Forcefully Deported From Georgia by the Former USSR in the 40-ies of the 20th Century

INTRODUCTION

One of the directions of the Public Defender's activities is to study the situation pertaining to the rights of persons forcefully deported from Georgia by the former USSR in the 40-ies of the 20th century. According to the international commitments undertaken by Georgia, the repatriation process should have been finalized before 2012. Nevertheless, the applications for acquiring the repatriate status are still being processed by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. According to the Ministry, 5841 persons seeking the repatriate status have addressed the Ministry, while so far only 337 applications have been processed.

Throughout 2011, none of the persons seeking the repatriate status addressed the Public Defender's Office. Nevertheless, the Public Defender studies the existing situation in this regard. Hence, this chapter focuses on the activities implemented by the State for repatriation of persons forcefully deported from Georgia by the former USSR in the 40-ies of the 20th century. Specifically, the present chapter reviews the 11 July 2007 Law of Georgia on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," social and economic rights of persons having the repatriate status, their integration into the society and the existing practices.

HISTORICAL BACKGROUND

By the end of 1944, based on the decision of the USSR leadership, the population of Meskheti, currently Samtskhe-Javakheti, was deported to the Central Asia. On 15-17 November 1944, along with the 7 other ethnic groups, approximately 120,000 persons were deported to the Central Asia. The deported persons were deprived of their homes and property. Due to over a month journey in terrible conditions, some deported persons died. Only after Joseph Stalin's death, several groups were allowed to return to their homelands, however, the Meskhetians were not among them.

In spring and summer 1989, following the Ferghana developments,[356] the conditions of the Meskhetians in Uzbekistan worsened. The Soviet Army evacuated 17,000 Meskhetians, while 70,000 Meskhetians left Uzbekistan on their own. Unfortunately, there is no accurate data on the overall number of Meskhetians world-wide. According to the information provided to the Public Defender's Office, the total number of Meskhetians equals to around 400,000[357]. Currently, persons forcefully deported from Georgia live mostly in Uzbekistan, Kazakhstan, Kyrgyzstan, Russia,

[356] In 1989, after an outbreak of violence and riots in Uzbekistan, which included attacks against Meskhetian Turks, over 70,000 Meskhetian Turks left Uzbekistan and were scattered in seven different republics of the Soviet Union. PACE Resolution 1428 (2005) http://www.repatriation.ge/index.php?m=30, checked on 13 February 2012.

[357] The Report of the Public defender, second half of 2006, page 219, http://www.repatriation.ge/index.php?m=30, checked on 13 February 2012.

Ukraine, Azerbaijan, Turkey and the USA. Their living conditions vary depending on their places of residence[358]. In Kazakhstan and Kyrgyzstan, the Meskhetians are fully integrated into the society and public structures. The similar situation is in the Ukraine, where most Meskhetians have acquired citizenship. In terms of protection of the rights, the situation is tough in Russia and Uzbekistan, which created grounds for migration of some Meskhetians into the USA.[359]

In 1999, within the framework of its Council of Europe (CoE) commitments, Georgia committed to adopt, within two years after its accession, a law permitting repatriation and integration, including the right to Georgian citizenship, for persons forcefully deported from Georgia by the Soviet regime. Georgia had to begin implementation of this law within three years after its accession and complete repatriation of the Meskhetian population within seven years after its accession. In 2002 recommendation N1570, the Parliamentary Assembly of the CoE (PACE) also recommended adoption and implementation of the relevant legal framework. PACE called on the Georgian authorities to create legal, political and administrative conditions, which would ensure voluntary repatriation of the Meskhetians.[360]

It is noteworthy, that during this period, the Georgian authorities have undertaken a number of significant and positive steps, both in terms of legislation and practice, to ensure return of deported persons. However, more efforts are required to ensure effective integration of repatriates. According to the CoE, 26 January 2012 PACE Information Note,[361] up to now there is no strategy being developed for dignified repatriation of the Meskhetians. Later on, CoE was informed that an Inter-Agency Council,[362] tasked with preparing a draft strategy, was created. We hope that adoption of the strategy will not be delayed and it will ensure repatriation and integration of the Meskhetians into local society.

GEORGIAN LEGISLATION PERTAINING TO PERSONS FORCEFULLY DEPORTED FROM GEORGIA BY THE FORMER USSR IN THE 40-IES OF THE 20TH CENTURY

On 11 July 2007, the Parliament of Georgia adopted a Law on "Repatriation of Persons Forcefully Deported from Georgia by the Former USSR in the 40-ies of the 20th Century." The Law aims at creating a legal basis for ensuring the return of the deported persons and their successors to Georgia. The Law defines rules for processing applications on acquiring the status of repatriate, as well as conditions for granting, suspending and terminating the mentioned status. According to the Law, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is responsible for processing applications on granting the status of repatriate.

According to Article 3 of the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," the right to submit an application for acquiring the status of repatriate is granted to displaced persons and their direct successors. The Law also determines the deadline for persons seeking the status of repatriate to submit applications to the Ministry. Initially, the deadline was set for 1 July 2009; however, later on, by 2009 amendments, it was prolonged until 1 January 2010.

A number of by-laws[363] were adopted on the basis of the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century." This can be considered as a step forward both from the perspective of creating legal guarantees in Georgia for mentioned persons and their ancestors as well as from the perspective of honouring the obligations undertaken by Georgia after its accession to CoE. Nevertheless, the Law includes a number of deficiencies, which hinder full and effective exercise of beneficiaries' rights. Those deficiencies can be divided into several parts:

358 The Report of the Public Defender, Second Half of 2006, page 219
359 Ibid, pages 219–220
360 PACE Resolution 1428 (2005)
361 http://assembly.coe.int/CommitteeDocs/2012/amondoc24rev3_2011.pdf
362 Governmental Decree N111, dated 1 March 2011, on "Approving the Composition of the Inter-agency Council on Repatriation of Persons Forcefully Deported from Georgia by USSR in 40s" and its Charter."
363 Governmental Decree N276, dated 17 December 2007 on "Additional procedures for considering application on granting the status of repatriate," Governmental Decree N 299, dated 28 December 2007 on "Approval of the form of income and property declaration for persons seeking the status of repatriate and their family members," Governmental Decree N3, dated 9 January 2008 on " Establishment of the form reflecting information on the state of health for the purpose of the law on repatriation of persons forcefully deported from Georgia by the former USSR in 40s" and Governmental Decree N87, dated 30 March 2010 on "Granting Georgian citizenship in a simplified manner to persons with the status of repatriate."

1. Issues related to adopting decisions on granting the status of repatriate.
2. The social-economic guarantees for persons having the status of repatriate.
3. Integration of persons having the status of repatriate.

Issues related to adopting decisions on granting the status of repatriate

One of the deficiencies of the "Law on Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," is non-existence of concrete deadlines. Specifically, the Law does not specify: 1. The deadlines for the Ministry of Internal Affairs and other agencies for preparing and sending to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees a conclusion on the expediency of granting the status of repatriation; 2. The deadlines for the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees for deciding over granting the status of repatriate.

According to Article 6 of the mentioned Law, to process an application and make the relevant decision, the Ministry registers application of a person seeking the repatriate status and sends it to the Ministry of Internal Affairs or other relevant agencies, if required. The mentioned bodies within their competence issue a conclusion on the expediency of granting the status of repatriate. Notwithstanding the fact that the Law defines the obligation for issuing grounded conclusions, the legislation does not specify the deadlines for preparing and sending a conclusion to the Ministry. In addition, Article 7 of the Law specifies that conditions and terms defined by the General Administrative Code, do not apply to processing of applications on granting the status of repatriate. While neither the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," nor other by-laws define special deadlines.

To prepare a conclusion on granting or refusing the status of repatriate, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees requests information from the relevant bodies and ensures analysis of the provided information. As a result, the Minister issues the relevant order. However, the Law does not specify concrete deadlines for issuance of the order. The Law only specifies that within 20 days after issuance of the order, the persons seeking the status of repatriate shall be notified about being granted or refused the status of repatriate.

The Public Defender's Office requested the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees to provide information on deadlines for processing applications on granting the status of repatriate. According to the Ministry, none of the documents defines deadlines for processing applications.

Since persons forcefully deported from Georgia by USSR in 40-ies of the 20th century belong to a vulnerable group, the reasonable deadlines for processing their applications should be specified.

Another problem is related to the right of access to the court. Specifically, according to the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," the General Administrative Code of Georgia, Article 177 and 178, section 3, does not apply to the administrative-legal acts on granting or refusing the status of repatriate. The mentioned provisions specify the right to appeal administrative-legal act in court. According to the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, none of the effective documents provide for this kind of a legal mechanism. Hence, persons seeking the repatriate status are deprived of an effective mechanism of legal protection, and have no access to court to appeal the relevant decision.

According to the Georgian Constitution, Article 42, paragraph 1, "Everyone has the right to access to the court for protection of his/her rights and freedoms." The mentioned provision ensures protection of the rights and legitimate interests through the judiciary.[364] At the same time, the right can be granted through domestic legislation or international

[364] Decision n#1/2/434 of the First Collegium of the Constitutional Court of Georgia, dated 27 August 2009, page 7.

documents. According to the Constitutional Court of Georgia: "the right to a fair trial constitutes an extremely important mechanism, which regulates disputes between an individual and the State, as well as between individuals." [365]

At the regional level, the right to a fair hearing is provided by Article 6 of the European Convention on Human Rights. The European Court of Human Rights, in the case *Golder v. UK*[366] established that Article 6 of the Convention guarantees the right of access to the courts. Disputes between parties may cover questions of fact as well as questions of law.[367] In the disputes the actual existence of a right may, of course, be at stake but so may the scope of such a right or the manner in which the beneficiary may avail himself thereof.[368]

The aim of the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," is to restore historical justice and ensure voluntary return of the deported persons, in respect to their dignity. Accordingly, it is an obligation of the State, and not just manifestation of a good will, to ensure the return of the persons forcefully deported from Georgia. Although the State has a wide discretion while deciding to grant a certain status, it does not imply non-existence of the court control over State's decisions[369]. Non-existence of the court control over the legality of decisions on granting the status of repatriate might result in ungrounded and inaccurate decisions from the side of the State, in this case the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. At the same time, the legitimate goal of this limitation is not clear, putting under question its proportionality.

Hence, to ensure the effectiveness of the process, reasonable deadlines for granting or refusing the status of repatriate should be established. Each person seeking the status of repatriate should be granted the right to appeal to court decisions on refusal.

Social-economic rights of persons having the status of repatriate and their integration

One of the important issues related to the return of Meskhetians to their historical homeland is formulation of the State policy and mobilization of necessary budgetary resources for supporting their integration. The State should have effective short-term and long-term programmes for ensuring full integration of Meskhetians within the society.

The preamble of the Law of Georgia on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century" states that the repatriation system established by the law is based on the principles of worthy and voluntary return of the Meskhetians. According to the given provision, the State undertakes an obligation to provide social-economic conditions, sufficient for ensuring the worthy quality of life for Meskhetian returnees. The State should also undertake steps to ensure civic integration of the repatriates. The similar types of obligations are related to the existing resources in the country. The State can implement social-economic obligations gradually through elaborating a long-term action plan.

The Public Defender's Office addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees on the issues pertinent to social assistance, resettlement and integration of repatriates. According to the information received from the Ministry, there are no social assistance programmes envisaged for repatriates. As for the integration of repatriates, the relevant programmes are in the process of elaboration. According to the provided information, the Inter-Agency Council on Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century, created on 1 March 2011, under the governmental decree No 111, is carrying out active work in this regard. We hope that effective and adequate measures will be undertaken in this direction.

Unfortunately, the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century" and relevant by-laws do not envisage any social assistance programmes for repatriates. This is also corroborated by the reply received from the Ministry of Internally Displaced Persons from the Occupied Territories,

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365 Distinct opinions of the members of the Constitutional Court of Georgia, Ketevan Eremadze and Besarion Zoidze, concerning the motivation of the decision n#1/2/434 of the First Collegium of the Constitutional Court of Georgia, dated 27 August 2009, page 21.

366 *Golder vs UK* A 18 (1975); 1 EHRR 524 PC.

367 *Albert and Le Compte vs Belgium A 58 (1983); 5 EHRR 533 PC*

368 *Le Compte, Van Leuven and De Meyere vs Belgium A 43 (1981); 4 EHRR 1 Para 49 PC*

369 *Decision n#1/2/434 of the First Collegium of the Constitutional Court of Georgia, dated 27 August 2009, page 16*

Accommodation and Refugees. While the State has discretion in offering social welfare conditions to the repatriates, the relevant State bodies can independently determine the form as well as conditions for social assistance, taking into consideration the existing resources and needs of the concrete vulnerable groups. The State should undertake the mentioned supporting measures to ensure worthy living conditions for repatriates.

As for the integration, neither the special Law[370] nor the relevant by-laws determine activities aimed at integration of the Meskhetians. However, the fact that elaboration of integration projects is one of the main goals of the Inter-Agency Council on Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century (created in 2011), deserves positive evaluation. It is impossible to make any concrete judgments in this direction, since by 2011 the integration policy of the repatriates was in the process of elaboration. Hence, below we emphasize those important issues which should be considered while elaborating the integration policy.

Various directions of the repatriates' integration can be considered, specifically:

- Economic integration and employment;
- Social integration and education;
- Political integration and public activities;

Those directions are closely interrelated and their full-scale implementation can be considered as a precondition for worthy return of the Meskhetians.

In the context of economic integration, the State should create conducive economic environment, supporting the relevant employment conditions for the repatriates and providing them with the possibility to ensure independently the welfare of the families. At the same time, attention should be paid to the social integration and education of repatriates. Special emphasis should be placed on overcoming the language barrier. The State should elaborate special programmes, which would help repatriates to learn the Georgian language, if required. The juveniles should have access to general education. On top of that, they should have favourable conditions for professional development, which would give them better chances to get employed and take part in political life, or activities of civic society organizations. In terms of political integration, it is important to involve repatriates in the activities of governmental bodies and civil society.

The relevant State bodies should consider all possible impediments while elaborating the integration policy of repatriates and support the returning Meskhetians in becoming the fully-fledged members of the society.

PERSONS FORCEFULLY DEPORTED FROM GEORGIA BY USSR IN 40-IES OF THE 20TH CENTURY - THE EXISTING PRACTICES

As mentioned above, according to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, 5 841 persons have addressed the Ministry with a request for repatriation. As of today, 337 applications have been processed. 333 applicants were granted the status of repatriate, 2 persons were refused the status, and one person deceased, while one turned to be a citizen of Georgia.

According to our information, at the initial stage, persons seeking the repatriate status faced impediments while submitting applications to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

More specifically, according to the Article 4, paragraph 2 of the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century," the application on acquiring the status of repatriate should have been accompanied by documentation necessary for registering and processing application, including for adopting final decision. The mentioned documents should have been submitted in Georgian or English languages. In case documents were submitted in a different language, they should have been translated (into Georgian or English languages) and approved appropriately.

[370] The Law of Georgia on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40s of the 20th Century."

The vast majority of persons seeking the status of repatriate are coming from Russian speaking countries. Unfortunately, some families could not afford translation of documentation and necessary notarial approval.[371]

The next barrier was related to submission of documentation certifying that ancestors of the beneficiaries were persons deported in 1944. According to the information provided by the International Foundation on Supporting Repatriation, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, dismissed 90 per cent of applications due to their shortcomings.[372]

One more factor related to migration of Meskhetians is worth mentioning. Specifically, Meskhetians started returning to Georgia in 1960-80-ies[373]. In 2005, a survey counted 592 Meskhetians in the country, primarily in Imereti and Guria.[374] According to our information, some Meskhetians have repatriated on their own, although many of them have now managed to legalize their presence in Georgia and have become citizens of the country. There are cases when those persons have not addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees for acquiring the status of repatriate (the mentioned persons do not know if there is a need to submit to the Ministry the documentation defined in the Law on Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-ies of the 20th Century, in order to acquire the status of a repatriate).

To avoid presence of those persons in Georgia with the status of irregular migrants (persons, who are in the State by violating the migration-related regulations), the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees with the support of the relevant State bodies, international organizations and NGOs, should seek for those persons and give them the possibility to regularise their presence in Georgia and acquire the relevant status.

As mentioned above, the State has undertaken a number of important steps for repatriation of persons forcefully deported from Georgia by USSR in 40-ies of the 20th century. Nevertheless, the law of Georgia on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-iess of the 20th Century," as well as the existing practices, requires further improvement. Non-existence of reasonable deadlines for processing applications as well as non-existence of the right to appeal a decision on acquiring the status of repatriate can have a significant impact on effective implementation of the rights and freedoms of the persons willing to acquire the repatriate status. We hope that the State will undertake effective steps to eliminate the existing deficiencies and implement relevant measures for effective integration of repatriates into the society.

RECOMMENDATIONS:

- **To ensure timely elaboration of the integration policy of Meskhetians (economic, social and political) and relevant programmes;**
- **To ensure elaboration of long-term or short-term social programmes adapted to the needs of repatriates;**
- **The Parliament of Georgia shall pass the relevant amendments to the Law on "Repatriation of Persons Forcefully Deported from Georgia by USSR in 40-iess of the 20th Century," to:**
  - **a. Determine the deadlines for the Ministry of Internal Affairs of Georgia and other agencies to produce their opinions on the expediency of granting the status of repatriate;**
  - **b. Determine the deadlines for the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees to adopt a decision on granting the status of repatriate;**
  - **c. Determine the right to appeal a decision on granting the status of repatriate.**

371 Maia Tsiklauri, " Meskhetians beyond attention," Society, 18 January 2001, page 3.
372 Ibid page 4
373 http://www.repatriation.ge/index.php?m=30 checked on 13 February 2012
374 Ibid

The Rights of the Child

INTRODUCTION

The year of 2011 saw numerous changes related to the Rights of the Child in Georgia. This involved both starting entirely new reforms, as well as advancing the on-going reforms to a further stage. Significant developments occurred in terms of deinstitutionalization and diversion of delinquent juveniles, and a whole new set of child protection related problems - largely overlooked in the past – were brought to the fore.

According to the 2011 UNICEF report[375], the situation of children in Georgia is far better now than it was a decade ago. This applies to the child mortality, access to pre-school, improvements in child protection, registration at birth, etc.

Despite the above progress, including improvements by various indicators, there are still number of problem issues that await solution, and the Public Defender of Georgia regularly underscores the relevance of these issues:

In the reporting period, the Public Defender addressed several recommendations to the relevant authorities requiring the introduction of higher standards for the investigation into alleged cases of child abuse and response to such facts. The Public Defender recommended bringing the standards of combating violence against children in compliance with the international practice and norms[376]. He regularly apprised the Ministry of Internal Affairs and the Social Service Agency of concrete facts of violence against children that were not tackled adequately by the relevant agencies. These instances of child abuse concerned both children in institutional care and those living with families.

During the reporting year, The Public Defender regularly called upon to the relevant public authorities to give proper attention to the need of involving children in such a decision-making process which has a direct impact on them. Similar to previous years, child's participation in administrative and judiciary proceedings that affect their own situation remained only minimal, even in cases, where these decisions concerned the personal life of the child.

In 2011, protection of the rights of children living/working on the street still remained a problem issue, and no fundamental changes were effected to improve the situation.

In 2011, the Public Defender's Office continued to receive complaints from socially vulnerable families whose children were not given the needed medical care because these families were qualified as ineligible for the inclusion into the unified database of families living below the poverty line.

Another pertinent issue for 2011 was the protection of the rights of pupils in public schools.

[375] UNICEF Report "Georgia and the Convention of the Rights of the Child. An update on the situation of children in Georgia, 2011".

[376] In the 2010 Public Defender's report, a special chapter was dedicated to explaining the content and qualification of the violence against child. During the report year, the Public Defender oversaw the management of the established cases of child abuse by the relevant public authorities. Representatives of the Public Defender participated in the working meetings held on this topic.

More specifically, there were several cases where disciplinary measures imposed on pupils were in breach of the existing legislation, and the Public Defender issued a special recommendation to the Minister of Education and Sciences to this effect.

On July 14 2011 the United Nations Human Rights Council adopted Resolution No.17/18 – Optional Protocol on the Rights of the Child -in relation to the communication procedure, whose main goal is to ensure enactment of an efficient mechanism for the consideration of complaints/communications pertaining to the violations of children's rights in the States parties to this Protocol. This latter entitles individuals/a group of individuals to submit communications to the Committee on the Rights of the Child on facts of child rights violations under the listed below instruments (provided that the State has ratified this instrument):

1. The UN Convention on the Rights of the Child;
2. The Optional Protocol to the Convention of the Sale of Children, Child Prostitution and Child Pornography;
3. The Optional Protocol to the Convention on the Involvement of Children in Armed Conflict.

The above mechanism is unique in a way that it affords the children a possibility to apply to an international body, UN Committee on the Rights of the Child, and request to react to the violations of their rights; While the Committee is examining the complaint, it may request the State to adopt interim measures to prevent any further damage to the child. It may also request adoption of protection measures, and if the violations are proved, the Committee will make recommendations to the State party for the redress of the violated rights of the child.

Proceeding from the above, the Protocol will once again reaffirm the status of the child as a subject of rights.

The Optional Protocol will be open for signature in 2012 and will enter into force after ten States parties have ratified it.

THE RIGHTS OF CHILDREN LIVING/WORKING ON THE STREET

The issue of children living/working on the street still remains highly problematic. Despite the detailed recommendations contained in the Public Defender's report for the second part of 2009, no system changes have been effected so far to ease the situation of children living/working on the street. On the contrary, it has become even more evident that street children cannot benefit from the existing state protection mechanisms that are available to the children living in families.

In 2011, the Public Defender received numerous complaints alleging violations of street and working children's rights. The studied cases attested to the fact that the existing child protection system is incapable of securing even minimum requirements of safety, growth and development of children. It has become obvious that the program for the provision of shelter to street children launched by virtue of a Governmental decree[377] is only an episodical undertaking. Children have to go through a lot of complicated formalities to get into a shelter, which in most instances becomes an insurmountable obstacle for them. Sadly, no progress was marked in respect a number of problem areas pointed out in the 2009 report. More specifically:

- there is no statistics of any type children living/working on the street;
- following 2008, not a single study was undertaken on children's rights situation;
- the majority of these children do not have proper documents;
- the overwhelming majority of these children are not getting any medical care;
- the overwhelming majority of such children do not go to school;

[377] Resolution No. 101 On the Adoption of the 2011 State Programme for Social Rehabilitation and Child Care", 23 February 2011

- the basic needs of such children remain unattended, while they often fall pray to violence and neglect;
- eligibility criteria for the enrolment into to the Day Care Centre programme funded through the Ministry of Labour, Health and Social Affairs, have not been modified to allow inclusion of the target group; in particular, street and working children cannot practically get an access to this free service due to the requirement that all beneficiaries to this programme should be selected from the Database of Socially Vulnerable Families, while – by accounts of non-governmental organizations - the majority of street children cannot meet this requirement.

The failure to provide a system solution to the above problems leads to the emergence of further challenges. More concretely, the cases reviewed by the Public Defender directly indicate that neither the Social Service Agency nor the Ministry of Internal Affairs are duly fulfilling the function of protection of street/working children from violence and neglect, to which they are entitled under the Joint Decree of the Minister of Labour, Health and Social Affairs, the Minister of Internal Affairs, and the Minister of Education and Science.[378]

LEGAL REGULATION

The Georgian legislation recognizes no such term as "children living/working on the street" and, accordingly, there are no legal provisions pertaining to this group of children.

The International Human Rights law acknowledges them as a vulnerable group in need of special care on the part of the government. While street and working children are entitled to all those rights that are guaranteed by the Convention on the Rights of the Child, it is essential that there are additional/dedicated mechanisms in place to ensure protection of the rights of such children, in view of their very specific situation.

It is through these additional mechanisms that street and working children, without any discrimination, should gain an access to all relevant public goods and services. The very fact that such services exist does not automatically turn street/working children into the actual beneficiaries of these services. Because they are not registered, respectively, there is no information on what their specific needs may be. Hence, these children fall through the net of medical and social services whereas it is these services' directly responsibility to enrol such children into relevant public service programs. Effectively, such children remain beyond the childcare system.

According to the UN Committee for the Rights of the Child, the difficulty with the provision of health and social services to such children is caused by the fact that this category of minors have no identification documents and no place of residence. Due to this, they are often subject to discrimination and violence.[379]

"States parties are required to (a) develop policies and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials; (b) develop strategies for the provision of appropriate education and access to health care, and of opportunities for the development of livelihood skills. [380]

CURRENT PRACTICE

In 2011, the Public Defender's Office received a number of applications concerning protection of the rights of children living/working on the street.

[378] Joint Order #152/N–#496–#45/N of the Minister of Labour, Health and Social Affairs, the Minister of Internal Affairs, and the Minister of Education and Science of 31 May 2010.
[379] Implementation Handbook for the Convention on the Rights of the Child; 287.
[380] Committee of the Rights of the Child, General Comment N4, 2003, CRC/GC/2003/4, Para. 36

M.B.'s Case

On May 26, 2011,citizen B.M. lodged an application[381] with the Public Defender's Office reporting that on many occasions, she had spotted a 2-year old child in the Beijing Street of Tbilisi who was begging on the street together with her mother. According to the applicant, the child looked undernourished and, often, insentient. The applicant claimed, the mother made the child drink some liquid substance and treated her abusively.

This case was referred for scrutiny to the Social Service Agency's Vake-Saburtalo Service Centre, which reported to the Public Defender that their social worker went to the site to find the two-year-old alone, sleeping on the pavement. All her attempts to wake up the child were in vain, so she called the patrol police intending to take the child to the nearest childcare facility – the Tbilisi Infants' Home. According to the social worker's report, as she was getting the child into the patrol car she was attacked by four or five women who, despite the patrol's efforts, managed to whisk the child from her and ran away. Ever since, for one month the social worker regularly visited that place hoping she would spot the child again but in vain. The Agency undertook no further actions to locate the child and take her under its care.

T.D.'s Case

On October 6, 2011 citizen T.D. filed an application[382] with the Public Defender's Office reporting a particular address in the Gldani-Nadzaladevi district of Tbilisi where the applicant kept seeing a woman with a child begging on the street. The child constantly seemed to be under the action of sedative drugs. The Public Defender's Centre for the Rights of Women and Children referred this case for scrutiny to the Gldani-Nadzaladevi Social Service Centre. The Centre reported back that their social worker visited the indicated address and visually examined the child. She also checked whether or not the child would respond when called by name, which he did. Hence, the social worker concluded (without any medical examination) the child had not been drugged. She offered the women accompanying the child to give him some free medical help. The women rejected the offer. After this, the social worker left, rest-assured that the minor was in a safe environment.

Sh Case

On July 3, 2010, the Public Defender's Office received an application[383] from citizen Sh. G. stating that on many occasions he was an eyewitness of a two-year old child being beaten and forced to beg in Rustaveli Avenue of Tbilisi. The case was referred to Social Service Agency's Old Tbilisi Service Centre. The Centre reported back that despite the many attempts to track down the child they were unable to do so. However, shop assistants from nearby shops all said that from time to time they saw a child sleeping in front of one of the shops.

Analysis

Based on the above cases, it would be fair to say that at identifying the instances of violence against children living/working on the street more often than not, Social Services fail to put adequate effort to understand the true interests and protection needs of the concerned children. Apparently, the Social Services either cannot or would not fulfil their part of responsibilities under the child referral procedures. More specifically:

1. Social services fail to assess adequately the well-grounded suspicion about child abuse and neglect;

2. Social services do not involve medical personnel in assessing the alleged cases of neglect with a view to examining the child's health condition and thus establishing the fact of neglect;

[381] Application #0657-11
[382] Application #1493–11
[383] Application 0732–11

3. Social services do not involve professional psychologists from early stages of case management, which would have helped to establish the facts of psychological/emotional abuse.

The analysis of the current practices revealed the existing shortfalls in the child protection legislation. This is particularly true of the Decree on Child Protection Referral Procedures:

1. This document does not mention or contain any clear reference to children living and working on the streets as a distinct target group. Respectively, it contains no indication of the needs and problems specific to this target group. To be more precise, Section 1 of Article 6 states that identification of cases of violence against children is the duty of any establishment whose work is related to children, pointing only to childcare institutions and schools as places where such facts should be sought. Considering the fact that children living and working on the street can hardly be found in either of these institutions, the duty to report violence and abuse against such children remain beyond the scope of regulation of the above Decree. Besides, the Decree makes no reference to Article 1198[1] of the Civil Code of Georgia, which requires that every natural or legal person who becomes privy to any encroachment upon the rights of a minor or his/her legitimate interests shall inform the guardianship or child care agency of the respective territory about this. Hence, the above Decree provides for no particular procedures for the reporting the facts of child abuse and neglect. Besides, the Decree is silent as to what should be the line of action of the police officers or relevant agencies' staff in situations where they personally come across a neglected child in the street but have had received no official report in respect of that child.

2. The definition of violence in the above document is not fully compatible with the respective definition provided in General Comment No.13[384] of the United Nations Committee on the Rights of the Child. Besides, there is no mention/definition of neglect as a distinct form of violence, which, in effect, is one of the biggest concerns in relation to children living/working on the street.

3. The requirement for the patrol police and social services to act in a concerted manner does not encompass all the stages of investigation into an alleged case of violence. In particular, by virtue of Article 8 of the Decree, when a case of violence is reported, the patrol police shall arrive at the site immediately, whereas according Article 11.2 of the same Decree, the Social Service Agency steps in only after the fact of violence has been established and the child has been placed in a temporary shelter. Clearly, this is a legislative flaw, since the practical experience shows that Social Service Agency's involvement into violence identification is absolutely critical from the very first stage, since establishing the facts of non-physical violence is a part of social worker's job description. By disregarding this circumstance, the Decree, in effect, turns a blind eye on the numerous acts of abuse and neglect directly affecting street children.

4. The Decree does not specify the circumstances that would warrant involvement of medical personnel/psychologists in the preliminary investigation/examination of alleged cases where child's medical or other needs are neglected.

VIOLENCE AGAINST CILDREN

The problem of violence against children retains its pertinence not only with regard to minors working/living on the street but also to children living with families, as well as in other settings. During 2011, the Public Defender's Centre for the Protection of the Rights of the Woman and the Child reviewed over 50 applications directly concerned with the child abuse and neglect. The review process exposed the existing problems, resulting both from legal regulation shortfalls and the inefficiency of the authorities responsible for conducting case investigations.

[384] Resolution No.101 On the Adoption of the 2011 State Programme for Social Rehabilitation and Child Care", 23 February 2011

Legal regulation:

The following normative acts comprise the legal basis for the protection of children against violence and neglect: the Criminal Code of Georgia; Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims; as well as the Joint Decree on Child Protection Referral Procedures of the Minister of Health, Labour and Social Affairs, Minister of Internal Affairs and the Minister of Education and Sciences of May 31, 2010 #152/n–#496–#45/n.

Convention on the Rights of the Child as an international document underscores the importance of incorporating the definition of violence against children in regulatory acts and spells out that[385] violence against the child shall not be understood solely in the meaning usually used in common parlance. Therefore, it is through adequate definition of this term that national legislatures should provide protection "from all forms of violence." To this end, the countries shall revise their legislation to embrace all forms of violence, including some of its forms that are rooted in various nations and cultures which may not always by seen by the society as acts of violence against the child.

General Comment 13 of the UN Committee on the Rights of the Child, "The right of the child to freedom from all forms of violence", in its Article 19 points to a particular form of violence – institutional and system violations of child's rights. This implies that authorities at all levels of the State responsible for the protection of children may themselves become the source of violence by failing to provide effective means of implementation of their own obligations. The forms of institutional violence include failure to adopt and adequately implement child protection laws and administrative regulations, together with insufficient provision of material, technical and human resources and capacities to prevent violence against children. Besides, professionals may abuse children's right to freedom from violence in the course of executing their responsibilities by disregarding the child's best interests, failing to provide prompt and efficient help to the child, or leaving the child in an unsafe environment, etc.

INADEQUATE NATIONAL STATISTICS ON CASES OF CHILD ABUSE AND NEGLECT

With a view to capturing the overall picture of child abuse and neglect situation in the country, the Public Defender's Centre for the Rights Women and Children requested statistical information from all relevant state organizations. The obtained information clearly attests to the lack of coordination among the state authorities that are responsible for following up the violence-related situation.

According to the State Childcare Agency[386], in 2011, it received 11 reports on the facts of violence against children, whereas the relevant body of the Ministry of Internal Affairs received only two reports.

Meanwhile, the Child Crisis Centre of the State Childcare Agency received reports about three instances of sexual violence. All three of them were notified to police department No.4, with all required measures undertaken. An act of violence was established in two of the above three alleged cases.

Further, the Statistics Centre and Criminal Sociology Department of the Ministry of Internal Affairs both replied they had no statistical information pertaining to child abuse and neglect.[387]

The reply from Social Service Agency added further to this statistical data disarray,[388] stating that they had received only one report on sexual violence as of 26 October 2011. It follows, therefore, that the Agency had not heard at all of the other two instances of sexual violence that were reported to the State Childcare Service (naturally, neither did it investigate into these instances or take any protection measures).

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385 The United Nations Children's Fund, 2007, Implementation Guidelines for the Convention on the Rights of the Child.
386 Letter 9/9; 9/8
387 Letter #12/5/3/11–1281847
388 Letter #04/46020

According to the Social Service Agency, as of 1 October 2011, they had received 121 reports on alleged acts of violence against children. Out of these, an act of violence was established in 88 cases. Notably, the majority of cases involved several concurring types of violence.

The provided statistics favour the conclusion that there is a clear lack of coordination among the state authorities responsible for child protection and no unified national registry is maintained so far to record child abuse and neglect cases. Besides, the information sharing between the relevant officials and agencies is inadequate. All this constitutes a breach of obligations stipulated in Article 16 of the Decree on Child Protection Referral Procedures; Moreover, this constitutes a breach of the provision of the Convention on the Rights of the Child specifically requiring collection of detailed data pertaining to violence against children (General Comment 13 of the Committee on the Rights of the Child), which should serve the basis for analysing this phenomenon and devising efficient policies and measures.

THE CURRENT PRACTICE

The applications filed with Public Defender's Office are indicative of the fact that the child rights protection in the country is inefficient. In a number of instances, law-enforcement officers have left children in vulnerable and unsafe situations, fully neglecting their needs. This was caused by:

1. Non-uniform interpretation of the law;
2. Lack of coordination between social services and the police.

AN ANONYMOUS CASE

On July 2 2011, the Public Defender's Office received an anonymous application[389] reporting about several abandoned children living in a vulnerable situation in Gudamakari Street of Tbilisi, near Hospital No. 8, on the ground floor of the former Neurology Institute. The Public Defender's Centre for Women's and Children's Rights referred a request to the Social Service Agency's Gldani-Nadzaladevi Social Service Centre to look into the case. On 28 September 2011, the Centre reported back[390] that they, indeed, found a family with four minors living in a ground-floor room of the abandoned Neurology Institute building. The room was messy, dirty and the children looked unkempt and in a poor hygienic state. At the time when a social worker went to the site to see the children, their mother, Q.G., was not home. The elder children refused to cooperate with the social worker and would not let her in. According to the provided letter, the social worker called the patrol police. But, despite the fact that the social worker explained to the police there were four unattended minors locked inside the room, the police said they had no authority to break forcefully into the room.

Next communication from the Social Service Agency's Gldani-Nadzaladevi Social Service Centre of 26 December 2011[391], informed the Public Defender that on December 2011 their social worker, together with the patrol police visited the place again. This time there were nine children in the room, from age 2 to age 10-11. The two-year old was wearing no clothes at all. The place was very messy, the children looked extremely unkempt and in a poor hygienic state. It was school time, and yet the children were all at home. Despite the social worker's insistence, the three patrol police car crews and the policemen from police department No. 8 did not think this was an instance of child abuse/neglect. After that day, the mother moved the children to an unknown address.

389 Application #1499-11
390 Letter #N05-1892
391 Letter #N05-2754

E. A.'s case

On 2 July 2011, citizen E.A[392] filed an application with the Public Defender's Office, claiming that his neighbour, I.K., systematically abuses her young grandchildren, aged 2 and 6, forces them to drink alcoholic drinks and keeps them in unbearable conditions. According to the communication[393] received from the Isani-Samgori Social Service Centre of the Social Service Agency to this effect, they, indeed, found that I.K. was abusing and neglecting the children. Having visited the place, the social worker made note of extremely poor sanitary conditions, with empty bottles, rotten food and garbage scattered all over the place, complete with a foul smell. She found the grandmother drunk and fast asleep, while the children were left unattended, in a poor hygienic state and given only stale food to eat. Other neighbours, too, confirmed the children's grandmother was often drunk and that the kids often went out to beg on the street, even late at night. They often drank the leftover alcoholic drinks from their grandma's bottles. During the visit, the woman physically assaulted the social worker. This latter called the patrol police, crew No. 515, of the Isani-Samgori main patrol police division. By the social worker's account, she demanded that the children should be immediately moved away to an emergency foster family, as leaving them at home would amount to subjecting them to neglect and abuse under these circumstances. However, despite this urgency, the police did nothing to transfer the children to a safe place, stating they would need the grandmother's consent to displace the children. As a result, the young children are staying with their grandmother to this day (three months after the event).

Analysis

The above cases clearly indicate to the failure of the responsible state authorities to fulfil the duties vested on them by the legislation with a view to protecting children against abuse and neglect.

In particular:

1. The police interpretation of the laws pertaining to violence against children is largely wrong, even in inarguable cases More specifically, the conditions holding potential threat to the life and health of a child are not qualified as neglect, which is against both Article 19 of the Convention on the Rights of the Child and Article 3 of the Decree on Child Protection Referral Procedures.

2. Hence, the police would not use the authority vested on them by the legislation to remove the child away from a potentially threatening environment, including issuing restraining order, which runs counter to Article 8 of the Decree of Child Protection Procedures. In addition, the above facts present a violation of Article 8 of Decree No.826 of the Minister of Internal Affairs dated 12 October 2012 on "Instructions for the Staff of the Ministry of Internal Affairs of Georgia for Implementation of the Child Protection Referral Procedures" which says "in situations where an act of violence against a child is committed by his/her family member/members and where leaving the child with the family would pose a potential threat to his/her life and/or health, the authorised staff shall issue a restraining order which will serve the grounds for the removal of the child to a safe place." By the account of social workers involved in the above-described instances, the children's health was at risk in both of the cases.

The described facts are only a few of the child abuse and neglect instances reviewed by the Public Defender. Unfortunately, the lack of adequate response by the responsible authorities to such facts has been a routine practice rather than an exception, and only owing to the insistence of the Public Defender did it become possible to move the concerned children to a safe place. These facts provide a sad illustration of the existing system violations of the children' rights enshrined in the Convention on the Rights of the Child, due to which children were unable to receive the help to which they are entitled, and were left unassisted and exposed to repeated acts of violence and neglect.

[392] Letter # 0718-11
[393] Letter #05/6254

THE RIGHT TO EDUCATION

A whole chapter in the 2010 Public Defender's report was dedicated to the violations of the right to education. This was due to a number of factors, including the teachers' low professionalism and degrading treatment of pupils.

The new facts studied by the Public Defender provide an additional body of evidence for persistent problems in the country's educational institutions. These problems are largely accounted for by the lack of appropriate rights protection mechanism, due to which they remain unresolved on a system level to this day.

LEGAL REGULATION

Pursuant to the Law of Georgia on General Education, disciplinary misconduct and rights violations at schools shall be reviewed by a disciplinary committee to be established under Section 1(k) of Article 38 of the same law. This latter requires that with a view to considering the cases of disciplinary misconduct - pursuant to the school internal rules & regulations - the Board of Trustees should elect a disciplinary committee comprised of an equal number of teachers, parents and middle-school pupils.

Article 19.4 of the same law provides that administration of school discipline is allowed only in cases stipulated in the school internal regulations and in accordance with the established rules, by means of applying a due process and fair procedure.

General Comment 1 of the UN Committee on the Rights of the Child "The aim of education"[394] spells out that the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning". Further, the comment states that children do not lose their human rights by virtue of passing through the school gates. This may imply imposition of strict limits on school discipline. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment is the violation of the rights of the child. The child must enjoy the right to express his or her views freely, and the creation of student councils and peer communities must be supported, together with the involvement of children in school disciplinary proceedings.

PRACTICE

The applications filed with the Public Defender's Office during the reporting period are indicative of several clearly marked trends in the school disciplinary proceedings.

In many instances, disciplinary committees meet episodically and only to discuss exceptionally complicated cases.

In other instances, disciplinary committees are rather inefficient, as they fail to consider the cases thoroughly. Accordingly, the disciplinary actions they impose on pupils are neither appropriate nor fair. Besides, the disciplinary committee members tend to side with the school administration (featuring as a party in a dispute), merely approving their decisions for imposition of disciplinary measures on pupils, without any in-depth consideration of the actual circumstances of the case.

The cases presented below provide a clear demonstration to the numerous problems existing in public schools in terms of abiding by the due process while deciding on application of disciplinary actions against pupils. Parties to the disciplinary process have no adequate information as to how this process should be conducted. By and large, the prescribed disciplinary actions are found to disregard the best interests of the child. No attempt is made to look into the root-causes of school policy violations, nor is anything done in terms of problem/needs management. The cases considered by the Public Defender favour the conclusion that many schools tend to turn a blind eye on their pupils' concerns, leaving them to their own devices in facing the problem. The disciplinary actions applied to minors in the described cases have put them in extremely stressful situations. They feel absolutely helpless and alone confronting

[394] General Comment No. 1 of the United Nations Committee on the Rights of the Child, 2001, *CRC/GC/2001/1*

the system, often losing their sense of dignity and self-esteem. Children no longer have any faith in the surrounding world that was supposed to be there to provide a supportive environment for his/her full-fledged development. Such situations tend to do an irreparable damage to the minor's personality development, lowering his or her chances of becoming an accomplished member of the society.

THE REVIEWED CASES

A certain number of the applications filed with the Public Defender's Office were concerned with the restriction of pupils' right to education through application of faulty disciplinary proceedings at a number public schools.

M. A.'s case

Citizen Lali Lekishvili lodged an application with the Public Defender, claiming that her son, Micheil Alexidze, had been unlawfully expelled from Public School No.53. The Public Defender's Centre for the Rights of Women and Children started reviewing the application immediately, as the applicant informed that Micheil Alexidze had his education right restricted for quite some time, starting 13 October 2011.

The Public Defender's Office staff scrutinized the case-related documentation, including the available explanatory notes and the information provided by the applicant. The obtained results revealed that the disciplinary committees took only a skin-deep approach in considering the circumstances of the case, and had violated the voting procedure established by the law; The fact-finding had been done without involving the minor or his legal representative - the parent, and the decision on the expulsion was issued by an unauthorised person. More specifically:

Articles 12.1 and 12.2 of the Convention on the Rights of the Child, in conjunction with Articles 28 and 29 of the same Convention, entitle the child to be heard in any judicial and administrative proceedings, including during the administration of school discipline.

The United Nations Committee on the Rights of the Child in its concluding observations to the United Kingdom of 9 October 2002[395] recommends that the State parties shall "take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State party have the right to be heard before exclusion."

According to Article 19.6 of the Law of Georgia on General Education, when taking disciplinary action or commencing disciplinary proceedings against a pupil, his/her parent must be informed immediately. The pupil has the right to appear together with the parent at all proceedings concerned with making such decisions that are related to him/her.

Article 95.2 of the General Administrative Code of Georgia provides that "An administrative agency shall inform an interested party about the commencement of an administrative proceeding, if this administrative act could deteriorate the legal status of the party, and shall ensure his participation in the proceeding".

Article 10, Section 5(d) of Internal Rules & Regulations of Public School No. 53, reads: "the parent shall be informed immediately of applying an administrative action or commencing disciplinary proceedings against the pupil. The pupil has the right to appear at any decision-making meeting concerning him/her together with his/her parent".

All members of the disciplinary committee of School No.53 confirm that the decision concerning Micheil Alexidze was taken in his absence and in the absence of his legal representative. Besides, there is no proof that they were notified of the holding of the disciplinary committees meeting. The minor's parent, too, denies she had been notified about the holding of the meeting. All of this, therefore, constitutes a violation of the rights provided both by the United Nations Convention on the Rights of the Child and the Georgian legislation.

Article 19.4 of the Law of Georgia on General Education prescribes that disciplinary proceedings may be administered only in respect of cases envisaged by the School's Internal Rules & Regulations, only through applying approved rules

[395] CRC/C/15 ADD.188

and only by means of a due process and fair procedure.

In accordance with Article 13.1 of the General Administrative Code of Georgia, "An administrative agency may review and solve a matter only if the interested party whose right or legal interest is restricted by the administrative decree has been enabled to present his opinion". Article 8.1 of the same Code requires that "An administrative agency shall exercise its authority impartially". Further, para 2 of the above Article specifies: "No public official shall participate in administrative proceeding, if he has any private interest or there is any other circumstance that may affect decision-making process"

Materials of the case provide a clear proof that the disciplinary proceedings carried out in respect of Micheil Alexidze were in breach of a due and fair process; All members of the Committee attest to the fact that there was no evidence presented at the meeting to prove the fact of disciplinary misconduct committed by the pupil other than the school director's own explanatory note. Other explanatory notes clearly corroborated the fact that the school director exerted pressure on the Committee members, which, according to them, affected the independence and impartiality of their judgement; therefore, the decision to apply a disciplinary action to Micheil Alexidze was not substantiated.

Article 19.2 of the Law on General Education spells out that disciplinary proceedings and disciplinary actions must be reasonable, well-substantiated and proportional. Article 5.8 of the Internal Rules & Regulations of School No.53, enumerates the disciplinary actions that can by applied to a pupil for violating school discipline. Notably, expulsion from school appears at the very bottom of the list as the harshest measure to be applied as a last resort.

According to Protocol No.1 of the disciplinary committees, the logic behind decision on Micheil Alexidze's expulsion was that he had been already subjected to more lenient disciplinary actions in the past. Public Defender's representatives scrutinized the school documentation and revealed that it had been eleven months since the time when a disciplinary action was last applied to Micheil Alexidze (Order No. 142-1/M, 12 November 2010). This means that, pursuant to Article 5.11, Section (e) of the Internal Rules & Regulations, the above record was to be expunged from Micheil Alexidze's files by 13 October 2011 and from that date onwards he was considered to have clean disciplinary record.

Accordingly, the disciplinary committee's decision can be qualified as disproportionate. The case materials attest that the disciplinary committee meeting was called on the director's initiative. The minutes of the meeting are dated 18:00 hrs, 13 October 2011. However, by the account of one of the committee members, Marina Basilashvili, the meeting was held after the pupils' protest rallies outside the school building had already been over. Meanwhile, media[396] reported the first rally on October 17, 2011, and more rallies for several days afterwards. Moreover, according to the minutes, the meeting was held at 18:00, while two committee members, Marina Basilashvili and Maya Lewitskaya, insist the meeting was held shortly after the classes, between 15:00 and 16:00 hrs. The above sheds doubt on the officially stated time and date of the meeting.

In conformity with Article 19 of the Law of Georgia on General Education, the disciplinary committee shall take decision on the expulsion of a student by secret vote. Two committee members, Marina Basilashvili and Maya Lewitskaya - in their letter addressed to the school director (No. 3-179) - point to certain inconsistencies in the decision-making procedure. While talking with a Public Defender's representative, Marina Basilashvili noted she had raised concern during the meeting over the intended use of open voting. However, the director managed to reassure the other members (wrongly stating that pursuant to School Rules & Regulations the decision can be made by open voting). As a result, the decision on Micheil Alexidze's expulsion was made by open voting.

Pursuant to Article 60^1 of the General Administrative Code of Georgia, the above procedural breaches by the disciplinary committee constitute sufficient basis for invalidating the decision (Minutes No. 1).

Further, as the case materials reveal, the school director used the above decision of the disciplinary committee as basis for his resolution (No. 2-50) "On imposition of administrative action on Micheil Alexidze, 11th grade pupil of the Ivane Javakhishvili Public School No. 53 of Tbilisi". This resolution contradicts Article 19.12 of the Law on General Education, which provides that the authority of expelling a pupil from school rests solely with the disciplinary

[396] The fist protest rally by School #53 was held on 17 Ocotber 2011. See Public Boradcaster "Moambe" 16:10–; Internet TV „ITV", 15:10; "Imedi" TV, program "Chronica", 14:00 edition, "Rustave 2" TV, news program "Courieri", 12:00 edition.

committee. Besides, based on Article 60.1, section (b) of the General Administrative Code, the above resolution cannot be considered as an administrative act since it has been issued by an unauthorised official.

Bearing in mind the above described circumstances and based on Article 21 of the Organic Law of Georgia on the Public Defender, the Public Defender addressed the Minister of Education and Science with a recommendation to scrutinize the said case and ensure reinstatement of Micheil Alexidze's violated right to education, as well as call the concerned officials to account for the actions performed, as provided by the law.

B. Kh.'s case

Citizen D.L. filed an application[397] with the Public Defender stating that his nephew was expelled from the Orpiri public school of the Tkibuli district on May 18, 2010. The applicant claimed the expulsion was unlawful.

With a view to studying the case, the Public Defender's Centre for the Rights of Women and Children officially requested[398] all documentation related to the case from the Orpiri public school. The studying of the provided materials revealed that in the course of administrative proceedings pertaining to the pupil's case, both the voting procedure and the procedure for holding the disciplinary committee meeting had been at fault. In particular:

Under Article 19.12 of the Law on General Education, the authority of expelling a pupil from school rests solely with the disciplinary committee, with the decision to be taken by secret vote. Therefore, the decision about B. Kh.'s expulsion from school taken by open voting was incompliant with the requirements of the Law of Georgia on General Education. By the same token, the school director's respective resolution (No. 23) was inconsistent with the law, since the above Article also provides that the only authorised body that may decide on temporary expulsion of a pupil from school for a ten-day period is the disciplinary committee.

The Law on General Education does not provide for involvement of either local government representatives or teachers from the Resource Centre (except those that are members of the disciplinary committee) in any decision-making process concerned with applying administrative actions to a pupil, in contrast to what took place at the Orpiri school.

Moreover, the notice to the minor's parent dated 27 April 2010, informing of the child's anticipated expulsion contradicts Article 19.12[1] of the Law on General Education, inasmuch as this provision prohibits expulsion of a pupil from the elementary or basic school level (at that time the minor was in the 7th grade, which is basic school level).

Based on the above, it was concluded, that pupil B. Kh.'s right to education was infringed due to the fact that the disciplinary proceedings against him had been in conflict with both the requirements of the Law of Georgia on General Education and the Internal Rules & Regulations of the Orpiri School.

We received a letter from the Orpiri public school dated 25 March 2011[399], which contained assurances from the school that it will take all appropriate measures to avoid any violation of its pupils' rights in future, and that is stands ready to reinstate the pupil into the school - if he or his legal representative so desires - and create all necessary conditions for his development. We were also assured that in future the school will act in full compliance with the law.

RECOMMENDATIONS:

Public Defender addresses the Parliament of Georgia with the recommendation: To ratify the Optional Protocol to the Convention on the Rights of the Child (Resolution 17/18) related to the communication procedure, which will contribute to the strengthening of child protection mechanisms and facilitate children's participation in the rights protection activity.

397 Letter 0857–10/2
398 Letter #3653/08–4/0857–10/2
399 Letter # 63

Public Defender addresses the Minister of Labour, Health and Social Affairs, the Minister of Education and Sciences, and the Minister of Internal Affairs with the following recommendations:

1. To amend the Child Protection Referral Procedure document with a view to eliminating the existing flaws and achieving the following:

   a) to harmonize definition of "violence" with the international standards

   b) to acknowledge and incorporate "neglect" as one of the forms of violence

   c) to take account of the specific needs and circumstances of children living/working on the street

   d) to ensure concerted and coordinated operation of social services and the patrol police

2. a) to ensure retraining of the professionals involved in the child protection referral process to deepen their knowledge regarding this issue;

   b) to ensure collection and maintenance of full-fledged national statistics pertaining to cases of child abuse and neglect;

   c) to ensure staff exchange and information sharing between and among the agencies engaged in the performance of the child protection referral procedures

   d) to eradicate institutional and system violence against children by the agents of the State

Public Defender addresses the Social Service Agency with the following recommendation in order to ensure protection of children living/working on the street:

a) to carry out preventive work to empower the families whose children are under the risk of ending up on the street through the provision of adequate services, as well as analyse and reduce the risk-factors pushing children onto the street;

b) to enhance the proactive component in the work of social services, in order to reach out to children living/working on the street and bring them into contact with the respective services and professionals;

c) to create a needs-based chain of services - with shelter being only one link in the chain - to be provided to these children, depending on the individual needs and requirements (day-care centre, counselling centre, crisis centre, act.), in order to facilitate their gradual integration into the society;

d) to ensure provision of medical services;

e) to resolve the problem of identity and registration documents of street children in cooperation with the Civil Service Agency.

Public Defender addresses the Minister of Education and Sciences with the following recommendation:

a) to inform the relevant school personnel of all the legal provisions to be observed in the course of conduct of disciplinary proceedings, as stipulated by the Georgian legislation;

b) to ensure that all school pupils are informed of their rights;

c) to provide all necessary support to ensure efficient operation of disciplinary committees.

The Rights of Women

According to the 2011 UN Women report, effective implementation of laws and of constitutional guarantees is a key challenge for making the rule of law a reality for women.[400] However, women themselves are often reticent to demand legal redress due to certain discriminative attitudes prevailing in the judiciary system.

Building a gender-sensitive judiciary system requires elaboration of special procedures to guide the work of police, judiciary and other relevant bodies, together with nurturing such an organizational culture that would support women in overcoming social and institutional barriers in the field of administration of justice.

Throughout 2011, the Public Defender kept a watchful eye over the implementation of protection measures designed for the victims of domestic violence in Georgia. Using the authority vested upon him by the law, the Public Defender carefully monitored both the quantitative data pertaining to domestic violence and the quality of women's right protection by the law enforcement bodies. In 2011, the Public Defender reviewed over 30 cases of domestic violence with a special focus on the promptness and efficiency of response by the law-enforcement bodies, together with assessing the actual accessibility of protection measures for the victims of domestic violence in each case.

Based on the obtained findings, it would be fair to say that there has been a marked progress with improving the legislation concerned with the protection of domestic violence victims. However, enforcement of these laws, together with interpretation of certain legal norms and fulfilment of country's international commitments pertaining to this field are still fraught with flaws.

The Public Defender received applications from a number of women who managed to overcome the strong social barriers and had brought up their domestic violence case to the attention of law-enforcers and/or the judiciary. However, in most of the cases, this lead to nothing but secondary traumatization, due to the callousness and lack of action on the part of the authorities.

LEGAL REGULATION

In 1994, by virtue of the Georgian Parliament Resolution No.561, Georgia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 18 December 1979. Through this resolution, Georgia assumed an international commitment to promote and protect the women's rights guaranteed by the Convention. The UN Convention on the Elimination of All Forms of Discrimination against Women does not contain such notion as "violence against women". However, the UN Committee on the Elimination of Discrimination against Women – first in 1989, and later on, in its Recommendations 12 and 19, called upon all the State parties to take all steps necessary in

[400] UN Women's report (2011), 2011-2012 Progress of the World's Women: In Pursuit of Justice, , p.11

order to ensure protection of women from all forms violence regardless of its source. It is these recommendations that emphasized for the first time that domestic violence is by no means a private family matter and that the responsibility for the protection of victims of domestic violence should rest with the State.

In 2006, upon submission of its 2nd and 3rd combined country periodic report to the UN Committee on the Elimination of Discrimination against Women, Georgia received recommendation from the Committee to place high priority on the implementation of the Law on the Elimination of Domestic Violence and the national action plan for combating domestic violence; as well as sensitize to this problem both the society at large and public officials; ensure that all women facing domestic violence, including those living in rural areas, have access to immediate means of redress and protection, including protection/restraining orders, placement in shelters, legal aid, etc.

On 25 May 2006, Georgia enforced the law on the Prevention of Domestic Violence, Protection and Assistance of the Victims of Domestic Violence. By recognizing the legal equality among family members, this law aims to set up legal safeguards for the protection of women's rights and liberties, upholding their physical and psychological integrity, and preserving family values, together with creating an actionable mechanism for the identification, elimination and prevention of domestic violence.

With a view to enabling the competent bodies to react promptly to the facts of domestic violence, the law permits the issuance of protective and restraining orders as a temporary measure.[401]

On 28 July 2008, the Minister of Labour, Health and Social Affairs issued Decree No.183/N which lays down the minimum standards for the establishment and operation of temporary shelters for the victims of domestic violence, together with the rehabilitation centre for perpetrators.

In 2010, the Law on Gender Equality entered into force. The law prohibits all forms of discrimination in all spheres of social life and lays grounds for the enjoyment of equal rights, freedoms and opportunities by women and men. It should be noted that the law contains definition of such important terms as: gender, gender equality, gender-based discrimination, direct and indirect discrimination, etc.

The agencies mandated to deal with gender equality and domestic violence matters in Georgia are: the Gender Equality Council[402], the Interagency Council for Combating Domestic Violence,[403] and the State Fund for Trafficking Victims Assistance and Protection[404]. This latter's mandate was expanded[405] in 2009 also to cover victims of domestic violence.

On 5 October 2009, the Parliament of Georgia adopted Resolution No.665, setting out the rule for identification of victims of domestic violence.[406] The rule provides for a uniform approach to be applied in identifying the victims of domestic violence, alongside with specifying the bodies mandated to participate in the identification process, together with their scope of competences.

On 27 April 2011, the National Action Plan on Domestic Violence and Protection of the Victims of Domestic Violence for 2011-2011 was adopted by Presidential Ordinance No. 27/04/02.

The Public Defender is authorised to oversee the implementation of particular components of the Action Plan. Among others, these include the oversight over the activities envisioned in Section 2.4 aimed at enhancing opportunities for the legal redress of victims of domestic violence. Section 3.2.2 of the plan envisages organizing awareness-raising and educational events for the following target groups:

401 Law of Georgia on the Prevention of Domestic Violence, Protection and Assistance of Victims of Domestic Violence. Article 10.

402 The Council received the status of a permanent body by virtue of the Law on Gender Equality, 26 March 2010.

403 The Council was established by Presidential Ordinance # 626, 26 December 2008

404 The Charter of the State Fund for Trafficking Victims Assistance and Protection was approved by Presidential Ordinance No. 437 of 18 July 2006

405 Presidential Ordinance No.4 of 6 January 2009 "On the Introduction of Changes and Additions to Presidential Ordinance No. 437 on the Endorsement of the Charter of the State Fund for Trafficking Victims Protection and Assistance of 18 July 2006.

406 Presidential Ordinance No. 665 On the the approval of Identification Rule of Victims of Domestic Violence. October 5, 2009.

a) internally displaced persons;

b) rural population;

c) ethnic minorities.

Section 1.3 of the Action Plan focuses on improving collection and collation of national statistics on domestic violence by creating a unified registry. The Public Defender is actively cooperating with the relevant agencies with a view to facilitating the development of specific standards for such a registry.

A new development worth mentioning here is the Resolution of the Parliament of Georgia of 27 December 2011[407] on the Approval of the 2012-2015 National Action Plan on Women, Peace and Security for the Implementation of the United Nations Security Council Resolutions Nos.1325, 1820,1888,1889, and 1960.

ACTIVITIES IN THE FIELD OF PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

The Public Defender requested information from the Ministry of Internal Affairs[408] about its work related to domestic violence. The Ministry replied[409] that it is proceeding with the implementation of the activities under the National Action Plan on Domestic Violence and Protection of the Victims of Domestic Violence; one of the components of the plan envisages upgrading the skills and competence of the police staff for dealing with domestic violence through training.

According to the Ministry, starting from January 2011 to the present day, as many as 1200 candidates who applied for a job at the patrol police or district police stations have taken a basic training course at the Police Academy.

Besides, with the support of international organizations and owing to active cooperation with non-governmental organizations, in February 2011, the Ministry launched training cycle on domestic violence, which is still underway. Such trainings were already held in the following regions of Georgia: Kakheti,Mtskheta-Tianeti, Shida Kartli, Kvemo Kartli, and Samtskhe-Javakjeti.

As of now, as many as 520 policemen have been retrained.

According to the Ministry of Internal Affairs, the number of restraining orders issued from January to October 2011 is significantly higher compared to the respective period of 2010, which is accounted for by an increase in the reporting of incidents to the police.

With a view to raising public awareness, the State Fund for Trafficking Victims Protection and Assistance printed 14,000 calendars containing the domestic violence hotline number, together with the hotline of the Minster of Internal Affairs. In addition, the Fund published 7,000 copies of a brochure entitled "Let's Step Up against Domestic Violence" which were disseminated among the population by the staff of the Tbilisi Police Department and the Regional Police Main Division.

In the second half of 2011, NGO "National Anti-Violence Network of Georgia" printed 18,000 leaflets in the Georgian, Russian, Armenian and Azerbaijani languages and booklets in the Russian and Azerbaijani languages. Apart from the information on domestic violence, they all contain the violence hotline number. The Ministry of Internal Affairs distributed these materials across various regions of Georgia, including those compactly populated with national minorities.

[407] #5622–RS
[408] Letter #1091/08
[409] Letter #1468871

PREVAILING TRENDS IN THE VIOLATION OF WOMEN'S RIGHTS

Despite the efforts undertaken by both governmental and non-governmental organizations against domestic violence and the results achieved so far, the applications filed with the Public Defender strongly suggest that domestic violence still remains a problem.

A great number of the 2011 applications pertaining to women's rights violations submitted to the Public Defender were concerned with domestic violence, including physical, psychological, and economic. The review of the applications revealed the following trend:

When called to the site, the patrol police would not exercise all relevant measures ought to be taken according to the law. In most of the cases, they qualify domestic violence as a family conflict; in this case, all they are required to do is just to give out a verbal warning and get a written undertaking from the offender. In case the act of violence involves bodily injuries, the police launch preliminary investigation based on the elements of crime, as spelled out in the Criminal Code. In such instances, they do not apply temporary measures envisaged by the domestic violence legislation. As a result, the abuser does not get restrained by any restrictive order, while the victim remains exposed to repeated outbreaks of violence.

The reporting period has demonstrated a fairly low level of awareness of the police staff on the specifics of working with domestic violence cases. This is evident from the replies provided by the police to the Public Defender's Centre for the Rights of Women and Children to its queries related to domestic violence. More specifically, in many instances, the police tend to treat the facts of economic violence as civil cases (property disputes) to be settled by the court. In other instances, involving severe emotional/psychological violence, the police were found to act inappropriately, disregarding the measures they were required to take under the law.

At the same time, it is a legal requirement that the police shall not be authorized to consider domestic violence case inferior to other cases of violence.[410]

If the police continue treating domestic violence cases in the above-described manner, this will clearly jeopardize the letter and spirit of the Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims.

N.M.'s Case [411]

On 23 May 2011, citizen N.M. lodged an application with the Public Defender.

The applicant claimed she was suffering domestic violence at the hands of her ex-husband and her son. Her ex-husband was permanently drunk and abused her both physically and verbally, kept insulting her, brandishing a knife, and threatening to kill her, while her son, I.M., always sided with his father. The applicant claimed she had applied to the Gldani-Nadzaladevi district Police Department Division No.6 on more than one occasion, but her reports remained unattended.

On 25 August 2011, the above police division informed the Public Defender[412] they had instituted a *prophylactic supervision case,*[413] which would be carried on until the settlement of property dispute between N.M. and G.M. However, according to the applicant, this measure provided her with no protection from any further instances of violence.

[410] Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims ", Article 16, Para 1.
[411] Application # 0633-11
[412] Application # 1023462
[413] Application # 807959

N. J.'s case [414]

On 5 April 2011, citizen N.J. lodged an application with the Public Defender of Georgia.

The applicant claimed she was repeatedly insulted and subject psychological abuse, slander and intimidation at the hands of her brother–in-law, her extended family and neighbours. Her husband and her children had died some time ago, and now her brother-in-law wanted to take over her property.

On 20 May 2011, we sent a query to the Ministry of Internal Affairs' Baghdati district police department.

On 29 August 2011, we received a reply from the Racha-Lechkhumi and Kvemo-Svaneti Main Division's Baghdati district police department, stating that the investigation initiated in connection with an intentional infliction of property damage was dropped due to insufficient crime elements (N057090082). The letter also pointed out that both of the rival parties were warned to refrain from verbal abuse. This case demonstrates the police failure to take adequate measures for the protection of the victim as required by the law.

L.B.'s case [415]

On 30 June 2011, citizen L.B. lodged an application with the Public Defender.

The applicant claimed she had suffered verbal abuse from her own children for three years, who kept threatening they would throw her out of home.

On 8 September 2011, the Ministry of Internal Affairs apprised us of the fact that L.B.'s children had been warned to refrain from insulting the applicant, stop conflicting with her and apply to the court to resolve their property dispute.

Again, the police have taken no appropriate measures to protect the victim.

L.K.'s Case [416]

On 30 July 2011 citizen L.K. lodged an application with the Public Defender.

The Applicant stated she had a property dispute with her bother-in-law who subjected both her and her children to abuse and threats.

On 6 September 2011, we sent a query to the Chokhatauri district department of the Ministry of Internal Affairs of Georgia. On 26 September 2011, the said department informed us that the investigation into this claim had not yet been initiated due to the absence of crime elements. They had the abuser to write a letter of undertaking, thereby warning him against any further verbal abuse of the applicant. Clearly, the police did not carry out the measures envisaged by the law with a view to protecting the victim.

As seen from the above instances, the police did intervene in all of the cases. However, this was only a formal intervention, which provided no actual protection for the affected individuals from a recurrent abuse. In 80% of domestic violence cases brought to the Public of Defender's attention, the police response was only limited to issuing warnings and initiating *prophylactic supervision*. Notably, the Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims contains no mention of *a prophylactic supervision case* at all. The Public Defender requested the police to supply any proof they might have to demonstrate that the warnings and prophylactic supervision were, indeed, an effective tool in preventing the recurrence of abuse, together with the copies of protocols of all the interviews with the victims and the alleged abusers, to help us assess the thoroughness and depth of the police enquiry. However, no

[414] Applications 0390-11; 0390-11/1
[415] Applications # 0980-11
[416] Application No.2386-09/3.

such proof was provided. This circumstance, coupled with the articulate dissatisfaction of applicants with the police response, strongly suggests that the preliminary investigation of all the above cases was insufficient and clearly lacking depth.

On 30 November 2010, the European Court of Human Rights passed the decision on the case of HAJDUOVÁ v. SLOVAKIA[417] (2660/03), in which the Court notes "it appreciates the police did intervene in this domestic violence case. However, it cannot overlook the domestic authorities' inactivity and failure to ensure protection of the victim from a repeated violence. The Court observes that the state authorities were under a duty to take reasonable preventive measures where they knew or ought to have known at the time of the existence of a real and immediate risk."

The above decision was preceded by yet another, highly resonating decision of the European Court of Human Rights in connection with domestic violence and women's rights protection - OPUZ v. TURKEY[418].

In the said judgement, the Court noted that the Turkish authorities, including the police, were reluctant to investigate duly into this family violence case or take any appropriate measures to prevent the death of one of the victims. To illustrate the women's rights situation in Turkey, the Court cites one of women's rights organization's report stating that domestic violence is still treated with tolerance at police stations, and that some police officers try to act as arbitrators, or take the side of the male, or suggest that the woman drop her complaint. There are also serious problems with the enforcement of court injunctions, some of these injunctions were not executed because the perpetrators were police officers or had friendly relations with officers at the police station in question.

The Court held that in the OPUZ v. TURKEY case the authorities did not appear to have taken due account of all relevant factors when deciding to discontinue the criminal proceedings against the abuser. Instead, they seem to have given exclusive weight to the need to refrain from interfering in what they perceived to be a "family matter." Therefore, the state authorities failed in their positive obligation to protect the right to life within the meaning of Article 2 of the European Convention on Human Rights.

The above judgements of the European Court of Human Rights are a clear illustration of the high positive obligation of the State authorities, including law enforcement bodies, with respect to protection of victims of domestic violence. While implementing these obligations, it is essential that each case be scrutinized thoroughly, in order to avoid the inadmissible mistake of leaving the victim to the mercy of the abuser.

RECOMMENDATIONS:

Public Defender addresses the Ministry of Internal Affairs with the following recommendations:

a) to conduct monitoring over the management of domestic violence cases;

b) to ensure continued training of police staff with a view to mastering the specifics of working on cases of domestic violence;

c) in the retraining process of the police staff, to consider using the 2010 publication by a group of authors entitled "Supplementary Guide for the Police on the Matters of Domestic Violence"[419] which, inter alia, was approved and recommended by the Ministry of Internal Affairs.

[417] European Court of Human Rights, Judgment No.2660/03.
[418] European Court of Human Rights, Judgment No.33401/02
[419] A large part of the Supplementary Guide is devoted to describing the role of police in preventing domestic violence. It contains a detailed account and sequence of actions to be followed by the police, while intervening into the case of vomestic violence, as well as during execution of the related injuctions: first a restraning order resulting from the response, and later - the protective order issued by the court .

The Rights of Persons with Disabilities

The year of 2011 was marked with a number of important measures enacted by the State with a view to protecting the rights of disabled persons which - compared to the previous years - is a positive trend. At the same time, the civil society discussions on this matter became more vigorous. A special mention must be made for the media who became more involved and provided a wider coverage of facts concerning the violations of disabled people's rights. This also included bringing into the limelight the concrete facts of violation of fundamental rights and freedoms of disabled persons described in the Public Defender's parliamentary and other reports. And yet, despite the above, there have been a few instances of discriminatory rhetoric towards disabled persons. Notably, the Board of Georgian Charter of Journalistic Ethics heard one of such facts and found the violation of Principle 7 of the Charter,[420] setting an important precedent. All in all, media's increased vigilance towards disabled people's problems over 2011 has been a positive development.

In 2011, a number of Public Defender's previous recommendations concerning the highly problematic issues described in the 2010 report have been implemented. For instance, several municipalities have commenced work to promote disabled-friendly access to the built environment; the civil society and research organizations have intensified their monitoring over the protection of the rights of disabled persons. However, there are still a number of problems whose solution requires a system approach. These latter are closely linked to the problematic issues brought to the fore in the present report.

IMPLEMENTATION OF PUBLIC DEFENDER'S RECOMMENDATIONS

At the end of 2011, the Public Defender's Office requested information from central authorities and local municipalities pertaining to the progress of implementation of recommendations proposed by the Public Defender during 2011.

The Gori municipality administration replied[421] that both the front entrance to the municipality administration building and the inside staircases have now been supplied with a ramp for wheelchair access, with a view to creating a friendlier built environment. Besides, the Administration has hired several disabled persons to work at its several service departments.

The Legal Service of the Tbilisi Municipality reported[422] that by the decision of the Tbilisi City Council of 28 January 2011, certain amendments and additions were introduced into the Tbilisi City Council Resolution on Tariffs in Regulated Spheres of Economy, No.6-35 of 8 May 2007. This novelty provides that in the economic spheres regulated by Article 1^1, section (a) (the underground electrical transport (Metro) and buses of M_3 category), used for regular

[420] 9 November 2011.
[421] Letter No.6467, 29 December 2011.
[422] Letter 06/153802–1, 7 December 2011

public conveyance, the travel shall be free of charge for any disabled individual registered in the capital with an advanced degree of sight loss, as well as for the accompanying person helping him/her to move around. As of December 2011, pursuant to the Decree of Tbilisi Government, No. 13.05.504 of 30 May 2011, the Municipality issued as many as 2800 free travel plastic cards.

Besides, 30 talking traffic lights have been mounted at 28 street crossings of Tbilisi. Gradually, in the course of the overhaul and reconstruction, the city streets are supplied with disability friendly sidewalks, and safety islands are levelled down to the ground.

On 29 April 2011, the Tbilisi City Council, by virtue of resolution No. 5-24, amended its earlier resolution No.9-48 of 3 August of 2007 on the Parking Regulations for Motor-Vehicle Transport in the Territory of the City of Tbilisi. These changes in the parking regulations have specified such definitions as "handicapped person" and "identification placard," together with denoting the categories of disability-adapted vehicles for which the handicapped placards can be issued. In addition, the detailed application procedure for handicapped placards has been introduced. Also, by virtue of Resolution No. 30.09.1208 of 28 October 2011, The Tbilisi Government amended its earlier Resolution No.18.04.606 of 27 August 2007, whereby out of the 34,970 parking spaces, 315 have been assigned for the disabled parking. Out of these latter, 179 are provided with the respective signposts, and 146 have handicapped parking marks on them.

The Ministry of Labour, Health and Social Affairs was requested to provide information on the activities it has implemented in the framework of the 2010-2012 Government Strategy for the Social Integration of Persons with Disabilities. According to the reply received from the Ministry,[423] during 2011, alongside with the routine annual programmes and activities, it also launched some new initiatives. More specifically, on 8 April 2011, the Ministry adopted the standards of day care service for disabled persons aimed at providing them with quality service.

Another fact worth mentioning is the Coordination Council on Issues of Persons with Disabilities functioning under the Prime-Minister of Georgia, which held its first meeting on 1 December 2011. Notably, the Public Defender had recommended establishing such a council several times in the past.

The above meeting was attended by the Prime Minister, Minster of Labour, Health and Social Affairs, Minister of Regional Development, Deputy-minister of Finance, Deputy Minster of Economy and Sustainable Development, a representative from the Minister of Culture and other stakeholders. The Council determined its working format and structure and resolved to set up a secretariat. The Prime Minister nominated Andria Urushadze, Minister of Labour, Health and Social affairs as a deputy chairperson of the Council. All other Council members supported this nomination. It was decided that the deputy chairperson would organize and lead the work of the Council, while the Prime Minister will present the matters of particular importance at Government sessions.

The meeting considered the following topical problems in the field:

1. The issue of granting the status to persons with disabilities;
2. Access to the built environment;
3. Access to education;
4. Problems with the issuance of driver's license;
5. Matters related to health insurance;
6. Supporting the cultural and creative groups at the Unions of the blind and deaf, and other relevant issues.

The second meeting of the Coordination Council was held on 7 December 2011, at the Ministry of Labour, Health and Social Affairs The meeting considered a set of topical issues pertaining to persons with disabilities.

Worthy of special mention is the fact that the state authorities and non-governmental organizations have both followed the Public defender's recommendation about the need to monitor the rights' situation of persons with disabilities. In

[423] Letter No.01/44549, 18 October 2011

particular, in the framework of the *Program Monitoring Subprogram*, launched in pursuance of the Georgian Government resolution No. 101 of 23 February 2011, "On the Adoption of the 2011 State Program for Social Rehabilitation and Child Care", organization "BCJ-Research" conducted monitoring of the programs undertaken by Ministry. The survey involved interviewing the organizations participating in state-funded programs and providing services to disabled people. The survey produced some interesting findings that may prove instrumental for improving the social rehabilitation programs.

Another non-governmental organization, *The Association of Disabled Women and Mothers of Disabled Children – DEA*, jointly with the Young Lawyers Association carried out provisional monitoring of the progress of implementation of the 2010-2012 National Action Plan for the Social Integration of Persons with Disabilities. The preliminary findings of the monitoring revealed the following problem matters:

Some of the ministries keep the information on the implementation of the Action Plan strictly confidential, others - reveal only partial information. This is an impediment for performing an adequate monitoring, if any.

Implementation of nearly all components of the Action plan is lagging behind the deadlines, and in some cases, these deadlines are misinterpreted. In one instance, the deadline was moved to a later date with no official authorization. Quite often, the time lag was to bad that it jeopardized the timely implementation of the whole component. The monitoring revealed several instances where deadlines were badly compromised, or even worse, some activities had not even been started by the time they were due to end according to the Action Plan.

Notably, the survey revealed no evidence of coordination between the implementing agencies, which has served yet another argument in favour of calling the meeting of the Coordination Council.

Another relevant point in this connection is that the above noted non-governmental organizations, in their provisional monitoring report supplied interesting and well-substantiated analysis of the achieved results and problems in relation to each item of the Action Plan. This analysis will afford the executive authorities a better insight into the views and opinions of the civil society regarding the rights situation of disabled persons and help them to work more efficiently towards implementation of the Action Plan, in partnership with civil society organizations.

The Public Defender welcomes the intensified efforts put by the state authorities, non-governmental organizations and local governments into safeguarding the rights of disabled people. However, a number of urgent problems in this field still await solution.

Over the reporting period, the Centre for Persons with Disabilities at the Public Defender's Office studied 58 applications pertaining to violations of the rights of persons with disabilities. This analysis allowed us to identify the most problematic issues, as presented below:

PROBLEM WITH THE RATIFICATION OF THE 2006 UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Procrastination with ratifying the UN Convention on the Rights of Persons with Disabilities by the Georgian Parliament in 2011 is a legislative setback, which hinders protection of the rights of disabled persons.[424]

It is noteworthy that the 2010-2012 National Action Plan for Social Integration of Persons with Disabilities adopted by Governmental decree No. 978 of 15 December 2009 incorporates a significant part of the commitments provided in the UN Convention on the Rights of Persons with Disabilities. These include: social protection of persons with disabilities, access to housing, infrastructure facilities and other social goods; as well as disabled persons' medical, professional and social rehabilitation, prohibition of discrimination, etc. The more so is it unclear what holds the parliament from ratifying the Convention, as this would have provided an opportunity to fulfil the above commitments to a higher standard, in compliance with the norms of international law.

424 Georgia signed this Convention on 10 July 2009.

The high importance of this Convention is attested by the fact that by ratifying it on 23 December 2010, the European Union became a **party** to an international treaty for the first time in its history.

The same year saw the adoption of the European Disability Strategy 2010-2020 for the EU countries. Implementation of this strategy is closely linked to the realisation of the rights guaranteed by the Convention. Respectively, as underscored in the above Strategy[425], its overall aim is to ensure implementation of the UN Convention across the EU, therefore the Strategy progress reports should be fully consistent with the reporting requirements for the Convention. This serves a further indication for Georgia - striving towards European **integration** - as to how crucial it is to ratify this Convention.

RESTRICTED ACCESS TO HEALTHCARE SERVICES FOR PERSONS WITH DISABILITIES

Similar to 2010, in 2011, access to health for persons with disabilities remained a daunting problem. In effect, a combination of infrastructural and institutional problems has erected an insurmountable barrier for disabled persons on the way to receiving adequate medical help.

It is a regrettable fact that, due to the limited employment and business opportunities for persons with disabilities, the only opportunity for these people to get medical service is through their inclusion into the Integrated Database of Socially Vulnerable Families. Meanwhile, in order to become eligible for basic medical service, the family's rating score should be below 70,000. The nature of citizens' complaints received to this effect over the reporting year strongly suggests that the scoring procedure, approved by the Ministry of Labour, Health and Social Affairs by Decree No.141/N of 2 May 2010, "Rules for the assessment of social and economic state of socially vulnerable families", in overall, fails to take account of or accommodate the special needs of disabled people. This results in a situation where many of them are not entered into the Integrated Database of Socially Vulnerable Families and, hence, get no access to the state medical service.

Another document which disregards the special needs of person with disabilities is Resolution No. 77 of 15 February 2011 of the Government of Georgia "On Approval of 2011 State Health care Programmes", more specifically - its Component on General Ambulatory Care Services. It provides for only four visits by a physician or a nurse a year for bedridden (immobile) patients.[426] Article 2 of the same Component specifies the beneficiary groups of this Programme. In particular, these are: children aged 0-6, elderly persons above age 60, diabetic patients ages 6 to 60, and incurable patients. Obviously, the said Programme provides for no other opportunity. Respectively, it offers no medical care to disabled persons aged 6 to 60 who are unable to leave their home due to their health condition.

The poorly adapted physical environment, together with the fact that disabled persons do not feature as beneficiaries either under Resolution No. 77 of 15 February 2011 of the Government of Georgia "On Approval of 2011 State Health care Programmes" or under Resolution No. 218 of 9 December 2009 "On Measures for Insuring the Health of Population within the Framework of State Programs and the Terms of an Insurance Voucher", results in a situation where the disabled population cannot even receive so much as elementary out-patient care.

M.G.'s case

On 19 April 2011, the Public Defender of Georgia received an application (N0479-11/1[427]) from citizen M.G. who reported that four of his family members had a disability. According to the social agent, one of them was bed-ridden, two others could not move around independently and needed a caregiver and at the same time belonged to the category of *patients with life-threatening disease, hence,* requiring permanent medication and outpatient medical care. The only source of livelihood for the family had been disability allowances, old-age persons, and a 150 Gel monthly of one of the

[425] European Commission, European Disabilituy Strartegy 2010-2020, Brussels 15.11.2010 SEC (2010) 1323

[426] Resolution No. 77 of 15 February 2011 of the Government of Georgia "On Approval of 2011 State Health care Programmes", Annex N24 – „General Ambulatory Care", Annex 24.1, Section (3).

[427] Application No.0479-11/1, 19 April 2011.

family members. The Applicant claimed that his overall family income was hardly sufficient to buy all of the required medication, so much so that they could not afford buying enough food. The applicant was particularly frustrated about the fact that his family was given a higher rating score during the most recent re-assessment round, entailing the loss of their health insurance policies. Meanwhile, these latter had been of critical importance for his family, according to the applicant.

During the recent assessment round, the assessor gave the applicant's family a higher rating score (81,890), which lead to the termination of social allowances designated for the families living under the poverty line. Interestingly, in the preceding years this family's assessments had been at: 27 830 in 2005; 9250 in 2008; and 27 160 in 2010.

In the applicant's view, and also judging by the comparison of the family's 2010 and 2011 asset declarations, this upward leap in the rating score may have been due to a new piece of property included in the 2011, as distinct from the previous year. In effect, this newly added asset was a used light vehicle manufactured in 1985. This car, the applicant claimed, was absolutely indispensible for a family with two disabled members, who needed constant help and regular medical checks. The more so that both of them suffered from a progressive muscular dystrophy, which requires permanent medication and care. The area where the family resides is poorly adapted to the needs of people with disabilities, therefore, without a car, it was practically impossible to move two disabled persons around the city.

Pursuant to Article 7 of the Law of Georgia on Social Protection of Persons with Disabilities, the State authorities shall provide all adequate conditions to persons with disabilities for unencumbered orientation and the use of transport and transport communications and mobility. Article 24.2 of the same law envisages provision of automobiles to disabled persons within the framework of social assistance programme. In view of the above-described circumstances, the latter legal provision seems particularly relevant to M.G.'s case.

Nonetheless, despite the many references to these circumstances contained in numerous communications sent by the Public Defender's Office,[428] the Social Service Agency disregarded M.G.'s family critical situation, fully ignoring the State obligations both under national and the international legislation to provide medical care to those in need and safeguard the right to dignified life.

Regrettably, when scoring durable property owned by families, the Social Service Agency does make a distinction between regular items and those that are vital to satisfying the basic needs of disabled people (individuals with life-threatening diseases, or those requiring permanent medication or regular visits to out-patient clinics and hospitals). According to the Social Service Agency, pursuant to Article 9 of the "Rules for the assessment of social and economic state of socially vulnerable families" approved by the Ministry of Labour, Health and Social Affairs Decree No.141/N of 2 May 2010, the only instance they will not count declared durable property toward the total score is if these durable items have been provided for free use or given gratis in full observance of the Civil Code by the State/local government body, legal person of private law, private educational institution, humanitarian mission of an international organization and/or its representative office in Georgia, as well as the durable property which has been sold directly to the family at a symbolic price, or items given as awards and prizes, in respect of which the family can provide a documented proof.

On 17 February 2011, at 9:00 a.m., M.G. contacted Public Defender's representative and told him one of his two disabled family members developed acute pneumonia, but he had no money to hospitalize her and pay for hospital treatment; The Public Defender's representative acted on this call immediately and started pushing for urgent arrangements to ensure that the disabled person received the medical help she needed. But, it was too late, and the disabled person died on 20 February.

[428] Deputy Public Defender's letter by the Lanchkhuti distrcit centre of the Social Service Agency No.1628/08–4/0479–11, of 13 May 2011; Deputy Public Defender's letter by the Lanchkhuti distrcit centre of the Social Service Agency No.4364/02/0479–11, 7 November 2011; Deputy Public Defender's letter by the Lanchkhuti distrcit centre of the Social Service Agency No.118/08–2/0479–11, 11 January 2012.

Citizen X's Case

On 1 April 2011, the Public Defender's Office received an application from citizen X [429] with an advanced disability.

Describing X's state, the social agent wrote: "the person is bed-ridden, unable to sit up or get up from bed without help. Needs a caregiver." X's family consisted of two members, the other member being a 64-year old parent. The total family income was 140 Gel, plus a 40 Gel monthly charitable assistance from a relative. Because of his medical condition, X was in pain all the time, while the family could not afford painkillers. He also needed an expensive surgery but, again, he could not afford it. Hence, X had to live with an exhausting pain all the time. According to the Social Service Agency's asset declaration, the family had no arable land, no cattle or poultry, not a single item of durable use subject to declaration which was in a working condition, such as: refrigerator, gas stove, water heater or vacuum cleaner. The social agent assigned the family to category 'very poor";

The Public Defender sent a letter to the Social Service Agency[430] pointing to X's restricted access to medication and the need of surgical operation;

In reply,[431] The Social Service Agency noted that their records pertaining to the concerned family contained no indication that "the person requires permanent medical treatment from a live-threatening disease," as X did had not present any valid medical certificate attesting to his disease.

Later on, the Public Defender's special Centre scrutinized the situation and found out that the family had had no money to pay for the doctor's certificate. The Social Agency assessor had taken no notice of this fact.

The applicant, who - due to the lack of financial means, was actually isolated from the surrounding world, owned a personal computer, which, as he said, was his only lifeline to the world. The Social Service Agency made no allowance for the disabled person's special needs and, therefore, classified the said PC as an item of significant value, rather than an only means of communication connecting the person to the outer world.

On 18 March 2011, the family was assessed and received the rating score of 81,590. This meant that the disabled person's right to medication (painkillers) or other medical care remained restricted, as before.

The two above cases provide a clear demonstration of the restricted access to health for persons with disabilities. The main reason accountable for such a situation is the State' failure to apply human rights based approach in addressing problems of disabled persons.

DISCRIMINATION ON THE GROUNDS OF DISABILITY

Protection against discrimination is guaranteed under Article 14 of the Constitution of Georgia, which reads that "everyone is born free and is equal before the law, regardless of race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and title of nobility or place of residence".

Pursuant to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The United Nations Committee on Economic, Social and Cultural Rights points out that discrimination on the grounds of disability, both de jure and de facto, has a long history and may come in many different manifestations. It could be explicit, bearing a clear negative context: e.g., denial of the right to education, or implicit and subtle: e.g., segregation

[429] Application No.0374/10, 01 April 2011.
[430] Public Defender's letter No.1209/08–410374–11, 11 April 2011.
[431] Social Service Agency letter No.04/35824, 24 August 2011.

and exclusion through imposing physical and social barriers. In view of the above, and based on the aims of the International Covenant on Social, Economic and Cultural Rights, the **discrimination on the grounds of disability** can be characterised as: an accentuation of a difference of any kind, exclusion, restriction of a right or a privilege, as well as the failure to observe the **reasonable accommodation principle**, resulting in a restricted enjoyment or recognition, or denial of a person's economic, social and cultural rights. Such a restriction of rights could also result from neglect, omission to act, stereotyped prejudices and biased judgements. Notably, Georgia ratified the International Covenant on Social, Economic and Cultural Rights on 25 January 1994. Hence, its norms are legally binding, similar to the Convention for the Protection of Human Rights and Fundamental Freedoms, which Georgia ratified on 12 May 1999.

In this context, it would be helpful to bring up the definition of "reasonable accommodation", as provided in Article 2 of the 2006 Convention on the Rights of Persons with Disabilities: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; This Convention is fully consonant with the International Covenant on Social, Economic and Cultural Rights in that they both treat the denial of the reasonable accommodation as an act of discrimination on the grounds of disability.[432] Given the above, any legal definition of discrimination must treat the failure to provide reasonable accommodation as an act of discrimination. In practical terms, application of reasonable accommodation means making the educational and health facilities, workplace, public transport, etc., usable by persons with disabilities by removing the barriers that may keep a disabled person from getting fully involved in the activities or receive a service on a par with others. It is the failure to comply with the principle of reasonable accommodation, which comes to the fore in the context of all the cases reviewed by the Public Defender. This failure resulted in a restriction (assumably partial) of the applicants' right to medical care, by erroneously considering the durable items in their possession as unnecessary indulgence, rather than vitally important aids helping these people to cope with the unfriendly environment. In one of the cases, this was a rather badly needed means of transport, and in the other – a personal computer, the person's only means of communicating with the outside world. It should be kept in mind that the principle of reasonable accommodation defies the application of stereotyped solutions (e.g., a car or a PC may not always be construed as a critically important implement in providing a disabled person with necessary access to the environment). And besides, if reasonable accommodation turns out to be a disproportionate and unbearable burden to those persons or organizations that are expected to provide it, such incompliance will not be qualified as discrimination. However, the question here is whether it was right to deny a disabled person health insurance only because he/she had not been included into the Database of Socially Vulnerable Families.

MINIMUM STANDARD OF HEALTH

While the Covenant on Economic, Cultural and Social Rights provides for progressive realization of rights and acknowledges the constraints due to the limits of available resources, it also imposes certain obligations on States parties that are of immediate effect. Pursuant to General Comment 14 of the UN Economic and Social Council,[433] States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of Article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. The WTO Strategy "Health for All"[434] stipulates that all people in all countries should have at least a minimum level of health, while the WTO Strategy for Primary Healthcare[435] provides a list of essential medical services, including treatment of common diseases and injuries and provision of essential drugs. With a view to understanding the context of Georgia, it would be helpful to compare the WTO list of essential medical services with a respective list presented

[432] The Office of the UN High Commissioner for Human Rights (2008), Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, "From exclusion to Equality. Realising the Rights of Persons with Disabilitites."

[433] UN Economic and Social Council, General Comment No. 14 #14, The right to the highest attainable standard of health : . 08/11/2000. (Article 12 of the International Covenant on Economic, Cultural and Social Rights., 2000, the 22 nd Session.

[434] World Health Organization, Global Strategy for Health for All by the Year 2000, WHA 34.36, 1981,

[435] World Health Organization "Primary Healthcare, Report for the Primary Health Healthcare Conference, Alma-Ata, 1978.

in Article 3 of the Georgian Government Resolution No. 218 of 9 December 2009 on the *Measures for Insuring the Health of Population within the Framework of State Programs and the Terms of an Insurance Voucher*. The Resolution provides that various target groups, including those registered in the Integrated Database of Vulnerable Families, are eligible for health insurance vouchers to cover the costs of such services as out-patient care, inpatient care, medicines and medical supplies, etc. By simple analogy, one can infer that this Resolution is meant to secure minimum standard of health in Georgia. And, as the Committee requires, the State parties should implement this latter without discrimination and as an obligation of immediate effect, so that everyone enjoys at least a minimum level of health and essential medical care.

Therefore, in order to give an access to the minimum standard of healthcare to disabled people in Georgia, it is necessary that the principle of reasonable accommodation is applied while calculating the rating score for the inclusion of applicants into the Integrated Database of Socially Vulnerable Families;

This change, if effected, will help disabled people from socially vulnerable backgrounds to receive the essential medical care they require. Naturally, this shall not rule out or replace other positive steps to be taken by the State with a view to providing essential medical and social rehabilitation services.

RESTRICTION OF ACCESS TO EARLY CHILDHOOD DEVELOPMENT PROGRAMMES FOR CHILDREN WITH DISABILITIES

From 13 to 16 January 2012, the Public Defender received 25 applications from citizens[436] who complained about the restricted access to early childhood development programmes for children with disabilities in Georgia. The applicants noted that the 2012 State Programme for Social Rehabilitation and Childcare adopted by Government resolution No. 503 of 29 December 2011 contained certain flaws seriously infringing the rights of disabled children; In more specific terms, the applicants claimed that in the preceding years the beneficiary audience of *Sub-programme for Early Development of Children with Mental and Physical Disabilities* covered all disabled children aged 0-7, whereas in 2012 the sub-programme was truncated to ages 0-3 only.

To gain an insight into this issue, the Public Defender's Centre for the Protection of Persons with Disabilities requested[437] pertinent information from the Ministry of Labour, Health and Social Affairs. Besides, it held working meetings with international and local organizations, as well as the parents of disabled children.

2011 SUB-PROGRAMME

The main objectives of the 2011 Sub-programme for Early Childhood Development of Children with Mental and Physical Disabilities (including Downe Syndrome, cerebral palsy, autism, etc.) focused on early rehabilitation and prevention

Sub-programme activities:

1. Identification of disorders in the early development of children with mental and physical disabilities; helping such children to develop their social, motor, cognitive, self-care and communication skills, and facilitating their social integration;
2. Development, implementation and monthly update of a child's individual development plan through applying appropriate evaluation techniques and methodologies (including stimulating activities for infants, development of social and self-care skills; developing cognitive, motor and communication skills);
3. Teaching parents to work with individual plans;

[436] Application #0056–12, 16 January 2012; Application #0051–12, 13 January, 2012.
[437] Correspondence #6430, 25 January 2012.

4. Based on a child's specific needs, providing no less than nine types of services a month (psychologist, early child development teacher, occupational therapist, physiotherapist, speech therapist);

5. Provision of moral and psychological help to the parents of children with mental and physical impairments from the time of the child's birth, and enrolling the child into the early childhood development program from the very first months of life.

2012 SUB-PROGRAMME

It is noteworthy that the 2012 State Programme for Social Rehabilitation and Childcare, adopted by Government resolution #503 of 29 December 2011, too, comprises a sub-programme for early childhood development, but with certain modifications from the previous year (and with a modified title).

More specifically, the objective of the sub-programme has been changed into "rehabilitation of children with mental and physical disabilities and their parents, and prevention of child abandonment in Tbilisi and Kutaisi." It is unclear why the coverage of the programme has been limited only to two cities, and why the subprogramme exercises a discriminatory approach towards those children who do not happen to live in these two cities. What's more, the title of the subprogramme itself is discriminatory as it asserts a geographically conditioned access to services, which contradicts Article 23 of the UN Convention on the Rights of the Child, requiring the State parties to ensure effective access to rehabilitation services for all children with disabilities.

On top it, the notion of *early rehabilitation of parents,* from the medical standpoint, is confusing, as well as unjustifiable and obsolete. In WTO's opinion,[438] medical personnel should treat disabled children's parents as active agents of their multi-disciplinary team to be empowered with new skills, information, knowledge, and encouraged through self-help groups, rather than seeing them as patients in need of rehabilitation. The modified objectives for the above sub-programme are clearly indicative of the old-fashioned approaches applied to this day in the rehabilitation and social integration of disabled children in Georgia.

In addition, as noted above, another major change of the 2012 sub-programme has been the shrinking of its target group only to cover children aged 0-3. Resolution No. 503 of December 2011 makes an exception for those disabled children aged 4-7, who had been beneficiaries of the 2011 Early Childhood Development Programme. These children may continue receiving services under the 2012 sub-programme, on the as-need-be basis.

According to the explanation[439] provided by the Social Affairs Department of the Ministry of Labour, Health and Social Affairs, the truncating of the target group age to 0-3 in the 2012 State Programme for Social Rehabilitation and Childcare has been conditioned by the pressing need to strengthen one of the major components of the on-going Child Welfare Reform - *prevention of disabled infant abandonment and facilitation of early childhood development*. At face-to-face meetings, the ministry officials clarified their position further: the Child Welfare Reform plan for 2012 envisages vigorous measures for the deinstitutionalisation of disabled infants living at the Tbilisi Infant Home. Accordingly, the Ministry made the task of caring for such children as the primary goal of the Sub-programme. This, the Ministry claimed, would reduce the risk of infant abandonment through enabling the parents who are contemplating abandonment to become beneficiaries of the sub-programme. And, on the other hand, according to the Ministry, such a decision would secure necessary funds for specialized services for the purpose of minimising chances of a repeated abandonment of the child, after he/she has been reintegrated into the biological family or put under foster care.

While each of the above ambitions is highly important in itself, the Ministry's logic for expanding services to one category of disabled children at the expense of another category, remains rather doubtful and offers a lame excuse for its decision. At a meeting with the Public Defender, organized on 13 February 2012 at the Ministry premises, the

438 World Health Organization, 2010, Community-based Rehabilitation http://whqlibdoc.who.int/publications/2010/9789241548052_empower_eng.pdf

439 Letter No.01/6360

ministry officials put the blame for such a decision on scarce resources. They further informed the Public Defender that due to the lack of resources for 2012, the Ministry was faced with hard choices and, eventually, an incontestable priority over other tasks was given to mobilising pension funds. Given the above circumstance, it can be logically inferred that the Ministry merely reshuffled the available resources within the Subprogram – allocating additional funds for the provision of services to disabled children aged 0-3 and, instead, removing ages 3-7 from the Sub-programme's beneficiary audience.

Interestingly, at the above mentioned meeting, the ministry officials set forth additional arguments to defend their position. For instance, one of them said: "It is imperative to equip parents with a set of skills necessary to care for their disabled children during the first three years of the child's life, and further on they will cope alright." When asked if prior to introducing the modifications, a field expert/specialist had been consulted or tasked to provide an opinion, to be sure that the intended change would be justifiable from the child's human rights standpoint, the officials answered they saw no need in doing so.

The above decision contradicts a number of international and national acts:

The above decision of the Ministry of Labour, Health and Social Protection reflects the Ministry's general philosophy regarding the exercise of the rights and entitlements by disabled persons. More specifically, both in written communications and in oral discussions, all of the concerned ministerial officials referred to the lack of resources as the main reason for their failure to provide services to disabled people. It would seem that executive authorities are badly over-exploiting the principle of "progressive realisation" applied in the sphere of protection and implementation of the economic, social and cultural rights of persons with disabilities (rights to health, rehabilitation, education, employment, etc.). In this context, it would seem appropriate to provide more detailed insight into the notion of "progressive realisation", as applied under international norms:

Pursuant to Article 2 of the International Covenant on Economic, Social and Cultural Rights, each State party shall take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the economic and social rights recognized in the Covenant. Often, phrase "achieving progressively the full realization" is misunderstood. General Comment 3 of the Committee on Economic, Social and Cultural Rights,[440] discussing requirements under Article 2.1 of the Covenant, points out that "the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time." However, the State parties shall read this phrase in the light of the overall objective and undertake concrete commitments to implement these rights as expeditiously and effectively as possible. However, in what concerns the child's economic, social and cultural rights, it must be noted that the UN Convention on the Rights of the Child contains no reference at all to "progressive realization". In addition, Paras 56 and 57 of Comment 9[441] of the UN Convention on the Rights of the Child point out that with respect to the rights of disabled children, an early identification of disability is by no means sufficient. Therefore, the State parties shall put full-fledged rehabilitation services in place to enable the child to achieve his/her functional independence to the fullest possible extent. The Committee calls upon the State parties to give priority to the provision of services to disabled children and invest in this as much resources as possible, in order to avoid discrimination on the grounds of disability.

Clearly, from the legal viewpoint, the Ministry's ambiguous allusions to limited resources are unjustifiable, the more so that the matter concerns disabled children. Clearly, such an explicitly discriminatory decision (against children aged 4-7) cannot be possibly made without thorough consideration and a well-justified expert conclusion containing very strong arguments.

Notably, the above decision is in breach of another fundamental principle contained in the International Covenant on the Economic, Social and Cultural Rights – avoiding retrogressive measures. Para 9 of General Comment 3 of the Committee points out: "any deliberately retrogressive measures … would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources." This principle precludes a deliberate imposition of such

[440] General Comment 3 of the Committee on Economic, Social and Cultural Rights "The nature of State parties obligations", 1990
[441] General Comment 9 of the Committee on the Rights of the Child. The Rights of children with disabilities. 27 February 2007.

restrictions upon the enjoyment of economic, social and cultural rights that would entail a regress in the person's standing, compared to the existing level. It may be that at the beginning, the Ministry did not quite apprehend the nature of the intended change. However, the Committee requires that the State party shall rectify the situation once it has realized the implications of any such decision.

Also, having analysed domestic normative acts, we found that the said change is, in effect, a derogation from one of the Tasks of "2010-2012 National Plan for Social Integration of Persons with Disabilities", approved by Governmental Resolution No. 978 of 15 December 2009. This Task implies improving the access to preventive, habilitation and rehabilitation programmes for children with disabilities starting from the early development stage. Hence, slashing down the target group of the 2012 State Programme for Social Rehabilitation and Childcare to ages 0-3 presents a significant reduction in the children's access to services provided under this sub-programme.

Particular attention here should be given to the expected impact of these changes on service quality. In the view of service providers and rehabilitation experts, the termination of a disabled child's rehabilitation at the age of 3 will largely compromise the results achieved so far. This may as well bring the obtained results to nil, or even aggravate the functional disability, whether induced by a disease or some other cause. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), the early childhood encompasses ages 0-8 years. Therefore, designing and implementing early childhood development programs throughout this period of the child's life is absolutely essential, particularly for children with disabilities, as this is the most critical time for child development and learning; Undoubtedly, adequate rehabilitation services provided during this period will have a decisive and lasting effect upon the progress an individual may make throughout his/her entire life.

All of the above provides convincing evidence against the decision taken by the Ministry of Labour, Health and Social Affairs, whereby all beneficiaries aged 3-7 were left out from the early childhood development programme. Undoubtedly, such a decision violates the fundamental right to rehabilitation and development of all disabled children belonging to this age group.

PROTECTION FROM VIOLENCE OF WOMEN AND GIRLS WITH DISABILITIES

On 10 July 2011, the UN Human Rights Council adopted a resolution[442] "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in protection." This resolution emphasises the importance of protecting disabled girls and women from violence. The Council calls upon the States to give special attention to undertaking a systemic study on the issue of violence against women, inclusive of disaggregated data on facts of violence against women with disabilities. The State parties are also required to assess the impact and effectiveness of national policies and programmes for the protection of women, in general, and disabled women, in particular.

General Recommendation No. 18 of the UN Committee for the Prevention of All Forms of Discrimination against Women[443] expresses concern about the situation of disabled women, who suffer from a double discrimination. This concern is mainly conditioned by the extreme scarcity of statistical data on disabled women who have suffered violence in the State parties. This is particularly worrying against the backdrop of the information provided by the Secretariat for the Convention on the Rights of Persons with Disabilities in its Factsheet,[444] demonstrating that persons with disabilities are more likely to be victims of rape, compared to those without disability, despite the fact they are less likely to obtain police intervention and legal protection. The Secretariat points out that according to research findings, violence against children with disabilities occurs at annual rates at least 1.7 times greater than for their peers without disabilities.

442 UN Human Rights Council resolution A/HRC/17/L.6, 10 July 2011.

443 General Recommendation No.18 of the UN Committee for the Prevention of All Forms of Discrimination against Women, Violence against women,1991

444 Fact sheet on Persons with Disabilities of Secretariat for the Convention on the Rights of Persons with Disabilities, UN Enable website: http://www.un.org/disabilities/documents/toolaction/pwdfs.pdf

The Public Defender made an enquiry on the issue of protection of disabled women and girls against violence in Georgia and analysed the information provided by the competent authorities.

According to the Information Centre of the Analytical Department of the Ministry of Internal Affairs,[445] its Statistics and Criminal Sociology Division possesses no records pertaining to the facts of violence committed against disabled girls and women in the last two years.

The Social Service Agency of the Ministry of Labour, Health and Social Affairs reported[446] it had received no reports at all through the Child Protection Referral Procedure in relation to cases of violence against children with disabilities.

According to the reply from the State Fund for Trafficking Victims Protection and Assistance[447], throughout its existence it has provided assistance to no disabled person so far. Besides, the letter pointed out that the Fund's hotline service (for victims of domestic violence) has no such routine process that would allow to single out the cases where the caller was a disabled person.

In addition, the Public Defender sent a query to the National Statistics Service, "Saqstat", about the categories of statistical information collected in connection with disabled persons. The National Statistics Service replied[448] they maintain no statistical data pertaining to the number of households with disabled family members; neither do they possess any information on the social and economic situation of persons with disabilities or the number of disabled people affected by domestic violence."

All of the above suggests that the information pertaining to the protection of vulnerable groups, and particularly, protection of disabled girls and women against violence is extremely scarce. Naturally, the mere fact that competent bodies have no information or reports on violence against disabled persons does not automatically warrant the conclusion that such facts do not occur in Georgia. On the contrary, it is more likely that the existing anti-violence system is insensitive to the special needs of persons with disabilities and/or the violence reporting system is not geared to communicating reports in such a way that would allow to single out the cases of violence against disabled people.

RECOMMENDATIONS:

The Public Defender addresses the Parliament of Georgia with the recommendation: to ratify the 2006 UN Convention on the Rights of Persons with Disabilities within the shortest possible time, with a view to safeguarding the rights of persons with disabilities in the country.

The Public Defender addresses the Minister of Labour, Health and Social Affairs with the following recommendations:

a) to incorporate the principle of reasonable accommodation, applied as a norm in the international law, into calculating the total rating score for the inclusion of individuals into the Database for Socially Vulnerable Families, in order to avoid discrimination against persons with disabilities and entitle such people to all services provided under the respective programme, including issuance of health insurance vouchers;

b) to ensure the realization of disabled persons' right to health, by incorporating specific norms into all State healthcare programmes in order to make them sensitive to the special needs of disabled persons and, thus, achieve full provision of such services.

[445] Letter 12/5/3/11–1401649, 10 November 2011.
[446] Letter 04/52635, 2 December 2011.
[447] Letter 07/49449, 14 November 2011.
[448] Letter 7/3–03/27, 24 November 2011.

The Public Defender addresses the Government of Georgia with the recommendation:

a) **To abolish the newly introduced restrictions into the Early Intervention Sub-programme due to the truncation of its target group and restore the programme eligibility criteria to the 2011 status, to ensure equal enjoyment of rights by all categories of children with disabilities.**

The Public Defender addresses the Minister of Labour, Health and Social Affairs and the Minster of Internal Affairs with the recommendation:

a) **To reform the anti-violence system in order to make the reporting mechanism sensitive to reports by persons with disabilities and provide access to the system to all victims of violence, as well as improve collation and analysis of information on the facts of violence.**

National Preventive Mechanism

The present Report covers the findings of the monitoring of penitentiary establishments carried out by the Special Preventive Group of the Prevention and Monitoring Department of the Office of the Public Defender of Georgia exercising its power within the National Preventive Mechanism mandate in 2011.

Participation of the representatives of the Georgian Young Lawyers' Association (GYLA) together with National Preventive Mechanism team in the monitoring of penitentiary establishments located in Eastern Georgia was ensured within the framework of joint project of PDO and GYLA aimed at supporting the National Preventive Mechanism.

During the reporting period, the Prevention and Monitoring Department of the Office of Public Defender undertook 516 ad hoc (1500 inmates interviewed) and 72 planned visits to penitentiary establishments of Georgia and 157 ad hoc and 84 planned visits to the temporary detention isolators.

Representatives of the Public Defender were allowed to and moved without any impediments within the penitentiary establishments as well as within the temporary detention isolators during the monitoring process. They were also able to select meeting points with inmates/detained persons according to their own consideration and interview them confidentially.

Only once the Special Preventive Group met the impediments and was unable to fulfill its functions during the reporting period. On 24 May 2011, the Preventive Group members visited the Temporary Detention Isolator in Gori to interview the person who had been imposed administrative imprisonment. The Chief of the Temporary Detention Isolator Eldar Dalakishvili refused to present the prisoner to the representative of the Public Defender stating that the prisoner himself was not willing to meet anyone. The members of the Special Preventive Group clarified to Eldar Dalakishvili their authority envisaged by the Organic Law of Georgia on Public Defender and explained that if the detainee had refused to have an interview with them personally they would have left the temporary detention isolator. However, Eldar Dalakishvili hampered the work of the Special Prevention Group and did not let them meet the prisoner, with this violating Article 43 of the Constitution of Georgia, as well as Article 18(a) of the Organic Law of Georgia on Public Defender and Article 19, Paragraphs 1 and 2 (a) of the same Law. By his action, Eldar Dalakishvili violated the requirements of sub-paragraphs "b", "d" and "e" of Article 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as Article 173[4] of the Code on Administrative Offences of Georgia.

On 6 June 2011, the Public Defender issued the protocol of administrative violation and the above-mentioned case materials were submitted to the Gori District Court. The judge of the Gori District Court Davit Papuashvili released Eldar Dalakishvili with the resolution issued on 21 June 2011 from administrative liability due to non-existence of administrative misconduct in his action. The mentioned resolution was appealed by the representative of the Public Defender in the Tbilisi Appeal Court. The resolution of 28 July 2011 by the Tbilisi Appeal Court granted the application

of the representative of the Public Defender, annulled the Gori District Court resolution of June 21, 2011, and returned the case for the re-examination to the first instance.

On 8 September 2011 the same judge of the Gori District Court Davit Papuashvili issued a resolution recognizing the Chief of the Shida Kartli Temporary Detention Isolator of the Ministry of Internal Affairs as liable, however limited the sanction to only giving a verbal note.

As stated above, it was the only case when the Public Defender's representatives met an impediment while visiting temporary detention isolators. As a rule, the administrations of the isolators tend to have smooth co-operation with the National Preventive Group.

Hereby the Public Defender hopes that the Ministry of Internal Affairs as well as the court will take serious steps to ensure the unimpeded exercise of the authority of the National Prevention Mechanism in future.

When undertaking the planned monitoring the representatives of the Public Defender were checking the compliance of the conditions and practices in penitentiary establishments of Georgia with the Georgian legislation, as well as with international standards. During the monitoring particular attention was devoted to the treatment of detainees/inmates in each of the establishments.

Interviews with administration, staff, prisoners/convicts of establishments were held during monitoring. A considerable number of prisoners per establishment were visited during the monitoring. Infrastructure and living conditions of each of the establishments including rooms for long-term visits and rooms for mothers and children were checked. The ongoing rehabilitation works were observed in a number of establishments. All the solitary confinement cells and quarantine cells were visited in the penitentiary establishments and all the prisoners staying in those cells during the monitoring were interviewed.

In the temporary detention isolators, the members of the monitoring group checked all the records on detained persons on spot, examined the infrastructure – cells, investigation rooms, sanitary points, walking courtyards, inventory, the conditions of keeping food and the belongings of the detainees. Interviews with the administration and the detainees/prisoner had clarified the frequency and the procedures of provision of food, access to shower, access to fresh air. As usual, particular attention was paid to the treatment of persons during the apprehension as well as afterwards.

Penitentiary Establishments

ILL-TREATMENT IN PENITENTIARY ESTABLISHMENTS

The results of the monitoring undertaken in 2010 and 2011 on a regular basis and analysis of cases shows that ill-treatment remains to be one of the main challenges to Georgian penitentiary system. During the reporting period, the cases of ill-treatment have been frequently documented in several establishments (Gldani No.8 Establishment, Medical Establishment for pre-trial and convicted inmates, Kutaisi No.2 Establishment), although individual cases occur in other establishments as well.

There are several reasons for lacking the solution to the problem of ill-treatment. One of the reasons is wrong attitude of prison administration towards inmates. As a rule, in some of the penitentiary facilities the illegal measures of pressure and punishment used against inmates are encouraged by the prison officials and by the system in general. With syndrome of impunity prevailing among the staff of the penitentiary system, in most cases, prison administrations tend to seek for hiding problems rather than solving them. In many cases, the inmates are pressured by different means to abstain from officially reporting mistreatment to the Public Defender or other relevant structures. The cases of attempts by prison administration to influence the inmates not to send complaints to relevant structures were documented as well. Passive and inadequate actions of investigative bodies even further impede the revelation and eradication of the practice of ill-treatment.

The monitoring undertaken in 2011 by the National Preventive Mechanism has revealed several instances of ill-treatment. The Public Defender instantly notified the Prosecution Service of Georgia of these facts and requested the launch of investigation.

However, in most cases, the persons reporting about their ill-treatment were refraining from providing the written statement about the alleged fact to the Public Defender.

Quite often, the inmates report to the Public Defender in details about physical and psychological abuse and request the confidentiality of the alleged facts. According to paragraph 2 of Article 20 of the Organic Law of Georgia "on the Public Defender of Georgia," "the Public Defender and a member of the Special Preventive Group are obliged not to reveal secret information and information recognized as confidential, neither information about torture and other cruel, inhuman or degrading treatment of a person, without explicit expression of such a will by the latter." Deriving from the cited provision, no facts of ill-treatment which the prisoners request to keep confidential are publicized. The case of Mikheil I. is the example of the above-mentioned tendency:

On September 5 2011, the members of the Special Preventive Group met and interviewed prisoner Mikheil I., placed in Medical Establishment N18. The latter stated that he had been systematically beaten while staying in Establishment N8 in Gldani. The traces of beating were noticeable during the interview. The medical expert of the Special Preventive

Group was dispatched to Medical Establishment N18 on the very second day to record the traces of injuries. However, the prisoner stated in the interview that due to his mental condition he could not remember what he had told to the representative of the Public Defender earlier and requested to leave his statement without any follow-up reaction. The inmate also stated that he did not need any assistance from the Public Defender.

The same outcome occurred on a number of alleged ill-treatment cases at Medical Establishment No.18 for pre-trial and convicted inmates (Central Penitentiary Hospital) and at Ksani No.15 Establishment.

Along with this, it is also a problematic issue that the inmates who reveal the facts of ill-treatment remain in the same penitentiary establishment and under the supervision of the same staff even after submitting complaints. This very fact results in the syndrome of fear due to which inmates in many cases reject their own statements (cases of Malkhaz A., Akhmed A.). The Public Defender has repeatedly addressed the Head of the Penitentiary Department with the recommendation to ensure the transfer of such inmates to other establishments, though none of the recommendations was taken into consideration. All the letters of recommendations were followed by similar answers notifying that the security of prisoner had been ensured and there was no need of transfer to other establishment.

Establishment No.2 in Kutaisi

The planned monitoring in Kutaisi No.2 Establishment took place twice in 2011, in summer and in winter. There were 1451 inmates in the Establishment at the time of the monitoring in summer. According to the statements of the prisoners, treatment of inmates by the administration of the establishment has noticeably deteriorated. The facts of ill-treatment of inmates have emerged lately. Inmates reported that the administration often dealt with them in a rude and humiliating manner. Most often, the victims of ill treatment are those inmates placed under disciplinary punishment or quarantine. According to them, for the last two months majority of inmates violating the internal regulation of the establishment were placed first in the so-called "box" instead of the solitary confinement cell as envisaged by the law. The "box" is a cell of measuring some 2-3 m^2., lacking a table, a chair, a bed; the inmates are placed there barefoot and in underwear. They are kept in a "box" for around 3 to 24 hours. Some of the convicts reported that they had been beaten after being placed in the "box". However, they hesitated to state this in writing. According to the statements of some of the inmates, the staff of the administration was pouring water on the floor in the "boxes" not to let the inmates fall asleep.

The inmates state that they refrain from the everyday walk, as each of their movement might become a reason for a conflict with the staff of the establishment. Even those who still use this right mention that if during the walk even one inmate violates the internal regulation (e.g. greets an inmate) all inmates from the entire cell are punished and returned to the cell.

The existence of the mentioned practice in Kutaisi Establishment No.2 was confirmed by the majority of the inmates visited (around 600 inmates were visited). This makes the alleged fact particularly convincing. The fact that the Kutaisi Establishment is a closed type one where the inmates in different cells have no contact whatsoever with each other, should be taken into consideration as well. Apart from this, in the reporting period numerous collective complaints were submitted by the inmates of Kutaisi Establishment No.2 to the Public Defender of Georgia with the allegations to violation of their rights and ill-treatment.

The situation in the quarantine cells of the Establishment was also complex. There were newly admitted prisoners placed there. According to the inmates, at any point when there was a noise on the door, all the inmates were forced to stand with their hands on heads facing a window. If any of the inmates could not manage to come down from the second level of the bunk bed on time and take the position as ordered by the administration, all the inmates in the cell would have been punished. According to the inmates, in such cases, forcing them to knee with their hands on the heads sometimes even for 1-2 hours was used as a punishment. The inmates in quarantine were devoid of their right to walk. The inmates stated that when leaving the quarantine cell for checks, the staff of the Establishment used to punch those in stomach or sides with elbow.

As stated by the inmates, the situation had been deteriorating since July 2011. The majority of the inmates linked this with the changes in the position of director. Most often the inmates indicate to the director of the Establishment Dimitri Jitchonaia as a participant of ill-treatment and also mention that the Head of the Social Service of the Establishment Irakli Jishkariani is outstanding as particularly "active". Inmates of Establishment No.4 in Zugdidi had the similar complaints regarding this person in the previous years, however, never confirmed it in writing.

The results of the monitoring of the establishments in West Georgia, including Establishment N2 in Kutaisi were published on the official web site of the Public Defender on 29 August 2011.[449] The Public Defender called upon the Minister of Corrections and Legal Assistance to urgently undertake all the measures required for the protection of the rights of persons deprived of their liberty in Establishment N2 in Kutaisi. Public Defender also called on the Minister of Corrections and Legal Assistance to raise the issue of liability of all the persons who were allegedly ill-treating the inmates.

On 11 September 2011, the representatives of the Public Defender of Georgia again visited and interviewed the prisoners (around 100 inmates were interviewed). The majority reported that on 09 September, 2011 at around 21:00 the "Special Task Forces" entered Establishment No.2 at around 21:00, took a part of the inmates (mainly from the blocks C and D) out of the cells, bet them, returned part of them to the cells and placed remaining of them in solitary confinement cells. Inmates David M. and Giorgi S., Gogita Z. and Iakob Kh. confirmed the above mentioned fact in writing.

As stated by the convict David M., on 09 September, 2011 at around 21:00 approximately 10-12 representatives of the scores of the Special Task Forces together with the staff of Establishment No.2 entered the cell D-105. They searched the cell. During the search, as stated by the inmates, no item prohibited by law was found. In approximately 5-6 hours the controller some Beso approached Davit M. and took him to the so called "boxes"[450] located within the Establishment, where following a brief squabble with the staff-member of the Establishment Roman Robakidze, someone unknown battered his head from the back. Then he was taken into the room where the Director of the Establishment Dimitri Jitchonaia, Achiko Tabatadze and other employees of the Establishment were present. Dimitri Jitchonaia verbally and physically abused him. As stated by the inmate, the Director hit the inmate's forehead with his head several times and threatened to add him a sentence. Following this, the inmate was taken to the solitary confinement cell and 3 days later administrative imprisonment for one month was imposed on him. The inmate was mentioning that finally he was placed in cell B-404 where the staff of the administration mistreated him abusing verbally.

As stated by Giorgi S., on 9 September 2011 he was placed in cell No.324 of the block C. Following the search of the cell the staff of the Special Task Force took him out of the cell that was followed by his beating by the staff-member of the administration Roman Robakidze. Afterwards he ordered the Special Task Forces to take the inmate to the "box" downstairs. As stated by the inmate, while staying in the "box" he was made kneel and Roma Robakidze was punching his head. Afterwards he was taken to the solitary confinement cell; 2 days later a month-long administrative imprisonment was imposed on him.

As stated by Gogita Z., on 9 September 2011, around 15 representatives of the Special Task Forces and administration entered cell C-219. Among those were Dimitri Jitchonaia, Misha Gigauri, Roman Robakidze, Achiko Tabatadze and some Mamuka. Having searched the cell, they led him through the so-called "corridor" by beating. As declared by the prisoner, the staff-members of the Establishment were particularly malicious. An administrative imprisonment for a month was imposed on him as well. Upon the return from the court he was placed in cell B-404, at the point of entering which Dimitri Jitchonaia and Gaga Liparteliani started beating him. The inmate reported that he had lost conscious at that moment. Gogita Z. had mentioned that water was poured onto him and once he revived, he was taken downstairs to the "box" being beaten and kept naked for 7 hours.

As stated by Iakob Kh., on 9 September 2011 he was in cell C-302. After searching the cell, the Special Task Forces took him to the "box" and kept him there for around 4-5 hours. As stated by the inmate, during this period, the Special Task Forces and the representatives of the administration were bringing inmates and while beating, were placing them

[449] http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1409

[450] "Box" is a cell measuring 2-3 m^2, without any table, a chair or a bed.

in the "boxes" located therein. The inmate mentioned that the prisoners were forced to knee. Iakob Kh. was subjected to 60 days of administrative imprisonment.

On 20 September 2011, in line with paragraph "c",Article 21 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender applied to the Chief Prosecutor of Georgia suggesting commencement of investigation into the fact of ill-treatment of inmates in Establishment No.2 in Kutaisi. According to Letter N13/43500, received from the Office of the Chief Prosecutor of Georgia on 18 October, investigation into the criminal case N088081011801 had commenced by the Investigative Service of the District Prosecutor's Office of Western Georgia on the fact of exceeding official power, based on the signs of crime as envisaged by sub-paragraph "b" of Article 333 (3) of the Criminal Code of Georgia.

According to Letter No.13/3211, received from the Office of the Chief Prosecutor of Georgia, the investigation into the case was ongoing. Gogita Z., Davit M., Iakob Kh., Giorgi S., had been interrogated as witnesses and had undergone the forensic medical examination.

On 16 September, 2011 the Public Defender's Office requested the copies of the decisions adopted on 11, 12 and 13 September, 2011 with regard to 26 convicts by the Kutaisi City Court, imposing administrative imprisonment on the inmates. Along with this, the orders of the Director Dimitri Jitchonaia imposing administrative imprisonment on inmates were also requested.

Analysis of the court decisions showed that on 11, 12 and 13 September 2011, all 26 prisoners had committed the same type of misdemeanor. In particular, in the Court Decision on the case N3/398–11 it is mentioned that the convict Davit Kh. being in the block "C" of Establishment No.2 by means of unlawful whoop was trying to deliver the banned information to the inmates in other cells. He was reprimanded by the staff on duty; however the inmate started shouting and dust-upping. In this way, he encouraged other convicts and the noise made by the inmates followed.

It shall be noted that another 25 decisions of the court repeat the same verbatim. The only difference is that some of those mention that the inmate "expressed aggression" instead of referring to "dust-ups."

The examination of the court decisions revealed that 14 convicts, 3-4 days prior to imposing administrative imprisonment on them, were placed in solitary confinement cells on 9 September 2011. Later the court imposed on them administrative imprisonment considering the petition of the Head of Prison Administration. It is noteworthy, that some of these convicts had not committed any type of misdemeanor before 9 September 2011, or in some cases, the one-year term envisaged by law had expired.

One more violation has caught our attention while analyzing the above-mentioned court decision:

According to Article 87 (4) of Imprisonment Code of Georgia, "if the violation is not repeatedly committed within 6 months after enforcement of the sanction, such sanction shall be annulled. If, however the sanction described under Article 82 paragraph 1 sub-paragraphs "f" and "g" is imposed, the sanction shall be annulled if the violation is not repeatedly committed during 1 year after enforcement of such sanction." According to Article 90 (1) of the same law, "if a convicted person repeatedly committed the defined by the present Code disciplinary violation during the term of the disciplinary sanction, the administrative imprisonment may be imposed for the term not exceeding 60 days and nights."

By the decision N3/397-11 of Kutaisi City Court, on 11 September 2011 the convict Hamlet K. was imposed to 30-days of administrative imprisonment. Having studied the decision, we could state that the convict was imposed to his latest disciplinary measure on 30 June 2010 (5 days in solitary confinement). Since more than a year have passed, the convict could not be considered as being under the administrative sanction. In spite of this, according to the decision, the judge considered at the time of imposing the administrative imprisonment on him, the convict had already been under the administrative sanction.

Case of Akhmed A.

Akhmed A. – a convict in Establishment N2 in Kutaisi applied in writing to the Public Defender. As stated by the applicant, on 25 July 2011 he was taken to the duty station point at the third floor of the block "D" where he was physically and verbally abused by the staff of the Establishment, named Anzor and Irakli. The request to use the right to walk on the fresh air and following the negative response from the administration, the declaration of the wish to go on a hunger strike turned out to be reason of this, as stated by the inmate.

The inmate reported that the staff employees also abused him verbally as well on the ground of his ethnic origin. Following this he was transferred to the solitary confinement cell of the same establishment, handcuffed, Regime Chief Gaga Liparteliani and one more staff member (whose first and last names are not known to him) were forcing him to kneel, however the inmate did not obey. As stated by the inmate, he was again beaten and abused verbally, following which he was transferred to the so called "box" (F102) of the Establishment and kept him there naked and handcuffed for around 2 hours. Following this, he was returned to the cell.

As stated by the inmate, he had headaches and the feeling of nausea in the cell, due to which he asked for a doctor. However, his request was ignored.

On 27 July 2011 the representatives of the Public Defender met and interviewed the Akhmed A.'s cell-mates. According to the inmates, their cellmate Akhmed A. was taken out of the cell by the employees of the Establishment and beaten on 25 July 2011. Akhmed A.'s cellmates confirmed the fact that the staff of the Establishment took the convict out of the cell at around 11 o'clock on 25 July and brought him back to the cell at around 15:00. At this point he was beaten.

The representatives of the Public Defender noted as a result of the external visual examination of the convict the following injuries: in the area of back – 3 bruises of around 10-15 sm, in the area of thorax and neck – multiple bruises and excorations, blazes covered with coarsened skin on both knees, hyperhemia on both wrists, blaze and intumescences in the area of head.

On 1 August 2011, in line with paragraph "b" of Article 21 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender applied to the Chief Prosecutor of Georgia to commence investigation into the fact of injuring Akhmed A' and recommended to in the shortest possible term undertake the medical forensic examination to establish the origin and the age of injuries on the body of the inmate. In his letter to the Public Defender, the convict assumed that following his statement his safety would have been jeopardized by the staff of the Establishment. The same day Public Defender issued a recommendation to the Chairperson of the Penitentiary Department to organize Akhmed A's transfer to another Establishment in the shortest possible term and along with that to ensure his safety and security.

Letter No.10/3/13–10624 received from the Penitentiary Department on 9 August 2011 stated that the security of the convict Akhmed A. was put on the special control. The request to transfer the inmate to another Establishment was not satisfied by the penitentiary Department.

Letter No.13/31797 from the Office of the Chief Prosecutor of Georgia notified us that preliminary investigation started into the case on 9 August, 2011, based on the signs of a crime envisaged by paragraph 2 (b) of Article 144[3] of the Criminal Code of Georgia (the degrading and inhuman treatment).

According to Letter No.13/3213 received from the Office of the Chief Prosecutor, the investigation was ongoing by the Investigation Unit at the Western Georgian Regional Prosecutor's Office into case No.088090811801 on the fact of the degrading and inhuman treatment of Akhmed A. The latter informs as well that the convict was interrogated as a victim and was granted this status by the investigation. He underwent forensic medical expertise. The witnesses, the inmates indicated by the victim, have been questioned as well.

Case of Shalva K.

On 22 July 2011 the representatives of the Public Defender met and interviewed the prisoner Shalva K. in Establishment No.2 in Kutaisi. According to the protocol on the external visual examination dated 20 July 2011 drawn up upon the admission of the inmate to the Establishment No.2 in Kutaisi, variety of injuries were noticeable on the prisoner Shalva K.'s body. In particular: bruises in the left side of the right eye-socket, dotted reddish bruises in the lower area of the right eye-socket, excoriations in the areas of right and left shoulders, multiple excoriations in the area of the back.

According to the protocol on the external visual examination as drown up in Establishment No.2, the mentioned injuries were inflicted on the prisoner as he disobeyed the police officers.

During the meeting with the representative of the Public Defender, the inmate Shalva K. reported the physical abuse by police officers and the staff of the Establishment. According to him, he had not disobeyed the Penitentiary Establishment staff, however, upon his placement in the duty station point of the establishment several staff members of the establishment started beating him. They were beating falling him down on the floor and were verbally abusing him. Later he was transferred to the solitary confinement cell of the duty station point where they retained him handcuffed for 2 days.

Numorous injuries were noticeable on the body of the inmate at the moment of meeting with the representatives of the Public Defender of Georgia as well. In particular, the following injuries were visible: hemorrhage on the left eye, excoriation on the right eye, yellowness and excoriations on the left hand, coarsened skin on the left back, as well as numerous excoriations in the area of back.

On 26 July 2011 the representatives of the Public Defender visited Temporary Detention Isolator in Kutaisi. They studied the file of the convict Shalva K. According to the external visual examination protocol, he had a small size excoriation on the left hand. The excoriation was inflicted before the detention. According to the protocol, he had no other injuries.

If we consider the records kept in Temporary Detention Isolator in Kutaisi and Penitentiary Establishment No.2 be credible, it appears that the prisoner entered the Temporary Detention Isolator practically without injuries, whereas during the examination by a doctor upon the admission in the Penitentiary Establishment, the injuries characterizing ill-treatment were already noticeable on his body. In conclusion, it is impossible to establish the origin and reasons of the injuries inflicted on the prisoner judging from the records made in the Temporary Detention Isolator and the Penitentiary Establishment.

On 04 August, 2011 the written application, accompanied with a copy of the protocol drawn-up following the interview with the prisoner Shalva K. was sent by the Office of the Public Defender of Georgia to the Office of the Chief Prosecutor of Georgia.

In accordance with Letter No.13/32002 received from the Office of the Prosecutor of Georgia, the Investigation Unit of the Office of the Western Georgia Regional Prosecutor commenced investigation into the criminal case regarding the degrading and inhuman treatment of a prisoner in Establishment No.2 from the side of the Police and staff of the administration of the prison, as envisaged by paragraph "b" of Article 144^3 of the Criminal Code of Georgia.

According to Letter No.13/3212, received from the Office of Chief Prosecutor of Georgia on 24 January 2012, Shalva K. was declared victim and he underwent the forensic medical examination. The witnesses, the staff-members of Kutaisi No.2 Establsihment and of the temporary detention isolator among them, were interrogated. The letter stated that according to the prosecution case files against Shalva K., the overall complex forensic psycho-psychiatric examination declared him mentally irresistible and unable to give true evidence, as well as unable to participate in the investigation and court proceedings. The stated-above made impossible to interrogate Shalva K.

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During the monitoring undertaken by the Special Preventive Group in winter 2012, there were 1464 inmates in Establishment No.2 in Kutaisi. The inmates reported the termination of placement in so-called "boxes" to be the only change for the past several months. However, the treatment of inmates by the administration remained to be rude and humiliating. The inmates stated that any contact with the administration might have caused conflict and abuse from their side.

In spite of the fact that the prisoners had the right to walk on a fresh air for more than one hour, the inmates stated that they used to refrain from enjoying this right as far as even the greeting between the inmates might have become the reason for termination of walk and return to the cells. Therefore, in Establishment No.2 in Kutaisi, the collective punishment method (punishing the entire cell for on inmate's misdemeanor) was still used by the administration as an additional method of pressure. In cells of the block "A", "B" and "C", the administration imposed a duty on the inmates. Upon one's duty, the inmate was responsible for the actions of other inmates as well. Any refusal to be on duty caused abuse or punishment.

The monitoring group visited the inmates placed in solitary confinement cells. The inmates stated that they have not been put under any kind of pressure neither during their placement into these cells, nor afterwards. However, number of inmates from the other cells reported about the humiliating measure of being forced to stay naked during the morning checks. It was very cold in the solitary confinement cells during the monitoring and the inmates stated that in bathing days (Monday, Tuesday, Wednesday and Thursday) the central heating unavailable until evenings.

There were 23 inmates in quarantine cells during the monitoring. While opening the door, the inmates were standing with hands on their heads and with their faces against the window. Number of them stated that they used to stay in such position 3-4 times per day sometimes for about half an hour. The inmates reported that they are punished even in case of being late for some seconds to stand up from the bed. Some part of the inmates stated that during morning checks they were physically and verbally abused by staff of the administration, though it was not happening on a regular basis.

It should be noted that due to the "special" regime in No.2 Establishment, one could notice the lack of any kind of communication or relations between the inmates and the administration staff. The inmates reported the so-called "fair syndrome" that makes them refrain even from calling a doctor in case of any need. One inmate stated that he was refraining from calling a doctor unless the situation aggravated and the need of urgent operation occurred.

Establishment No.4 in Zugdidi

Establishment No.4 in Zugdidi is one of those to be recommended by the Public Defender of liquidation due to the inadequate conditions there. It should be noted that during the monitoring the inmates have not reported any cases of mistreatment. Although, other inmates transferred from the mentioned establishment often complained about the inhuman and degrading treatment there but were refraining from giving written statements. The Special Preventive Group noticed the presence of tense atmosphere during opening the doors of the cells – all the inmates were standing up at the windows with their hands on the beck and were answering in unison that everything was "ideally" fine.

Case of Murman K.

On 3 November 2011 the sister of the inmate Murman K., who deceased on 31 October 2011 in Kutaisi No.2 Establishment, submitted an application at the Office of Public Defender. She was reporting about the live-aged injuries on the body of the deceased.

On 16 November 2011, the representative of the Public Defender interviewed the inmates Sh. K. and G.O in Medical Establishment No.19 who were transferred together with Murman K. from Zugdidi No.4 Establishment.

The inmate Sh.K stated that after spending two days together with Murman K. in medical unit of Zugdidi No.4 Establishment, they were both transferred to Kutaisi No.2 Establishment. During the transfer inmate, Murman K. felt extremely bad, he even felt down from the chair in the bus thus hitting his nose that started bleeding. In Kutaisi No.2 Establishment Sh.K was placed with M. K in the cell No.F-107, the so-called "box". Sh. K reported that in spite of the deteriorated health of M.K, the doctor of the establishment gave him only Validol. Sh.K repeatedly asked the doctor to pay attention to M. K who was unconscious and needed urgent help, but the doctor replied, "Give him a blow and he will regain his consciousness, it's the sign of tuberculosis." Later Mamuka K. died.

The inmate G. O confirms that Mamuka K. felt badly, even fell down in microbus and hit his face.

The deficiencies of the medical service in the penitentiary system has been repeatedly addressed in the reports of the Public Defender of Georgia. The above-mentioned facts once more prove the existence of felonious indifference towards the inmate patients in Zugdidi No.4 and Kutaisi No.2 Establishment by medical personnel as well as by the administration in general. Until his health extremely worsened, seriously ill inmate was in the conditions of Zugdidi No.4 Establishment where even the placement of the health person could not be recommended. Instead of the ambulance, the prison transfer bus was used to transfer the ill inmate from Zugdidi to Kutaisi. In Kutaisi No.2 Establishment the health of Mamuka K was inadequately assessed resulting in his placement not in a medical unit, but in "box", where conditions were inhuman and absolutely inadequate for the ill person. The Public Defender considers that the above-mentioned allegedly caused the lethal end.

On 25 November 2011, the Public Defender addressed the Chief Prosecutor of Georgia with the request to launch an investigation and to discuss the liability of relevant staff-members of Zugdidi No.4 and Kutaisi No.2 Establishments.

Letter No.13/52268 received from the Office of the Chief Prosecutor of Georgia stated that the investigation was launched on 31 October 2011 on Case No.073311011002 based on the signs of crime envisaged by Paragraph 116 (1) of the Criminal Code of Georgia. The convicts indicated by the Office of Public Defender, as well as the staff-members and medical personnel of Establishment No.2 were interrogated as witnesses. The place of crime was searched on the spot and forensic medical as well as trasology expertise were appointed.

On 7 February 2012, the Office of Public Defender repeatedly sent a letter to the Office of Chief Prosecutor requesting the information on the investigation process. The letter received from the Office of Chief Prosecutor stated that "the investigation established that the death of the convict Murman K. was caused by Tubercular intoxication and no other person could be charged for guilt or any misdemeanor". It was stated in the letter that on 27 December 2012, the investigation was terminated due to the lack of the crime signs envisaged by Criminal Code of Georgia.

The answers received from the Office of Chief Prosecutor of Georgia showed that the investigators had not interrogated he staff-members and medical personnel of Zugdidi No.4 Establishment. Neither the fact that the inmate with extremely worsened health was in the conditions of Zugdidi No.4 Establishment and that instead of ambulance the prison transfer bus was used to transfer the ill inmate from Zugdidi to Kutaisi caught the attention of the investigators.

In judgment of the European Court of Human Rights on case "Makharadze and Sikharulidze v. Georgia", the Court found a violation of Article 2 (right to life) of the Convention for the Protection of Human Rights and Fundamental Freedoms and considered that inadequate and late efforts of the State resulted in failure to protect the life of N. Makharadze, who suffered from multi-drug-resistant tuberculosis in prison.

"The Court notes with concern that all those omissions were due to the fact that, despite the threatening magnitude of the problem of the transmission of multi-drug resistant forms of tuberculosis and the associated high rate of mortality in Georgian prisons, which has prevailed in the country for many years, the relevant State authorities did not begin implementation of the standard general health-care measures – outlined by the WHO as far back as 1997 – until March 2008 (see paragraphs 46-48 and 65 above). This mismanagement by the State in the medical sphere, which directly resulted in or contributed to the death of the first applicant, cannot be justified, under Article 2 of the Convention, by a lack of resources (see, mutatis mutandis, Dybeku, cited above, § 50)."[451]

[451] ECHR judgment on case "Makharadze and Sikharulidze v. Georgia", 22 November 2011, § 90.

The Court further considered that at least some of the omissions could have been solved in a more timely manner by allowing the prisoner's placement in one of the two civil hospitals specialized in treatment of tuberculosis or by ordering the prisoner's conditional release pending full of partial recovery. "However, the Court reiterates that whenever authorities decide to place and maintain a seriously ill person in detention, they must demonstrate special care in guaranteeing such conditions of detention as correspond to his special needs resulting from his illness (see Farbtuhs, cited above, § 56; Isayev v. Ukraine, no. 28827/02, § 20756/04, 28 May 2009)."[452]

Establishment No.8 in Gldani

In terms of treatment and regime for prisoners, the conditions are similarly not favorable in the Establishment No.8 in Gldani. It was revealed during the monitoring, that particular rules are established in the mentioned Establishment: they are not allowed to sleep during the day, they are also forbidden even to lie on the second level of the two-level bed. They are not allowed to take off the tee-shirt while staying in the cell, listed radio even at an average loud sound and play backgammon by rolling dice on the wooden board, as this, in the view of the administration, causes extra noise. This on its turn results into punishment. The stories told by the prisoners were also proved by the fact that there is incredible silence in the Establishment in Gldani, with over 3500 persons. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also drew its attention to this conspicuous silence during the visit paid in 2010.

The 2010 Report of the CPT mentions the following: "Practically no allegations of ill-treatment by staff were received during the visit to Prison No. 8 in Gldani. However, a number of inmates subsequently met by the delegation at other establishments alleged that they had been physically ill-treated by staff whilst being held at the Gldani establishment in the recent past, in particular in the "kartzer" area, the showers and upon reception. The ill-treatment alleged (consisting of punches, kicks and truncheon blows) was reportedly triggered by violations such as knocking on cell doors, talking loudly or attempting to communicate with prisoners from other cells. The delegation noted for itself that an uncommon silence reigned in the prisoner accommodation blocks at Gldani."[453]

As stated by the prisoners, even in case of the violation of the above-mentioned strictest rules they are severely punished – they either are beaten, or are placed in the quarantine of the Establishment with the purpose of punishing them. The latter is also unlawful, as the quarantine cell shall not be used for punishment. However, as there are particularly unbearable conditions in the quarantine cell, this method of punishment has been used regularly. The inmate placed in the solitary confinement cell stated that in case of some noise, the staff-members enter the cell and beat the prisoners. This inmate reported to the Special Preventive Group about being beaten 8 times during the year, though he did not confirmed it in writing.

It shall be underlined that both in Establishment N2 in Kutaisi, as well as in Establishment N8 in Gldani the methods of collective punishment are used – the entire cell is punished for the misdemeanor committed by one prisoner. This is an additional pressure mechanism for the administration – the prisoner becomes responsible vis-à-vis the cell mates as well.

A part of the prisoners placed both – in Kutaisi as well as in Gldani mention that they refuse to have walk on their own will and spend 24 hours in a cell, as they are made to run to the walking courtyard and any impediment in this process becomes the reason for insult, brutality and humiliation. Besides, the monitoring group came up to the case when due to the fact that inmate suffering from neurological disease had difficulties to move and it was forbidden for only one inmate to stay in the cell alone during the walk-time, all his cell-mates were devoid of the possibility to enjoy the right to walk.

There are in total 15 quarantine cells in the Establishment. Prisoners who are taken to court hearings are placed in 7 of them. The mentioned 7 cells do not have beds, there are only chairs there. Out of these 7 cells 3 are used as additional

[452] *Ibid,* § 91.

[453] Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, Para.49

quarantine cells and prisoners are placed there for several days, often a week. Respectively, the prisoners have to sleep either at the chair or straight at the concrete floor. The administration of the Establishment does not provide them neither with the mattresses nor with the blankets.

There are 48 beds in the remaining 8 quarantine cells. There are three two-level beds, and a small table in each cell. The cells have small windows that open half. There were no mattresses and blankets at the bed during the monitoring. There was fuggy air with a specific smell in cells. As stated by the prisoners, they are not provided with the hygienic items and they are not able to take shower. The water supply system is out of order in some of the cells. The prisoners in quarantine cannot enjoy the right to walk. They have difficulties in getting medical assistance as well.

It shall be mentioned that prisoners refrain from stating about their ill-treatment in writing. However, they tell in details the stories on ill-treatment exercised with regard to them or other prisoners. The names of some "Ango", "Khonski" and Beka Mzhavanadze are cited most frequently. During the monitoring conducted in summer, the prisoners were referring to blond, blue-eyed staff member some Oleg. There are more often cases when the prisoners in other Establishments mention the facts of ill-treating prisoners in the Establishment N8 in Gldani to the National Preventive Mechanism Team during the monitoring. However even in those cases they abstain from publicizing the facts.

The alleged inhuman treatment at the Gldani Establishment is proved by the statements of the inmates transferred from Gldani Establishment to Tbilsi No.1 Establishment, the liquidation of which has been repeatedly recommended by the Public Defender due to inhuman and degrading conditions there. While comparing these two establishments, all the transferred inmates unanimously were giving preference to the latter one with even better conditions compared to the newly built Gldani Establishment. The Special Preventive Group identified similarly deplorable conditions at No.12 Establishment, located on the territory of former Medical Establishment No.18 for pre-trial and convicted inmates.

The second planned monitoring visit conducted in No.8 Establishment revealed that inmates had not been placed any more in quarantine cells for punishment, though had been placed there before returning from solitary confinement cell to the ordinary cells, sometimes for up to three days. It turned out that it was forbidden for the inmates to lie on the first floor of beds during daytime, neither have they had the right to smoke in cells; they did it in turn in toilette. The inmates stated that such restrictions had been imposed for the last 2-3 months. The inmates might have been punished in case of violating the rule of shaving the beard in mornings on a daily bases. According to the inmates, no matter how badly the prisoners felt while going for a visit to the doctor, they should put their hands behind the back and run. The inmates were pressured to cut their hair very shortly and as far as a service of a hairdresser was not available in prison, they had to shave their heads with razor.

Besides the above-mentioned, the monitoring group identified number of rules that the inmates had to obey strictly, otherwise being punished: any time during the day, when the staff member of the establishment looks through the door-eye of the cell, the inmates should terminate all the activities and stand with their face against the door. If the door opens, they should stand in a row with their face against the wall. Before the checking of the cell, he inmates should clean the room in a way not to leave any of the objects either on the pump or on the beds, when the door opens, they should stand in a row with their face against the door, the first of them –with a pack of wastes. The voice of the radio is set on the lowest level, the inmates avoid talking loudly or laughing as far as any voice coming out of the cell is considered a noise and might result in punishment. The above-mentioned practice could be proved by more than 500 records in the journal of the solitary confinement cell (so-called "karzer"), where the "noice in the cell" is cited as a reason for misdemeanor. It should be stressed once more that the establishment in Gldani is one of the exceptions where one could not hear any kind of voice or noise in the corridors. The inmates are allowed to wash their clothes in the cells, though not to dry them there, thus, they use to dry their clothes at night while hiding the wet clothes during the daytime. The inmates are not allowed to knock at the door; the ring bell is not and have never been functioning, thus, in urgent cases, even in cases of health worsening, the inmates have to wait for the controller passing and call him in a low voice. If the controller opens the door and calls for a prisoner by surname, the inmate should approach the door and answer by declaring his and his father's name. Like in Kutaisi establishment, the "on duty" system works at Gldani establishment as well resulting in responsibility of one inmate for all the misdemeanors in his cell. After turning off the light at 22:00, it is forbidden to stay on one's feet and to talk, not saying even about reading a book or any noiseless activity.

The inmates reported that after the appointment of a new director of establishment, the staff-members' behavior became less defiant. The cases of verbal and physical abuse have decreased (though still happening) but the regime became more strict.

Case of Malkhaz A.

On 22 June 2011, the Special National Preventive Group of the Public Defender visited inmate Malkhaz A. in Establishment N8 in Gldani. The inmate reported a number of facts of ill-treatment exercised against him in the Establishment N4 in Zugdidi and Establishment N8 in Gldani at different times. He has also asked the representatives of the Public Defender to visit him often, as there was a risk of pressure. On 23 June 2011, the representatives of the Public Defender visited Malkhaz A. again. The latter stated that he did not want any more the Public Defender to react on his previous statements. Malkhaz A. confirmed during the consequent visits as well that he did not want to have any reaction to the facts of his ill-treatment. Since then, the representatives of the Public Defender have repeatedly visited the prisoner several. At the same time, the Public Defender issued a recommendation on his transfer to another establishment due to the reason that it was utterly intolerable to keep the prisoner in the establishment against the administration of which he had made a complaint. Despite the above-mentioned, the Penitentiary Department did not consider it relevant to transfer Malkhaz A. to another establishment.

Medical Establishment N18 for Convicts Pre-trial Inmates in Tbilisi (Central Penitentiary Hospital)

The convicts transferred to the Medical Establishments No.18 often report about the ill-treatment during interviews. However, they often refrain from making the written statements and publicizing the facts. Many of them declare that even in case of urgent need they are not willing to return to the medical establishments due to the extremely strict regime there. Often they even leave the medical establishment on their own will. As stated by the prisoners, during the any movement within the territory of the establishment the administration make them to keep the hands behind the back, even in cases when the physical conditions of the prisoner do not allow for. If this requirement is not adhered to, the entire cell is prohibited to go out for a walk in the fresh air; some other rights become also restricted, such as the use of the telephone. Quite often, prisoners refrain from going out for a walk, as each of their movement may become the reason for a conflict with the staff of the establishment. Along with this, a part of the prisoners in the Medical Establishment N18 mentions that the negative attitude of the staff toward the prisoners is caused by the fact that the latter make applications to the European Court of Human Rights. As stated by the inmates, due to this they are often labeled as "traitors of the motherland" and "schemers". The inmates reported the cases of bringing the prisoners to the morgue for beating.

As declared by the prisoners the staff-members of the Establishment Mr. Avsajanashvili and Mr.Tolordava are the most frequent participants of the facts of ill-treatment. As stated by some of the inmates, the very Director of the Establishment Vazha Tskhvediani also participates in beating the inmates.

Case of Ilia M.

On 30 May 2011, the members of the National Preventive Mechanism Group of the Public Defender of Georgia met and interviewed the convict Ilia M. in Medical Establishment N18 in Tbilisi. As stated by the inmate, the staff of the administration of the Establishment verbally abused him and threatened him to add the sanction. The convict was referring to his application to the European Court of Human Rights. As noted by him he was called "schemer" and "traitor of Georgia". According to the prisoner, he was punished – in particular, he was not given medications and his rights to use telephone, to walk on the fresh air and use the shower were also limited.

On 6 June 2011, the Office of the Public Defender sent a letter, with written explanations of the convict annexed to it, to the Office of the Chief Prosecutor of Georgia requesting the follow-up to the case. According to Letter No.13/19685 received from the Office of the Chief Prosecutor of Georgia, the investigation into criminal case No.073110359 commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia on 9 June 2011, on the fact of exceeding the official powers, the crime as envisaged in paragraph 1 of Article 333 of the Criminal Code of Georgia. On 9 June 2011, the case was subordinated to the Tbilisi Gldani-Nadzaladevi District Prosecutor's Office for investigation.

On 13 July 2011 based on the phone notification to the Office of the Public Defender of Georgia the representative of the Public Defender met the convict Ilia M. in the Medical Establishment N18 again. As clarified by the convict, some infringements of his rights had taken place after 9 July 2011 again.

According to the convict, on 13 July 2011 his spouse, who is at the same time his authorized person to the European Court of Human Rights, visited him. As stated by Ilia M., while writing a submission during the meeting, the representatives of the administration of the Establishment entered the room and deprived him of his pen and the pencil.

Case of Kakhaber B.

On 1 December 2011, the representatives of the Public Defender met and interviewed the convict Kakhaber B., who reported about his urgent night transfer on 27 November 2011 from Establishment No.17 to Medical Establishment No.18 due to kidney failure. The inmate stated that in the evening of 28 November 2011 he suffered from unbearable pain and was requesting the visit to a doctor. The request of the inmate resulted in taking him to morgue and beating him there by the staff-members of Medical Establishment No.18. The staff-member Giorgi Avsajanishvili even threatened to rape the inmate. Kakhaber B stated that after being beaten he was lying on the floor in the morgue with his hands cuffed for about 30-40 minutes; later, the inmate was pressured to write down that the injuries were self-inflicted and he did not have any complaints against the administration staff.

During the interview with the Special Preventive Group, various types of injuries were visible on the inmate's body.

On 2 December 2011, the letter requesting the follow-up to the case together with the convict's written explanation annexed to it was sent from the Office of Public Defender to the Chief Prosecutor's Office. The same day, the letter requesting to undertake all necessary measures to ensure the security for the convict was sent to the Head of the Penitentiary Department. The answer to the latter has not been received.

On 7 December 2011, during the follow-up meeting with the staff-members of the Prevention and Monitoring Department, the convict stated that due to continuous physical and verbal abuse by the staff-members of the establishment, he declared hunger strike and refused to take medicines. On 7 December 2011, the Public Defender addressed the Chief Prosecutor to initiate investigation on fact of ill-treatment against the convict Kakhaber B. The same day, the Public Defender addressed the Minister of Corrections and Legal Assistance with the recommendation to ensure the transfer of the convict to the civil medical establishment.

Letter No.04-12208 received from the Ministry of Corrections and Legal Assistance stated that the convict was transferred for one day to the Gudushauri National Center Hospital.

According to Letter No.13/57003 of 28 December 2011 received from the Office of Chief Prosecutor, the investigation was launched by the Investigative Department of the Ministry of Corrections and Legal Assistance on 2 December 2011 on the fact of inflicting damage to health of Kakhaber B.

On 10 February 2012, the Department of Prevention and Monitoring of the Office of Public Defender sent a letter to the Investigative Department of the Ministry of Corrections and Legal Assistance the requesting the information about the investigation process on the above-mentioned case. According to Letter No.05/01-247 received from the Ministry,

the investigation commenced into the criminal case based on Article 118(1) of the Criminal Code of Georgia on 2 December 2011, upon receiving the information from Establishment No.18. The convict and all the staff-members of Establishment No.18 cited by him have been interrogated as witnesses; forensic medical examination was conducted as well. The letter stated that the classification of crime had changed and the investigation continued into the crime envisaged by Article 333(1) of the Criminal Code of Georgia. On 11 January 2012, the case was transmitted to the Chief Prosecutor's Office for further investigation.

Case of Giorgi O.

On 24 December 2011, the representatives of the Public Defender met and interviewed convict Giorgi O. at Establishment No.18. The inmate stated that in April 2011, he applied to the European Court of Human Rights concerning his case and health problems. The letter sent from The European Court of Human Rights in October 2011 regarding the above-mentioned application, indicated to the need of providing health care to the applicant.

On 1 December 2011, the inmate was transferred to Establishment No.18. According to his statement, upon entering Establishment No.18, the inmate was verbally abused by the Head of the Regime Service Alexandre Tolordava as well as by the Head of Security service of the establishment Giorgi Avsajanishvili. Giorgi Avsajanishvili threatened the inmate by adding the sanction and infringing upon his health. The application to the European Court of Human rights was named as a reason for mistreatment. Giorgi O. reported about the physical abuse as well, he was hit several times on his face and his head. According to the statement of the inmate, he has been several times abused physically and verbally since then. The inmate mainly indicates to the names of Giorgi Avsajanishvili and Alexandre Tolordava.

The inmate reported the was refused to contact his advocate and the representatives of the Public Defender, he was not given a pen and a paper, was avoid of personal hygiene items, clothes and a mattress. Later his clothes and the mattress were returned, but not personal hygiene items.

Later, Head of Social Service Zurab Bulbulashvili visited the inmate and informed that due to the regime requirements, an administrative sanction would be imposed on him – the common position of all the staff-members of the establishment would have an influence on the court to issue the desired judgment.

The pressure against the inmate resulted in inflicting self-injuries on him in the throat area and upper area of the right limb. The convict was transferred to the surgical ward where his wounds were treated only after having lost too much blood.

On 24 December 2011, the administrative sanction of one month was imposed on the inmate. During the transfer from the court to the penitentiary establishment, Giorgi Avsajanishvili reminded the prisoner about the existence of suicide attempt in his case and threatened his life.

On 27 December 2011, the Public Defender of Georgia addressed the Chief Prosecutor's Office with regard to launching the preliminary investigation on the facts of ill-treatment against Giorgi O. by the staff-members of Establishment No.18. The same day, the letter was sent to the Head of the Penitentiary Department of the Ministry of Corrections and Legal Assistance, requesting to ensure the security for the inmate and his transfer to the other establishment where it would be possible for him to continue treatment on Hepatitis.

Letter No.13/57593 received from the Chief Prosecutor's Office on 31 December 2011, stated: on 27 December 2011, the investigation on the fact of exceeding official powers by the staff of the Penitentiary Department of the Ministry of Corrections and Legal Assistance was initiated on Case No.01027211801 by the Anti-Corruption Investigative Unit of Tbilisi Prosecutor's Office pursuant to Article 333(1) of the Criminal Code of Georgia.

Establishment N7 in Tbilisi

Case of Gaioz Z.

On 17 March 2011, Gaioz Z.'s lawyer submitted the application N0299 to the Public Defender of Georgia. On 16 March 2011, on the basis of the request of the Office of the Chief Prosecutor of Georgia convict Gaioz Z. was extradited from the Russian Federation. He was admitted to Establishment No.7 of the Penitentiary Department. As stated by the applicant, at the time of his visit to the convict on 17 March 2011, injuries were noticeable in the facial are of the inmate. The latter had difficulties to talk and to move. The inmate had told the lawyer that the injuries were inflicted on him in Establishment No.7.

On 18 March 2011, the representatives of the Public Defender visited convict Gaioz Z. in Establishment No.7 in Tbilisi of the Penitentiary Department. The convict stated that on 16 March 2011, he was transferred from the Russian Federation. As mentioned by him, he was placed in Establishment No.7 in Tbilisi upon arrival. The inmate alleged that following the admission to the Establishment he was requested to sign some document but he refused, whereupon about 7-8 persons started beating him. He does not know their names, but he may recognize some of them.

After being beaten, the inmate was placed in cell No.3 at the ground floor of the Establishment. As stated by the prisoner, the doctor of the Establishment visited him a day after. The doctor made records on the injuries and the health condition of the prisoner. The same day, during the following several visits by the doctors, Gaioz Z. notified them on the health concerns he had.

At the time of the interview with the National Preventive Mechanism Group, the following injuries were visually noticeable on Gaoiz Z.: small hemorrhage in the right side of the upper lip, swollen right jaw area, excoriation in the right side of the forehead area, hemorrhage in the right eye-socket area. The prisoner complained of dizziness, the feeling of vomiting, feeling of heaviness in the area of head, particularly in the left side of the head, stabbing pains in head. He was opening left eye with difficulty, his coordination was transgressed causing problems during movement. As stated by the convict, the above mentioned health concerns appeared after he was beaten.

The Special Preventive Group members studied Gaioz Z.'s medical records. The record describing the injuries identified during the external visual examination of the convict stated: "Reddish excoriation in the area of right temple (above the corner of the eyebrow) of 2.0x1.0 cm. size; excoriation covered with brown coarsened skin in the right area of the upper lip of 1.0x0.5 cm. size; weakly visible reddish hemorrhage in the left facial area; narrow-line-type excoriation close to the axilar line on the left of the middle area of thorax is noticeable; excoriation covered with brown coarsened skin on the surface of the right knee joint, of 1.5X1.0 cm. size. The old post-surgery scar in the right area of groin. The above-mentioned injuries, as stated by the inmate, were inflicted before the detention." The record mentions that the convict refused to make a signature upon it.

The medical record contained the protocol of the external visual examination undertaken at the moment of admission of the convict into the Establishment. The protocol mentions the analogous records regarding the injuries inflicted on the prisoner. It is mentioned therein that Gaioz Z. refused to sign the protocol.

The representatives of the Public Defender checked the Register of the physical injuries of prisoners/convicts in the Medical Unit. The records therein are identical to the ones in the medical file of the convict.

It is worthwhile to mention that according to all the records, the injuries visible on the convict were inflicted before his detention. In fact, Gaioz Z. had been detained in the Russian Federation by the law enforcements a year before. The injuries on the body evidently do not correspond with that time span. These facts were making the content of the records vague leaving undetermined the age of injuries inflicted on Gaioz Z.

On 21 March 2011, the Public Defender applied to the Chief Prosecutor of Georgia to commence the preliminary investigation. According to Letter No.13/8547 of 15 May 2011, received from the Office of the Chief Prosecutor of Georgia, the Investigative Department of the Ministry of Corrections and Legal Assistance commenced investigation

into criminal case No.073110173 based on the signs of a crime pursuant to Article 118 (1) of the Criminal Code of Georgia on 18 March 2011.

On 24 January 2012, a letter was sent from the Office of the Public Defender to the Office of the Chief Prosecutor of Georgia requesting the information about the investigation into criminal case No.073110173. The reply stated that the investigation was ongoing pursuant to Article 118 (1) of the Criminal Code of Georgia; the convict, staff-members of the Extradition Unit of the Prison Transfer Service of the Penitentiary Department as well as the staff-members and medical personnel of Establishment No.7 were questioned as witnesses. The convict underwent the forensic medical examination.

Establishment No.15 in Daba Ksani

In 2009-2010, Establishment No.15 in Daba Ksani deserved particular attention of the Special Preventive Group as far as the great part of the complaints submitted to the Office of Public Defender in those years referred to facts of ill-treatment of inmates by the staff and the administration of the Establishment. The number of such complaints has considerably decreased during the reporting period, though, several cases of allegations to the fact of ill-treatment of inmates by the administration still occurred thus keeping the mentioned Establishment in the list of problematic establishments in this regard.[454]

During the reporting period, three inmates at Establishment No.15 in Ksani, I.Ch, N.Kh. and I.D reported about being beaten upon the admission to the establishment. Various types of injuries were visible on them. The reason of the beating was the reply of the inmate I.Ch. to the verbal abuse by the staff-member of the establishment. The Public Defender addressed the Chief Prosecutor with a letter calling upon initiating the preliminary investigation. The investigation commenced pursuant Article 333 (1) of the Criminal Code of Georgia, though, lately, the Special Monitoring Group was informed that all the inmates concerned denied the facts of ill-treatment.

Case of Nugzar T.

On 6 September 2011, the lawyer of the inmate Nugzar T at Establishment No.15 in Ksani, I. Saginadze, submitted the application to the Office of Public Defender of Georgia stating that on 12 August 2011 the staff-members of the Establishment have beaten the inmate. According to the statement of the applicant, he had submitted the application on the fact of beating to the Chief Procesutor's Office on 26 August 2011.

On the day of receiving the application, the staff-member of the Prevention and Monitoring Department visited and interviewed the inmate who reported that on 12 August 2011 he was physically and verbally abused and threatened to be killed if he would not withdraw all the complaints.

On 15 September 2011, the letter together with the inmate's written explanation attached to it was sent from the Office of Public Defender of Georgia to the Chief Prosecutors Office requesting follow-up to the case. The letter was requesting the information as well whether the investigation started based on the application of I. Saginadze; if yes – the further information about the investigation process. There was no reply received regarding the case.

On 22 October 2011, the representatives of the Public Defender visited and interviewed the inmate. According to his statement, on 21 October 2011, at 14:00, three staff-members of the Penitentiary Department visited him and told him that if he wrote that he had not had any complaints on the fact of physical abuse of 12 August 2011 and had inflicted the injuries himself, he would have been transferred to Medical Establishment No.18. These three persons

[454] When the given report was in the drafting process, the Public Defender received applications from the inmates I.M and N.T on the alleged facts of ill-treatment, although after having written quite long explanation, one of the inmates asked the Public Defender to keep his case confidential. On 14 March 2012, the Public Defender addressed the Chief Prosecutor to launch the investigation into the second case.

were unfamiliar to the inmate but he could recognize them. The inmate refused to accept the deal. Two hours later, two persons visited him and threatened saying to "blame himself what would happen with him." According to the statement of the inmate, he did not reply to those persons and returned to his cell.

On 26 October 2011, the representatives of the Public Defender visited again the inmate Nugzar T. who reported that he was repeatedly abused physically and verbally on 23 and 24 October 2011. By an external visual examination of the inmate, large excoriations and hemorrhage on the thigh, excoriations on the right leg, hemorrhage on the left arm, excoriations on the right arm and shoulders were visible on him.

According to the statement of the inmate, on 23 October 2011 he was in the bathroom when approached by the staff-member of the establishment Dima Chkheidze and abused by him verbally concerning the denial of the inmate to withdraw the complaint on the fact of 12 august 2011. Nugzar T. reported about being beaten by Dima Chkheidze and other staff-members of the Establishment. Considering the new facts, the Office of Public Defender once again addressed the Chief Prosecutor's Office on 27 October 2011. Letter No.13/49399 received from the Chief Prosecutor's Office on 18 November 2011 stated that on 4 November 2011 the investigation was launched by the Investigative Department of the Ministry of Corrections and Legal Assistance on criminal case N07041111001 pursuant to Article 333 (1) of the Criminal Code of Georgia.

Fearing for his life and health, the inmate requested the transfer to the other establishment. Therefore, a letter was sent from the Office of Public Defender to the Head of Penitentiary Department requesting to undertake under his personal control the security of the inmate and to transfer him to the other establishment. Letter N0.10/4-14553 received from the Penitentiary Department stated that the life and health of the inmate was not under any threat.

INVESTIGATION INTO THE ALLEGED FACTS OF ILL-TREATMENT

The monitoring of closed institutions and the analysis of the applications submitted to the Office of Public Defender shows that ill-treatment in the penitentiary establishments and police stations remains to be a problematic issue. The Public Defender has repeatedly touched this topic in his parliamentary and special reports. It is within the competence of the prosecutor's office to react by means of legal proceedings upon the facts of torture and inhuman treatment. Full eradication of ill-treatment requires thorough investigation upon each case of possible ill-treatment and overcoming the perception of impunity reigning nowadays. The Public Defender addressed the Office of Chief Prosecutor of Georgia calling upon initiating the investigation on a number of cases, though in most cases the investigation is either prolonged or terminated.

The inefficiency of investigative bodies creates a ground for perception of impunity among the staff of the enforcement bodies, while causing a loss of trust towards the investigation among the victims that in no way contributes to the disclosure and eradication of the practice of ill-treatment.

According to the case law of the European Court of Human Rights, whenever a person was injured while in the hands of public officials, there is a strong presumption that the person concerned was ill-treated.[455] The authorities' duty is to provide a satisfactory and convincing explanation of how the injuries were caused. The failure of authorities to provide such explanation raises the issue of violation of Article 3 of the European Convention of Human Rights.[456]

It is highlighted in the CPT's 14th General Report that the investigation should be thorough and comprehensive, it should be conducted in a prompt and expeditious manner, and the persons responsible for carrying out the investigation should be independent of those implicated in the events.[457] Although, in most cases the investigation on the facts of ill-treatment of the inmates in penitentiary establishments is initiated by the Investigation Department of the Ministry of Corrections and Legal Assistance that further more undermines the effectiveness of investigation.

[455] Case of Bursuc v.Romania, Judgment of 12 October 2004.
[456] Case of Selmouni v. France, Judgment of 28 July 1999.
[457] 14th General report on the CPT's activities, paras.25-42.

In its Report to the Georgian Government on the visit to Georgia carried out in 2010, the European Committee for the Prevention of Torture (CPT) stresses that "the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. Some of the delegation's interlocutors met during the visit were of the opinion that information indicative of ill-treatment was frequently not followed by a prompt and effective response, which endangered a climate of impunity. According to them, most complaints of ill-treatment were dismissed; at best, the officers concerned were disciplined. It was suggested that the Prosecutor's Office often failed to initiate cases into complaints of ill-treatment, and that when cases were opened, this was rarely under Section 144 of the Criminal Code, but rather under Section 333. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints."[458]

The Public Defender has repeatedly touched the above-mentioned issue in his parliamentary reports and referred to inadequate qualification to the cases as being one of the major problems in investigation of facts of ill-treatment. In most cases the investigation is initiated not pursuant to articles envisaging torture or health damage, but pursuant to the article envisaging exceeding official power that leads to lighter sanctions.

According to the available information, the only case on the fact of ill-treatment that leaded to conviction for the last two years was the case of beating of inmate Ramaz P. Two staff-members of the Establishment No.2 in Kutaisi were detained on the mentioned fact. We hope that this case will not be the only exemption and that the investigation will come up with logical result on the similar cases in future.

Case of Ramaz P.

The letter of 2 March 2010 received from the Chief Prosecutor's Office stated that on 19 February 2010, the Investigation Unit of the Western Georgia District Prosecutor's Office launched investigation into case No.088108005, on the facts of beating Ramaz P by the staff-members of the Prison No.2 in Kutaisi, degrading treatment and exceeding the official powers, i.e into the criminal case pursuant to Articles 144^3 (2) (b) and 333 (3) (b) of the Criminal Code of Georgia.

According to the letter of 25 January 2012, received from the Chief Prosecutor's Office, two staff-members of Prison No.2 in Kutaisi were charged for the crime envisaged by Article 333 (3) (b) of the Criminal Code of Georgia and were sentenced.

The Public Defender welcomes the fact that the above-mentioned case was investigated and the concrete persons were charged. Here it should be mentioned that considerable number of applications are submitted to the Office of the Chief Prosecutor of Georgia and the investigation into these cases is pending.

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The Office of the Public Defender applied in writing to the Office of the Chief Prosecutor of Georgia requesting the information covering the year 2011 on the following:

1. Number of investigations initiated into the facts containing signs of crimes pursuant to Articles 332-333, as well as Articles 144^1-144^2-144^3 of the Criminal Code of Georgia (separately, per each article);

2. Number of persons against which the criminal prosecutions commenced; number of civil servants among them (indicating the state agencies);[459]

[458] Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, Para.17

[459] The definition of the crime of torture as included in the Criminal Code of Georgia does not comply with the definition provided by the UN Committee against Torture. One of the differences is as follows: the articles 144^1 (Torture), 144^2 (Threat of Torture), 144^3 (Degrading or inhuman treatment) do not indicate the special subject of crime – the official or the civil servant.

3. Number of cases submitted to common courts for consideration;

4. Number of cases finalized with plea bargain;

5. Number of preliminary investigations terminated on the facts containing the signs of the above-mentioned crimes, indicating the reasons for termination.

Letters No.13/41367 and No.13/10332 received in reply stated that 20 investigations had been initiated in 2011 pursuant to Article144[1] (Torture) of the Criminal Code of Georgia. Prosecution had commenced against 3 persons; 11 out of these investigations had been terminated.

Investigation has not been initiated on any of the facts pursuant to Article 144[2] (threat of torture) of the Criminal Code of Georgia.

9 Investigations had been initiated pursuant to Article 144[3] (inhuman or degrading treatment) of the Criminal Code of Georgia; 3 out of these investigations had been terminated; only one investigation had led to conviction.

In 2011, 77 Investigations had been initiated pursuant to Article 332 (abuse of power) of the Criminal Code of Georgia; 29 out of these investigations had been terminated; criminal prosecution had commenced against 67 persons; cases on 75 persons had been sent to court; 78 persons were found guilty.

In 2011, 127 investigations had been initiated pursuant to Article 333 (exceeding official powers) of the Criminal Code of Georgia; 58 out of these investigations had been terminated; criminal prosecution had commenced against 25 persons; cases on 29 persons had been sent to court; 32 persons were found guilty.

The requested information neither on the number of plea-bargains nor on the number of preliminary investigations terminated (indicating the reasons of termination) had been provided by the Chief Prosecutor's Office.

The Public Defender, in his previous Reports, had repeatedly addressed the Chief Prosecutor's Office of Georgia and called upon introducing the system for statistical information on investigations into the facts of torture and ill-treatment. The statistical data shall give information on the number of civil servants, including staff of penitentiary establishments and Police against whom preliminary investigations had started on the facts of torture or ill-treatment as well as the number of investigations that led to conviction. Despite this, judging from the reply from the Chief Prosecutor's Office, the statistics on the facts of ill-treatment is still incomplete. It is impossible to determine the number of civil servants charged for the crimes; along with that, in cases of crimes committed under Articles 332 and 333 of the Criminal Code, it is impossible to determine whether a servant was found guilty for the ill-treatment of a person in custody or for some other misconduct while performing his duties. Moreover, despite our requests, the information on belonging to state institutions of those persons convicted was not included in the responses provided.

The Chief Prosecutor's Office is obliged to produce statistics pursuant to Decree No.250 of the President of Georgia as well. The Decree approved the Strategy on the Fight against Ill-treatment and the 2011-2013 Action Plan on the Fight against Ill-treatment. The registration of the information by the Chief Prosecutor's Office about the facts of ill-treatment by civil servants is envisaged therein.

Following the visit to Georgia carried out in 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has addressed the Government of Georgia with recommendation to improve the methods of collecting statistical data, mentioning: "The compilation of statistical information is not an end in itself; if properly collected and analysed, it can provide signals about trends and can assist in the taking of policy decisions. Increased co-ordination between the Ministry of Internal Affairs and the Chief Prosecutor's Office is clearly needed in this respect. The CPT invites the Georgian authorities to introduce a uniform nationwide system for the compilation of statistical information on complaints and disciplinary and criminal proceedings and sanctions against police officers. Further, steps to provide information to the public on the outcome of investigations into complaints of

ill-treatment by the police could help counter a perception of impunity."[460]

It shall be noted in addition that the investigative bodies are reluctant to show pro-activity when it comes to complaints of ill-treatment of inmates. According to paragraph 1 of Article 101 of the Criminal Code of Georgia, the reason for commencing preliminary investigation may be information disseminated by press. However, as a rule no investigation is initiated without an application or official notification (See case of Malkhaz A.).

Recommendation to the Chief Prosecutor of Georgia:

- **To exercise the personal control over the investigations into all the facts of ill-treatment during the detention and in the penitentiary establishment to ensure quick and efficient investigation;**
- **To ensure keeping the detailed statistics on the facts of ill-treatment exercised by the civil servants in order to facilitate thorough and comprehensive monitoring of the situation in the field of fight against torture;**
- **To ensure the provision of comprehensive and timely information to the Public Defender on the investigations of the facts of ill-treatment.**

OVERCROWDING

During the year 2011, the problem of overcrowding was still noticable in some of the penitentiary establishments. The European Committee for the Prevention of Torture (CPT) has recurrently issued recommendations on ensuring the allocation of at least 4 m^2. per inmate. Despite this, the new Code on Imprisonment envisages the same space as it was envisaged by the old "Law of Georgia on Imprisonment".[461] It shall be mentioned that in some of the penitentiary establishments a space does not correspond even to the norms established by the national legislation.

The total limit of the capacity of the penitentiary establishments set by Decree No.184 of the Minister of Corrections and Legal Assistance is 24 650, although, this figure exceeds the number of available places in the penitentiary institutions (Establishments No.13 and No.10 are not functioning). Considering currently available places in the penitentiary institutions, the actual limit is 23 630 while according to the data of December 1 2011, 24 244 inmates were placed in the penitentiary establishments.

In 2011, the problem of overcrowding was permanently or periodically noticeable in some of the establishments. The inmates have not even had their personal beds in the following establishments: Tbilisi No.1, Zugdidi No.4, Batumi No.3 and Rustavi No.17.

In his Parliamentary reports, the Public Defender constantly issues recommendations to eradicate the problem of overcrowding as far as the number of inmates has a proportional effect on the quality of ensuring the respect of the rights of inmates, hinders the proper implementation of the penitentiary healthcare reform process, thus negatively affecting the state budget. The recommendations of the Public Defender refer to the revision of the excessively strict criminal justice policy on the one hand and prioritizing the alternatives to deprivation of liberty and less strict forms of punishment in cases of the crimes less dangerous for society, when determining criminal prosecution policy[462].

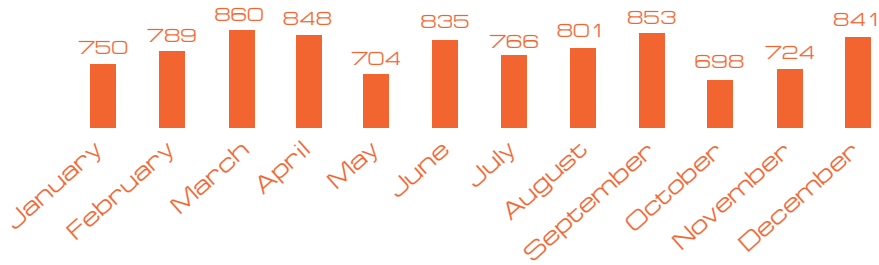
An amendment introduced within Article 40 of the Criminal Code of Georgia shall be positively assessed. According to the amendment, the community service shall be used as an alternative sanction to the deprivation of liberty. The Public Defender expresses the hope that the practical application of the mentioned amendment will alleviate the problem of overcrowding at the penitentiary establishments.

[460] The Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2010, para. 17.

[461] *The living space norm per convict shall be no less than 2 m^2. in a penitentiary establishment, 2,5 m^2. in a prison, 3 m^2. in the establishment for women, 3,5 m^2. in the Juvenile establishment, 3 m^2. in the Medical Establishment.*

[462] See: The Public Defender's 2010 Parliamentary Report.

The number of prisoners accommodated in penitentiary establishments in 2011, as per month



In 2011, 9460 prisoners were placed in the Penitentiary Department Establishments. 4508 Prisoners were released for different reasons from the penitentiary establishments during the reporting period. Among those 444 persons were conditionally released pre-term, 1055 were given the conditional probation term, 47 convicts got serving their sentence postponed, 680 were pardoned.

Proposal to the Parliament of Georgia:

- **To introduce the respective changes into the Criminal Code of Georgia, to ensure the principle of summing up of sentences in force be altered with the principle of absorption;**
- **To undertake the measures necessary for decriminalization of some of the crimes less dangerous for society;**
- **To introduce the respective changes into the Code on Imprisonment in order to provide 4 m² of living space per prisoner.**

Recommendation to the Chief Prosecutor of Georgia: To prioritize the use of the alternative measure to deprivation of liberty and less strict forms of punishment in case of the crimes less dangerous for the society, during the determination of the criminal prosecution policy.

LIVING CONDITIONS

Accrding to European Prison Rules, "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation."[463]

The same Rules state the following:

"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

[463] Para.18.1, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules; Council of Europe.

c. there shall be an alarm system that enables prisoners to contact the staff without delay."[464]

According to the case law of the Euroepan Court of Human Rights, that the conditions in which a person is kept might lead to violation of Article 3 of the Convention along with ill-treatment and inhumane treatment.

One of the basic principles of the European Prison Rules is that "Prison conditions that infringe prisoners' human rights are not justified by lack of resources."

The Public Defender has repeatedly issued recommendations in his reports to close down penitentiary Establishments No.1 in Tbilisi, No.3 in Batumi, No.4 in Zugdidi and No.13 in Khoni as far as the conditions in these prisons could be described as amounting to inhuman and degrading treatment. Request of closing down referred to the establishments where none of the standards of the living space per inmate, lighting, heating, ventilation or hygiene were respected, and where the infrastructure was dilapidated to the extent not to be the subject to refurbishment.

The Public Defender positively assesses the closure of the Establishment No.13 in Khoni during the reporting period. According to the information on the web page of the Ministry of Corrections and Legal Assistance in Georgia,[465] on June 10 2011, the Council of Europe Development Bank (CEB) approved the project worth 60 million Euros for the Government of Georgia for the construction of the Laituri prison complex, with a capacity of 2000 inmates. The Public Defender hopes that after the launch of the exploitation of the Laituri prison complex, the above-mentioned penitentiary institutions will quit their functioning.

Establishment No.15 in Ksani

Despite the cosmetic restoration of the closed type part of the Establishment, the conditions have not improved essentially there. The problem related to the walls in the cells remains, as they are covered with a thick uneven layer of a concrete, the so-called "furry-coat (shuba)". Electric heating appliances are used to heat cells and the lighting is not sufficient. Great number of cockroaches is also noticeable.

During the monitoring undertaken in August-September 2011, the inmates placed in cell No.20 of Establishment No.15 reported to the representatives of the Public Defender of Georgia that due to the lack of pumps in the cell, they had to keep their clothes and other personal belongings in the packs under their beds. While visiting the mentioned cell, the monitoring group noticed that there was only one outdated pump there. Following this visit, a letter was sent to the director of Establishment No.15 from the Office of Public Defender of Georgia requesting the information whether the inmates in Cell No.20 would be provided with pumps for keeping their personal belongings. In reply, letter No.10/34/3-4998, the director of the establishment stated that all the inmates in Cell No.20 of Establishment No.15 were provided with the pumps (1 pump per 2 inmates); though the follow-up monitoring visit revealed that that the information provided by the director of the establishment was not correct and the situation remained the same.

The so-called old zone has three barrack-type accommodation buildings and one medical unit there. One of those underwent cosmetic restoration. The blocks damaged during the fire on 6 March 2009, were refurbished except one accommodation block on the second floor where there are 40 inmates placed there. The block is divided into four parts by tarpaulin; the floor is concrete and partly damaged. Heating was insufficiently provided by electric heating appliances and it was cold in the block during the monitoring visit. The living conditions do not permit the inmates to keep the bloc clean. The sanitary-hygienic conditions in the toilet of this barrack ws far from being satisfactory.

A canteen was located in the newly refurbished block where the inmates could have their meal three times a day. It was freezing in the canteen as far as no heating was available there.

[464] Para. 18.2 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules; Council of Europe.

[465] http://www.mcla.gov.ge/index.php?action=page&p_id=452&lang=eng.

There were 172 inmates placed on the first floor and 156 inmates on the second floor of the refurbished building. The space of each of the floor was 343 m^2. 4 Electric heating appliances used per one floor for the heating that was not enough and it was as cold there as in other blocks. Moreover, there was no ceiling on the top of the building, which is covered with tin. There were no cupboards for the inmates there and they have to keep their belongings in cardboard or plastic bags under their beds. The floor was concrete; walls are plastered by cement. According to the statements of the inmates, despite their efforts to keep clean the accommodation block, their beds and personal belongings were always covered with dust. There was no ventilation in the block; 7 windows measuring 1 m^2 could not ensure the access to natural light and ventilation in the block. The living space per prisoner on the first floor was 1.9 m^2 while on the second floor – 2.1 m^2. Water was leaking on the second floor of one of the blocks of the accommodation building, thus causing the high level of humidity, wherefore the inmates used cellophanes to cover their beds.

The accommodation limit of the second two-floor building is 588 places. The first and the second floors of the living block are divided into two parts. There was one room on the first floor and 4 rooms on the second one there. The living block has not been refurbished for years. The sanitary-hygienic conditions were not satisfactory there. The toilets on both floors were dilapidated. The heating provided by means of electric appliances was not enough for the rooms. There was an access to natural light and ventilation there. The space of the accomodation block measured 913 m^2; the living space per inmate measured 1.55 m^2.

There was a medical unit in the third building with the shower room on the first floor. There were neither windows in the shower room nor a central ventilation system. The ceramic slabs were planked on the floor, the ceiling and walls were painted, however, there was humidity and plaster had fallen down at some places. The shower room was also used as a laundry.

The conditions in so-called medical unit were lamentable. It is unacceptable to place the inmates in such conditions. Lamentable situation was in so-called "old medical unit" as well where there were inmates with health problems placed there. The conditions there were poor to the extent that the placement of inmates there should be inadmissible.

In so-called "old zone" courtyard, there was a common toilet there with poor sanitary-hygienic conditions. Sewerage system was outdated resulting in unbearable smell there. As for the toilets in the accommodation buildings, apart from being in dilapidated conditions, according to the statements of the inmates, their number was not enough for the prisoners, resulting in rows in the mornings.

Establishment No.6 in Rustavi

The cosmetic restoration of the old part of Establishment No.6 shall be positively assessed. The fact of constructing metallic-plastic windows during the refurbishment that are opened well enough to ensure the ventilation should be welcomed. It would be recommendable to use this practice in other establishments as well, where the construction of the windows frequently with double or even triple lattice hinders the ventilation of cells.

The absence of ventilation system in newly-built accommodation block created ventilation problems there. Provision of artificial lighting by means of "economic-bulbs" was very poor. Water-sewage system was in need of refurbishment.

Refurbishment works should be undertaken as well on the ground floor of the new living block, where the conditions are not satisfactory either with high level of humidity.

Establishment No.12 in Tbilisi

The sanitary-hygienic conditions of the establishment were poor. As mentioned several times before, since the construction of the institution, cosmetic restoration had been done only on the ground floor of the establishment,

where the offices of the administration and the medical service were located. The electric heating appliances were used to heat up the establishment. The establishment mainly accomodates prisoners who have to serve a small remaining of their sentence, as well as elderly prisoners.

Establishment No.14 in Geguti

The Establishment has 5 barrack-type dormitories. There are around 200 to 250 inmates on each of the floors. In its report on the visit to Georgia in 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a recommendation to transform the barrack type dwelling space in Establishment No.8[466] in Geguti into cells, which is also recommended from the point of view of security.[467] The mentioned recommendation has been repeatedly issued by the Public Defender as well; however it has not been followed up to now.

Establishment No.17 in Rustavi

The sanitary-hygienic conditions of the cells in the dormitories I, II, III and IV of the Establishment are not satisfactory and the cells require substantial refurbishment. The above-mentioned dormitories are provided with artificial lighting, as the size of windows does not ensure access to natural light. Walls are partially torn down. There is natural ventilation, however not sufficient. In some of the cells, the water taps are out of order; in some, there are no light bulbs. The central has heating is provided.

Medical Establishment No.19 for Tubercular Convicts

Medical Establishment for Tubercular Convicts is a complex of 3 isolated residential buildings. Apart from the renovated building for the convicts with resistant tubercular disease, the other two residential buildings require refurbishment and their sanitary-hygienic conditions are extremely poor. Heating is provided by means of electric appliances. The construction of a new building is under way at the territory of the Establishment. It is planned to open the new building in 2012. Here should be mentioned as well that the sanitary-hygienic conditions of the shower room are still very poor in the renovated building for the convicts with resistant tubercular disease.

Establishment No.8 in Gldani

The cosmetic restoration works undertaken in quarantine cells at Establishment No.8 in Gldani on January 2012, should be positively assessed. Thick mattresses were laid on the beds, water system has been changed, tables and chairs in the cells have been changed as well. Four 4-storey beds were placed per each cell. Three quarantine cells have been added to the institution.

Establishment No.16 in Rustavi

Some of the recommendations of the Public Defender of Georgia regarding this institution have been taken into consideration: the building accommodating solitary confinement cells and quarantine cells where the anti-sanitary and inhuman conditions have been prevailing during the past years has been refurbished.

[466] The numeration of the establishment is dated at the period of visit of CPT delegation to Georgia

[467] The Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2010, para. 77.

The infrastructure of Dormitories A and B was good; there were 6-place cells there. However in Dormitory C, there were still the barrack-type cells there some with the capacity of 50-52 places and others with the capacity of 14-40 places that did not ensure the satisfactory conditions of placement there. Generally, most of the cells in Dormitory C needed refurbishment. There was a stadium at the Dormitory C there.

Establishment No.7 in Tbilisi

Most of the cells in the Establishment needed refurbishment. The main problem at the Establishment i.e. insufficient access to natural light and ventilation, especially on the ground and the first floors is caused by the fact that the windows going out into the courtyard and constructed closer to the ceiling were covered by several levels of lattice.

It should be noted that there were no chairs or other equipments in courtyards (of 12-13 m2 space) of establishment for walk in the fresh air.

Recommendation to the Ministry of Corrections and Legal Assistance:

- **To ensure the refurbishment of all the above-mentioned establishments, i.e. shifting from the barrack-type system to the cell-type system;**
- **To ensure the access to natural light, artificial lighting, ventilation and heating in all the establishments.**

PERSONAL HYGIENE

According to international standards, as well as in line with the national legislation, the prisoners shall have adequate environment to be able to keep the personal hygiene. According to paragraph "a.a" of Article 14 of the Code on Imprisonment, a remand/sentenced person shall have a right to be provided with the personal hygiene. According to Article 21 of the same Law, "a remand/sentenced person shall have a possibility to satisfy natural physiological needs and keep personal hygiene without infringement of honor and dignity". "As a rule, a remand/sentenced person shall have a possibility to take shower twice a week, as well as the services of a hairdresser no less than once a month…"

Despite the requirements of the legislation, inmates have no access to shower twice a week in any of the closed-type penitentiary establishments. In Tbilisi Establishment No.8, the inmates have access to shower once a week, though according to their statement they are given maximum 10 minutes for taking shower. As for the semi-open penitentiary establishments, this problem is dealt with on the expense of the shower rooms in the blocks or courtyards of the establishments. The exception from the rule is accommodation block No.6 of the Establishment No.14 in Geguti, where the convicts have access to shower only once a week. According to some of the inmates placed in so-called "old zone" of Establishment No.15 in Ksani, they have access to shower once per 10-15 days. Some other inmates point out that they do not have any problems regarding access to shower as far as the shower room is located in the yard and might be used accordingly. However, during the planned monitoring visits, in both cases, the door of the shower room was closed and it took up to 15-20 minutes to get the keys.

As regards to the hairdresser's services, either inmates provide this service to each other or a convict listed in the provision unit acts as a hairdresser.

As it has been repeatedly mentioned in the past, toilets in cells of the Establishment No.4 in Zugdidi and Establishment No.1 in Tbilisi are semi-open, not meeting any of the standards. The same may be said about the majority of toilets in

cells in the Establishment No.3 in Batumi. There are partitioned toilets in the cells of Establishment No.6, though the height of the door of the toilet does not ensure its full partitioning.

According to paragraph 3 of Article 22 of the Code on Imprisonment, a remand/sentenced person shall have a personal bed linen, which shall be provided clean and not damaged. Administration shall ensure freshness of linen. As a result of monitoring it was revealed that prisoners are given linen only upon the admission to the establishment. Administration changes linen on a systematic basis only in Establishment No.8 in Gldani on the demand of inmates. According to the inmates of Establishment No.8, they prefer to wash the linen purchased by their own money themselves as far as the administration could not ensure the return of the same linen to the inmates after washing them.

EXERCISING A RIGHT TO WALK IN THE FRESH AIR

According to the paragraph "g" of Article 14 of Imprisonment Code of Georgia, accused/convicted persons "shall enjoy the right to walk on the fresh air at least less one hour a day."

Despite the fact that the duration of the walk is defined by the Code of Imprisonment, the inmates in Establishment No.4 in Zugdidi benefited from this right only for 20-25 minutes, in the Establishment No.7 they enjoyed 25-30[468] minutes of walking in the fresh air, and in Establishment No.3 in Batumi duration of walk was about 10-15 minutes.

In his parliamentary reports, the Public Defender has repeatedly issued recommendations to ensure exercise of a right to a daily one-hour walk, including at weekends. However, this has not been practiced in any of the closed type custodial establishments.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended the Georgian authorities to ensure that all the prisoners in closed type establishments 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 for the prisoners under special security regime, they shall have the possibility to take outdoor exercise for at least one hour every day.[469]

In some of the semi-open type establishments, the inmates enjoy staying in the fresh air for only 4-6 hours a day (e.g. Establishment No.14 in Geguti, Establishment No.12 in Tbilisi, Establishment No.15 (new block) in Ksani). Establishment No.16 in Rustavi is semi-open and closed type custodial establishment, however accommodation buildings are closed on Sundays and convicted persons are not able to enjoy their rights to stay in fresh air. The inmates in the Block A of the Semi-Open part of Establishment N5 for Women are able to stay in the fresh air only for 6 hours during a day.

Order No.97 of 30 May 2011 of the Minister of Corrections and Legal Assistance approves the Statutes for pre-trial detention establishments, custodial establishments and medical establishments for accused/convicts as well as medical establishment for tubercular convicts. According to the Article 29 (2) of the Statute of pre-trial detention establishments, "the accused persons shall enjoy the right to walk during day-time. The walk is permitted in outdoor exercise yards. Benches and shelters from the rain should be constructed in the yards. During a walk, the juveniles shall have an access to physical training and sports facilities. However, it should be noted that none of the establishments are equipped in a way to comply the above-mentioned rules. The same conditions are documented in the closed type establishments. The prisoners are compelled to stand during the entire duration of walk and they often refuse to walk or return to their cells quickly. Prisoners in Medical Establishment No.18 for accused/convicts in Tbilisi also often complain that they may not exercise the right to walk as the outdoor exercise yard is not respectively arranged. In particular, some of the inmates stated, they had difficulties to stand on their feet and as there were no chairs in the courtyard, they refrained from going for walk. Staying in the fresh air is even more problematic in rainy and sunny days as far as one could not find a shelter from rain and sun almost in none of the establishment.

[468] The only exception are the prisoners who stay alone in their cells. They do enjoy the rights of one-hour walking in the fresh air.

[469] The Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2010, para. 82.

Despite of the number of recommendations of Public Defender of Georgia, this problem remains unsolved. The Order of the Minister of Corrections and Legal Assistance on the statutes of the establishments[470] envisages the relevant equipment of the outdoor exercise yards as well, however, this is not applied in any of the establishments.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia:

- **To ensure making amendments to Order No.97 of 30 May 2011, in order to define the minimum standards of equipping the outdoor exercise yards according to the CPT recommendations;**

Recommendation to the Head of the Penitentiary Department:

- **To provide for inmates in all the penitentiary establishments access to shower twice a week;**
- **To ensure that the convicted persons in all semi-open type establishments have the right to stay in fresh air for minimum 8 hours a day;**
- **To ensure that the convicted persons could enjoy one hour walking in all the closed type penitentiary establishments;**
- **To ensure fixing benches, constructing sports facilities and refurbishing the outdoor exercise yards in a way to be available in all climate conditions.**

DISCIPLINE AND PUNISHMENT

Imposition of disciplinary measures and administrative punishment

According to the European Prison Rules: "Disciplinary procedures shall be mechanisms of last resort;"[471] "Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners;"[472] "The severity of any punishment shall be proportionate to the offence;"[473] "Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited;"[474] "Punishment shall not include a total prohibition on family contact."[475]

According to the written replies, No.10/8/2–9487 and No.10/8/2-426, received from the Penitentiary Department on 15 July 2011 and on 27 February 2012, in 2011, administrative imprisonment was imposed on 46 convicts for the severe violation of internal regulation of the penitentiary establishments;[476] 2856 convicted inmates were placed in solitary confinement cells. According to the same source, none of the inmates placed in solitary confinement cells had appealed the decisions of directors of establishments.[477] The inmates report to the Special Preventive Group that appealing never brings any results, herein is lies the reason for non-appealing such decisions. It shall be mentioned herewith as well that the number of punished inmates in fact is higher, as in some of the establishments. i.e. Establishment No.8 in Gldani and Establishment No.2 in Kutaisi the informal forms of punishment of prisoners are practiced (placing in

[470] The Order No.97 of 30 May 2011 of the Minister of Corrections and Legal Assistance approves the Statutes for pre-trial detention establishments, custodial establishments and medical establishments for accused/convicts as well as medical establishment for tubercular convicts.

[471] Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules; Council of Europe; Rule 56.1;

[472] Ibid, Rule 56.2;

[473] Ibid, Rule 60.2;

[474] Ibid, Rule 60.3;

[475] Ibid, Rule 60.4;

[476] See above the Chapter on ill-treatment containing information on imposing administrative sanctions on 26 convicts at the same time in Establishment No.2 in Kitaisi. See above in the same chapter the cases on Ilia M. and Giorgi O. related to the bad practices of imposing administrative sanctions.

[477] This information is requested by the Office of Public Defender twice a year on a 6-month bases.

quarantine or the so called "box") and used in cases when the administration for some reason does not want to even formally justify the punishment.

Solitary confinement cells do not exist in Establishments No.1, No.11 and No.18.

The length of punishment for the same misdemeanor in different penitentiary establishments varies. This approach could be positively assessed only in case if applied on an individual basis considering the personal file of the prisoner and the circumstances of the misdemeanor.

The monitoring has revealed that disciplinary misdemeanors committed by the prisoners are often related to the request to visit a doctor – the prisoner is compelled to make noise and knock on the cell door, otherwise, according to their statements, it is impossible to meet a doctor. This is particularly relevant for Establishments No.2 in Kutaisi, No.6 in Rustavi and No.15 in Ksani.

The instances of collective punishment are also frequent. This is absolutely forbidden both by the national, as well as international standards. As it was already mentioned, for the misdemeanor committed by one prisoner the entire cell is punished in Establishment No.8 in Gldani and Establishment No.2 in Kutaisi. This, as stated by the prisoners, results in deprivation of radio, prohibition to walk in the fresh air, even in verbal or physical abuse.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stressed in its 2010 Report that "any form of collective punishment is unacceptable. Further, all disciplinary punishments should be imposed in full compliance with the relevant formal procedures".

The CPT states further that "all disciplinary punishments should be imposed in full compliance with the relevant formal procedures."[478] These procedures are quite precisely defined by the Imprisonment Code of Georgia. According to article 84 of the Code, "Director or designated by him/her person shall review disciplinary cases; The right to give testimony, present evidence, file motion, make statements in native language and use interpreter's services, appeal to the resolution on imposition of the disciplinary sanction, and shall be explained to an accused/convict; An accused/convict shall provide explanations on the violation concerned, and in case of refusal to do so, the relevant minutes shall be drawn; The person in question, a witness and a victim shall have a right to submit written testimonies and/or comments, which shall be attached to the resolution on imposition of disciplinary sanctions." The same article of the Code states that „an accused/convict has a right to be represented by a lawyer at the hearing being held on sanctions described in Article 82 paragraph 1 sub-paragraphs "f" and "g". Before commencement of the hearing, an accused/convict shall be informed about the right to be represented by the lawyer, which, in case of the consent, shall be performed within 3 hours. If the lawyer fails to appear within established time limits, the public lawyer shall be appointed. If an accused/convict refuses to attend the hearing, the written document reflecting such refusal shall be developed and signed by an accused/convict."

In spite of the above-mentioned, during the monitoring in some cases (ex. Establishment No.16 in Rustavi) the inmates placed in solitary confinement cells do not possess any information about the length of their punishment that is a serious misdemeanor. Before their placement in solitary confinement cells, they are obliged to sign the documents, though most often not giving the information about the content. Therefore, some of the inmates refuse to sign the papers.

According to Paragraph 2 of Article 88 of the Imprisonment Code of Georgia, "an accused/convict, placed in the solitary confinement cell shall be deprived of the right to visits, telephone conversations, purchase of food." The CPT recommends that the Georgian authorities „take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts."[479]

The Public Defender considers that the right of prisoners to contact with the outside world shall be considered as their right and prohibition of such contacts shall not be used as a form of punishment. Enhancing the forms of

[478] Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, para.114.

[479] Ibid, para.115.

encouragement for prisoners and objective reference to the forms of punishment might facilitate maintaining the stability in a prison, whereas the unjust and illegal treatment of prisoners may on the contrary, cause the discrepancies with the administration or, in cases of using the collective punishment – among each other, that may result in a serious and unacceptable outcome.

- Suggestion to the Parliament of Georgia: **To introduce respective changes into the Imprisonment Code of Georgia in order to ensure the contact of the persons placed in the solitary confinement cells with the outside world.**

Recommendation to the Head of the Penitentiary Department:

- **While exercising the service control, the Penitentiary Department shall pay particular attention to the identification and elimination of the methods of informal punishment and the cases of collective punishment;**

- **To ensure that all the inmates placed in solitary confinement cells shall have the detailed information about the decision (order of the director of the establishment), as well as information about appeal mechanisms and length of punishment.**

THE REGISTER FOR THE REGISTRATION OF PERSONS PLACED IN SOLITARY CONFINEMENT CELLS

Thorough maintenance of records on placement in solitary confinement cells is extremely important in terms of monitoring of punishment tendencies, misdemeanors and existing practice. It is essential to indicate the length of punishment, dates of placement and release as well as the certain reason of punishment in the records.

The study of the registers for persons placed in solitary confinement cells has revealed that the Registers are maintained insufficiently and inadequately in a number of establishments. In some of them only the types of misdemeanor are mentioned – "violation of internal regulations", "violation of regime", "has violated the regime of the establishment" (e.g.: Establishment No.17 in Rustavi, Establishment No.12 and Establishment No.2 in Kutaisi), "was placed according to Order No...of the Director" (Establishment No.16 in Rustavi), though the types of misdemeanors committed by inmates are not mentioned. In such cases, records are less informative and does not provide any information about the reason of placement into the solitary confinement cell.

The monitoring revealed that the Register on solitary confinement is not maintained in Establishment No.15 in Ksani. The information is searched in the resolution register of the Penitentiary Department, where there is not any reference about the misdemeanors.

It shall be positively assessed that the records about the misdemeanors are made quite thoroughly band clearly in some of the establishments, e.g. Establishment No.6 in Rustavi, Establishment No.5 for Women, Establishment No.9 in Tbilisi, Establishment No.14 in Geguti and Establishment No.8 in Gldani. However, according to the Register in No.8 Gldani Establishment, the most frequently cited reason for placing inmates in solitary confinement cells is "noise in the cell". As already stated above, in this establishment even light increase of voice, laugh, listening to radio in a normal voice and etc. is considered a misdemeanor due to the reigning regime there. Therefore, only one step separates each inmate from violation of the set up rules

In Medical Establishment No.18 for accused/convicted inmates, the "reprimand" was used as a means of punishment during the reporting year, though in some cases the administrative sanction of up to 20-30 days.

Some cases of disciplinary punishment were documented in Establishment No.12, where there were 66 inmates places in solitary confinement cells during the year 2011, 20 out of these during the second half of the year.

In Establishment No.4 in Zugdidi, there were 38 inmates place in solitary confinement cells. 8 inmates were place in solitary confinement cells in Establishment No.19. As for the Establishment No.3 in Batumi, the figure for the first half of 2011 constitutes 3 inmates, while for the second half of the year there we no inmates placed in solitary confinement cells there.

Based on the data of 2011, the practice of placing the prisoners in the solitary confinement cells in Establishment No.17 in Rustavi and Establishment No.14 in Geguti shall be positively assessed. The records made into the Registers during the reporting period, as well as the interviews with the inmates show that the individual approach is used during the punishment of the inmates and placing them in solitary confinement cells in the mentioned establishments, deriving from the severity of the misdemeanor and the personality of the violator.

The positive trend of the pre-term release from the solitary confinement cell based on the doctor's report is noted only in Establishments No.14 in Geguti and No.6 in Rustavi.

There were 19 such facts recorded in Establishment No.14 in the first half of 2011, which makes 17,4% of the cases of placement of the sentenced persons (109 sentenced persons) in the solitary confinement cells in that period. In the second half of the year, the number of pre-term releases was 45 that constituted 24.5% (184) of the placements during that period. The figure for the pre-term release based in doctor's report for the whole year constitutes 21.8% out of the whole number (293). As stated by the prisoners placed in the same establishment, the placement of the sentenced persons in the solitary confinement cell has decreased for the recent period.

Similar tendency was has revealed in Establismment No.6 in Rustavi in the second half of the year. 15 Cases of pre-term release following recommendations of a doctor were documented that constituted 13.3% out of the total number (113).

Such single fact has been documented as well in Establishment No.4 in Zugdidi, where there were 21 inmates placed in solitary confinement cells during the second half of 2011.

The uniform sanctions are used in Establishment No.16 in Rustavi, Establishment No.5 for Women, Establishment No.8 in Gldani and the general duration of punishment is about 5, 10 and 20 days.

The most wide-spread forms of misdemeanors in the penitentiary establishments, which had led to the imposition of the disciplinary measures are noise, whooping, fight, verbal abuse of the prison staff or other inmates, resistance to the requirement of the prison staff, being late or absent during the checking the prisoners according to the list, littering the territory.

It should be noted that compared to the date of the first half of the year, the tendency of sharp increase in the number of disciplinary punishments has been noticeable in the second half of 2011. It mostly refers to the large establishments such as Establishment No.2 in Kutaisi (202 - I half; 339 – II half); Establishment No.14 in Geguti (109 – I half; 184 – second half); Establishment No.16 in Rustavi (58 – I half; 122 – II half); Establishment No.15 in Ksani (363 – I half; 502 – II half); Establishment No.8 in Tbilisi (226 – I half; 303 – II half); Establishment No.6 in Rustavi (40 – I half; 113 – II half).

- **Recommendation to the Head of the Penitentiary Department: To ensure that the administrations of the penitentiary establishments keep the Registers for the registration of persons placed in solitary confinement cells, their dating and numbering, with the description of the factual circumstances of the misdemeanor in an unified manner.**

- **Recommendation to the Administration of Establishment No.15 in Ksani: To ensure that the Register is maintained in the establishment for the placement of inmates in solitary confinement cell.**

INFRASTRUCTURE AND CONDITIONS IN THE SOLITARY CONFINEMENT CELLS

According to Article 88 of the Imprisonment Code of Georgia, the accused/convict placed in a solitary confinement cell has a right to a daily walk of an hour. Along with that, "the solitary confinement cell shall be lighted, provided with ventilation; the accused/convict shall have a chair and a bed. He/She shall be entitled to receiving reading materials, if so requests."

Establishment N2 in Kutaisi

There were 28 solitary confinement cells in the Establishment. They varied in terms of space; however, their equipment was identical. Each of the cells was equipped with one bunk bed. Each cell had one window measuring 0,5 m². There was sufficient lighting provided, both – by artificial as well as natural means; Heating was provided via the central heating system, there was natural ventilation. The toilet was semi-partitioned from the cell by a wall of 1,3 m height. There was a separate water tap in a cell. The walls of the cells were made of tiles, the floors were covered with mosaic, overall conditions in the cells were normal. There was a table and a chair in each of the cells.

	Solitary confinement cell N	Space
1	A1	5.8 m²
2	A5	5.48 m²
3	A6	4.3 m²
4	C2	5.12 m²
5	D6	11 m²
6	D10	12.74 m²
7	D15	12.25 m²

The inmates reported they could not enjoy the right to walk, a right to use shop and take shower. Library and press were not accessible for inmates placed in solitary confinement cells. A doctor did not visit them on a daily basis either. They were given a mattress and a blanket upon placing in a solitary cell.

Establishment No.3 in Batumi

There were 4 solitary confinement cells in the Establishment equipped with one bunk bed with a mattress and a blanket, a pillow and bed linen in each of them. Each of the solitary confinement cells had one window. There was sufficient light provided both – artificial as well as natural. The central heating and ventilation system was not functioning. Ventilation of the cells was provided via window, which had no glass. The toilets were semi-partitioned with a wall of 0,80 m height. The tap was fixed on top of toilets. The ceiling, walls and floor of the solitary confinement cells I, II and III were painted. They were generally in a satisfactory condition. There was humidity and scabrous paint in the cell IV.

	Solitary cell N	Space
1	N I	7.43 m²
2	N II	6,27 m²
3	N III	5.61 m²
4	N IV	6.3 m²

There was one prisoner in the solitary confinement cell during the monitoring. According to his statement, he could not enjoy the right to walk, a right to use shop and take shower. Library and press were not accessible for him. A doctor did not visit him on a daily basis either.

Establishmnet No.4 in Zugdidi

There were 3 solitary confinement cells in the Establishment. The space in all of them was identical measuring 6,38 m². There was one bunk bed with a mattress and a blanket in each of the cells. Each of the cells had one window of 0,5 m² size. The lighting was sufficient, both artificial, as well as natural. The cells were not heated and ventilated. There were plastic utensils, toilet paper and soap. The toilet was semi-partitioned from the cell with a wall of 0,70 m. height; there are also a tap and a washbasin, however the tap was out of order in all the three cells at the moment of the monitoring. The walls, ceiling and concrete floor were painted. Their general condition as compared with other cells was satisfactory.

There were no inmates placed in the solitary confinement cell during the monitoring.

Establishment No.5 for Women

There were 2 solitary confinement cells in the Establishment equipped with 6 beds with a mattress, a blanket and bed linen. There were 2 prisoners in the solitary cell at the moment of the monitoring. Each of the cells measured 18.15 m². The lighting of the cells both – natural and artificial – was sufficient. Heating was provided through central heating system, ventilation was provided through central ventilation system, as well as naturally. The partitioned toilets were ventilated via central system and by natural means; the lighting was artificial and sufficient. There was also a washbasin in a toilet. The sanitary-hygienic conditions of the cells were satisfactory.

As clarified during the interview with a person placed in the solitary confinement cell during the monitoring, there was a possibility to exercise a right to an hour-long walk everyday, take shower, use library and buy press in a shop of the Establishment. As stated by the inmate, doctor used to pay a visit only if requested.

Establishment No.6 in Rustavi

There were 11 solitary confinement cells in the Establishment equipped with one bed. The space in each of the cells was identical measuring 7 m². There were mattress and a pillow in the cells with inmates. Each of the cells have window of 0,5 m² size with double grizzly. Solitary cells were lighted both – artificially as well as naturally in a sufficient way. The heating was provided by means of central system. Ventilation system also worked. Toilet was partitioned; however, it did not have a door. There was a tap in the toilet. The walls and the ceiling in the toilet were painted. The floor was covered with mosaic. There were no table and chair in the solitary cells.

As clarified from the interviews with the persons placed in the solitary confinement cells during the monitoring, they could not exercise the right to walk, had no access to the shop of the Establishment, and water was supplied in a cell only during the distribution of meal. As stated by the prisoners, they had no possibility to take shower. Press was accessible for prisoners. According to the inmates, they were visited by a doctor upon placement in the solitary cell. The prisoners placed in the solitary cell mentioned that they took crockery and toilet paper from their cells.

Establishment No.7 in Tbilisi

There was one solitary cell in the Establishment measuring 7.1 m². There was no prisoner in the solitary cell during the monitoring. The cell was equipped with one bunk bed with a veneer on it covered by a mattress; one table and a chair. The solitary cell had one window measured 0.23 m² with a double grizzly. There was no access natural light, whereas the artificial lighting was insufficient. There was central heating in the cell. The ventilation was provided by means of a vent. Toilet was partitioned; there is a washbasin in the cell. The walls of the cell are painted, the floor is covered with a linoleum.

Establishment No.8 in Gldani

There were 36 solitary confinement cells in the Establishment, however only 27 out of these cells were functioning. There were inadequate conditions in 9 solitary cells because of water leakage, the walls and ceiling were soggy and scabrous. There were 26 turn-up beds in the solitary cells. 8 cells measured 8.6 m^2, whereas the other 28 cells measured 8,4 m^2. Each of the cells had a window measuring 0.6 m^2. There was a list of duties of prisoners and prohibitions displayed on the walls of the cells. Access to natural light, artificial lighting was sufficient. There was a central heating system; natural ventilation. Toilets were semi-partitioned with a wall of 1,66 m. height.

The interviews with the persons in the solitary cells revealed that they could not exercise a right to walk and use a shop. The inmates had no possibility to take shower. There was no library and press accessible to prisoners. Inmates in the solitary cells had a glass, a porringer and a plastic spoon. The administration of the Establishment provided them only with soap. The prisoners used pieces of journals and newspapers instead of a toilet paper. One of the prisoners in the solitary cell stated that they did not have any information on the length of the disciplinary punishment. Along with that, as state by the same person, they were scared that after leaving the solitary cell they would be placed in the quarantine again. The prisoner also stated that in case of noise the staff of the Establishment used to beat the inmates. According to him, he was beaten 8 times during 9 months; however, he refused to confirm the said in writing.

Establishment No.2 in Tbilisi

There were 2 solitary confinement cells in the Establishment measuring 18 and 15 m^2. The cells were equipped with 2 bunk beds with a sponge and a blancket in each of them; a table and a chair. There was no access to ventilation either artificial or natural; it was impossible to open any of the windows. The floor was of a concrete, the ceiling and walls were painted; toilet was semi-partitioned with a wall of 1.6 m. height.

Establishment No.14 in Geguti

There were 15 solitary confinement cells in the Establishment, 9 out of these cells measured 15.5 m^2 and had 4 places, 3 out of them with single place measured 5.8 m^2 and the rest 3 measuring 5.8 m^2 accommodated 2 persons,. The cells were equipped with beds covered with veneer and a mattress, table and a chair. Prisoners were provided with blankets in the evenings. Each of the cells had one window of 0.67 m^2. Cells for one person had toilet semi-partitioned with wall of 1,4 m height, whereas in other cells toilets were partitioned. Access to natural light, artificial lighting and central heating system as well as the ventilation were adequate. There was a tap with a washbasin in cells. The general condition of the solitary confinement cells were satisfactory.

The inmates reported that they had a right to purchase means of hygiene in a shop of the Establishment, they also enjoyed their right to take a shower, and to walk. This practice is not followed in any of the other penitentiary establishments.

Establishment No.15 in Ksani

There were 16 solitary confinement cells in the Establishment, 15 out of those were functioning, whereas one was used as a storage. Out of the functioning cells, 10 were for one person, 5 – for two persons. Cells measured 18 m^2 and were equipped bank beds with mattresses, a table, a chair and a small storage box. Each of the cells had one window of 0.5 m^2. Access to natural light, artificial lighting, central heating and ventilation was adequate. Toilets were semi-partitioned. The cells had a tap/washbasins. The floors of the cells were covered by mosaic, ceiling and walls were painted. General sanitary-hygienic conditions of the cells were satisfactory.

The inmates placed in solitary confinement cells during the monitoring reported that they could not exercise a right to walk and had no possibility to take shower. They did not have access to library as well. They were able to read only prayers and psalms. As clarified by them, they had not requested to use a right to access to press. Doctor was visiting them on a daily basis. The administration provided soap and toilet paper to prisoners upon placing in the solitary cells.

Establishment No.16 in Rustavi

There were 9 solitary confinement cells in the Establishment (some with 4 places, others with 10 places). Cells for 4 persons measured 14.6 m^2, whereas cells for 10 persons measured 19.45 m^2. Each cell was equipped with beds with a mattress, a blanket and a pillow; a table, a chair and a small storage box. Access to natural light, artificial lighting, central heating and ventilation was adequate. Toilet was semi-partitioned by a wall of 1,46 m. height. Washbasin was installed in toilets. The sanitary-hygienic conditions of the cells were normal. Inmates had shampoo, soap, toilet paper, dish-washing sponge.

According to the statements of the inmates placed in the solitary confinement cells during the monitoring, they did not have any information regarding the length of the disciplinary punishment.

Establishment No.17 in Rustavi

There are 16 solitary confinement cells in the Establishment, however only 8 of them are functioning, as one was used as a quarantine cell, whereas the others were used as isolation cells.

N	Cell N	Number of beds	Space
1	N 6	4	16.65 m^2
2	N 8	8	19,24 m^2
3	N 4	4	17 m^2

Each cell had a window of 0.72 m^2. Each cell was equipped with bunk beds with mattresses. Access to natural light, artificial lighting, ventilation and central heating system were adequate. The toilets were partitioned. There were taps installed in the cells. The cells required refurbishment works.

According to the inmates placed in the disciplinary cells, they could not exercise a right to walk, to use a shop of the Establishment, did not have access to shower, water was provided in shifts. Library and press were not available for them. They were not visited by a doctor every day either.

Medical Establishment No.19 for Tubercular convicts

There were 9 solitary confinement cells in the Establishment, 5 out of these cells were functioning, 3 out of these five cells were use for quarantine. There were 20 inmates in the solitary confinement cells during the monitoring, 1 out of those was self-isolated, the others were under the quarantine regime as being transferred from different establishment on that day and were waiting for placement in cells.

The cells were equipped with 12 beds. Each cell had a window of 0.3 m^2 without any glass. There is an access to artificial lighting; however, access to natural light is insufficient due to the small size of windows. There is no access to ventilation and central heating system. Toilets were partitioned, though with ant-sanitary due to malfunctioning of sewage system. Water was provided in shifts. The tabs were not functioning. The walls and the ceiling in the cells were humid and scratched; the concrete floor was damaged. The administration claimed that these solitary confinement cells

have not been used any more. The latter was proved by the inmates and the Register on the placement in the solitary confinement cells in Establishment No.19.

CONTACT WITH THE OUTSIDE WORLD

Short-term visit

Apart from the educational institution for juveniles, short-term visits in all the establishments take place in a room separated by a Plexiglas screen thus preventing the physical contact of inmates with their family members. In some cases, the Plexiglass screen iron gridiron on both sides, not giving a proper possibility even to see the visitor. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended the respective bodies to review the issue of visits in order to provide the prisoners with the possibility to receive the visitors in relatively less strict conditions. According to the Committee, "[t]he 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."[480]

According to Paragraph 7 of Article 17 of the Code on Imprisonment, the short-term visit shall last for 1-2 hours. According to the prisoners, the practice varies per establishment – the duration of the visit in Establishments No.8 and No.2 is abour 40-45 minutes; in Establishment No.4 – 15-20 minutes, whereas in Establishment No.3 – 10-15 minutes.

Long-term Visit

The change made into the Code on Imprisonment according to which a part of the prisoners was given a right to use the long-term visit shall be assessed positively. To this end the hotel-type rooms have been built in Establishments No.14 in Geguti, No.6, No.16 and No.17 in Rustavi and No.11 Establishment for Juveniles. In 2011, 3369 prisoners enjoyed this right.

Despite the above mentioned, the convicted persons, who due to the length of their sentence most of all require the additional means of the contact with their families have no access to the long-term visit. According to Paragraph 6 of Article 17^2 of the Code on Imprisonment, "long-term visit may not be used by a sentenced person placed in the closed type penitentiary establishment, apart from the life prisoners, as well as by a sentenced person placed in the quarantine regime, a sentenced person who had been imposed the disciplinary measure or/an administrative imprisonment."

A long-term visit, first of all, is the best way to re-socialize and keep the close contact with close people. This is particularly needed for the sentenced persons placed in the closed type penitentiary establishments. Deriving from the mentioned, the Public Defender considers that the respective changes shall be introduced into the Code on Imprisonment and the sentenced persons in the closed type establishments shall also enjoy the right to long-term visits. The mentioned change will be one step forward to support the rehabilitation of sentenced persons.

Video conference

Granting to prisoners the right to a video conference is a positive change as well. According to paragraph 1 of Article 17^1 of the Code on Imprisonment[481], "the sentenced persons in the penitentiary establishment apart from those sentenced for particularly grave crimes and person envisaged by paragraph 1(f) of Article 50 of this Code, has a right to a video conference (direct voice and visual TV conference) with any person."

[480] The visit to Georgia carried out from 21 March to 2 April, 2007;
[481] In force since 1 January, 2011;

The infrastructure necessary for the video conference was available in Establishment No.11 for Juveniles and Establishment No.15 in Ksani. In 2011, 517 inmates enjoyed this right, 13 out of these inmates in Establishment No.11 and 504 out of these inmates in Establishment No.15.

As in the case of long-term visits, allowing the video conferences for all categories of the sentenced prisoners would have been positive change and would have greatly contributed to the sentenced persons' re-socialization process, particularly as video conference might be exercised not only by family members, but also by friends and other close persons as well. The reservation introduced by the Code on Imprisonment, not allowing the video conference for a particular category of the sentenced prisoners, is not justified in the form as it is provided, as any of the prohibitions and restrictions shall have individual character and must be respectively justified in each of the specific cases.

Suggestions to the Parliament of Georgia:

- **To introduce relevant changes and amendments into the Code on Imprisonment in order to ensure the right of all categories of convicted persons to long-term visit;**
- **To introduce relevant changes and amendments into the Code on Im[redacted] ensure the right of all categories of convicted persons to video conference;**

Recommendation to the Minister on Corrections and Legal Assistance: To ensure that relevant infrastructure for long-term visit is provided in Establishments No.15 and No.5 for Women within the shortest deadlines.

Recommendations to the Head of the Penitentiary Department:

- **To ensure the arrangement of the short-term visiting facilities without Plexiglas screens and iron lattice; Any exception shall be based on well-founded following individual assessment of circumstances or the personality of a visitor;**
- **To introduce strict control on ensuring the compliance of duration of visits in all the establishments with the Law.**

TELEPHONE CONVERSATIONS

According to the Code on Imprisonment, a convict serving a sentence in a semi-open custodial establishment is entitled a right to make phone calls at his/her own expenses three times a month, not exceeding 15 minutes each, whereas the convicts serving their sentence in closed type custodial establishment are authorized to two phone conversations a month at his/her own expenses, each of them shall not exceed 15 minutes.

In spite of the above-mentioned, the inmates in Establishment No.8 in Gldani have a right to phone calls twice a month on the same number only for 3-5 minutes. The telephone communication has not been arranged yet in Establishment No.3 in Batumi. In spite of the fact that the Public Defender has repeatedly referred to the existence of this problem, it has been staying unresolved for several years leaving the inmates without the access to telephone calls. The absence of telephone has particular impact on considerable number of foreigners in Establishment No.3 for whom the telephone is the only means of communication with close people.

New phone cards provide convicts with the possibility to call only two numbers for 15 minutes. The convict is made to purchase several cards in order to make several phone calls, that is related to respective expenses. In some of the establishments, it is also possible to call three numbers from one card.

Recommendation to the Penitentiary Establishment:

- **To ensure the realization of the right of all prisoners to have telephone conversations, including taking into consideration the interests of the those inmates whose close persons are not in Georgia;**

- **To ensure the production of standard, multi-use telephone cards for the inmates.**

ACCESS TO PRESS, TV AND RADIO BROADCASTING

According to the European Prison Rules "Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case."[482]

Numerous reports of the Public Defender had mentioned the absence of TV sets in the closed type penitentiary establishments (apart from the Establishment N15 in Ksani, where there is a TV set in each of the cells). When the prisoners have to spend minimum 23 hours in a cell and they are not busy with activities lack of TV set is particularly inadmissible. The Public Defender hoped that the entry into force of the new Code on Imprisonment, which in general allows the TV sets, would have improved the situation, however the change was introduced only on paper and TV set, in a view of the Ministry of Corrections and Legal Assistance, still remains to be the unnecessary luxury for prisoners.

In Establishment No.6 in Rustavi only life prisoners have a right to have TV set, in the Establishment No.2 in Kutaisi only women prisoners have TV sets, in Establishment No.8 in Gldani and Medical Establishment No.18 for accused/convict inmates no broadcasting is allowed. In Establishment No.7 in Tbilisi, the sentenced persons again watch one and the same recordings on DVD instead of TV programs.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report recommended[483] the Government of Georgia to allow the TV sets in Establishment No.8 in Gldani.[484] However, the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, just like the recommendation of the Public Defender was neglected by the Ministry of Corrections and Legal Assistance of Georgia.

The access to press is a problem in almost all the penitentiary establishments. In principal, only the newspaper "Kviris Palitra", crosswords and the magazines "Sarke", "Tbiliselebi", "Gza" and "Raitingi" are available in the shops of the penitentiary system. It was possible to purchase the magazines and puzzles in the Russian language at the shop of Establishment No.8 in Gldani. In some cases, the limitations are introduced with regard to magazines as well. One of the recommendations of the Public Defender of Georgia related to access to press in penitentiary establishments. Despite this, almost in all the establishments delivering newspapers by parcels was prohibited. Newspapers are not available in the shops at the establishments as well.

According to the webpage of the Ministry of Corrections and Legal Assistance, "A memorandum of understanding was signed with the Georgian Post on 14 November 2011, under which the Georgian penitentiary system embraced yet another service as part of the ongoing penitentiary reform. The Georgian Post now offers special discount rates for sending parcels to pre-trial and convicted inmates from any region of Georgia. The new services simplified the parcel delivery procedures saving many families the extra cost involved in this process. A list of permitted items to send in prisons is visibly displayed in every postal office of Georgia."[485]

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482 Rule # 24.10

483 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, para.114..

484 The recommendation referred to the establishment No.8, though it was relevant for all the establishments.

485 http://www.mcla.gov.ge/index.php?action=page&p_id=671&lang=eng

As reported by the inmates the representatives of the social service have informed them regarding this novelty as well as about the possibility to deliver newspapers by parcel. However, the inmates state that their family members are told at the post offices that it is prohibited to send newspapers with "political content". This issue needs further discussion.

The prisoners have a possibility to have written communication with the family members and the inmates in other penitentiary establishments. They have the right to send letter abroad as well, though due to high prices (84 GEL) they often do not use this right.

Recommendation to the Ministry of Corrections and Legal Assistance:

- **To ensure the right to have TV set and receiving translations in all the penitentiary establishments;**
- **To ensure the access to press by means of parcels or at the shops in all the penitentiary establishments.**

COMPLAINTS AND APPLICATIONS

Complaint boxes are present at all the penitentiary establishments, however, alike the previous years, in some of the establishments sending complaints to their addressees is a remaining problem. According to Article 16(8) of the Code on Imprisonment „the Administration is prohibited to stop or inspect an application, demand and complaint sent by an accused/convict in the name of the President, Chairman of the Parliament, member of the Parliament, Court, European Court of Human Rights, international organization established based on human rights international treaty ratified by Georgia, the Ministry of Georgia, Department, Public Defender of Georgia, lawyer or prosecutor."

The Parliamentary Report of the Public Defender has several times mentioned the violations of a right of prisoners to correspondence; however, this problem remains unresolved. 1000 applications/complaints have been submitted to the Office of Public Defender in 2011, though, great part of them were submitted either by relatives/lawyers or were handled to the monitoring group by the prisoners themselves. The inmates in Establishment No.14 in Geguti reported that the complaints are never sent from Establishment notwithstanding whether they are related to the administration or not. The same could be mentioned about the other establishment, i.e administrations of all the establishments try to reduce the number of complaints from their establishments to the possible extent.

Recommendation to the Penitentiary Department:

- **To ensure the exercise of the right of prisoners to correspondence provided by Law and timely sending of their complaints and other type of correspondence to addressees;**
- **To ensure that the correspondence of prisoners is confidential within the framework established by the Law.**

PARCELS

According to Article 14 of the Code of Imprisonment, the inmates have the right to send and receive parcels and money. Article 23 (6) of the same Law states that "At the consent of the Chairman of the Imprisonment and Custodial Department an accused/convict shall have the right to receive additional food and personal items in a form of postal packets."

The Order No.32 of March 2 2012 of the Minister on Corrections and Legal Assistance, the changes were introduced into the Order No.97 of 30 May 2011 on "approving Statutes for pre-trial detention establishments, custodial establishments and medical establishments for accused/convicts as well as medical establishment for tubercular convicts," defining the list of personal items that are allowed for prisoners to receive by parcels. Only certain products, drinks, clothes, bed linen, hygienic items, certain types of books and other items are allowed.

The monitoring group noticed that the decrease of the allowed items on the list to a maximum extent occurs. It is impossible to identify the reason of banning some types of products, e.g. it is allowed to received lemon while grapefruit or other citruses are banned. As for the clothes, the prohibition of receiving jeans and shorts in a hot temperature is unexplainable when the prisoners are in very poor conditions even without this banning. According to the same Order, receiving by parcel the hygienic items for women are allowed only in Establishment No.15 for Women. The order does not takes into consideration the needs of women in Establishments No.2 in Kutaisi, No.3 in Batumi and No.4 in Zugdidi.

Prohibition of receiving of more than two photos is unexplainable as well. At the same time it is forbidden to receive the clothes checking of which requires even light work on the part of the staff of establishments: warm jacket, shoes or boots with thick sole, clothes with lining and etc. Therefore, the clothes of the inmates are often not relevant for the climate conditions that are mostly noticeable in winter.

- Recommendation to the Head of the Penitentiary Department: **To ensure the introduction of new normative act that will define the list of items permitted for delivery by parcel considering not only the requirements of security and regime but also the needs of the inmates. Particularly, the list shall include seasonal fruits, clothes, necessary hygienic items as well as photos within the reasonable limits.**

RE-SOCIALIZATION

The Public Defender has repeatedly mentioned in his reports that the conditions of imprisonment shall ensure the re-socialization of an inmate and reintegration into society and shall not be oriented only on punishment. Therefore while service their sentence, the inmates shall have access to education and professional training, shall have the right to engage themselves in difference activities, shall have the right to observe the developments outside the penitentiary establishment, as well as to contact their family members and other close persons. All these are the preconditions for the return of the inmate to the society.

The lack of the above-mentioned preconditions is quite visible in the penitentiary system, though, the Ministry of Corrections and Legal Assistance more or less tries to make some steps to eradicate this problem. Various types of educational or rehabilitation programs have been recently launched in several establishments. I would be fruitful if the process becomes irreversible; the programs are not short-term and are implemented according to the preliminary defined action plan.

- **Recommendation to the Minister of Corrections and Legal Assistance: To ensure the elaboration of the action plan for re-socialization of convicted persons considering the types of establishments and categories of inmates in the nearest future that shall become the basis for elaboration of individual plans.**

SOCIAL SERVICE

The Social Service of the Penitentiary Department shall have an important role in re-socialization of prisoner and be more or less oriented and responsible for the protection of the rights of prisoners, their rehabilitation and re-socialization. The rights and obligations of this Service are determined by the Order N35 of the Penitentiary Department of the Ministry of Corrections and Legal Assistance "on the Approval of the Regulation of the Social Service."

In practice, the work of the Social Service of the Penitentiary Department is far from the requirements of the legislation. In some of the establishments, the prisoners do not possess any information about such service, in others the Social Service personnel mainly ensure the fulfillment of the regime and security requirements that is unacceptable and contradicts their functions established by the law. This is particularly relevant with regard to the Social Service personnel of Establishment No.2 in Kutaisi and Establishment No.4 in Zugdidi. In Establishment No.2 in Kutaisi, according to the statements of the prisoners, the Chief of the Social Service participates in punishment and intimidation of inmates. When the members of the Monitoring Group asked the prisoners in Establishment No.4 in Zugdidi, whether they knew the personnel of the Social Service they replied that they thought those were prison regime personnel.

The work of the Social Service at Establishment No.3 shall still be assessed positively, as the Service implements the individual plans for Juvenile inmates, providing them with different trainings, entertaining and educational activities.

Recommendation to the Ministry of Corrections and Legal Assistance of Georgia:

- **To ensure efficient work of the Social Service works within the penitentiary establishments, the identification of the respective tasks and goals for them and the introduction of the reporting system.**

EDUCATION AND REHABILITATION PROGRAMS

There were a scarce number of rehabilitation programs implemented in the majority of establishments during the reporting period and the accent was mainly made on juvenile inmates. The training centers were opened at establishments No.14 in Geguti, No.15 in Ksani and No.16 in Rustavi in the beginning of 2012.

According to the administration of Establishment No.14 in Geguti, the following training courses will be provided: in finances, in business management, and in foreign language (English) courses. The inmates will have the possibility to receive professional education in electrical engineering, painting as well as tiling.

In Establishment No.15 in Ksani, lectures are delivered periodically on a variety of topics: tiling, plaster and cardboard works, finances, business management, foreign languages (English).

Lectures on various topics are delivered at the establishment. The rehabilitation program "Preparation for Release" functions there as well involving dozens of inmates

The inmates placed in the so-called "old part" of the establishment have an opportunity to learn playing chess and making icons. There is a room for woodcarving and painting the icons where there are 12 inmates engaged in works. The icons and crosses made by the inmates are sent to the church.

In Establishment No.16 in Rustavi, it is possible to learn electrical engineering, finances, foreign languages (English), business audit, as well as acquire computer skills. It is also possible to learn wood-carving there involving 12 inmates. The band performs as well having he inmates as musicians.

In Establishment No.2 in Kutaisi, 2 inmates are involved in works. They have the possibility to engage themselves in woodcarving and icon painting.

In Establishment No.8 in Gldani, the program of psychological aid is functioning there for the inmates involved in methadone program as well as for the juveniles. The psychologist conducts half an hour interview with these inmates daily (except the weekends). On Wednesday, the psychologist from outside the penitentiary establishment visits the inmates and discusses the problematic issues with them. According to the administration, psychologist from the Patriarchy visits the inmates periodically. The inmates, including the juveniles do not have access to primary education or professional training there.

In Establishment No.12, the rehabilitation program "Preparation for Release" funded by NORLAG was functioning during the monitoring. This program was involving the inmates who had left 3-4 months before their release. It was ascertained during the monitoring that the program was implemented in four groups and each of the groups had 15 inmates.

In Establishment No.17, the icon-painting teaching program was functioning, engaging 5 inmates in it.

In Establishment No.19, woodcarving and icon painting room was arranged involving 4 inmates.

All the above-mentioned initiatives should be welcomed and will have positive results for the rehabilitation of inmates in terms of long-term perspective. Unfortunately, nowadays it is possible to involve only small number of inmates in such activities. The Public Defender hopes that more and more inmates will be gradually involved in these programs that will facilitate the full rehabilitation of prisoners.

EMPLOYMENT OF INMATES

According to the European Prison Rules, "[p]rison work shall be approached as a positive element of the prison regime and shall never be used as a punishment."[486] "Prison authorities shall strive to provide sufficient work of a useful nature."[487] "As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release."[488]

It shall be noted that out of 24119 prisoners (as per 01.07.2011) only 25 inmates had remunerated employment and all were employed in bakeries at different penitentiary establishments.

In the second half of the year, 32[489] inmates out of 24 244[490] were employed. The monitoring results showed that the bakeries were functioning at Establishments No.14 in Geguti, No.15 in Ksani, No.16 in Rustavi, whereas they were closed at Establishments No.3 in Batumi, No.12 in Tbilisi and No.6 and No.17 in Rustavi due to changes in the food service provider at these establishments.

- **Recommendation to the Minister of Corrections and Legal Assistance of Georgia: To elaborate a strategy and an action plan for the employment of sentenced persons in co-operation with relevant structures.**

HIGHER EDUCATION

According to the recommendation R(89)12 of the Committee of Ministers of Council of Europe to Member States on Education in Prison "[e]ducation for prisoners should be like the education provided for similar age groups in the

486 Rule 26.1;
487 Rule 26.2;
488 Rule 26.3;
489 According to Letter No.10/8/2-468 of the Penitentiary Department, sent on 16 January 2012.
490 There were 24 244 prisoners in the Penitentiary Establishments of Georgia (according to the data as of 1 December 2011)

outside world" (para. 2). "Wherever possible, prisoners should be allowed to participate in education outside prison" (para. 14). "Where education has to take place in the prison, the outside community should be involved as fully as possible" (para.15).

In 2011 a number of inmates wished to pass the unified national examinations, however they were not provided with this possibility. The Public Defender considers the fact that the Code on Imprisonment does not provide for the right to higher education any more, to be a step back – the state, on its turn, should support the prisoners, who have the potential to realize this right.

- **Suggestion to the Parliament of Georgia: to introduce the respective changes and amendments to the Code on Imprisonment in order to ensure the access to high education for convicted inmates.**

OTHER ISSUES OF IMPORTANCE FOR NATIONAL PREVENTIVE MECHANISM

Prison personnel

According to the Standard Minimum Rules for the Treatment of Prisoners,[491] "The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends."[492]

For the normal functioning of the penitentiary system, for the return of the prisoners to the society as its full members, and in order to have the measure of imprisonment to prove the purpose of punishment, the personnel of the penitentiary establihment, their professionalism, human characteristics and their attitude towards the persons deprived of their liberty, along with other components shall be given particular attention. The prison personnel shall be aware of both – legislation of Georiga, as well as international standards.

The personnel of the penitentiary establishemtns shall be given clear and understandable directive about the limits of their competence and the type of reaction they shall have over one or the other complex case. Often the administration of the establishment „explains" the facts of ill-treatment of inmates by rudeness and abuse coming from the prisoners. This indicates that the penitentiary system personnel lack the professional training for managing such situations, to adequately react over the aggressive actions of the prisoners or even provocations exercised by them, not saying about the cases when the prisoners are provoced to commit a violation by the rude and degrading treatment by the personnel, following which, as a rule, the violator prisoner is punished, however, the personnel who had committed illegal action, is not kept responsible. The leadership of the penitentiary system have certainly a wrong understanding of the prestige of their own agency and they consider that the revelation of the facts of ill-treatment will have negative influence on their reputation, whereas the dismissal of the personnel with inappropriate behaviour shall on the contrary, positively influence the correct and adequate work of the system and will turn the ongoing reforms to be more efficient and valued. The approach of today does in no way correspond with the international and European standards of treatment of prisoners. In this reality it is difficult to talk about the full iradication of the facts of torture and inhuman treatment.

The efficient management of the penitentiary system and its correct management to a certain degree depends on the penitentiary personnel as well. The qualified, experienced and properly trained personnel is one of the important factors of iradication of the practice of torture and inhuman treatment in the penitentiary establishments. Unfortunately, the Georgian penitentiary system has still not reached the benchmark which shall make it obvious that the personnel employed in prison who is in touch with prisoners on a daily basis needs the specific training and education. Numerous facts identified during hte monitoring prove that despite the attempts of the Training Center and the trainings organized,

[491] 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;

[492] Rule 46;

the desired goal has not been reached. It shall also be noted herewith that the attraction of the personnel is complicated due to the particularly complex conditions of the work of the penitentiary system personnel: low remuneration, frequent keeping of duty, in some cases the outdated technical basis and the absence of social guarantees. The administrations of penitentiary establishments often note that they do not have enoungh personnel, therefore they can not arrange the exercise of the rights such as e.g. the rights envisaged by the Code on Imprisonment to have shower twice a week and a daily walk. This is particularly true with regard to the closed type penitentiary establishments; however, for the same reason the cell doors in Semy-open Establishment No.16 in Rustavi is closed for weeks.

All of these shall become the subject of particular attention of the Ministry of Corrections and Legal Assistance, as low social status and low financial interest does not create the basis for the attraction of the qualified personnel into the penitentiary establishments. As a result, the prisoners suffer again.

The Public Defender has repeatedly recommended in his reports to have the penitentiary system staffed with the personnel with the respective qualification and to improve their social and labour guarantees. Though, in spite of the budgetary increase at the Ministry of Corrections and Legal Assistance, this problem remains unresolved.

It should be positively noted that in the process of drafting the given report, on 16 March 2012, The Ministry of Corrections and Legal Assistance presented the Stategy on the Development of Penitentiary and Probation Training Center for 2012-2015, which suggests detailed description of trainings and programs for the staff members of the Penitentiary Department and a Ministry as a whole. The Public Defedenr hopes that this fact will positive impact the development of Penitentiary system personnel.

- **Recommendationto the Ministry of Corrections and Legal Assistance: To ensure the imployment of qualified personnel in the Penitentiary Establishments as well as promotion of skilled staff-members including by means of imroving their social and working guarantees.**

ADMISSION AND PLACEMENT OF PRISONERS

According to the European Prison Rules,[493] "[a]t admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison."[494] "Prisoners shall be allowed to keep in their possession a written version of the information they are given."[495]

In Establishment No.3 in Batumi the list of the rights and obligations of inmates is displayed and instantly renewed if it is damaged, in each cell. There is only a list of obligations of the inmates displayed in the cells of Establishment No.8 in Gldani. This does once again underline the existence of strict regime in the mentioned establishment. The inmates are informed about their right in writing, as confirmed by their signatures under the list of the rights and obligations in their personal files. However, this only carries a formal character, and the inmates often are not able to have the list of their rights and obligations.

According to the European Prison Rules, "[i]n deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain: a. untried prisoners separately from sentenced prisoners."[496] The same principle is embedded in Article 9(2) of the Code on Imprisonment. Despite this, remand and sentenced prisoners are placed together in the cells of Establishment No.8 in Gldani, Establishment No.3 in Zugdidi and Establishment No.4 in Batumi, as well as in Establishment No.2 in Kutaisi.

493 Recommendation of the Committee of the Ministers of the Council of Europe rec (2006) 2
494 Rule 30.1
495 Rule 30.2
496 Rule 18.1

Pre-trial detention often is related to placing a person in new, unusual environment. Therefore, the admission procedures shall not only comply with the legislation of Georgia, but shall also take into consideration the respect of human dignity as well. This is not true about the quarantine units in Establishments No.8 and No.2 (see: Ill-treatment).

According to Article 46(3) of the Code on Imprisonment, "a convict shall serve his/her sentence in a custodial establishment located in the nearest proximity to the place of residence of his/her family members or a person with whom he/she lived, except for the cases, when the aforementioned deems impossible by reason of overcrowding of the establishment concerned. In exceptional cases a convict may be transferred to other custodial establishment due to his/her health status, personal security or/and with his/her consent."

The inmates and their family members often apply to the Public Defender asking support in placing convicts in establishments in a proximity to their residence place. There are often cases when a sentenced person living in East Georgia is placed in the establishment in the West Georgia or vice-versa. In reply to several letters sent from the Office of the Public Defender of Georgia to the Penitentiary Department, requesting the placement of a prisoner in the proximity of his/her residence place the standard type of letters are received, mentioning either that the inmate is placed in the type of penitentiary establishment as defined by the Law or that his request would be take into consideration while transferring the inmates. Lately, several such requests were taken into consideration and the inmates were transferred to the establishments in the proximity of their residence place. We hope that the Ministry of Corrections and Legal Assistance will respect in future the rule envisaged by Article 46(3) of the Code on Imprisonment stating that "a convict shall serve his/her sentence in an establishment of deprivation of liberty of the respective type located in the nearest proximity to the place of his/her residence or of his/her close relative, except for in cases when such placement is impossible due to the overcrowding of the establishment concerned."

Recommendation to the Head of the Penitentiary Department:

- **To pay particular attention to the observance of the procedures as envisaged by the Law during the admission and placement of inmates, thus avoiding mass violation of rights of inmates;**
- **To ensure inmates are provided with the list of rights and obligations in writing upon admission to establishment;**
- **To ensure placing of remand and sentenced inmates separately in penitentiary establishments;**
- **To take into consideration the inmate's residence place or residence place of his/her close relative upon the placement of the sentenced person in penitentiary establishment.**

CLOSED TYPE REGIME

According to Law on Imprisonment, which was functioning before introducing the Code of Imprisonment, the maximum term of placing the inmate in closed type regime was 1 year. However, the inmates have been unlawfully placed in closed type regime for years. The Public Defender has repeatedly recommended the Head of the Penitentiary Department to eradicate such illegal practice.

The introduction of the Code on Imprisonment,[497] instead of solving the issue, has further aggravated the situation in this regard. According to the code, Penitentiary establishments are divided into several types.[498] In closed type penitentiary establishment, as a rule, a person convicted for the first time for committing particularly grave crime

[497] 1 October 2010.

[498] According to Article 10(2) of the Code on Imprisonment, the establishments of deprivation of liberty are:
a) Semi-open type establishment;
b) Closed type establishment;
c) Special establishment for juveniles;
d) Special establishment for women.

of forethought and sentenced by the court to deprivation of liberty for the term of more than 10 years is placed;[499] therefore, the maximum time limit for placing inmates in closed type regime is not defined. The Head of the Penitentiary Department is given the free hand to decide the regime for the inmates, that is a step back as far as such decisions do not have time-limits and its periodical revision is not defined by Law.[500]

The Public Defender has repeatedly underlined the negative impact of placement of inmates in closed type establishments on their physical and psychological health. With this regard, the CPT reiterates the recommendations made in the report on the visit in 2007 that "the placement of a prisoner in such a regime is for as short a period as possible and is reviewed at least every three months."[501]

According to the reply N0.10/8/2–9497 received from the Penitentiary Department on 28 July 2011, as per 30 June, 2011 there were 8820 inmates sentenced to serve their sentence in semi-open type of establishment; 12959 inmates were sentenced to serve their sentence in the closed type of establishment of deprivation of liberty, whereas 617 convicted persons were waiting for the determination of the type of the sentence. The same information was requested on 4 January, 2012, though the information was not provided.

Thus according to the date of July 2011, most of the inmates had been serving their sentences in closed type of establishments.

The problem is even more aggravated by the fact that according to the results of the monitoring, even those inmates are placed in closed type establishments for whom such regime was not assigned. Moreover, great part of the inmates in the establishments in Gldani and Kutaisi are sentenced and according to the Law they shall be placed in the semi-open penitentiary establishment. Presumably, such practice is caused by the overcrowding of semi-open type establishments, and the placement of sentenced persons in the closed type establishments in used as one of the means of overcoming this.

- **Suggestion to the Parliament of Georgia: To ensure the adoption of changes and amendments to the Imprisonment Code in order to define the placement of inmates in closed type of establishments as a special and time-limited action, considering the security consumptions and individual approach.**

- **Recommendation to the Head of the Penitentiary Department: To ensure that the bad practice of placing under the closed type partially or for the whole term of those inmates who were assigned to serve their sentence in semi-open types of custodial establishments is eradicated.**

RIGHT TO DEFENSE

According to the Article 42(3) of the Constitution of Georgia, "[t]he right to defense shall be guaranteed". According to the Article 38 of the Law of Georgia on Advocates "[a]dvocate implements the professional activities independently and interference in this is not permissible"; any information that the advocate has received from the client or other person seeking legal advise is confidential"; also, "overhearing the conversation between an advocate and a client and the recording of this is not permissible, whereas the written correspondence between them is unimpaired."

Despite all the above mentioned there are frequent cases when the lawyers are not given the possibility in the penitentiary establishments to realize the right granted to them by the Law. A number of lawyers have applied to the Public Defender mentioning that the personnel of the penitentiary establishments had deprived them of the explanations or complaints written by the prisoners, particularly the complaints about the violation of rights of prisoners by the personnel of the penitentiary establishment.

499 Article 64(1) of the Code on Imprisonment.
500 Article (61) of the Code of Imprisonment.
501 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010,Para. 121

The Public Defender considers that the mentioned problems shall be eradicated, as the keeping of confidentiality during the professional relations between the advocate and the client is of utmost importance and the prisoners shall have possibility to fully protect their rights.

- **Recommendation to the Chairman of the Penitentiary Establishment: to place under the personal control the procedure of admission and checking the advocates in the penitentiary establishments, particularly the Establishment N8 in Gldani and Establishment N18, as well as in line with the requirements of the legislation, the protection of confidentiality of documentation and correspondence resembling the relations of an advocate and a person under the defense.**

RIGHTS OF VULNERABLE GROUPS IN PENITENTIARY ESTABLISHMENTS

According to Article 15(5) of the Imprisonment Code of Georgia, "Pregnant and nursing women, juveniles, ill convicts, persons with obvious and identifiable disabilities and aged persons (females from 60 and males from 65) shall be provided with better living conditions compared to other accused/convicts."

LIVING CONDITIONS FOR THE PERSONS WITH DISABILITIES

On 15 September 2011, a letter was sent from the Office of Public Defender of Georgia to the Head of Penitentiary Department requesting the information whether the infrastructure ad living conditions in the penitentiary establishments were adapted to the needs of persons with disabilities. Letter No.10/8/2-12887 received from the Penitentiary Department on 27 October 2011 stated that the infrastructure and living conditions in the penitentiary establishments were not adapted to the above-mentioned needs. According to the data of 31 December 2011, there were 184 persons with disabilities, 9 women among them, placed in the penitentiary establishments.

The monitoring revealed that despite the law requirements, pregnant women, females from 60 and men from 65 were placed in the conditions similar to those of other inmates. The same could be stated regarding the sick inmates. In number of cases, the persons with disabilities unable to move independently and in need of special treatment were placed in the establishments together with the other inmates being left only under the care of those inmates.

It should be mentioned that wheelchair ramps are constructed only at the entrance of Establishment No/14 and at the exit to the outdoor exercise yard of the same establishment. However, it is doubtful whether the inmates with disabilities could move using these ramps independently.

As already states in the present report,[502] according to the case law of the European Human Rights Court, whenever authorities decide to place and maintain a seriously ill person in detention, they must demonstrate special care in guaranteeing such conditions of detention as correspond to his special needs resulting from his illness, otherwise the violation of Article 2 (right to life)[503] and/or Article 3 (prohibition of torture) might occur.[504]

Therefore, all cases when the inmates with disabilities are kept in inadequate conditions, could be amounted to inhuman and degrading treatment.

Releasing the inmate due to health conditions falls within the competencies of joint permanent commission of the Ministry of Corrections and Legal Assistance and the Ministry of Labour, Health and Social Affairs.[505] Inmates, their

[502] Ill-treatment, case of Murman K.
[503] ECHR judgment on case "Makharadze and Sikharulidze v. Georgia", 22 November 2011
[504] ECHR judgments on cases Farbtuhs v. Lithuania, 6 June 2005, Isaev v. Ukraine, 28 August 2009.
[505] Joint Order No.179-No.427 of 23 December 2010 of the Minister of Corrections and Legal Assistance and the Minister of Labour, Health and Social Affairs on "the establishment of joint commission of the Ministry of Corrections and Legal Assistance and the Ministry of Labour, Health and Social Affairs."

legal representatives of prison directors have the right to apply to the above-mentioned commission.[506] The special Preventive Group learned that prison governors have never used this right.

The work of the joint permanent commission undoubtedly needs further separate analysis, though, though we could state that Order No.179-No.427 does not define either the frequency of the meetings or the terms for proceedings of cases starting from the submission period. Moreover, the increase of the complaints submitted to the Office Public Defender of Georgia on the work of the commission is quite visible.

The Public Defender addresses the Penitentiary Department of the Ministry of Corrections and Legal Assistance with recommendations:

- **To ensure adapted living conditions for the inmates with disabilities in penitentiary establishments or to ensure their the placement in other establishments with adequately adjusted conditions;**
- **To ensure that the prison directors are instructed to apply regularly the Joint Permanent Commission of the Ministry of Corrections and Legal Assistance and the Ministry of Labour, Health and Social Affairs regarding the suspended sentence of early release.**

FEMALE INMATES IN PENITENTIARY ESTABLISHMENTS

According to the data of 1 December 2011, there were 1203 female inmates placed in the penitentiary establishments, 58 out of these were aged, 3 out of these – juveniles, 4 - life-sentenced and 9 – disabled.

TREATMENT

In 2011, the Public Defender of Georgia did not received any applications from female inmates on ill-treatment. The Special Preventive Group has not revealed any cases of ill-treatment during the monitoring either. There were several allegations on pressure and physical abuse of female inmates publicized in media, though none of the facts were confirmed either by the supposed victims or other inmates during the visit of Special Preventive Group. The complaints of female inmates mostly refer to the medical treatment and in some cases – living conditions. During the monitoring, the inmates reported about the indifferent and even rude treatment by chief and other doctors as well. This problem could gradually rise into the tensions between the inmates and administration that needs timely prevention on the part of the administration as well as the medical department.

LIVING CONDITIONS

Great part of the female inmates is placed in Establishment No.5 in Rustavi, part of the inmates waiting for the final sentence are temporarily placed in Establishments No.2 in Kutaisi, No.3 in Batumi and No.4 in Zugdidi.

According to European Prison rules, "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation."[507]

"In all buildings where prisoners are required to live, work or congregate:

[506] Ibid, Article 5(3) of the Order No.179-No.427
[507] Para 18.1; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

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 recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay."[508]

Generally, it might be stated that living conditions of female inmates even in those establishments that do not ensure adequate living conditions (Establishments No.3 in Batumi, No.4 in Zugdidi), were better than those of men inmates. The reason for this is more loyalty on behalf of administration of the establishments towards the female inmates allowing females to have certain hygienic items prohibited for men. However, the living conditions of female inmates are far from complying with European standards, though not amounting to inhuman and degrading treatment.

Establishment No/2 in Kutaisi

There were 3 cells for female inmates in Establishment No.2 in Kutaisi, each measuring 15.5 m^2. The cells were equipped with 3 bunk beds, a table and a chairs. The toilets were partitioned. The sanitary-hygienic conditions were satisfactory.

Establishment No.4 in Zugdidi

There were 2 cells for female inmates on the first floor of the establishment. The female inmates enjoyed better conditions than the male inmates did in the same establishment. In 2011, the cosmetic repairs have been arranged in the cells for female inmates (windows were changed, floors were painted, the walls in toilets were tiled). The toilets were left semi-partitioned even after refurbishment works. One cell was designed for 8-person occupancy while the other one - for 10-person occupancy.

Establishment No.3 in Batumi

There were 2 cells for the female inmates on the first floor of the establishment. One cell was equipped with 9 bunk beds. The floor was tiled. The water leakage was visible during the monitoring visit. The walls were damp and scratched. The toilet was partitioned.

Another cell was a three-room-accommodation equipped with 11 bank beds (per 3 beds in the first two rooms and 5 in the second). There was a refrigerator in this cell. The wooden floor was covered by linoleum, cracked in some places. The inn-cell toilet was partitioned.

Establishment No.5 in Rustavi

The Establishment No.5 for Women opened on 6 November 2010. The placement limit of the Establishment is 1200.

There were A, B, C, D accommodation buildings, detention ward, house for mothers and children and accommodation ward for tubercular inmates in the Establishment. The medical unit was in B accommodation building.

There were 38 cells in building C, in building B – 16 cells; in building C – 74 cells and in building D – 71 cells; in detention ward – 30 cells, 1 cell out of these for quarantine, 1 cell for juveniles and 2 solitary cells. There were 6 rooms in the building for mothers and children and 3 cells in the ward for tubercular inmates.

[508] Para 18.2; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

Almost all the cells in the establishment were designed for six-person occupancy; in building C, there were 20 cells for three persons each.[509]

Each cell was equipped with bunk beds, a table and a chair as well as cupboards for each inmate. The living space per prisoner was 3 m^2.[510]

The yard of accommodation Building A is equipped with the volleyball stadium and a summerhouse. There is a canteen in the yard as well, divided into 2 parts. The canteen is equipped with 16 tables. The access to natural light, ventilation and central heating system is sufficient.

There is a shower bathroom in the yard, equipped with 4 showers baths. Three out of these shower baths were functioning during the monitoring visit. The water sewage system was not in order resulting in dammed water on the floor. There were not any windows; ventilation was not functioning; there was no natural light and artificial lighting was very poor. Thus, the sanitary-hygienic conditions there were rather unsatisfactory.

Building B includes medical unit with 61 inmates during the monitoring visit. There is a laundry room equipped with washing machine and a shower bathroom equipped with 3 showers.

The yard of accommodation Buildings C and D were equipped with summerhouse, toilet and shower bathroom, which was not functioning during the monitoring visit. There is a small garden as well there with chairs there. The canteen was functioning for buildings C and D divided into 5 parts. The access to natural light, artificial lighting, ventilation as well as central heating system is sufficient. The canteen is equipped with washing basin, tabs and toilet.

Ward for mothers and children was located in a separate building and consisted of 6 rooms. All these rooms measuring some 12.7 m^2 each were equipped in a similar way. The floor was covered with laminated wood, walls were covered by wallpaper. The rooms were equipped with one bed, one small bed, cupboard and luster on the ceiling. Each room had partitioned toilet equipped with shower as well.

There was a living room in the ward equipped with chairs, TV set and DVD.

The canteen in the ward was equipped with 2 refrigerators, gas range, a table and chairs as well as a washing machine. The kitchen was equipped with all necessary equipment. There were rocking chairs in the yard. In summer, children were provided with puffed swimming pool.

Ward for tubercular female inmates includes 3 cells, measuring 20 m^2 each. Each cell was equipped with 6 beds, 6 cupboards and TV set. There were washing machine and refrigerator in the corridor. The toilets in cells were partitioned and equipped with shower and washing basin as well. The floor was laminated. There was a summerhouse in the yard that had an access to telephone as well.

Detention unit was designed for 200 inmates. There were 5 investigative rooms in the ward equipped with a table and chairs each. The shower bathroom was equipped is 13 showers and a dressing room. There were 6 outdoor exercise yards in the unit equipped with chairs. The inmates used one of the yards for drying the laundry.

There was concrete floor in all the buildings of the establishment except the wards for juveniles and mothers and children. The inmates always complained that the concrete floor was damaging their health, therefore, the administration allowed them to have carpets. However, there monitoring group have seen carpets only in several cells during the visit.

[509] Previously used as a cell-type accommodation.
[510] The cell for 6 persons measured 2.96x6.6 m; the toilet measured 1.57x1.53 m.

FEMALE JUVENILE INMATES

With the 10 January 2007 Order No.6 of the Minister of Justice, the Head of the Penitentiary Department was ordered to establish a separate unit for female juveniles. The same law obliged the Head of the Penitentiary Department to ensure accommodation of female juveniles in compliance with the law in force.

On 6 March 2009, the Public Defender of Georgia addressed the Ministry of Corrections and Legal Assistance with recommendation to place female juveniles in separate establishment due to non-existence of educational establishment envisaged by law for female juveniles. In March 2009, they were placed in Establishment No.5 for Women and Juveniles which did not have the adequate infrastructure for juveniles and they had to serve their sentence together with the other inmates.

On 26 October 2009, the Ministry of Corrections and Legal Assistance separated and renovated unit for female juvenile prisoners in the territory of the General and Prison Regime Penitentiary Establishment No.5 for Women and Juveniles, however, they had to use the common outdoor exercise yard together with women inmates.

Establishment No.5 in Rustavi did not have separate infrastructure for female juvenile prisoners. They were placed in separate cells but had to share other infrastructure with women prisoners. The cell for female juveniles measuring 18 m^2 was located in Building D. The cell was equipped with two beds, a table, 2 cupboards, a computer and a TV set. The floor was laminated. An access to natural light, artificial lighting, ventilation was sufficient. Heating was provided by means of central heating system. There was a window measuring 1.7 m^2 in the cell. The toilet was partitioned and equipped with washing basin as well.

One cell measuring 18 m^2 was located in detention unit and was equipped with 3 bunk beds, 6 cupboards, a table and a TV antenna. Access to natural light, artificial lighting, ventilation and central heating system was sufficient. There was a window measuring 1.7 m^2. The toilet was of Asian-type and partitioned equipped with washing basin as well. The ventilation and access to artificial lighting was sufficient in the toilet.

ACCESS TO LIGHT, HEATING AND VENTILATION

All the cells in Establishment No.5 in Rustavi had windows measuring 1.7 m^2 and ensuring access to natural light and ventilation. The exceptions were 19 cells in accommodation Building C which were previously used as cell-type rooms and had windows measuring 0.65 m^2 that was not enough for ensuring natural light and ventilation. Heating was provided by means of central heating system; however, during the monitoring visits in winter it was cold there especially in the corner cells. The heating was not sufficient in detention unit as well and the inmates received electric heating devices. Access to artificial lighting is sufficient.

Heating in Establishments No.3 in Batumi and No.4 in Zugdidi was provided by means of electric heating devices. Cell No.1 in female unit of Establishment No.3 did not have an access to natural light and ventilation. Ventilation was provided by vents. Size of the windows in the Establishments No.4 in Zugdidi and No.2 in Kutaisi did not ensure the access to natural light and ventilation. In Establishment No.2, ventilation and artificial ventilation was provided by central system.

PERSONAL HYGIENE

According to European Prison Rules, "[a]dequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene."[511] "Prisoners shall keep their persons, clothing and sleeping accommodation clean

[511] Para. 19.4, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

and tidy."[512] "The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials."[513] "Special provision shall be made for the sanitary needs of women."[514]

Special attention is paid to ensuring women prisoners with adequate living conditions, their provision with hygienic items and sanitary needs, as well as their provision with health care needs in Chapter VI of the CPT Standards[515] that represents an extract from the 10th General Report on the CPT Activities.[516]

According to Rule No.5[517] of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), "[t]he accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women (…)."

Article 21(2) of the Imprisonment Code states that "[a]s a rule, an accused/convict shall be provided an opportunity of shower twice a week and barber service at least once a month."

The administration of Establishment No.5 in Rustavi provides the inmates with washing soap, washing powder, hair dye and chlorine once a month. It is possible as well to purchase hygienic items at prison shop.

The prison administration provides the inmates with bedding upon placement in the Establishment. The bedding is provided after upon the need of the inmate. It is possible to buy the bedding at the prison shop as well. The inmates wash their bed linen and clothes themselves and are allowed to give them to their family members for washing.[518]

Hair dressing is provided by the prisoner who serves the other inmates upon the need.

In semi-open type establishments the access to shower is not limited; in detention facilities it is once per week. The exceptions are made for the long-term prisoners who have access to shower twice a week.

In Establishments No.2 in Kutaisi, No.3 in Batumi and No.4 in Zugdidi, the prisoners have access to shower one a week. They could buy bed linen in prison shops. It is allowed to bring the bed linen by parcels as well. The inmates at all three establishments wash bed linen and clothes themselves in their cells. The administration provides them with washing soap and powder once a month. As for the hygienic items, the inmates in Establishment No.4 reported about the prohibition of receiving the personal hygienic items by parcels and frequent absence of these items at the prison shop as well. During the monitoring visit, the monitoring group noticed the lack of products at the prison shop.

ACESS TO FRESH AIR

According to Paragraph 1(g) of Article 14[519] of the Code of Imprisonment, accused/convicted "[s]hall enjoy the right to walk on the fresh air at least one hour a day."

The female prisoners at Establishments No.4 in Zugdidi and No.3 in Batumi have access to walk in the fresh air for 20-25 minutes a day; at Establishment No.2 – 40-45 minutes a day. This does not comply with the standards envisaged by the Code.

It is noteworthy that according to Article 61, paragraph 1 of the Imprisonment Code, women sentenced to deprivation of liberty shall serve their sentence in the semi-open type custodial establishment. In spite of this, often the female

512 Ibid, Para, 19.5
513 Ibid, Para. 19.6.
514 Ibid, Para, 19.7.
515 CPT/Inf/E (2002) 1 - Rev. 2010
516 CPT/Inf(2000)13, 1999.
517 Supplements Paras 15 and 16 of the UN Standard Minimum Rules for the Treatment of Prisoners.
518 There is one laundry room at the Establishment, as well as a separate building for laundry, though the prisoners do not use them. The laundry block is equipped with 5 washing machines.
519 Rights of accused/convicted persons.

prisoners placed in Establishment No.4 in Zugdidi and Establishment No.3 in Batumi are not transferred on time to the relevant establishment and they have to spend much more time in closed type custodial establishment than it is envisaged by law.

CONTACT WITH THE OUTSIDE WORLD

Short-term visit

Article 17 (7) of the Imprisonment Code states that „[s]hort visits are organized for the period of one to two hours. The short-term visit is carried out only under the visual supervision of the attending representative of the administration, except for cases prescribed by the legislation."

Article 72 of the same Law states that „[f]emale convicts shall be entitled to 3 short visits a month."

The monitoring revealed that there are some problems regarding the short-term visits in Establishments No.4 in Zugdidi and No.3 in Batumi as the females state that the duration of their short-term visits is not more than about 20-25 minutes.

Such restrictions are caused by the lack of adequate infrastructure as well as indifferent attitude of the administration towards the issue.

According to Article 70, paragraph 2(a) of the Imprisonment Code (Conditions for serving a sentence at the Special Establishment for Juveniles), a juvenile convict has the right to "enjoy four short-term visits per month." However, the juvenile[520] placed in Establishment No.5 reported that she had the right to enjoy this right three time per month for 2 hours per visit.

Long-term Visit

According to Article 72, paragraph 8 of the Imprisonment Code of Georgia, female convicts shall be entitled to 2 long term visits a year and 1 long term additional visit per year as an encouragement. In spite of the above-mentioned changes to the Code, the infrastructure for long term visits did not exist in Establishment No.5 in Rustavi and female inmates were not able to enjoy the right stipulated by Law.

Video Conference

The infrastructure for the video conferences did not exist in Establishment No.5; therefore female inmates could not enjoy this right.

Telephone conversations

Article 72, paragraph 6 of Imprisonment Code stipulates that female convicts have the right to perform 4 telephone conversations during a month at their expense, each up to 15 minutes.

The problem of telephone communication in Establishment No.3 in Batumi has been staying unresolved for the last several years. Prison administration explains the reason for this problem in different ways; they refer either to the technical problems or the fact that the cable had been stolen.

520 There was only one female juvenile placed in the Establishment during the monitoring visit.

The inmates in Establishment No.4 are allowed to enjoy this right twice a month for 5-10 minutes.

In Establishment No.5 the telephone apparatus are placed in the yard; thus giving the inmates the possibility to enjoy this right without any impediments.

Access to press, TV and radio broadcasting

The fact that all the female inmates are allowed to have TV sets, shall be assessed positively. It s noteworthy that in Establishments No.2 in Kutaisi, No.3.in Batumi, No.4 in Zugdidi only female and juvenile inmates have TV sets. The inmates in Establishments No.3 in Batumi and No.2 in Kutaisi report about the lack of newspapers. The prison shop sells only newpapers "Kviris Palitra" and "Crossword Puzzles" and the magazines "Sarke", Tbiliselebi" and "Reitingi".

Complaints and Applications

Complaint boxes are present at all the penitentiary establishments where female inmates are placed; however, alike the previous years, in Establishments No.4 in Zugdidi and No.3 in Batumi, sending complaints to their addressees is a remaining problem.

RE-SOCIALIZATION

Article 39(1) of the Criminal Code of Georgia says that "punishment is aimed at the restoration of justice, prevention of new crimes and resocialization of a criminal."

According to European Prison Rules, "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty."[521]

Every aspect shall be taken into Consideration: religion, education, trainings, social protection, employment, and physical training. Personality of each of the inmate should be taken into consideration. Criminal past of an inmate, term of sentence, and future perspectives after release should also be taken into consideration.[522]

In its Resolution 1663(2009) 'Women in prison", the Parliamentary Assembly recommends states parties to recognize the very low levels of literacy and numeracy amongst all prisoners, including women, and ensure that a minimum of twenty hours' education and training per week are available to all women prisoners.[523]

In establishment No.5 the program "Woman and business" is running, providing trainings in computer literacy, foreign languages and working on felt as well. Courses are provided for 3 groups for 8 inmates per each. Overall number of inmates involved in trainings is about 70.

Rehabilitation program is offered at the psycho-rehabilitation center for 3 groups consisting of 8 inmates. School for juveniles is functioning at the establishment as well.

There are no rehabilitation programs functioning at Establishments No.2 in Kutaisi, No.3 in Batumi and No.4 in Zugdidi.

521 Para 6, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.
522 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.
523 Para.11.1, Resolution 1663(2009) Women in Prison, Parliamentary Assembly.

EMPLOYMENT

None of the female prisoners placed currently in penitentiary establishments is employed for the paid work.

Recommendation to the Minister on Corrections and Legal Assistance:

- **To ensure that the female prisoners enjoy the right to long-term visits and right to have video conferences.**

Recommendations to the Head of Penitentiary Department of the Ministry of Corrections and Legal Assistance:

For full exercise of the rights of the female prisoners envisaged by the legislation in force, to ensure that:

- **The female prisoners enjoy the right to everyday walk envisaged by Law;**
- **The female prisoners are transferred to the semi-open type custodial establishments as envisage by Law within the reasonable period of time;**
- **The inmates have access to telephone calls under the conditions envisage by the Law in all the establishments;**
- **The female prisoners have access to shower twice a week;**
- **The female prisoners are provided by all the necessary hygienic items, including by means of prison shop;**
- **The duration of visits is regulated in compliance with the Legislation;**
- **The complaints and other type of correspondence of female prisoners are timely sent and delivered.**

CONDITIONS OF LIFE-SENTENCE PRISONERS IN THE PENITENTIARY SYSTEM OF GEORGIA

According to the data of 31 December 2011, there were 91 life-sentence prisoners in the Georgian Penitentiary System, 4 out of these were women.

While assessing the protection of the rights of life-sentence prisoners during the monitoring, the Special Preventive Group was guided with the following standards and documents: National Legislation, International standards, Recommendation of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse,[524] Recommendation of the Committee of Ministers of the Council of Europe to member states on conditional release (parole),[525] Resolution of the Minister's Deputies of the Council of Europe on Practical organization of Measures for the supervision and after-care of conditionally sentenced or conditionally released offenders,[526] as well as case-law of the European Court of Human Rights.

[524] Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, 9 September 2003.

[525] Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), 24 September 2003.

[526] Resolution (70)1 adopted by the Minister's Deputies on 26 January 1970 on Practical organization of Measures for the supervision and after-care of conditionally sentenced or conditionally released offenders.

The Legislation in force until 1997 in Georgia envisaged death penalty. Article 15 (2) of the Constitution of Georgia envisaged the death penalty until its full abolition for the especially crimes against life. Only the Supreme Court of Georgia could make decisions on such cases.

According to Order No.387 of the President of Georgia, dated 25 July 1997, stipulating pardoning the prisoners sentenced to death penalty, 54 prisoners were pardoned and sentenced to 20 years of imprisonment.

On 11 November 1997, the Parliament of Georgia supported the draft law on prohibition of death penalty initiated by the President of Georgia.

According to the current legislation in force, the highest penalty is life-imprisonment. Article 51 of the Criminal Code of Georgia stipulates that "life imprisonment may be awarded only in case of especially grave crime." "Life imprisonment shall in no way be awarded against those who have not reached eighteen years by the moment of committing a crime or who have reached sixty years by the moment of delivering the sentence."

Current edition of the Criminal Code of Georgia envisages life imprisonment for 19 types of crimes.[527] Currently, great part of life-sentence prisoners serves its sentence envisaged by premeditated murder; the others most often serve their sentence envisaged by articles on narcotic crimes and crime against State.

The life-sentence prisoners are accommodated in several establishment of the penitentiary system of Georgia. Most of them are placed in Establishment No.6 in Rustavi, 4 of them – in Establishment No.7 in Tbilisi and life-sentence female prisoners are placed in Establishment No.5 in Rustavi. Prior to final decision on the terms of the sentence, those life-sentence prisoners whose cases are proceeded at western Georgian courts, are temporarily placed in Establishment No.2 in Kutaisi.

TREATMENT

Neither monitoring undertaken by the Special Preventive Group nor the complaints submitted to the Office of the Public Defender of Georgia reveal the allegations on ill-treatment of life-sentence prisoners. Most often, the complaints submitted by these categories of prisoners are related to living conditions or health problems, being the general problems in the penitentiary system of Georgia and equally affecting both life-sentence prisoners and short term prisoners.[528]

COMPLIANCE OF LIVING CONDITIONS OF LIFE-SENTENCED PRISONERS WITH INTERNATIONAL STANDARDS

Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners contains the list of principles obligatory for States parties to foresee while defining conditions for such prisoners. The recommendation states "Considering that the enforcement of custodial sentences requires striking a balance between the objectives of ensuring

[527] Article 109 (3) Premeditated murder under extreme violence; Article 143[2](4) Trade with Juveniles (trafficking); Article 227[2](3) Illegal seizure and destruction of stationary platform; Article 260(3) Illicit preparation, production, purchase, keeping, shipment, transfer or sale of narcotics or analogy or precursor thereof; Article 308(2) Encroachment upon territorial inviolability of Georgia; Article 318(3) Sabotage; Article 323(3) Terrorist Act; Article 324(2) Technological Terrorism; Article 324[1](2) CIBER terrorism; Article 325 Assault on political Official of Georgia; Article 326 Assault on Person or Institution Enjoying International Protection; Article 330(2) Taking Possession of or Blocking Object of Strategic or Special Importance for Terrorist Purposes; Article 331[1](3) Financing Terrorism; Article 353[1](3) Assault on policemen or representative of State or Public Official; Article 404(2) Unleashing or Waging of the war of aggression; Article 407 Genocide; Article 408 Humanity Crime; Article 409 Ecocide; Article 411(2) Deliberate violation of International humanitarian law amid any international or internal armed conflict.

[528] See Special Report of the Public Defender of Georgia covering 2009 and the first half of 2010 "Right to Health and Problems Related to exercise this Right within the Penitentiary System of Georgia", http://www.ombudsman.ge/files/downloads/en/mxrysbiojfslxhprxpkz.pdf

security, good order and discipline in penal institutions, on the one hand, and providing prisoners with decent living conditions, active regimes and constructive preparations for release, on the other;

Considering that prisoners should be managed in ways that are adapted to individual circumstances and consistent with principles of justice, equity and fairness."

Deriving from the above-mentioned, the States Parties are recommended to take into consideration the following aims of the management of life-sentence and other long-term prisoners:

- to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them;
- to counteract the damaging effects of life and long-term imprisonment;
- to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release.[529]

Apart from the General Objectives, the recommendations contains the general principles for the management of life sentence and other long-term prisoners: "Consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence (individualisation principle)";[530] "Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalisation principle);"[531] "Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence (non-segregation principle)."[532]

The findings and results of the Monitoring revealed that the Georgian Legislation and the situation in Penitentiary system of Georgia fall short to comply with International standards. Nowadays, the only aim of the management of life sentence is their isolation from the society.

Like other sentenced prisoners, the conditions of placement of the life sentence prisoners are regulated by the Imprisonment Code of Georgia, envisaging their placement in close-type custodial establishments. Article 64 of the Code states that "As a rule, a person convicted for the first time for committing particularly grave crimes of forethought and sentenced by the court to deprivation of liberty for the term of more than 10 years, persons convicted for repeatedly committing deliberate crimes, a person sentenced to life imprisonment, in case of criminal recidivism, as well as convicts transferred from another type of custodial establishment in accordance with the rules of the present Code shall serve a sentence in the closed type custodial establishment."

The Code does not envisages Individualization and Non-Segregation principles, i.e the placement conditions of sentenced prisoners are defined due to the length of imprisonment term rather than individual approach and the level of threats. Therefore, automatically, all life sentenced prisoners are separated from the others despite the fact that the Legislation in force does not envisage this contrary to the Georgian Law on Imprisonment that was in force until October 2010[533]. Moreover, the Recommendation of the Committee of Ministers of the Council of Europe further stipulates,that "A careful appraisal should be made by the prison administration to determine whether individual prisoners pose risks to themselves and others. The range of risks assessed should include harm to self, to other prisoners, to persons working in or visiting the prison, or to the community, and the likelihood of escape, or of committing another serious offence on prison leave or release."[534]

529 Para 2, Appendix to Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003.
530 Ibid; Para 3.
531 Ibid; Para 4.
532 Ibid; Para 7.
533 Article 22, Paragraph 1(d) of the Georgian Law on Imprisonment envisaged separate placement of life sentence prisoners.
534 Para 14, Appendix to Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003.

The European Committee against Torture number of times stressed the issue of non-segregation of life sentence prisoners. In its 2006 Report to the Czech Government, the CPT referred to the Council of Europe's Committee of Ministers' Recommendation (2003) 23, on the "management by prison administrations of life-sentence and other long-term prisoners" of 9 October 2003 stating that "One of the general principles underpinning such management is the non-segregation principle, which states that consideration should be given to not segregating life-sentence prisoners on the sole ground of their sentence. This principle should be read in conjunction with the security and safety principle, which calls for a careful assessment of whether prisoners pose a risk of harm to themselves, to other prisoners, to those working in the prison or to the external community. It recalls that the assumption is often wrongly made that the fact of a life-sentence implies a prisoner is dangerous. The explanatory report to this recommendation notes that "as a general rule, the experience of many prison administrations is that many such prisoners present no risk to themselves or to others" and that "they exhibit stable and reliable behaviour".[535]

The Imprisonment Code of Georgia stipulates that life-sentenced prisoners shall enjoy the right to walk on the fresh air at least one hour a day.[536] It is obvious that placement in closed type of custodial establishment and granting the right of only one-hour walk in the fresh air violates the Normalization Principle – the conditions of their placement are far from being adequate as well.

In its report 2007 to the Georgian Government, the European Committee Against Torture stressed that the regime applied to prisoners serving life sentences, in addition to the absence of any activities was characterised by an almost total deprivation of human contact, save for contact with one cellmate and occasional visits. The CPT could not see any justification for indiscriminately applying restrictions to all life-sentenced prisoners (such as separating life sentenced prisoners from the rest of the prison population and prohibiting communication with more than one other prisoner) without giving due consideration to the individual risk they may (or may not) present.

Such isolation of life sentence prisoners is often explained by he fact that they fall under the category of most dangerous, who "has nothing to loose". As we have already mentioned above, such approach could not be justified and does not comply the European standards as far as the aim of the sentence of any of the prisoners (including life sentenced) should be focused on re-socialization and preparation for the further life out of the establishment. Life sentence prisoners should understand that in case of good behavior and rehabilitation their sentence might undergo the revision process. This will stimulate their good behavior in the establishment.

Establishment No.5 for Women

There were 4 life sentence prisoners at the Establishment No.5 on 31 December 2011, placed in two cells (two prisoners per each).

The cells each measuring 18 m^2 were equipped with bunk bed, a table and chairs, individual cupboards, TV set. The window in each of the cell measured 1.7 m^2. The partitioned toilet equipped with tab as well was in satisfactory sanitary-hygienic conditions. An access to natural light, artificial lighting, natural and artificial ventilation as well as central heating system was sufficient.

The life sentence female prisoners enjoyed the right to walk in the fresh air 2 hours a day. They had access to shower 3 times a week.

Rec(2003)23 of the Committee of Ministers of the Council of Europe states that "Since women prisoners usually constitute a small minority of those serving long or life sentences, their individual sentence planning should be carefully considered so as to meet their specific needs…Particular efforts for women prisoners should be made to: … avoid

[535] Para, 42, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 7 April 2006 and from 21 to 24 June 2006.

[536] Article 14, paragraph 1(g) of Imprisonment Code of Georgia.

social isolation by merging them as far as possible with the general population of women prisoners…"[537]

Chapter 11 of the Imprisonment Code stipulating the specificities of service sentences by female prisoners states that "female convicts shall serve sentences in semi-open type custodial establishments."[538] This disposition does not refer to the life sentence female prisoners who are placed in close type custodial establishments according to Article 61 (1) of the same Code.[539]

Establishment No.6 in Rustavi

There were 82 life sentence prisoners at Establishment No.6 in Rustavi as of 31 December 2011. At the time of monitoring, one prisoner was transferred to Medical Establishment No.18.

In Establishment No.6 in Rustavi, life-sentenced prisoners are placed in separate wing holding 31 cells. In 11 cells there are one prisoner per each; in 5 cells – 2 prisoners per each; in other 5 cells – 3 prisoners per each; in 6 cells – 4 prisoners per each and in the rest 4 cells – 5 prisoners per each. Only one life sentenced prisoner is accommodated in two-place cells in the other part of the establishment. Unlike the other life sentence prisoners, he could not enjoy the right to have TV set as far as there was no TV cable there.

The cells measuring 19.5 m^2 each, were equipped with bunk beds, a table and chairs, individual cupboards as well as a TV set. The size of the window ensured the access to natural light and ventilation. An access to artificial lighting, artificial ventilation and central heating system was sufficient. The partitioned toilets were equipped with washing tabs as well. The sanitary-hygienic conditions in the cells were satisfactory.

The prisoners at Establishment No.6 could enjoy the walk in the fresh air for 1.5 hours a day and access to shower – once a week.

Establishment No.7 in Tbilisi

There were 4 life-sentenced prisoners at the Establishment as of 31 December 2011, placed separately in two-place cells.

The cells measuring 7.1 m^2 each were equipped with bunk bed and a small table. There were no individual cupboards in the cells. The windows measuring 0.25 m^2 could not ensure the access to natural light and ventilation. Ventilation and heating was provided by means of central system. The toilets were partitioned. There were washing tabs in the cells as well. The sanitary-hygienic conditions in the cells were satisfactory.

The prisoners enjoyed the right to walk for an hour a day. Establishment No.7 is distinguished by the fact that instead of having an access to TV programs, the prisoners are allowed to watch DVD recordings. The administration explains this fact by technical deficiencies, though, presumably the reason is the specific category of prisoners - "thieves in law" - serving their sentence in the establishment.

The European Prison Rules states that "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 organisations and to receive visits from these persons… Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered

[537] Para 30 (a,b), Appendix to Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003.
[538] Article 72, para, 1 of the Imprisonment Code of Georgia.
[539] This disposition covers the rights of the female prisoners sentenced to long or shorter term imprisonment.

by a judicial authority, shall nevertheless allow an acceptable minimum level of contact."[540] Therefore, the prisoners in Establishment No.7 shall enjoy the right to watch TV.

- **Recommendation to the Minister of Corrections and Legal Assistance: To ensure that the conditions of life sentence prisoners comply with the Georgian Legislation as well as with standards of the Council of Europe and European Committee against Torture (CPT).**

CONTACT WITH THE OUTSIDE WORLD

The Imprisonment Code entitles life sentence prisoners with the right to the following means of communication: short and long-term visits, telephone calls, correspondence and receiving information by means of media.

Like the other prisoners, the life-sentenced are visited by priest.

The Public Defender of Georgia has been issuing recommendations for the last several years to re-establish the practice of long-term visits. The recommendation was partially satisfied by the changes to the Code allowing the juvenile inmates, life sentenced and those prisoners placed in semi-open type custodial establishments enjoy this right.

Article 65 (5) of the Imprisonment Code grants the life sentence prisoners serving their sentence in close type custodial establishments with the right to enjoy 2 long-term visits a year and 1 additional visit a year as a form of encouragement.

The changes made to the Code shall be assessed as a step forward, though it should be mentioned as well that the infrastructure necessary for the long term visits for life sentence prisoners exist only in Establishment No.6 in Rustavi. The life sentence prisoners including females placed in the other establishments still could not enjoy this right.

According to Article 65, paragraph 1 (b), a convict service a sentence in a closed type custodial establishment shall enjoy one short-term visit a month.

In its 2010 report to the Georgian Government, the European Committee against Torture (CPT) recommends that the Georgian authorities amend the legislation concerning sentenced prisoners' entitlement to visits as far as the entitlement of one visit per month is not sufficient to enable a prisoner to maintain good relations with his family and should be substantially increased (e.g. at least one visit per week).[541]

The CPT 2010 Report to the Georgian Government states "the CPT has already stressed in the report on the visit in 2007 that a system under which the extent of a prisoner's contact with the outside world is determined as part of the sentence imposed is fundamentally flawed. In principle, all sentenced prisoners should have the same possibility for contact with the outside world and must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouses and children. The continuation of such relations can be of critical importance for all concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world as often as possible; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. As regards the possibility for prisoners to be granted leave, it is unlikely to compensate for the lack of long-term visits."[542]

According to Rec(2003)23 of the Committee of Ministers of the Council of Europe, "Special efforts should be made to prevent the breakdown of family ties. To this end:

- prisoners should be allocated, to the greatest extent possible, to prisons situated in proximity to their families or close relatives;

[540] Rules 24.1,24.2, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.
[541] Para. 109, Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010.
[542] Ibid

- letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy. If such provision endangers safety or security, or if justified by risk assessment, these contacts may be accompanied by reasonable security measures, such as monitoring of correspondence and searches before and after visits."[543]

Article 46 (3) of the Imprisonment Code of Georgia states that "A convict shall serve his/her sentence in a custodial establishment located in the nearest proximity to the place of residence of his/her family members or a person with whom he/she lived…"

In the Penitentiary System of Georgia, the principle of placing this category of prisoners according to the proximity to the place of residence is not envisaged due to the practical features thus bringing additional impediments for the families who reside in Western Georgia.

In its 2000 report to the Government of Ukraine, the European Committee against Torture (CPT) stresses that "[r]isk/needs assessment of life-sentenced prisoners should therefore be made on a case by case basis. Such an approach will also make it possible for the prisoners in question to be accommodated as close as possible to their homes, and will improve their contact with the outside world."[544]

According to the Imprisonment Code of Georgia, some categories of prisoners could enjoy the right to video conferences, though the law makes exception for the prisoners sentenced for the extremely grave crimes.[545] Therefore, the prisoners falling under this category are devoid of the right to benefit from video conferences. The right to short leave from the establishment is not applied to the life sentenced prisoners either.[546]

The Public Defender considers that the he life sentenced prisoners shall have the right to video conference like other categories of prisoners do.

Article 65, paragraph 1[c] of the Imprisonment Code of Georgia states that a convict serving a sentence in a closed type custodial establishment shall be authorized to have telephone conversations at his/her expenses twice per month, each conversation shall not exceed 15 minutes.

The approach of the administration of Establishment No.6 towards enjoying the to telephone conversation shall be positively assessed. The telephone apparatus is provided in turn to each of the cell on a daily basis this giving the inmates the possibility to use it.

In Establishment no.7, the prisoners have access to telephone calls twice per month for 5-10 minutes. Similar conditions are in Establishment No.5 for women.

All the life sentenced prisoners could freely enjoy the right to have radios (in Establishment No.7 the prisoners exceptionally have radio cables). The prisoners enjoy the right to correspondence as well. The situation with regards to the access to press differs in the establishments. In some of the establishments the magazines and certain newspapers are allowed, however, the life sentence prisoners have never complained to the representatives of the Public Defender either orally opr in written regarding the access to press.

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543 Para 22, Appendix to Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003.

544 Para. 75, Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 26 September 2000.

545 Article 17[1] (1) of the Imprisonment Code of Georgia.

546 Article 27 (1) of the Imprisonment Code defines the categories of prisoners who could benefit from the right to leave the territory of establishment for a short period.

Recommendation to the Minister of Corrections and Legal Assistance:

- **To ensure that all the life sentence prisoners enjoy the right to long term visits;**
- **To ensure that the life sentence prisoners are placed in the establishments close to the place of their or their family's residence.**

RE-SOCIALIZATION

As already noted above, the Individualization principle which stipulates that "consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence"[547] is stressed to be very important by the Rec (2003)23 of the Committee of Ministers of the Council of Europe. The same recommendation states that "Special management care and attention should be given to the particular problems posed by prisoners who are likely to spend their natural life in prison. In particular, their sentence planning should be sufficiently dynamic and allow them to benefit from participation in meaningful activities and adequate programmes including interventions and psychosocial services designed to help them cope with their sentence."[548]

According to the Rec(2003)23, the individual plan should be developed for each prisoners as early as possible following the entry into the prison.[549] The plans should be developed with the active participation of the prisoner[550] and should include the following issues:

- participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release;
- interventions and participation in programmes designed to address risks and needs so as to reduce disruptive behaviour in prison and re-offending after release;
- participation in leisure and other activities to prevent or counteract the damaging effects of long terms of imprisonment.[551]

Unfortunately, the Penitentiary system in Georgia is still far from being in compliance with the above-mentioned standards lacking the practice of management of life sentence prisoners and developing the individual sentence plans. Therefore, neither the Progression principle is secured according to which, individual planning for the management of the prisoner's life sentence should aim at securing progressive movement through the prison system that envisages transferring the prisoner to the less strict regime. Life sentence prisoners do not enjoy even elementary conditions for employment, educational or other programs in prison that would play important role in their rehabilitation process. We would like to stress again, that life sentence prisoners like other prisoners placed in closed type custodial establishments in line with the Imprisonment Code, are entitled to spend 23 hours in their cells during a day. This fact which not only impedes the re-socialization process, but even becomes a source of emerging psychological and psychiatric problems, does not benefit from being an important issue of concern within the Penitentiary system.

In Establishment No.6, a psychologist has been employed in recent years, however, nowadays, the prisoners at this establishment including the life-sentenced, could not benefit from psychological service. Such service has never been available at Establishment No.7 in Tbilisi. As for Establishment No.5 for women, the psycho-rehabilitation program of the non-governmental organization "GCRT" is functioning there. There are no other psycho-rehabilitation programs for life sentence prisoners.

547 Para 3, Appendix to Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003.
548 Ibid, Para 31.
549 Ibid, Para 11.
550 Ibid, Para 9.
551 Ibid, Para 10.

The standards of the European Committee against Torture envisage that "long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way."[552] This statement was reiterated by CPT in its 2007 Report to the Government of Georgia.[553]

The Public Defender of Georgia considers that the adequate conditions should be ensured in the penitentiary establishments on order to relieve the psychological conditions of life-sentenced prisoners. Special attention should be paid to this category of prisoners: they should benefit from different rehabilitation and educational programs and employment that will promote their re-socialization and reintegration process into society. The staff of the establishments should be adequately trained in order to reveal the negative psychological impact on the early stage and to eradicate the problems. The prisoners shall have unimpeded access to the psychologist's service at any time whenever needed.

COMPLIANCE OF THE MECHANISM OF CONDITIONAL RELEASE OF LIFE-SENTENCED PRISONERS WITH EUROPEAN STANDARDS

According to the Resolution 70(1), adopted by the Committee of Ministers of the Council of Europe on 26 January 1970, "to insure that those serving life sentences have the possibility, by means of periodical review, of being granted conditional release or at least clemency after due consideration of their personality and the need for the protection of society."

Case law of the European Court of Human Rights stipulates that imposition life imprisonment could not be considered as a breach of Article 3 of European Convention of Human Rights envisaging prohibition of torture; however, the imposition of irreducible life imprisonments not being subject to revision, is in principle inconsistent with Article 3 of the Convention.[554]

According to the case law of European Court of Human Rights, the sentence of life imprisonment should be periodically revised as far as prolonged period of detention in case of changed circumstance might lose its lawfulness in accordance with Article 5 Para 4 of the convention.[555] The Court considers that the life imprisonment shall be reviewed on a certain point after some period of time to identify whether it is in compliance with the requirements of Article 5 of the European Convention of Human Rights.[556]

The Georgian legislation envisages the possibility of conditional release of life-sentenced prisoners. Article 40, para.6 of the Code of Imprisonment states: "The convict maybe released from serving the life imprisonment if he/she actually served 25 years of the term."

According to Article 72, para.7 of the Criminal Code of Georgia, "The convict may be released from life imprisonment if he/she actually served twenty-five years of imprisonment and if the Local Council of the Ministry of Corrections and Legal Assistance of Georgia holds that it is no longer necessary for the convict to continue serving the sentence."[557]

[552] Para, 33, 11th General Report on CPT's Activities, CPT/Inf (2001)16.

[553] Para, 54, 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), 2007.

[554] ECHR Case of Weeks v United Kingdom, judgment of 14 March 1985; Case of Leger v.France, judgment of 11 April 2006; Case of Kafkaris v.Cyprus, Judgment of 12 February 2008.

[555] "Everyone who is deprived of his liberty by the arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is unlawful."

[556] ECHR cases: Thinner, Wilson and Gunnell v. United Kingdom, judgment of 25 October 1990, Weeks v United Kingdom, judgment of 14 March 1985; Case of Leger v.France, judgment of 11 April 2006.

[557] In force since 1 October 2010.

Currently there are no life-sentenced prisoners having already served twenty-five years of imprisonment in the establishments. Therefore, the Public Defender could not assess the implementation of the mentioned provision in practice, though, it should be stressed that the compliance of early conditional release system in Georgia with the requirements of Article 5 of the European Convention of Human Rights.

The European Human Rights Court considers that only formal existence of the early conditional release mechanism does not provide the ground for full compliance with the Convention standards. For this end, such mechanism shall be in full compliance with the requirements of Article 5§4 of the European Convention of Human Rights, namely, the decision making body shall be independent and unbiased as well as the procedure shall be enough transparent, ensuring the participation of the sentenced prisoner in the proceeding of his case and etc.[558]

In the Case of Weeks v. United Kingdom, the Court discussed the compliance of the procedures of conditional release with Article 5§4 of the Convention and decided that the UK Board on conditional release did not ensure the guarantees for full compliance with Article 5§4.[559]

In this case the Court undertook detailed analysis of the composition and the regulations of the Board in order to decide about their compliance with the requirements of Article 5§4 of the Convention. As for the composition of the Board and the procedure of granting the prisoner the right to make presentation with respect to his call in writing and orally, the Court did not found any violations of Article 5 of the Convention.[560] However, whilst these safeguards were not negligible, there remained a certain procedural weakness in the case of a recalled prisoner related to the fact that the Board was not required under English law by the principles of natural justice, to fully disclose the adverse material which the Board has in its possession to the prisoner, thus violating the Article 5§4 of the Convention. The procedure followed did not therefore allow proper participation of the individual adversely affected by the contested decision, this being one of the principal guarantees of a judicial procedure for the purposes of the Convention.[561]

As mentioned above, the European Court of Human Rights thoroughly assesses the procedures of conditional release of life-sentenced prisoners, the composition of board and regulations, which shall ensure the independence of this body from the executive branch of Government.

Order No.151 of the Minister of Corrections and Legal Assistance on the Number, Territorial Jurisdiction and Regulations of the Local Council of the Ministry of Corrections and Legal Assistance contains the regulations of the Council and the procedures of decision-making process on conditional release of prisoners. According to Article 2 of the Order, the work of the Council is based upon the principles of independence, lawfulness, transparency and unbiased work. Article 6 of the same order stipulates that the Council makes decisions on two types of hearings – with oral hearing and non-oral. On non-oral hearing, the Council studies the essence of cases and decides about the admissibility of the petition.

Therefore, it seems that the main decision of the Council is made on non-oral hearing thus not ensuring the participation of the prisoner concerned (prisoner or his legal representative) in the procedures of assessing the criteria on which the final decision is made about the conditional release. Later, the participation of the prisoner bears only the formal character not ensuring his/her participation in decision-making process. It is not clear as well how the Council assesses the family conditions and his/her personality based only on documents.

Here we will not go further in details of the deficiencies of practical functioning of the Council that deserves separate discussion. Even the analysis of the Order No.151 as such, makes it clear that the mechanism of conditional release does not comply with the requirements of Article 5§4 of the European Convention of Human Rights.

The composition of the Council deserves special attention. According to Order 151, the Council shall consist of 5 members: 1 representative of the Central Apparatus of the Ministry of Corrections and Legal Assistance or the

[558] As an example please see ECHR cases: De Wilde, Ooms and Versyp v.Belgium, judgment of 18 June 1971; Herczegfalvy v. Austria, judgment of 24 September 1992.
[559] Para.58, Case of Weeks v. United Kingdom.
[560] Ibid, para. 66
[561] Ibid.

Penitentiary Department of the Ministry; and, 1 representative per National Probation Agency, Local Self-government bodies, non-governmental organization and High School of Justice.

The presence of the representative of local self-government bodies in the Council is inadequate as far as the permanent residence place of life-sentenced prisoners is not taken into consideration during their placement in penitentiary establishment and they their great number is placed in the establishment located in Village Mtisdziri, Gardabani region.[562] Therefore, the function of the local self-government representative is rather unexplainable while assessing the criteria of conditional release as well as in promoting the prisoner's employment or re-socialization in case of release.

The members of the Council are appointed or approved by the Order of the Minister of Corrections and Legal Assistance with the approval of the Permanent Commission of the Ministry. Therefore, the independence and unbiased approach of Council members from the executive branch of the government during the decision-making process might be questioned thus raising the issue of violation of Article 5§4 of the Convention.[563]

Stemming from the above-mentioned it is clear that the mechanism of early conditional release envisaged by the Georgian Legislation, namely the composition and procedures of its functioning, does not comply with the requirements of Article 5 of the European Convention of Human Rights and the standards of ECHR case law.

Proposal to the Parliament of Georgia:

- **To introduce changes into the Criminal Code of Georgia as well as in Imprisonment Code of Georgia in order to bring the mechanism of early conditional release into compliance with the requirements of Article 5§4 of the European Convention of Human Rights; to ensure the independency of the decision making body from the executive branch as well as full participation of the person concerned (prisoner or his/her representative) on each stage of decision-making process.**

Recommendations to the Ministry of Corrections and Legal Assistance:

- **To ensure the placement of female life-sentenced prisoners in semi-open type custodial establishments in line with Article 72 (1) of the Criminal Code of Georgia;**
- **To ensure that the living conditions of life-sentenced prisoners are brought into compliance with the standards envisaged by Georgian Legislation in force;**
- **To ensure that all the life-sentenced prisoners enjoy the right to long-term visits;**
- **To ensure that the system of Individual planning of management of life-sentenced prisoners is elaborated;**
- **To ensure that special attention is paid to the psychological care of the life-sentenced prisoners.**

PROTECTION OF THE RIGHTS OF JUVENILE PRISONERS IN THE PENITENTIARY SYSTEM OF GEORGIA

In general, the alleged cases of ill-treatment of juvenile prisoners are very rare in the Penitentiary system of Georgia. The exception is Establishment No.8, where the treatment of juveniles according to their statements is the similar as of the other inmates. However, the juveniles interviewed failed to provide the concrete facts of alleged ill-treatment.

[562] Address of Establishment No.6 in Rustavi.
[563] ECHR cases: Weeks v.United Kingdom. Kafkaris v.Cyprus.

The main problem of the juvenile inmates in Establishment No.8 is a strict regime of the establishment, the detailed description of which was provided in the Chapter on Ill-treatment. One more issue should be added here to list of rules reigning in the establishment described in the Chapter on ill-treatment. Upon admission to the Establishment, hair of the juveniles is completely removed despite the provisions of Article 21, para.2 of the Imprisonment Code stating that "the administration shall not require an accused/convict to completely remove hair unless such request is imposed by the doctor or hygienic necessity." This approach could amount to ill-treatment of juveniles.

The juveniles placed in Establishment No.11 and Establishment No.5 for Juveniles state that their treatment in these establishments is good; the administrations are trying to maintain permanent contacts with them.

The juveniles in Establishment No.2 state that they are treated much better than other inmates are.

PLACEMENT AND LIVING CONDITIONS

In general, the attitude and approach towards juvenile inmates in the Penitentiary System of Georgia is satisfactory. As a rule, number of aspects of conditions of their placement is far from complying with European Prison Rules and CPT standards and recommendations; however, they mostly enjoy relatively better treatment than the adult prisoners do.

Upon the request of the Office of Public Defender, the Penitentiary Department provided the following statistical data on the placement of juveniles:

	Month	Accused	Convicted	Total
1	January	46	160	206
2	February	43	152	195
3	March	47	152	199
4	April	26	160	186
5	May	51	166	217
6	June	43	166	209
7	July	41	167	208
8	August	38	170	208
9	September	37	174	211
10	October	25	165	190
11	November	21	179	200
12	December	18	161	179

During the reporting period, the juvenile prisoners were placed in Penitentiary Establishments No.3 in Batumi, No.4 in Zugdidi, No.2 in Kutaisi, No.5 in Rustavi, No.8 in Gldani and No.11 in Avchala. There were 310 places held for juveniles in penitentiary system of Georgia; 90 places out of these - in Establishment No.8; 18 places – in Establishment No.2 in Kutaisi; 20 places – in Establishment No.3 in Batumi; 12 places – in Establishment No.4 in Zugdidi; 10 places – in Establishment No.5; 160 places – in Establishment No.11 in Avchala.

In **Establishment No.3 in Batumi**, there was one cell for juveniles there, measuring 45.1 m^2, with 2.2 m^2 living space per prisoner. The cell was equipped with 10 bunk beds. The cell did not have concrete ceiling and the top was of iron resulting in endurable hot in summer and cold in winter respectively. The heating was provided by means of electric heater, thus insufficient. Small size of the window could not ensure an access to natural light and ventilation. Both categories of juveniles, accused and convicted were places together in the cell. They did not have individual pumps and had to keep their clothes in packs.

In **Establishment No.4 in Zugdidi**, there was one cell for juveniles there, measuring 29.6 m^2, with 2.4 m^2 living space per prisoner. The cell was equipped with 6 bunk beds. The anti-sanitary was reigning in the cell; water sewage system

was outdated; the electric cables were open; the toilet was semi-partitioned. The window lacking the glass was covered by plastic packs by prisoners. There were cockroaches in the cell. The inmates did not have their pumps and they had to keep their clothes either on beds or on hanging on the walls.

It should be noted here that in September 2011, the cells for juveniles were closed in Establishments No.3 and No.4 and the juveniles were transferred to Establishment No.2 in Kutaisi.

In **Establishment No.2 in Kutaisi**, there are 3 cells for juveniles there, measuring 18.9 m^2 equipped with 3 bunk beds each. Thus, 3.1 m^2 living space is ensured per each inmate. The administration reported that dues to the refurbishment works in the cells envisaged for juveniles, they were temporarily placed in the accommodation building "B". At the time of the monitoring visit, there were cockroaches in the cells of juveniles, thus there was anti-sanitary in the cells. The mattresses on the beds were extremely warned and the prisoners were sleeping almost on the iron beds. The heating was provided by means of central heating system. The access to natural light and ventilation was sufficient. All the inmates had individual pumps.

In **Establishment No.8 in Tbilisi**, there were 15 cells for the juvenile prisoners placed on the fourth floor of the accommodation Building No.4. The cells measured 18.9 m^2 each, equipped with 3 bunk beds; 3.1 m^2 living space was ensured per inmate. The juveniles had individual pumps. Heating was provided by means of central heating system. Access to natural light as well as artificial lighting was sufficient. Toilets were partitioned. There was a shower room equipped with 6 showers and an exchange room in the juvenile's ward.

There were 2 cells for juveniles in **Establishment No.5**: one in detention ward and another in the accommodation building "D". The cells measured 18 m^2 each. The living space per juvenile in the detention ward was 3 m^2; as for the convicted female juveniles, they had a living space of 6 m^2 per each. There were 6 places for accused juveniles and 3 – for convicted ones. Heating was provided by means of central heating system. Access to light and ventilation provided by both, natural and artificial means, was sufficient. The cells were equipped with table, chairs and individual pumps each.

In Establishment No.11 in Avchala, the juveniles were placed in 9 multi-occupancy rooms. The number of juveniles placed per each cell varied in between 15-18. The living space per each prisoner varied as well in between 1.7 – 2.1 m^2. In general, the cells needed refurbishment. Heating was provided by means of central heating system. Access to natural light and ventilation was sufficient. The inmates did not have a table, chairs and individual pumps. The common toilets were located in the end of the corridor. The sanitary-hygienic conditions in the toilet, which deeded refurbishment as well, were not adequate.

Personal Hygiene

In Establishments No.2. No.3 and No.4, the juveniles had access to shower once a week; in Establishments No.8 and No.5 the juveniles benefitted from the access to shower twice a week. As for Establishment No.11, the juvenile prisoners had a daily access to shower.

The juveniles wash their bed linen themselves or send them to their family members. As for Establishment No.8, according to the statements of the inmates, the administration ensures washing bed linen once per two weeks.

Access to the Fresh Air

In spite of the fact that the Imprisonment Code entitles the prisoners to have no less than 1 hour walk in the fresh air, the duration of walk in Establishment No.4 in Zugdidi was reported to be 30-40 min.; in Establishment No.3 in Batumi – 10-15 min.; in Establishment No.8 – 10-15 min. and, in Establishment No.2 – 45 min. The juvenile prisoners

were not able to enjoy the right to walk in the fresh air on weekends. The prisoners in Establishment No.5 had a daily access to the fresh air for 1 hour.

Contact with the Outside World

The Imprisonment Code entitles the prisoners with the right to 4 short-term visits per month and as a form of incentives – 1 additional short term visit; right to 3 video conferences and 5 phone calls per month as well as the right to 3 long-term visits per year. It should be positively assessed that the juvenile inmates enjoyed the right to meet their family members during the short-term visit in the room not partitioned by Plexiglass screen. In other establishments, unfortunately the inmates could meet their family members in the rooms partitioned with Plexiglass screen. In Establishment No.11, the inmates enjoyed the right to video conferences and long-term visits.

Re-socialization

The Public Defender of Georgia welcomes the elaboration of special approach towards the juvenile inmates in the penitentiary system of Georgia. Namely, in Establishment No.11, management of prisoners based on individual planning is implemented aimed at reducing the risks for the juveniles and their return to the society as its full member. The juvenile inmates are involved in a variety of educational, rehabilitation or sports activities.

In Juvenile Educational **Establishment No.11** the following courses and activities were running: rugby, the group-work with sentenced juveniles, where anger management is taught. The public school functions within the Establishment and the inmates get the certificate of the school No.123.

The following teaching programs funded by the Center "Apkhazeti", though currently under the management of the Ministry of Education and Science was functioning in the Establishment:

- Web-designing;
- Animation;
- 3D programs;
- Enamel;
- Woodcarving;
- Photo art;
- Barber's services;

74 Juveniles were involved in these programs. The school was located in 7 rooms on the first floor of the Establishment. The teaching was provided in 7-12 grades in the school; however, it is possible to provide the extern education in the lower grades as well.

The yard of the Establishment was equipped with sports facilities as well as with stadium with artificial cover. In summer, the inmates could enjoy swimming in the small pool as well.

In **Establishment No.2 in Kutaisi**, the psychological care program was functioning for the juvenile inmates there.

There was a room equipped with sports facilities, though at the time of the monitoring the juveniles stated that they had not been able to use this room for the last 2 months.

In **Establishment No.3 in Batumi**, the rehabilitation program organized by GCRT was functioning there.

Access to TV and Radio

In Establishments No.8 in Gldani and No.11 in Avchala, the juvenile prisoners enjoyed the right to watch TV unlike the juveniles placeded in Establishment No.2 in Kutaisi and in the detention ward of Establishment No.5, where there were not TV sets. All the juveniles had access to radio except those placed in Establishment No.8.

Education

Currently, ensuring the juvenile prisoners' right to education in prison conditions is limited to providing the secondary education, which is accessible only in Establishments No.5 and No.11. Juvenile inmates placed in Establishments No.2 in Kutaisi and No.8 in Gldani, are not able to enjoy this right. On one hand, it could be explained by the fact that the latter establishments are for pre-trial detention, where juveniles spend only several months there. Although, on the other hand, it often happened that due to different reasons the convicted juveniles were not transferred to the relevant establishments and had to spend much more time in the detention wards that had a negative impact on their educational process.

Recommendations to the Head of the Penitentiary Department of the Ministry of Corrections and Legal Assistance

In order that juvenile prisoners could fully enjoy the rights entitled to them by the Legislation, to ensure that:

- **juvenile prisoners enjoy the right to 1-hour walk, as stated by Law;**
- **juvenile prisoners are transferred on time into the semi-open type custodial establishments as stipulated by Law;**
- **juvenile prisoners have access to shower twice a week;**
- **juvenile prisoners enjoy the right to watch TV in all types of custodial establishments;**
- **the living space per juvenile inmate complies with the standards envisaged by the Imprisonment Code;**
- **the barrack-type (multy-occupancy) system of placement in Establishment No.11 shifts into the cell-type system;**
- **all categories of juvenile prisoners enjoy the right to education.**

Situation in the Temporary Detention Isolators of the Ministry of Internal Affairs

POLICE

The Prevention and Monitoring Department of the Office of Public Defender of Georgia conducted monitoring on the protection of human rights in police divisions. During the reporting period, the Special Monitoring Group visited the following police divisions throughout Georgia: in Kobuleti, Ozurgeti, Lanchkhuti, Chikhatauri, Zugdidi district and regional divisions, Senaki, Poti, Chkhorotsku, Khobi, Mestia, Kutaisi, Bagdati, Zestaphoni, Samtredia, Chiatura, Tsageri, Lentekhi, Rustavi regional division, Marneuli, Gardabani, Tetritskaro, Akhaltsikhe, Akhalkalaki, Borjomi, Khashuri, Signagi, Sagarejo. The Special Monitoring Group checked at all the police divisions the detention registers and registers on the persons transferred to the temporary detention isolators. The monitoring revealed a number of violations about which the Prevention and Monitoring Department sent a letter to the General Inspection of the Ministry of Internal Affairs (MIA) on 22 September 2011. Letters No.79659 and No.189286 sent in reply by the General Inspection of the Ministry stated that the cases of the violations revealed during the monitoring were studied and as a result, different types of administrative sanctions were imposed due to improper performance of official duties on 25 staff members of the MIA. Among them, there were 3 staff-members of Samegrelo and Upper-Svaneti Regional Division, 5 staff-members of Bagdati District Division, 3 staff-members of Zestaphoni District Division, 8 staff-members of Lanchkhuti District Division and 6 staff-members of Senaki District Division.

The Public Defender of Georgia welcomes the timely and adequate follow-up by the General Inspection of the Ministry of Internal Affairs on the results of the monitoring undertaken by the Prevention and Monitoring Department of the Office of Public Defender of Georgia.

TREATMENT

Police has vital roles in ensuring public order and security. The fulfillment of duties by Police stipulated by law shall lead to the prevention of unlawful actions. While performing their duties the representatives of law enforcement bodies shall respect and protect everyone's rights and dignity.

Forms, methods and means of performing police duties are defined by the Georgian Legislation.

The Georgian Law on Polices stipulates that Police while performing its duties shall protect the rights of citizens, provide with relevant aid within its competencies to the citizens and other state bodies and strictly observe the ethical norms while communicating with the citizens.

Unfortunately, the cases of human rights violations by police occur in a number of cases.

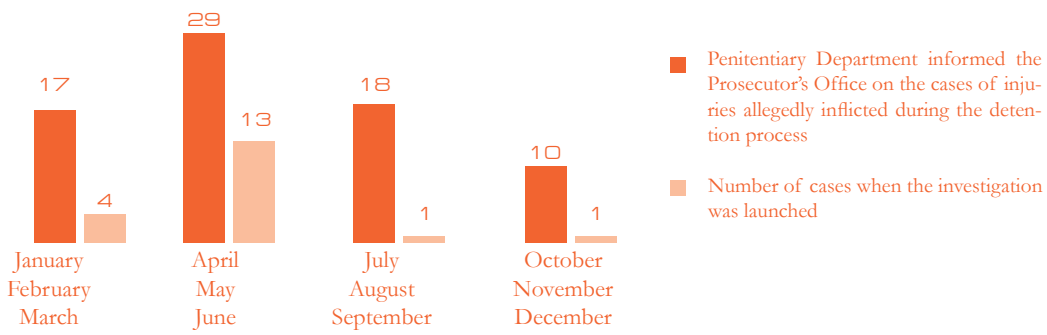
According to the Principles for the Protection of All persons under Any Form of Detention or Imprisonment,[564] "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."

The Special Preventive Group thoroughly studies the issues of treatment at the apprehension as well as during the detention process.

The Special Preventive Group requested from the Ministry of Internal Affairs the detailed information on the placement in temporary detention isolators. The data received from the Ministry showed that in 2010, there were 21 603 persons placed in temporary detention isolators. 466 Persons out of the total number bared signs of physical injuries, 71 out of them, who had received the injuries during apprehension and detention processes, had complaints against police.

According to Letters No.950480 of 5 August 2011 and No.73165 of 18 January 2012, received from the Ministry of Internal Affairs, the total number of the persons placed in temporary detention isolators in 2011 was 19 283. Out of the total number, 260 persons bared signs of injuries upon the admission to the temporary detention isolators and 69 persons had complaints against police staff. In 2010, the percentage of the detained persons baring signs of injuries was 15.2% out of total, the same figure for 2011 was - 26.5%. In 2010, percentage of the detainees with complaints against police was 2.2% out of those with signs of injuries, the same figure for the year 2011 was - 1.3%.

The Prevention and Monitoring Department requested as well the information on the admission to the detention facilities from the Penitentiary Department of the Ministry of Corrections and Legal Assistance. According to the data provided, in 2011, 977 detainees with injuries were admitted to the detention facilities of the Penitentiary Department, 74 out of them indicated that have received injuries during the detention. The Penitentiary Department informed the relevant District Prosecutor's Offices about all the 74 cases. Investigations had commenced only on 19 cases as far as the other detainees did not confirm the nature of any unlawful action during their detention process.



The Special Preventive Group thoroughly studied the records on external visual examination of injuries at all the temporary detention isolators. There were several cases when the persons reported about the injuries inflicted during the detention process, though did not complain against police. However, the description of the level and severity of injuries could be considered as a sign of alleged ill treatment. There were case when the injuries were visible on several persons at the same time; some of them were complaining against the police, though others were stating that the injuries had been inflicted before apprehension.

Members of the monitoring group visited the persons with injuries at the detention facilities of Penitentiary Department. Some of them reported about the physical and verbal abuse by the police staff though abstained from giving any written statements. Others while complaining about the alleged ill treatment by police officers were stating that had not reported about such facts either upon admission to the temporary detention isolator or to the detention facilities of Penitentiary Department as far as were afraid of further aggravation of the situation.

[564] UN General Assembly Resolution No.43/173, Adopted on 9 December 1988.

Case of Lasha A.

On 17 June 2011, the representative of the Public Defender of Georgia visited detained Lasha A at the temporary detention isolator of Samegrelo –Zemo Svaneti Regional Police Division. Lasha A stated that he was apprehended by the police staff of Jvari Police Unit of Tsalenjikha District Police Division on 14 June 2011 at about 21:00-22:00. The detainee reported about physical and verbal abuse upon admission to the Jvari Police Unit.

The detainee reported that police staff was trying to make a deal with him. For helping the police to detain some wanted Zviad A., they promised unconditional immediate release. In case of refusal, they threatened him be accused in crimes connected with murder and explosions. According to the statement of the detainee, after physical abuse and the threat of sexual abuse, he was forced to sign the testimony, which he had not written.

Lasha A reported that he asked the police to allow him to make a phone call to the family members and to inform them about his detention. The police staff-members answered that soon he would not have any relatives as far as his father and brother would have found themselves even in worse conditions then he did.

The detainee stated that he had not reported about physical abuse in any of the establishments as far as was threatened by detective of Jvari police Unit, Ilia Akubardia, and by other police staff.

On 17 June 2011, the following injuries were visible on the detainee according to the visual external examination: hyperemia and bruises on left back, hyperemia on the back of both ears; swelling on the left eye.

On 26 June 2011, the Public Defender of Georgia addressed the Chief Prosecutor's Office calling on to launch preliminary investigation into the alleged fact of beating Lasha A.

On 1 August 2011, the representative of the Public Defender of Georgia visited and interviews accused Lasha A. due to the application No.1075-11/1 submitted by his lawyer, Keti Bekauri. T the moment of the interview, the injuries were visible in the area of both armpits. The detainee reported that these injuries were inflicted by the staff of the Jvari Police Unit by burning a cigarette on him. 3 Traces of injuries (presumably burnings) were visible under his left armpit and 2 spots under the right armpit during the external visual examination.

The representative of the Public Defender of Georgia asked the detainee to make written statement where the latter noted that the mentioned injuries had been inflicted on him by the head of Jvari police unit, whose surname was Abashidze and by two other police staff-members. To question why the detainee had not reported about the injuries before, the latter answered that in case of submitting a complaint and showing the injuries to the medical expert, he was threatened by revenge against his family.

On 1 August 2011, a letter repeatedly was sent from the Office of Public Defender to the Chief Prosecutor's Office with the written statement of the detainee attached to it.

By Letter No.13/33525 of 6 September 2011, the Chief Prosecutor's Office replied that the investigation was launched into the case No.053170811801 pursuant to Article 144[1], para.2(b) of the Criminal Code of Georgia. The investigation is still pending.

Case of Boris Kh.

On 28 September 2011, the spouse of the detainee Boris Kh. submitted an application to the Office of Public Defender of Georgia. On 29 September 2011, the representatives of the Public Defender of Georgia visited and interviews Boris Kh. In Establishment No.8 in Gldani. Boris Kh.reported that he was detained in the Village Vejini on 24 September 2011 at 6 a.m and was accused pursuant to Article 177 of the Criminal Code of Georgia. He was apprehended by two persons who presented themselves as policemen. Right after he asked about the reason of the detention, he felt a harsh blow on his neck and lost his conscious. When he came to the conscious, he found himself surrounded by 15-20

policemen. The prisoners reported that a rope was fastened around his neck and he was forced to move 100 meters towards the horse in stealing of which he was accused. Policemen requested from him to plead guilty and to name his accomplice. As far as Boris Kh. refused to plead guilty, they started beating and threatening him. According to the statement of the detainee, they were physically and verbally abusing him for 2 hours. Boris Kh. identified one of the policemen as Alexandre Berikashvili. Boris Kh. reported about his beating to the investigator at the police division as well as to the judge but they have not reacted.

On 30 September 2011, the copy of the written interview was sent to the Chief Prosecutor's Office from the Office of the Public Defender of Georgia.

Letter No.13/43738 of 21 October 2011, received from the Chief Prosecutor's Office stated that on 13 October 2011, the investigation was launched at the Investigation Division of Kakheti Regional Prosecutor's Office into case No.043131011801 pursuant to Article 333 of the Criminal Code of Georgia.

On 12 January 2012, a letter was sent to the Chief Prosecutor's Office from the Office of Public Defender of Georgia requesting further information on the process or preliminary investigation into the case. By letter No.13/3209 of 24 January 2012, the Chief Prosecutor's Office replied that Boris Kh and other related persons were questioned as witnesses; the forensic medical examination was conducted. At the time of drafting the present Report, the investigation was pending.

TEMPORARY DETENTION ISOLATORS UNDER THE SUPERVISION OF THE MAIN DIVISION OF HUMAN RIGHTS PROTECTION AND MONITORING OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

Treatment

It should be positively assessed that like the previous years, the monitoring undertaken during the reporting period has not revealed any allegations on ill treatment by the staff of the temporary detention isolators. The detainees interviewed in the penitentiary establishments prove this fact as well. In some cases, they reported about the abuse by the police, but often state that the staff-members of the temporary detention isolators were behaving correctly and were trying to meet the needs of the detainees to a maximum extent.

Unfortunately, there were several exceptional cases of ill treatment documented in connection of 26 May 2011 events (see below in this chapter).

The Public Defender hopes that the forms of treatment at the temporary detention isolators will continue to be in line with the legislation.

ADMINISTRATIVE DETENTION

We welcome the fact that the Ministry of Internal Affairs partly satisfied the recommendations of the Public Defender of Georgia and by Order No.1704 (28 December 2011) introduced changes to the Order No.108 (1 February 2010) of the Minister of Internal Affairs on "On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators." The changes defined the conditions of administrative detention according to which, the living space per administrative detainee shall be no less than 3 m^2; the place of administrative detention shall have a window ensuring access to natural light and ventilation; the place of administrative detention shall be provided with seasonal heating; the administrative detainee shall be provided with the conditions adequate for healthcare; the administrative detainee shall be supplied by bed with full bedding, shall have right to receive parcels, food and clothes. Those persons detained for

more than 7 days (in case of juveniles – for more than one day) shall have access to shower twice per week as well as access to daily walk for 1 hour. If the temporary detention isolator does not have an exercise yard, the detainees shall have access to walk in the territory of the administrative building of the Ministry of Internal Affairs. According to the Order, the detainees shall have all the conditions to satisfy the natural needs in good sanitary-hygienic conditions. They should have access to toilet 24 hours a day. The toilets shall be provided with sanitary items. A person detained for more than 30 days shall have an access to barber service. The administration of temporary detention isolator shall not require a detainee to remove hair completely unless such request is imposed by the doctor or by hygienic necessity. Those persons detained for more than 30 days and juveniles detained for more than 15 days, shall have the right to short-term visits twice per month and a telephone call once per month for 10 minutes. The administrative detainees were granted the right to subscribe to or receive literature, magazines and newspapers at their expense, receive and send correspondence, complaints/applications. According to the Order, an administrative detainee shall have the right to register by written application according to the rules established by the Ministry of Education and Science for the National Examinations in order to receive high education.

The Public Defender of Georgia welcomes the changes that will certainly improve the conditioned of administrative detainees, though, still considers that some of the dispositions are clearly inconsistent with the recommendations of the Public Defender of Georgia and with European standards.

The Public Defender has repeatedly stated in his Reports that the infrastructure of temporary detention isolators does not provide not only for a possibility to realize the rights of the persons imposed administrative imprisonment in line with international standards and recommended the Government of Georgia to ensure the creation of special establishments for the persons imposed administrative imprisonment, taking into consideration the regional principle, which would have been adapted for the long-term placement of persons.

During the reporting period, the monitoring group revealed a number of violations concerning the placement and conditions of administrative detainees and addressed the Ministry of Internal Affairs with the relevant recommendations.

Case of Giorgi Kh., Akaki Ch. and Merab Tch.

On 29 March 2011, the members of the Special Preventive Group of the Public Defender met and interviewed persons who had been imposed the administrative imprisonment: Giorgi Kh., Akaki Ch. and Merab Tch. On 26 March 2011, the Collegiums of the Tbilisi City Court imposed administrative imprisonment on two of them for 20 days, whereas one of them was sentenced to 10 days of administrative imprisonment.

The persons imposed administrative imprisonment noted that their right to daily hour-long walk, access to press and access to shower was restricted in the temporary detention isolator. Therefore, they could not observe the personal hygiene. Giorgi Kh. stated that he had been requesting the meeting with a doctor for three days, and he was granted this later. He also mentioned that he applied the extreme means of protest – hunger strike, however he was not transferred to another cell and neither a doctor had visited him since he commenced hunger strike.

The Public Defender of Georgia considers that the persons imposed an administrative imprisonment shall enjoy all the rights that sentenced persons have. Deriving from the mentioned, they shall not only have a right to have a daily walk, but shall also have a possibility to meet family members, have access to telephone conversations and contact with the outside world. These rights were not envisaged by the legislation of Georgia in force during the reporting period.

On 5 April 2011, the Public Defender addressed the Minister of Internal Affairs of Georgia with recommendation to ensure at the initial stage the administrative detainees enjoyed their rights envisaged by Order No.108 of the Minister of Internal Affairs "On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators;" and, to ensure the adoption of the new normative act reflecting all the rights of detained/imprisoned persons.

No reply was received by the Office of the Public Defender with regard to the mentioned recommendation, however, as it was already mentioned above, the changes were introduced to Order No.108 later.

THE RIGHTS OF PERSONS DETAINED IN RELATION WITH THE EVENTS OF 26 MAY

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). These are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons, which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).[565]

During the events of the night of 26 May 2011, several dozens of persons were detained. They were placed in various temporary detention isolators of the East and the West Georgia. Apart from this, the location of several dozens of persons was unknown. Investigators contacted the family of a detained person only in singular cases, notifying them of the detention and the whereabouts of their close person.

On 26 May, the representatives of the Public Defender visited the persons placed in the temporary detention isolator No.2 in Tbilisi, in Mtskheta, in Kaspi and in Shida Kartli Regional Temporary Detention Isolator. As it turned out at a later stage, the persons placed in the Temporary Detention Isolator No.2 in Tbilisi were transferred to other isolators on the same day. Respectively, the lawyers were not able to meet them, the prisoners' right to defense was limited, they could not use the possibility provided by the Law to appeal the administrative imprisonment due to the expiration of 48 hours time-limit, whereas their family members lacked the elementary possibility to learn where their close persons had been.

Deriving from the above-mentioned, the Public Defender addressed the Minister of Internal Affairs of Georgia with the recommendation to immediately ensure the restoration of rights of persons detained during the events developed at the night of 26 May 2011, in particular to provide the detained persons with the possibility to contact their family members and lawyers, to provide them with adequate medical assistance and to allow them receive the items as a parcel as envisaged by the legislation.

No reply had been received by the Office of the Public Defender on this recommendation.

On 28 May 2011, the information was published on the official web-site of the Public Defender, mentioning the first and last names of all those detainees who had been placed in any of the temporary detention isolators in relation with the events of 26 May. The monitoring revealed that the majority of the detained persons had more or less serious injuries. Some of the detainees had serious injuries, as also confirmed by the protocols of external visual examination upon their admission to temporary detention isolators. The detainees were stating during the verbal communication that their injuries were inflicted as during the dispersal of the action, as well as after the detention, however their majority refused to provide clarifications to the representative of the Public Defender.

Lasha Ch.'s case

On 11 June 2011, the representatives of the Public Defender met and interviewed administratively imprisoned person Lasha Ch., who was placed in the Shida Kartli Regional Temporary Detention Isolator. He mentioned that his rights had been violated from the very first day of his imprisonment. In particular, he went on hunger strike, announcing this

[565] [CPT/Inf (92) 3] 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991. para. 36

to the administration with the application on 07 June 2011. He stated that he, as a person on a hunger strike, was not put under medical control. According to him, the brigade of emergency medical aid was called three days later after the request. According to the prisoner, no clothing, cigarette and press were allowed as a parcel to him. He stated that after the admission to the temporary detention isolator he was deprived of cigarette and explained that smoking in temporary detention isolator was prohibited. The representatives of the Public Defender spoke with the Chief of the Temporary Detention Isolator Eldar Dalakishvili on the latter issue. E. Dalakishvili confirmed that Lasha Ch. was deprived of his cigarettes, as according to the statement of the Chief of the temporary detention isolator, the mentioned establishment was the "public gathering place" and smoking was prohibited there.

On 13 June 2011, a copy of the protocol drawn with Lasha Ch. was sent from the Office of the Public Defender to the Head of the Human Rights and Monitoring Unit of the Ministry of Internal Affairs of Georgia. No reply had been received on the mentioned letter.

Regional Temporary Detention Isolator for Imereti, Racha-Lechkhumi and Kvemo Svaneti (Kutaisi)

On 31 May, 2011 the representatives of the Public Defender met and interviewed the prisoners in the Regional Temporary Detention Isolator for Imereti, Racha-Lechkhumi and Kvemo Svaneti: Levan Ch., Vasil B., Davit T., Vlad Sh., Iuri K., Otar A., Giorgi P., Levan K., Gela D., Irakli K., Mamuka G., Zurab Sh., Zurab T. and G G.. These persons were placed in three cells of the temporary detention isolator. According to them, they were deprived of their right to have a daily walk, an access to shower; they were not able to receive as a parcel clothing and cigarette. They were not provided with hygienic items either.

According to the prisoners, the administration of the temporary detention isolator was taking them to the corridor every night, where for the purpose of punishment they were made to stand facing a wall with their heads bent down for 30-40 minutes. As clarified by them, the mentioned action was "justified" by the administration citing the verbal directive from the leadership of the Ministry of Internal Affairs.

A part of the prisoners mentioned that they needed medical assistance that was not accessible in the temporary detention isolator.

On 6 June 2011, the Public Defender recommended the Minister of Internal Affairs to eradicate the above-mentioned violations and consider the liability of the persons responsible.

No reply had been received by the Office of the Public Defender on this recommendation.

Otar A.'s case

On 10 June 2011, the Public Defender received an application of Otar A.'s parent. Otar A. was a person imposed administrative imprisonment placed in the temporary detention isolator in Zestaphoni. According to the applicant, the term of his son's administrative imprisonment was expiring on 20 July 2011, whereas on 14 and 15 July the prisoner had to participate in the entry examination for master's program at the I. Javakhishvili Tbilisi State University.

The note issued by the National Examination Center on 6 June 2011 was attached to the application. The note confirmed that Otar A. was in fact registered for the Unified Master Program Exams of 2011.

On 21 June 2011, the Public Defender recommended the Minister of Internal Affairs of Georgia to ensure the participation of the prisoner in the examinations for master's degree program.

According to the letter received in response on 1 July 2011 from the Ministry of Internal Affairs of Georgia, the prisoner Otar A. would be transferred to participate in the entry examination for master's degree program at the I. Javakhishvili Tbilisi State University.

LIVING CONDITIONS

It shall be welcome that a part of those temporary detention isolators the abolishment of which the Public Defender had called upon, were actually closed. These were temporary detention isolators in Gori, Khashuri and Tsageri. However, temporary detention isolator in Samtredia functions to date, where placement of a person, even for a short period, may amount to inhuman and degrading treatment. Temporary detention isolator in Samtredia consisted of 6 cells, out of which 3 functioned. Anti-sanitary reigned in the temporary detention isolator. The cells were humid and dirty. The windows were covered with the vented metal plate, therefore it was impossible to provide the ventilation and lighting of the cell. The plaster had fallen down from the walls. Rodents and scorpions were noted at the time of the monitoring. Toilet with poor sanitary-hygienic conditions was located at the end of the corridor. There was no shower room, walking courtyard and any means of heating in the temporary detention isolator.

According to the European Prison Rules, "[t]he 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."[566]

No sufficient lighting and ventilation was provided in the majority of temporary detention isolators; some of them had no window at all (Akhaltsikhe, Borjomi) or they were of such a small size that could not ensure access to natural light and ventilation. In some of the temporary detention isolators the windows were of a sufficient size, however the triple grates could not ensure the access to natural light and ventilation (Sighnaghi).

According to the same Rules, "[p]risoners shall have ready access to sanitary facilities that are hygienic and respect privacy"[567].

Toilets of the cells in temporary detention isolators were not partitioned. The Public Defender recommended the Ministry of Internal Affairs to ensure partitioning of toilets in all the temporary detention isolators; however, this recommendation has not been implemented yet.

Apart from some cells in temporary detention isolators in Marneuli, Ambrolauri, No.1 in Tbilisi and Batumi, in the cells of other temporary detention isolators the space for each of the detainees does not comply with the standard of 4 m^2. The Public Defender has recommended in its several Parliamentary Reports to have no less than 4 m^2. space envisaged for each of the detainees. The mentioned was also recommended by the CPT in its Report to the Georgian Government on the visit to Georgia carried out in 2010. As for the cells, where detained persons are kept alone, their space shall be no less than 7 m^2.[568]

"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".[569]

No bed linen was provided to detained persons/prisoners in any of the isolators. They were only provided with blankets and mattresses. Interviews with the administration made it clear that blankets, in the best case, were washed once a month. Respectively, there was a real risk of spreading various diseases.

[566] Rule 18.1
[567] Rule 19.3
[568] The Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2010, para. 117
[569] Rule 21

Despite the recommendation issued by the Public Defender, some of the temporary detention isolators still used wooden decks instead of beds. Such practice was used in temporary detention isolators in Akhalkalaki, Marneuli, Bolnisi, Gardabani, Tsalka, some of the cells in the temporary detention isolator No.2 in Tbilisi, temporary detention isolator in Baghdati, Kvemo Kartli Regional Temporary Detention Isolator.

The Public Defender has recommended several times that persons detained for over 24 hours shall have a right to a walk for at least an hour during a day. However, the majority of the temporary detention isolators had no walking courtyards. These were temporary detention isolators in Dusheti, Kazbegi, Tetritskaro, Tsalka, Marneuli, Sighnaghi, Sagarejo, Kaspi, Kutaisi, Zestaponi, Samtredia, Baghdati, Terjola, Ambrolauri, Lentekhi, Borjomi, Adigeni, Kobuleti, Lanchkhuti, Zugdidi, Poti, Khobi, Chkhorotsku, as well as Regional temporary detention isolators of Samtskhe-Javakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Samegrelo-Zemo Svaneti. The corridors were used as walking courtyards in some of the temporary detention isolators: No.1 in Tbilisi and Ozurgeti Regional Temporary Detention Isolator. Such practice was inadmissible. According to Order No.108 of the Minister of Internal Affairs "On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators" the right to a daily walk is given only to those persons who had been sentenced by the court to no less than 15 days of imprisonment.

The maintenance of freshness and personal hygiene is one of the important factors from the point of view of maintaining the dignity and health of prisoners. Therefore, all the prisoners shall have the possibility to use shower and maintain freshness. The monitoring has revealed that in those temporary detention isolators where shower rooms were arranged, the prisoners had an access to it once a week, however the temporary detention isolators where there was no shower room, access to shower still remained to be a problem: temporary detention isolators in Dusheti, Kazbegi, Samtredia, Baghdati, Lentekhi, Adigeni, Akhalkalaki, Lanchkhuti and Mestia.

The Public Defender had mentioned several times that the persons imposed administrative imprisonment shall have all the rights that sentenced persons had. Deriving from the mentioned, they shall not only have a right to a daily walk but they shall also have a possibility to meet their family members. These rights were not envisaged for administratively imprisoned persons by the Georgian legislation in force today. As the majority of the temporary detention isolators did not have the infrastructure appropriate to place the long-term administratively imprisoned persons the Public Defender has recommended the Government of Georgia to ensure the creation of special establishments for the persons imposed administrative imprisonment, taking into consideration the regional principle, which would have been adapted for the long-term placement of persons.

Standard food was provided to the detainees in all the temporary detention isolators – bread, tinned pate and dry package soup. The mentioned foodstuff was insufficient, that was particularly alarming taking into consideration the fact that a person may happen to stay in the temporary detention isolator for up to 90 days and may have no close persons who would provide a parcel with the additional food.

The temporary detention isolators No.1 and No.2 in Tbilisi were exceptions from this, as the persons placed therein were provided with the food from the canteen of the establishment, thus ensuring far more wholesome and various nutrition for a person deprived of the liberty.

CERTIFICATION OF DOCUMENTATION

During the monitoring, interviews with the representatives of administration of temporary detention isolators revealed the following problem: in some cases, the need for notarization of documents signed by a detainee emerges. As an example, we could bring the case when a minor child of a detainee goes abroad and parent's notarized consent is required.

Unlike the directors of the penitentiary establishments, the chiefs of temporary detention isolators have no authority granted by the Law to fulfill the functions of a notary – Article 43 of the Law on Notary defines the list of officials

authorized to certify the wills and authorizations which equals the notarized documents and the list does not include the chief of temporary detention isolator. Respectively, the detained person and his/her family have problems with the certification of documents.

The Public Defender considers that the respective changes into the Law of Georgia on Notary shall be introduced and the chiefs of temporary detention isolators shall be given the same authority that the directors of establishments of imprisonment or deprivation of liberty have. The mentioned change will be particularly important for the persons imposed administrative imprisonment.

Suggestion to the Parliament of Georgia: To ensure that the sub-paragraph with the respective content is added to paragraph 1 of Article 43 of the Law of Georgia on Notary in order to equal the certification of a document by the chief of the temporary detention isolator to the notarization.

Recommendation to the Government of Georgia: to ensure the creation of special establishments for the persons imposed administrative imprisonment, taking into consideration the regional principle, which would have been adapted for the long-term placement of persons.

Recommendations to the Minister of Internal Affairs of Georgia:

To introduce the respective changes in Order No.108 in order to ensure that:

- **the detainees/prisoners detained for more than 24 hours have access to walk in the fresh air at the place of specially arranged to this end; all the detainees/prisoners have regular access to shower;**
- **the living space of 4 m^2 is provided for each of the detainee in common cells, whereas the space of no less than 7 m^2 is provided in the cells envisaged for solitary placement.**

Recommendation to the Head of the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs of Georgia:

- **To ensure that the use of wooden boards is abolished in all the temporary detention isolators and the detainees are provided with individual beds;**
- **To ensure that heating is provided by means of central heating system in all the cells of temporary detention isolators, as well as to ensure the adequate access to natural as well as artificial lighting and ventilation;**
- **To close down those isolators, in which it is impossible to provide adequate conditions due to the specificities of the infrastructure;**
- **To ensure that toilets are partitioned in all the temporary detention isolators;**
- **To ensure that the detainees placed in temporary detention isolators are provided with wholesome food three times a day.**

Protection of Healthcare in Penitentiary System

HEALTHCARE ASPECTS OF THE PRISON OVERCROWDING

Population of the Penitentiary System of Georgia has been showing a trend of sharp increase judging from the data of the recent years. Despite the construction of new penitentiary establishments and the upgrading of the capacities of the existing infrastructure, number of prisoners and the existing capabilities are still disproportional. Overcrowding is certainly one of the evident reasons of healthcare related problems in a prison. Among these we shall first and foremost outline increase in transmittable diseases and the problem of mental health. In the overcrowded establishments there are no resources and means for dealing with medical problems in addition to the fact that the anyway overtly heavy workload of medical personnel does not allow to cope with the health needs of the patients any more. A clear example of this is the delay in transferring to medical institutions, use of less efficient or practically ineffective treatment means (based on the principle – to undertake the widest possible inclusion), exercise of illegal doctoral activity, when due to the lack of specialists, a doctor of other specialization has to undertake actions not falling within his/her professional profile, which he/she has no sufficient knowledge and experience of and etc.

In penitentiary system of Georgia, in line with the limits approved by the Minister of Corrections and Legal Assistance, the total capacity of penitentiary establishments is 24 280 (this figure does not include Establishment No.10 in Tbilisi, which was in practice closed in 2011 and there were no prisoners there since 18 March 2011, as well as Establishment No.13 in Khoni that was functioning only in the first half of 2011). At the time of monitoring the National Preventive Mechanism established that in the first half of 2011, in the 18 functioning penitentiary establishments of Georgia there were 24.261 inmates and in the second half of 2011, in the 17 functioning penitentiary establishments – 24.114 inmates. This practically corresponds with the edges of the limits established. The mentioned statistics broken down to the establishments is provided below in the list:

№	Name of the establishment	Limit (max. possible number) of prisoners allowed		Current situation	
		I half	II half	I half	II half
1	№1 Tbilisi	750	750	1074	1329
2	№2 Kutaisi	1840	1840	1451	1450
3	№3 Batumi	557	557	652	531
4	№4 Zugdidi	305	305	378	338
5	№5 Rustavi	1200	1200	1157	1174
6	№6 Rustavi	1400	1400	1194	1246
7	№7 Tbilisi	108	108	39	37
8	№8 Tbilisi	3672	3672	3505	3408
9	№9 Tbilisi	970	970	1044	1064

10	№10 Tbilisi	---	---	---	---
11	№11 Tbilisi	160	160	164	138
12	№12 Tbilisi	700	700	796	849
13	№13 Khoni	650	--	73	--
14	№14 Geguti	2500	2500	2693	2693
15	№15 Ksani	3300	3300	3271	3645
16	№16 Rustavi	2704	2704	2560	2515
17	№17 Rustavi	2744	2744	3168	2721
18	№18 Tbilisi	180	180	218	222
19	№19 Ksani	540	540	824	754
	Total:	24.280	23.630	24.261	24.114

As demonstrated in the table, despite the fact that during the monitoring the actual total number of inmates was not exceeding the top limit established for all the penitentiary establishments in Georgia, unfortunately, the problem of overcrowding exists in several establishments. The percentage of overcrowding fluctuates between 8-77%. It is particularly alarming that both medical establishments within the system work in the conditions of obvious overcrowding. This certainly is reflected upon the quality of the service delivered. The table below provides the list of overcrowded establishments, and the level of overcrowding is reflected therein:

I half of 2011

№	Name of the Establishment	Limit (max. possible number) of prisoners allowed	Current situation	Overcrowding	
				Number	%
1	№19 in Ksani	540	824	284	53 %
2	№1 in Tbilisi	750	1074	324	43 %
3	№4 in Zugdidi	305	378	73	24 %
4	№18 in Tbilisi	180	218	38	21 %
5	№3 in Batumi	557	652	95	17 %
6	№17 in Rustavi	2744	3168	424	15 %
7	№12 in Tbilisi	700	796	96	14 %
8	№9 in Tbilisi	970	1044	74	8 %
9	№14 in Geguti	2500	2693	193	8 %

II half of 2011

№	Name of the Establishment	Limit (max. possible number) of prisoners allowed	Current situation	Overcrowding	
				Number	%
1	№1 in Tbilisi	750	1329	579	77 %
2	№19 in Ksani	540	754	214	40 %
3	№18 in Tbilisi	180	222	42	23 %
4	№12 in Tbilisi	700	849	149	21 %
5	№4 in Zugdidi	305	338	33	11 %
6	№9 in Tbilisi	970	1064	94	10 %
7	№14 in Geguti	2500	2693	193	8 %

As seen from the list, the overcrowding has reached its maximum in Medical Establishment for Tubercular Convicts No.19 in Ksani. The next on the list is Establishment No.1 in Tbilisi, followed by Establishment No.18 in Tbilisi, Establishment No.4 in Zugdidi and etc. It shall also be mentioned herewith that the problem of overcrowding creates particular problems in those establishments where the existing infrastructure is outdated and in poor conditions. Establishments No,1 in Tbilisi, No.4 in Zugdidi, No.3 in Batumi, No.12 in Tbilisi and No.9 in Tbilisi shall be referred to in this regard. Juvenile Special Establishment No.11 happens to work on the merge of overcrowding.

MEDICAL PERSONNEL OF THE PENITENTIARY ESTABLISHMENTS

According to the information on the official web-site of the Ministry of Corrections and Legal Assistance of Georgia, "the number of medical personnel on spots corresponds with the norms envisaged by the Healthcare standards of the country". The staff of the Office of the Public Defender could not find any of the standards of the country or the normative act, regulating a number of medical personnel at the service provision spots. It shall be particularly underlined that no such document exists with regard to the penitentiary establishment. Deriving from this, it remains unclear what was contemplated by the Ministry of Corrections and Legal Assistance when disseminating the above-mentioned information.

During the monitoring in the first half and the second half of 2011, the Public Defender studied in detail the situation related with human resources in the penitentiary healthcare system, their types and distribution in the establishments. The existence of the human resources is one of the pre-conditions to have a variety of types of the medical service physically available and be provided to beneficiaries. In 2011 a number of doctors and nurses was slightly fluctuating; however was remaining relatively stable in comparison with the previous years.

On 8 August 2011, the Special Preventive Group of the Public Defender applied in writing (Letter No.756/03) to the Medical Department of the Minsitry of Corrections and Legal Assistance, and along with other issues requested to submit the full list of medical personnel, employed by the penitentiary system of Georgia, broken down in accordance with the establishments and indicating the specializations of the doctors (indicating the field in which the State license was issued to a doctor); There has been no reply received by the Office of the Public Defender. By the official letter (No.07-8504), received on June 6 2011, related to other issues, the Medical Department of the Ministry, referring to the above-mentioned request, informed the Office of the Public Defender that the additional reply to the requested information would be sent when the relevant information were gathered. Since then the Medical Department have not provided the promised information, thus violating the Organic Law of Georgia "on the Public Defender of Georgia".

As a result of the monitoring conducted by the National Preventive Mechanism in summer, 2011 it was revealed that there are in total 177 doctors, 16 dentists, 168 nurses, 19 persons with pharmaceutical education and 20 medical personnel of other profile employed in the penitentiary system. The monitoring conducted in the second half of 2011 provides the following data: the penitentiary system employs 171 doctors, 16 dentists, 173 nurses, 18 persons with pharmaceutical education, 8 paramedics and 13 medical personnel of other profile. This data indicated to the stability in the number of medical personnel in the system.

The table below shows the above-mentioned data broken down per establishments for I and II halves of 2011:

I half of 2011

№	Name of the Establishment	Number of Doctors	Number of Nurses	Number of Dentists	Number of Pharmacists	Other Personnel
1	№1 in Tbilisi	4	5	0.5*	1	0
2	№2 in Kutaisi	7	8	1	1	0
3	№3 in Batumi	5	4	1	1	0
4	№4 in Zugdidi	4	4	0.5	1	0
5	№5 in Rustavi	8	6	1	1	0

6	№6 in Rustavi	5	6	1	1	0
7	№7 in Tbilisi	2	2	0.5	0.5	0
8	№8 in Tbilisi	15	16	1	1	0
9	№9 in Tbilisi	4	6	1	1	0
10	№10 in Tbilisi	---	---	---	---	---
11	№11 in Tbilisi	3	4	1	1	0
12	№12 in Tbilisi	3	4	0.5	0.5	0
13	№13 in Khoni	5	4	0.5	1	0
14	№14 in Geguti	5	5	0.5	1	0
15	№15 in Ksani	8	7	0.5	1	0
16	№16 in Rustavi	8	7	1	1	0
17	№17 in Rustavi	8	11	2	1	0
18	№18 in Tbilisi	65	52	2	2	17
19	№19 in Ksani	18	17	0.5	2	3
	Total:	177	168	16	19	20

II half of 2011:

№	Name of the Establishment	Number of Doctors	Number of Nurses	Number of Dentists	Number of Pharmacists	Other Personnel
1	№1 in Tbilisi	5	5	0.5[568]	1	0
2	№2 in Kutaisi	10	9	1	1	0
3	№3 in Batumi	5	4	1	1	0
4	№4 in Zugdidi	4	4	1	1	0
5	№5 in Rustavi	8	8	1	1	0
6	№6 in Rustavi	5	7	1	1	0
7	№7 in Tbilisi	2	3	0.33[569]	0.5[570]	0
8	№8 in Tbilisi	15	17	1	1	0
9	№9 in Tbilisi	2	6	1	1	0
10	№10 in Tbilisi	---	---	---	---	---
11	№11 in Tbilisi	3	4	1	1	0
12	№12 in Tbilisi	3	4	0.5*	0.5**	0
13	№13 in Khoni	-	-	-	-	-
14	№14 in Geguti	8	7	1	1	0
15	№15 in Ksani	8	7	0.33***	1	0
16	№16 in Rustavi	7	7	1	1	0
17	№17 in Rustavi	7	10	2	1	0
18	№18 in Tbilisi	59	52	2	2	10
19	№19 in Ksani	20	19	0.33***	2	3
	Total:	171	173	16	18	13

The lists of 177 and 171 doctors (according to the biannual data) also include the chief doctors, however 11 of them are independent medical practitioners, and 7 chief doctors do not possess the state medical certificates in any of the currently recognized specialization. Therefore it may be stated that by the time of the monitoring in the first half of 2011, 170 doctors served 14.261 persons deprived of liberty. Respectively, for the first half of the year in the penitentiary system throughout Georgia, there are 142.7 patients per 1 doctor, almost the same number of patients

570 One dentist serves for the establishments N1 and N12 in Tbilisi

571 One dentist serves for Establishments No.7 in Tbilis, No.15 in Ksani and No.19 in Ksani for the convicts with Tubercular diseases.

572 One pharmaceutist serves for Establishments No.7 and No.12 in Tbilisi

(144.4) per 1 nurse. Despite this, the co-relation of doctors with patients on spots is clearly different and a certain disproportion is visible, quite widely fluctuating. The abovementioned co-relation is provided in the table below:

№	Name of the establishment	Number of Doctors		Number of Prisoners		Doctor/ patient co-relation	
	Year 2011	I half	II half	I half	II half	I half	II half
1	№1 in Tbilisi	4	5	1074	1329	268.5	265.8
2	№2 in Kutaisi	7	10	1451	1450	207.3	145
3	№3 in Batumi	5	5	652	531	130.4	106.2
4	№4 in Zugdidi	3	4	378	338	130.4	84.5
5	№5 in Rustavi	8	8	1157	1174	144.6	146.75
6	№6 in Rustavi	4	5	1194	1246	298.5	249.2
7	№7 in Tbilisi	1	2	39	37	39	18.5
8	№8 in Tbilisi	15	15	3505	3408	233.6	227.2
9	№9 in Tbilisi	3	2	1044	1064	348	532
10	№10 in Tbilisi	---	---	---	---	---	---
11	№11 in Tbilisi	3	3	164	138	54.6	46
12	№12 in Tbilisi	3	3	796	849	265.3	283
13	№13 in Khoni	4	-	73	-	18.25	--
14	№14 in Geguti	4	8	2693	2693	673.25	336.63
15	№15 in Ksani	8	8	3271	3645	408.8	455.63
16	№16 in Rustavi	7	7	2560	2515	365.7	359.29
17	№17 in Rustavi	8	7	3168	2721	396	388.71
18	№18 in Tbilisi	65	59	218	222	3.35	3.76
19	№19 in Ksani	18	20	824	754	45.7	37.7
Total in Georgia:		170	171	24.261	24.114	142.7	141.01

The specifics require to consider separately the co-relation of doctors with patients in the medical establishments of the penitentiary system and consider the specifics of other places of serving sentence separately. As shown in the table above, there is 1 doctor per 3.35-3.76 patients in the Medical Establishment No.18 for Convicted and Pre-trial Inmates (Central Prison Hospital). If we also take into consideration the fact that the Establishment N18 is clearly overcrowded going beyond the limit for that establishment (there were 218/222 persons hospitalized instead of 180 patients), in case of observing the set limit of patients, there will be 2,5 patients per 1 doctor in the establishment, that is not a natural indicator, requiring the further discussion and consideration. As for Medical Establishment for Tubercular Convicts No.19, 42 patients are counted per 1 doctor there. It shall be noted that this indicator was established during the monitoring, against the background of strident overcrowding. In the conditions of normal load of patients there will be 30 patients per 1 doctor in Establishment No.19.

As regards the functioning establishments, as provided in the table below, in the I half of 2011, the indicators in 5 establishments stay below the average rate of the country:

№13 in Khoni	18.25
№7 in Tbilisi	39
№11 in Tbilisi	54.6
№3 in Batumi	130.4
№4 in Zugdidi	130.4
	142.7
№5 in Rustavi	144.6
№2 in Kutaisi	207.3

№8 in Tbilisi	233.6
№12 in Tbilisi	265.3
№1 in Tbilisi	268.5
№6 in Rustavi	298.5
№9 in Tbilisi	348
№16 in Rustav	365.7
№17 in Rustavi	396
№15 in Ksani	408.8
№14 in Geguti	673.25

The indicator of the doctor-patient co-relation in 11 establishments though exceeds the average rate of the country. The table above shows the clear imbalance; in particular, the indicator fluctuates in between 18-673.

II half of 2011:

№7 in Tbilisi	18.5
№11 in Tbilisi	46
№4 in Zugdidi	84.5
№3 in Batumi	106.2
	142.7
№2 in Kutaisi	145
№5 in Rustavi	146.74
№8 in Tbilisi	227.2
№6 in Rustavi	249.2
№1 in Tbilisi	265.8
№12 in Tbilisi	283
№14 in Geguti	336.63
№16 in Rustavi	359.29
№17 in Rustavi	388.71
№15 in Ksani	455.63
№9 in Tbilisi	532

The same data for the II half of 2011 shows that the indicators in 4 establishments stay below the average rate of the country. The indicator of the doctor-patient co-relation in 11 establishments, like in the fist half of 2011, exceeds the average rate of the country. The table above shows the clear imbalance; in particular, the indicator fluctuates in between 18-532.

The analysis of the above data has high importance in terms of identification of the maximum workload of doctors and other medical personnel in different types of penitentiary establishments for the future. In the majority of the European countries, the average normal weekly workload of doctors is 38-40 hours distributed on 5 working days. The adoption of the European Working Time Directive regulated to a certain degree the norms related to the limits of workload in separate sectors. This was particularly essential for doctors. Deriving from the fact that prisons are "risk zone" for doctors, all the factors making the working environment and conditions of doctors more complex shall be taken into account from this perspective, taking into account the national trends. Respectively, the Ministry of Labor, Health and Social Protection of Georgia shall study and analyze the issue in details, with the involvement of all the interested parties and establish the national standard in line with the best European practice.

During the monitoring, the National Preventive Mechanism also got interested in the specializations of doctors working in the establishments. According to Order No.136/N of the Minister of Labor, Health and Social Protection of Georgia on "Defining the list of Profiles corresponding the Medical Profiles, Adjacent Doctoral Profiles and Sub-profiles", dated 18 April 2007, there are 21 active medical profiles currently in Georgia. We classified the profiles of doctors strictly following this very list (the listing does not encompass the structure of profiles of 65 doctors of Medical Establishment No.18 for Convicted and Pre-trial inmates Central Prison Hospital). The profiles of doctors employed in the penitentiary system (with the exception of Establishment No.18) as established by us for the first half of 2011 look as follows: 30 independent medical practitioners with the profile "Internal Medicine", 12 surgeons, 17 TB specialists, 10 doctors with the medical profile of therapy, 3 cardiologists, 2 urologists, 5 pediatricians, 12 doctors of "general profile", 6 neurologists, 3 family doctors, 1 gynecologist, 1 specialist of dermatology and venereal diseases, 1 pulmonologist, 3 specialist at the medical laboratory, 1 radiologist, 2 anesthesiologists, 1 oncologist, 2 specialists of infectious diseases.

Apart from this, it shall be mentioned that a certain part of the doctors of the penitentiary system have State license in other medical profiles and sub-profiles. Therefore, on spots one could find independent medical practitioners who have got a State license with the "oncology" and "otorhinolaryngology" on the list of medical profiles.

Since 2011, the process of re-training the local physicians for getting the license of family doctors has been going. Several doctors have already passed the license exams within the programme and got the state license proving the respective medical profile, whereas the second part of doctors should have finishes the mentioned re-training by the end of the year. The Public Defender has quite critical and essential observations with regard to this process, as described in details in the following chapter of this Report.

As demonstrated in the tables above, there are in total 16 dentists serving the entire penitentiary system. There is constantly 1 dentist per each of 8 establishments. There are 2 dentists in each of the following establishments: Establishment No.17 in Rustavi and Medical Establishment No.18 (Central Penitentiary Hospital), whereas there are a half-time dentists working in 8 establishments. Often a dentist serves in two or more establishments. In relation with the mentioned there are weekly work schedules for dentists that are notified in advance to the local medical units. The mobilization of patients seeking services of a dentist takes place according to these schedules. Unlike the preceding years, when a dental help in the great majority of cases was only limited to the extraction of a damaged tooth, the scope of dental help has been expanded. Along with surgical dentistry, the local dentists offer services of therapeutic dental aid as well, that became possible following the installation of dental equipment in all the establishments throughout the last 2 years. Apart from this, the component of orthopedic dentistry is also being progressively widened. This fact shall be welcome undoubtedly.

Dentistry, as a medical profile, has adjacent profiles and sub-profiles. At present, Order No.136/N of the Minister of Labor, Health and Social Protection of Georgia on "Defining the list of Profiles corresponding the Medical Profiles, Adjacent Doctoral Profiles and Sub-profiles", dated 18 April 2007, defines the following adjacent doctoral profiles of dentistry: maxillofacial surgery, orthodontics, orthopedic dentistry, therapeutic dentistry, surgical dentistry, children' therapeutic dentistry and children's surgical dentistry. During the monitoring it was revealed that the majority of the dentists working in the penitentiary establishments possess State license in "therapeutic dentistry" and also in "surgical dentistry," based on which it is possible to have both – therapeutic treatment of patient's oral and teeth diseases (e.g. filling) as well as surgical treatment (e.g. teeth extraction).

As regards the personnel with pharmaceutical profile, there are 18 persons with this profile in total employed in the penitentiary system. The description and features of their work will be considered in the respective chapter of the Report.

In addition to medical (doctor and dentist), nursing and pharmaceutical personnel, there are also other healthcare professionals employed in 2 establishments (medical establishments) of the penitentiary system of the Ministry of Corrections and Legal Assistance. In particular: there are also 2 persons of medical laboratory staff (without medical education) and 1 statistician in the Establishment for Tubercular Convicts (No.19). As for the Medical Establishment No.18, the number of technical and support personnel there is considerably higher. At present there are: 8 paramedics,

5 persons of medical laboratory staff (without medical education) and 1 person per each of the following positions: masseur, statistician, housekeeper, archivist and psychologist.

The analysis of the findings of the monitoring conducted in the first and the second halves of 2011 reveals that the number of the personnel was stable during the year. The stability was maintained with regard to the classification of medical profiles as well.

In addition to the medical personnel envisaged by the core staff listing, the groups of consultant doctors for eastern and western Georgia also serve Georgia's penitentiary system. Visits of the group are much more frequent in the penitentiary establishments of the eastern Georgia. The group members pay visits to the penitentiary establishments according to the preliminarily established schedule, as well as on the basis of *ad hoc* notifications received from the local medical units. A specialist visits an establishment once or twice a month at average. Sometimes the visits are more frequent. In some cases weekly visits were also noted, however this practice has no systematic character. It shall be noted that both – in Eastern, as well as Western Georgia, echoscopist and X-ray specialist pay the periodic visits. The situation has improved in Western Georgia in this regard. In particular, already since the end of spring 2011 there is a portable X-ray in the Establishment in Geguti, which is periodically transferred to Establishment No.2 in Kutaisi. A contract was signed with an echoscopy specialist and X-ray specialist, along with the Establishment in Batumi also serving the Establishment in Zugdidi. The latter establishment in the past was in the majority of cases devoid of such service.

The group of consultant doctors for Western Georgia is composed of 7 specialists, out of which 4 are core members, whereas the remaining 3 have only conducted several consultations. Doctor cardiologist, dermatologist and venereal diseases doctor, psychiatrist, ophthalmologist and neuropathologist visit the Establishment in Kutaisi on a monthly basis, systematically. Only visits of psychiatrist are undertaken on a stable basis in the Establishment in Batumi. In other cases there have been only separate consultations provided by cardiologist, skin and venereal diseases doctor and urologist during the first 6 months of 2011. The visits of a doctor psychiatrist in the Establishment in Zugdidi shall be distinguished as stable as well. Apart from a psychiatrist the visits have been paid in the Establishment by a neuropathologist and urologist in the first half of the year, and have in total consulted 7 patients.[573] As for the Establishment N 14 in Geguti, it has periodically and on a stable basis been visited by doctors of 5 profiles, consulting patients, like in the Establishment in Kutaisi (the same profiles and same doctors, as in Kutaisi). In addition to the mentioned, a surgeon (10 consultations in total) and a gynecologist (3 consultations in total) have paid additional visits in Kutaisi, Batumi and Zugdidi. The above-mentioned statistics in reflected in details in the table below:

I half of 2011

№	Western Georgia Doctors by specialization	Number of consultations delivered broken down per establishment					
		No.2 in Kutaisi	No.3 in Batumi	No.4 in Zugdidi	No.13 in Khoni	No.14 in Geguti	Total
1	Neuropathologist		0	5	22	300	701
2	Skin and venereal diseases	373	1	0	12	206	592
3	Ophtalmologist	273	0	0	7	280	560
4	Psychiatrist	259	97	63	6	92	517
5	Cardiologist	194	1	0	2	268	465
6	Urologist	0	2	2	0	0	4
7	Surgeon	0	3	1	0	0	4
8	Gynecologist	0	0	1	0	0	1
	Consultations Total:	1473	104	72	49	1146	
	Echoscopy specialist	288	197	40	21	352	898

[573] The same figure was documented in Zugdidi Establishment in the second half of 2011. The only difference was that the visit was undertaken by ophthalmologist, who provided consultations to one patient.

	X-ray lab analyst	281	55	35	25	321	717
	Examinations Total:	569	252	75	46	673	

II half of 2011:[574]

№	Western Georgia Doctors by specialization	Number of consultations delivered broken down per establishment					
		No.2 in Kutaisi	No.3 in Batumi	No.4 in Zugdidi	No.13 in Khoni	No.14 in Geguti[572]	Total
1	Neuropathologist		0	6	–	230	614
2	Skin and venereal diseases	350	0	0	–	238	588
3	Ophtalmologist	250	7	1	–	220	478
4	Psychiatrist	370	76	52	–	103	601
5	Cardiologist	193	0	0	–	172	365
6	Urologist	0	1	1	–	0	2
7	Surgeon	3	3	0	–	0	6
8	Gynecologist	2	0	0	–	–	2
9	Endocrynologist	6	0	0	–	–	6
10	Traumatologist	6	0	0	–	–	6
11	Otorhinolaryngologist	15	0	0	–	–	15
12	Angiologist	2	2	0	–	–	4
13	Infectionist	8	0	0	--	–	8
14	Proctologist	2	4	0	–	–	6
15	Reumatologist	1	0	0	–	–	1
16	Oncology Surgeon	1	0	0	–	–	1
	Consultations Total:	1587	106	59	–	963	
	Echoscopy specialist	254	176	31	–	221	682
	X-ray lab analyst	308	40	39	–	365	752
	Examinations Total:	562	216	70	–	586	

As demonstrated in the table above, the most fruitful work from the point of view of service delivered by the consultants is carried out in Establishment No.2 in Kutaisi. As for the consultants themselves, neurophatologist, doctor of skin and venereal diseases' profile, ophthalmologist, psychiatrist and cardiologist consult around 90-95 patients as month, as distributed over minimum 4 visits a month. This means that they consult around 23 patients during each visit. This indicator shows quite high daily workload of doctors.

The situation in this respect is much more organized in the penitentiary establishments in the Eastern Georgia and prisoners receive medical service from doctors with a larger variety of medical profile. The regularity of the visits of consultants in prisons is relatively more organized, having periodic and systematic character and covering wider spectrum of specializations of medical profession. In the Easter Georgia region the Monitoring Group recoded regular and systematic visits of doctors of 13 medical profiles in different establishments. There were visits of doctors of 25 medical profiles altogether in all establishments of Eastern Georgia. There were visits of doctors of narrow medical specialization also undertaken in Medical Establishment No.18. The following shall be mentioned out of these visits: Neuro TB specialist (Phthisiatrist) (9 consultations), vertebra TB specialist (2 consultations), TB specialist (18 consultations), thoracicist (21 consultations), rhythmologist (2 consultations), and parasitologist (3 consultations). The information fully reflecting the work of the consultant doctors in the Eastern Georgia is provided below in the respective table:

[574] The table does not include the data for Geguti Establishment (the data was not provided by the establishment) resulting in the total number.

№	Eastern Georgia Medical Profile	A number of consultations delivered broken down by establishments													
		№1	№5	№6	№7	№8	№9	№11	№12	№15	№16	№17	№18	№19	Total
1	Skin and venereal diseases	105	108	61	15	11	0	48	54	163	150	215	0	26	956
2	Urologist	72	52	59	6	25	1	19	44	88	98	67	0	36	567
3	Ophtalmologist	48	93	31	6	38	29	16	17	84	111	66	0	23	562
4	Cardiologist	66	110	33	5	0	4	21	35	99	126	0	0	59	558
5	Psychiatrist	17	74	78	2	62	0	9	6	97	32	60	0	78	515
6	Otorhino-laryngologist	61	36	9	14	26	0	42	30	62	19	71	0	44	414
7	Neuropathologist	24	2	45	3	37	10	0	33	19	101	78	0	11	363
8	Endocrinologist	9	100	6	1	16	8	4	3	26	25	19	0	0	217
9	Angiologist	0	81	5	0	9	2	0	21	5	5	0	61	2	191
10	Rheumatologist	7	40	0	0	14	1	2	10	16	0	16	17	0	123
11	Neurosurgeon	0	16	0	0	1	0	0	0	0	0	0	26	0	43
12	Infectionist	10	2	0	11	2	0	9	0	3	0	5	0	0	42
13	Maxillofacial surgeon	0	1	0	1	8	0	0	0	0	0	6	25	0	41
14	Hematologist	0	1	0	0	0	0	0	0	0	0	0	23	0	24
15	Oncologist	0	0	0	1	0	0	0	0	0	0	0	18	0	19
16	Alergologist	0	0	0	0	0	0	0	0	0	0	0	5	2	7
17	Hepatologist	0	2	0	0	0	0	0	0	0	0	0	0	0	2
18	Traumatologist	0	0	0	1	0	0	0	0	0	0	0	0	0	1
19	Narcologist	1	0	0	0	0	0	0	0	0	0	0	0	0	1
	Consultations Total:	420	718	327	66	249	55	170	253	662	667	603	175	281	
	Echoscopy specialist	102	199	106	5	86	25	8	52	245	302	316	1063	101	2610
	X-ray specialist	140	213	230	7	185	3	6	96	348	244	390	1961	1642	5465
	Examinations Total:	242	412	336	12	271	28	14	148	593	546	706	3024	1743	

For the II half of 2011:

№	Eastern Georgia Medical Profile	A number of consultations delivered broken down by establishments													
		№1	№5	№6	№7	№8	№9	№11	№12	№15	№16	№17	№18	№19	Total
1	Skin and venereal diseases	112	109	45	9	0	72	44	53	98	108	61	0	46	757
2	Urologist	44	46	39	7	23	19	10	22	98	99	40	0	38	485
3	Ophtalmologist	16	56	54	2	48	38	15	39	85	86	33	0	5	477
4	Cardiologist	35	115	0	5	0	36	6	39	127	46	0	0	80	489
5	Psychiatrist	17	55	143	1	76	17	16	45	54	24	59	0	194	701
6	Otorhino-laryngologist	39	12	41	7	21	37	28	45	95	60	50	0	45	480
7	Neuropathologist	30	1	72	4	67	33	0	18	0	55	77	2	47	406
8	Endocrinologist	6	77	4	0	29	22	0	0	25	30	4	0	0	197
9	Angiologist	18	28	0	1	3	15	0	9	16	0	0	30	5	125
10	Rheumatologist	2	28	4	0	0	7	4	6	25	0	4	3	0	83
11	Neurosurgeon	0	24	0	0	4	2	0	2	9	0	0	17	0	58
12	Infectionist	3	5	17	2	0	4	31	5	3	0	0	0	0	70
13	Maxillofacial surgeon	0	0	0	0	33	0	0	2	0	0	0	38	0	73
14	Hematologist	0	1	0	0	0	0	0	0	0	0	0	24	0	25
15	Oncologist	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16	Alergologist	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	Hepatologist	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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18	Traumatologist	0	0	0	1	0	0	0	0	0	0	0	0	0	1
19	Narcologist	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20	Otolaryngologist	0	2	0	0	0	0	0	0	0	0	0	3	0	5
21	TB specialist	0	8	0	0	0	0	2	0	0	0	0	34	0	44
22	Nephrologist	0	0	1	0	0	0	0	0	0	0	0	0	0	1
23	Thoracic surgery	0	0	0	0	0	0	0	0	0	0	0	25	0	25
	Consultations Total:	322	567	420	39	304	302	156	285	635	508	328	176	460	
	Echoscopy specialist	40	243	108	8	42	95	4	95	144	181	250	900	74	2184
	X-ray specialist	168	127	213	5	164	19	16	27	337	227	237	1808	1563	4911
	Examinations Total:	208	370	321	13	206	114	20	122	481	408	487	2708	1637	

As demonstrated in the table above, the maximum number of consultation was provided by a doctor with a medical profile in skin and venereal diseases (956/757 patients consulted). Consultations by urologist and ophthalmologist are frequent as well both in the first half and in the second half of 2011. As for the frequency of the visits by consultants, 10 specialist doctors visit establishments minimum 4 times a month (see: Table No.1-10), consulting at average 445 patients a month. A number of consultants are more than one in some fields (e.g. psychiatry); however, the current workload shall still be assessed as high for doctors. A psychiatrist shall be particularly distinguished in this respect, who presumably shall be devoting longer time to the examination and consultation of a patient than other doctors. The statistics provided does not differentiate the initial and repeated consultations provided by a psychiatrist. Therefore, the consideration of further details at this stage is impossible. The issue requires more in-depth study.

As shown in the statistics provided, the types of medical aid provided to the patients in the Eastern and Western Georgia, are not comparable. In particular, the services of 5 times more medical profile doctors are accessible in the Eastern Georgia region. Along with this, the visits of consultant doctors are more frequent and systematized therein. The Public Defender of Georgia considers that the equitable and proportional distribution of the existing resources will support the decrease of the violation of rights in the penitentiary healthcare system.

The medical personnel working in the establishments of the penitentiary system of Georgia are on duty at night and outside office hours according to the established schedule. The details related to this issue and the existing practices were described in the Public Defender's reports of the previous years. In particular, in some of the establishments, a service of a doctor is not accessible during night. Apart from this, as stated by the Chief Doctor of Establishment No.6 in Rustavi, the night shift for doctors was cancelled in that Establishment along with the commencement of the pilot programme of primary healthcare. Consequently they were instructed to call the emergency medical service in case of need. The specifics related with the duty shifts of doctors and nurses are provided in the table below for the I half and II half of 2011:

№	Name of the Establishment	Doctor on duty shift		Nurse of duty shift	
		I half	II half	I half	II half
1	Establishment №1	1	1	1	1
2	Establishment №2	1	1	2	2
3	Establishment №3	1	1	1	1
4	Establishment №4	1	1	1	1
5	Establishment №5	1	1	2	1
6	Establishment №6	0	0	1	1
7	Establishment №7	0	0	1	1
8	Establishment №8	1	1	1	1
9	Establishment №9	1	1	1	1
10	Establishment №11	1	1	1	1

11	Establishment №12	0	0	1	1
12	Establishment №13	1	–	1	–
13	Establishment №14	1	1	1	1
14	Establishment №15	1	1	1	1
15	Establishment №16	1	1	1	2
16	Establishment №17	1	1	2	2
17	Establishment №18	3	3	6	8
18	Establishment №19	1	1	2	2
	Total:	17	16	27	28

As clearly demonstrated in the table above, 17/16 doctors and 27/28 nurses stay in the establishments of the penitentiary system of Georgia at night and outside office hours.

Doctors are not on duty at night in Establishments No.6, No.7 and No.12.

Along with the issue of keeping duty by the medical personnel, the Monitoring Group got interested in the issue of participation in the continuous professional education and the system of continuous professional development, that ensure the permanent advancement of the qualification of independent medical professionals. In this respect, it shall be mentioned, as during the last year, that none of the doctors have participated in any of the continuous professional education/continuous professional development programs accredited by the Professional Development Council of the Ministry of Labour, Health and Social Protection. The situation with regard to other trainings in not uniform throughout Georgia. Several doctors/nurses of all the establishments have passed the trainings on mental health; some others have passed trainings on the HIV. It is regrettable that during interviewing a part of these doctors the Monitoring Group concluded that the training had not upgraded their knowledge in any way. First, it shall be mentioned that the majority of doctors could not recall what was the title of the training, what issues were discussed and what was its purpose or who had organized it. In relation to this issue, in the best case, the doctors were stating that the training was called: "Training in Psychiatry", "Training on Prevention of Suicide and Mental Disorders", "Training in Management of Mental Disorders", "Training in Psychiatry", "Torture Training", etc. Some of the doctors could recall the participation in the training only according to the place where it had been held. Such an approach to the upgrading the qualification, particularly from the side of the doctors of the penitentiary system, negatively influences the work of doctors and nurses and what is the most important – on the quality of the medical service. Apart from these two trainings, in some of the establishments we were told that their medical personnel had also participated in a training devoted to the specificities of infectious deseases (Establishment No.2), a training devoted to the organizational issues of the DOTS Program (doctors and nurses of Establishments No.19 and No.18). Putting a question of this type (whether or not have they or their staff participated in any type of professional trainings) turned out to be confusing for Chief Doctors of some of the establishments. Due to this, they were categorically refusing any participation of any of their staff in any of trainings anywhere.

The National Preventive Mechanism got interested into the issue related to the invitation of doctors from civilian healthcare system upon the choice of a patient to a penitentiary establishment. As it was identified, Chief Doctors have different instructions and practice in this respect. Chief Doctors of some of the establishments clarify that the mentioned issue is decided upon locally. Some mentioned that only Medical Department was entitle to make such decisions. In any case, a doctor must provide a copy of the State License on Independent Medical Activity proving independent medical activity and a copy of the ID. It shall be mentioned that the solution to the issue related to invitation of a doctor from outside, as a rule, is related to protracted procedures, often having direct influence on the quality of the medical service making it less efficient. In the first half of 2011, we were told categorically in Establishments No.1, No.3, No.4, No.7 of the penitentiary system that there was no need whatsoever of inviting a doctor from outside and this issue had never even been considered. In Establishments No.9, No.11, No.13 and No.14, such practice had existed in the past; however, no prisoner had asked for during the reporting period. In case of the written request, they shall act in line with the existing practice. As for other establishments, the invitation of a doctor from civilian healthcare sector is most often registered in Establishments No.2 in Kutaisi, No.12 in Tbilisi and No,14 in

Geguti. As stated by the local doctors, there were around 10 such cases in each of the establishments by the first half of 2011. During the monitoring undertaken in the second half of 2011, the Chief Doctors stated that in case of the prisoner's request, there were not any problems with inviting doctor from outside the establishment and that the prison administration has never refused to prisoners. In spite of such statements, the statistics of number of visits conducted by invited doctors was not available. According to the statements of prison doctors, this data was included into the data of total number of consultations. The Chief Doctor of Medical Establishment No.18 stated that the practice of inviting outside doctor was not rare in his establishment, though failed to provide any statistical data.

Throughout the recent years, Public Defender of Georgia has been carefully observing the issues related to monitoring, identification and eradication of identified shortcomings in the variety of sectors of the penitentiary healthcare system by the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs. The Special Preventive Group of the Public Defender has continuously addressed the Agency to study the issues related to delivering the medical aid to specific sentenced persons and follow-up within its scope of responsibility. The mentioned information is reflected in the Parliamentary and Special Reports of the Public Defender annually. In this regard, the Public Defender applied with a letter (N755/03) dated 8 August 2011, to the Medical Department of the Ministry of Corrections and Legal Assistance, requesting the information on the composition of the group tasked to monitor the quality of the medical aid, established within the Ministry of Corrections and Legal Assistance, as well as the reports reflecting the work of the Group and positive and negative trends in the system in this respect during 6 months of 2011. Office of Public Defender of Georgia has also requested information regarding the recommendations of the group. Apart from this, the Public Defender enquired further about the information, which had been disseminated via the website of the Ministry of Corrections and Legal Assistance, according to which "the respectively authorized services" of the Ministry of Labour, Health and Social Affairs of Georgia undertake the monitoring of the quality of the medical aid delivered. In this regard the Public Defender requested the Chief of the Medical Department to provide the information containing the details as to which services and based on which principle do undertake the mentioned activities (the planned and *ad hoc* visits, etc.), what type of recommendations were issued by the mentioned service with regard to the penitentiary healthcare system and what was the statistics and dynamics of the implementation of those recommendations; the Public Defender was also interested as to whether the Agency for State Regulation of Medical Activity raised any issue on professional liability of the doctors employed in the penitentiary system from 1 January to 1 July, 2011, what type of liability was imposed and what active measures were undertaken to eradicate the mentioned gap.

The reply (letter N07-8540) from the Medical Department of the Ministry of Corrections and Legal Assistance, dated 6 September 2011, notified us that the joint verification group composed of the representatives of the Inspectorate General and Medical Department was established according to Order No.73 (20 April 2011) of the Minister of Corrections and Legal Assistance. The group was composed of Nikoloz Megrelishvili, Giorgi Pruidze, Badri Balavadze, Revan Dapkviashvili, Shota Gelashvili and Givi Mikanadze. The verification group was tasked to enquire into the conditions related to the sanitary-hygienic conditions in establishments of the penitentiary system, the discipline related to keeping medical documents, the turn-over, use up and registration of medications and medical materials, nutrition of accused/convicted inmates and professional discipline of the medical personnel. From 26 April 2011 to 12 May 2011, the group studied the above-mentioned issues in all the establishments of the system. The verification established that "the quality of producing medical documentation in all penitentiary establishments has improved. The delivery, disbursement and registration of medications and other materials takes place strictly in line with regulations established by law. In some of the establishments, despite the fact that the prisoners undergo the respective examinations, receive the consultations of specialist doctors, as well as the adequate treatment, the doctors of establishments do not fully reflect the general conditions of patients in dynamics and the medical aid delivered to them in their medical records. There were some instances identified when a questionnaire on the examination of TB was incompletely filled-in by doctors. The chief doctors of medical units of establishments were advised on the deficiencies identified during the verification process and they were given time to improve them (the subsequent verification is planned for autumn). If there are no respective improvements during this period; the administrative measures established by law will be undertaken by the leadership of the Ministry." As stated in the reply, the "verification" carried out brought along practically insignificant results. The attention was devoted to the issues having the tenth-class issues, while the core problems stayed unsolved. It is also unclear how competent all the members of the group were to study medical issues,

what principles and methodology did they base their activities on or what type and what degree of access did they have to the documentation including the confidential information of patients.

As for the verifications undertaken by the Agency for State Regulation of Medical Activity, the Chief of the Medical Department has let us know that "the monitoring of medical aid in the penitentiary system is carried out by the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs. The representatives of the Agency, based on the applications of law enforcement agencies, the Public Defender and citizens study the legal documentation and findings of specialist doctors with respective qualification over the situation, determine the quality and scope of medical aid provided to remand/sentenced persons in the penitentiary system. In case of provision of inadequate medical aid, the Agency is authorized to take administrative measures envisaged by the legislation of Georgia against the medical personnel or instigate their legal liability." As demonstrated from the answer, the Medical Department does not fully understand the functions of the Agency for State Regulation of Medical Activity, neither is competent in the sector of professional liability of doctors (and not administrative and legal field), that is envisaged by the respective chapter of the Law of Georgia on Medical Activity. It shall be noted that the decision over the professional liability of a doctor is taken not by the Agency, but by the "Professional Development Council", which is convened periodically under the chairmanship of the Minister of Labour, Health and Social Affairs. Apart from this, it shall be mentioned that the consideration of an issue by the Agency, in a great majority of cases, is initiated on the very basis of the application of the Public Defender of Georgia. The Medical Department notified us that the Agency has studied 24 cases; in one of the cases a doctor of Establishment No.18 was given a written reprimand, whereas 10 cases were submitted to a variety of subject-matter associations, the answers being still pending. In the replies of the Agency for State Regulation of Medical Activity to the Public Defender situation seems to be more complex and prompting cogitation. According to the information provided, the issue of suspension of a State license for a doctor and giving a written reprimand was raised several times. Apart from this, the Agency for State Regulation periodically issues recommendations and information to the Medical Department requesting to submit the information on the follow-up to the cases identified. In such cases, the Department only limits its action to forwarding a letter to a subsequent addressee and taking the note for information. The Agency has never released any information regarding the follow-up measures undertaken by the Medical Department for the eradication of the existing gaps and deficiencies. The Medical Department has once again refrained from providing the mentioned information. This resulted in not providing us with a full answer.

We cite herewith one of the latest instances as a matter of example. This shall be considered as an exception in a way, as there was a follow-up to the information provided by the Agency.

In the letter (N02/39527) of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia received on 21 September, 2011, the Head of the Agency notified the Public Defender, that "Agency for State Regulation of Medical Activity studied the facts provided in your letter (11.07.2011 No.2697/03-4/0430-11), in particular, the issue related to the quality of medical aid provided to deceased sentenced A.D. in the medical unit of the Strict and Prison Regime Establishment No.2 of the Penitentiary Establishment of the Ministry of Corrections and Legal Assistance of Georgia. The results of the enquiry were (on 01.09.11) submitted by the Agency for State Regulation of Medical Activity to the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia. On 13.09.11, a letter (09.09.11. N07-8693) from David Asatiani, the Head of Medical Department of the Ministry of Corrections and Legal Assistance arrived, notifying on dismissal of medical personnel who participated in the provision of medical aid to by now diceased sentenced A.D. (doctors of the medical unit of Strict and Prison Regime Establishment No.2: N. Kurashvili, R. Beshkenadze and M. Nikolaishvili)". As regards the decision of the Professional Development Council to consider the issue of professional liability of the above-mentioned doctors, we shall be notified further on this matter.

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"FAMILY PHYSICIANS" IN THE ESTABLISHMENTS OF THE PENITENTIARY SYSTEM OF GEORGIA

Throughout the recent years, increasing attention has been devoted to the piloting of reform of the primary healthcare in the penitentiary system and subsequently widening this model to the entire system. The central component of this system is the shift to the scheme of "family medicine" and introduction and establishment of the competences of "family physician and nurse" in prison. To this end, the re-training of the doctors and nurses of the penitentiary system with the specializations of "family medicine" is being actively carried out since 2011. During the monitoring, the National Preventive Mechanism thoroughly studied the system of re-training of doctors and nurses and the current realities in this respect. Data for 2011 is the following:

№	Name of the Establishment	Number of specialists before re-training	Re-training was finalized		The re-training is ongoing		Comments
			Doctors	Nurses	Doctors	Nurses	
1	Establishment №1	0	0	1	1	0	
2	Establishment №2	1	2	4	1	0	1 doctor left
3	Establishment №3	1	1	0	0	0	
4	Establishment №4	1	0	0	0	0	
5	Establishment №5	0	2	2	0	0	
6	Establishment №6	0	3	5	0	0	1 nurse left
7	Establishment №7	0	1	2	0	0	
8	Establishment №8	1	6	4	0	0	2 nurses left
9	Establishment №9	0	0	2	0	0	
10	Establishment №11	0	1	1	0	0	
11	Establishment №12	0	1	1	0	0	
12	Establishment №13	–	–	–	0	0	
13	Establishment №14	1	1	0	0	0	
14	Establishment №15	1	2	1	0	0	
15	Establishment №16	1	3	3	0	0	
16	Establishment №17	0	1	1	0	0	
17	Establishment №18	1	0	0	0	0	Not required
18	Establishment №19	0	0	0	0	0	Not required
	Total:	8	24	9	2	0	

As demonstrated in the table above, before the commencement of the "process of re-training of the family physician" in the structures of the penitentiary healthcare system, there were only 8 independent medical professionals, working with a specialization of "family physician." A part of those also held the State license in other specialization (mainly – in the internal medicine). A specialist with the nursery specialization "family medicine" did not work in the system at all. The process of re-training was planned in two stages. At the first stage, first, the doctors of the pilot establishments (No.6 and No.8) were re-trained. On the following stage, doctors of other establishments were primarily re-trained. In parallel, the process of re-training started in the West Georgia as well. As revealed during the monitoring, 24 doctors have completed the process of re-training, passed the State license examinations and received a State license in the specialization "family medicine". In parallel, the re-training of 9 of nurses has completed and they work with the same specialization as well. According to the data of the second half of 2011, only 2 doctors were taking part in re-training process. The monitoring revealed that in some of the establishments the re-trained doctors and nurses did not work as far as they had left their jobs; along with that, new personnel were recruited, with the mentioned specialization; therefore, despite a short time-period the migration of the medical personnel is noticed.

As far as the re-training of family physicians and family nurses is a new trend for the penitentiary system, the monitoring group tried their best to meet all the medical personnel who had gone through the cycle of the mentioned re-training

and all the persons who possessed the information on this matter on spot, in order to get the information from them on the process and the future plans.

The re-trained doctors stated that they had attended the cycle of lectures lasting throughout a day. It shall be mentioned, that during the re-training process the doctors were not isolated from their offices, as they were on-duty in night shifts. The doctors maintained their salaries. A re-trained doctor mentioned that the course included the "short curatio courses" of therapy, infectious diseases and psychiatry, dealing "primary healthcare based on the prevention." The program commenced in November 2010 and lasted through May, 2011. They had to take 4 internal "examinations". Upon the completion of the full course they passed the State license examination and were granted the State license with the specialty "family physician". The re-trained doctors mention that the nurses were being re-trained on the same basis, however the details of the program for nurses was less known to them. The program for doctors also included 1 week-long module on psychiatry. As for the "practical part" of the program, it was conducted in the premises of Establishments No.8 in Gldani and No.6 in Rustavi, for 2 weeks each. Following the completion of the lecture course, for a certain time-period (during 4 weeks) they worked together with the supervisors of the programme in the penitentiary establishment with sentenced persons. The program supervisors were assessing them. According to an interviewed doctor, mainly they covered therapeutic diseases and considered up to 40 guidelines in force. The emphasis was made on the 5 basic medical problems: diabetes mellitus, hypertension, heart ischemic disease, gastro-esophageal reflex disease and bronchial asthma.

At the time of the monitoring visit in the first half of 2011, the Special Preventive Group interviewed a doctor in Establishment No.2 in Kutaisi who was undergoing the re-training process by that time; however, the doctor was in the office during the monitoring visit. According to this doctor, the re-training program was undergoing in polyclinic No.3 and the practical exercises were periodically held in Establishment No.2 in Kutaisi.

The 15 April 2004 Order No.80/M of the Minister of Labour, Health and Social Affairs of Georgia approved the list of the specializations acquired as a result of postgraduate professional training and adjacent nursing specializations. According to the mentioned list, the nurses were presumably granted a license with a specialization "nurse of general practice (community)".

According to the above data, 24 new doctors and 9 nurses general practice (community) joined the penitentiary medical system. Their absolute majority is currently employed in a variety of penitentiary system. The mentioned so-called "re-training process" is still ongoing and presumably the number of "re-trained" in this way and certified persons will increase further. The Public Defender considers that re-training of medical personnel and particularly of doctors using this rule and following this model endangers the healthcare system of the country. The problem is quite deep and complex.

To demonstrate the problems accompanying the introduction of the concepts of so-called "primary healthcare" and "family physician" into the penitentiary healthcare clearly and in detail, it is important to study the pre-conditions and reality around this issue and to make a short review. According to the Georgian legislation, the primary healthcare is defined as "the first touch of an individual and a family with healthcare system; continuous, comprehensive and coordinated medical service, primarily based on the family medicine system, accessible for each member of the society, which includes the measures of healthcare promotion, prevention of diseases, treatment and rehabilitation of widely spread diseases, including the taking care of health of mothers and children, family planning, palliative care, the provision of accessibility of necessary medications." Following the emphasizing the primary healthcare component in the civilian healthcare system of Georgia, that has been activated particularly since 2002, a new medical field of family medicine (family medicine – the medical discipline oriented on the primary healthcare, independent from other disciplines, with the different system of professional preparation, examination and clinical activity) and the medical specialization "family physician", which according to the legislation of the country is defined as "a specialist doctor, who is entitled according to the rule established by the legislation of Georgia to provide the primary multi-profile medical service to all persons of all ages of both sex." An additional Article 89[1] was introduced in the Law of Georgia "On Healthcare" particularly for the mentioned changes, according to which "the legal basis necessary for the development of primary healthcare system, including family medicine, and the rule of organizational-legal arrangement is established by the

Ministry of Labour, Health and Social Protection". Respectively, the country started slowly moving to the new model of the primary healthcare. It is natural, that very quickly, the issue of the preparation of the specialists of this field was put high on the agenda. This necessitated the definition of the framework of specializations and the formulation of the postgraduate education programs which would have been used to train the specialists of this field. All of this took place against the background of annulling the concept of the so-called "doctor-physician of general profile" and thousands of the freshman doctors holding the respective State license of this specialization again appeared in uncertain position. Several years after the entry into force of Article 89[1] of the Law of Georgia "on Healthcare", despite delay, the program of the respective postgraduate education (Residency) was approved nevertheless.

The 15 August 2007 Order No.239/M of the Minister of Labour, Health and Social Affairs of Georgia (on the approval of the Residency Programs) approved 5 Residency Programs according to paragraph 3 of Article 15 of the Law of Georgia "On Doctoral Activity". These programs included "family medicine". Following this point, certain perspective and elucidations emerged, as well as the basis appeared to have the new field integrated into the healthcare system of Georgia, with the purpose of solving, the respective healthcare needs. The components of the education program are comparable with the framework of the structured education program, the aim of which is a provision of comprehensive knowledge, competencies, communication skills and professional approaches to doctors. The general framework and the structure of the program reflects in detail the European definition of the general practice/family medicine (*WONCA Europe [The European Society of General Practice / Family Medicine]: The European Definition of General Practice/Family Medicine; Barcelona: WONCA, 2002*), as provided in the Educational Program prepared by the European Academy of Teachers in General Practice (*EURACT [European Academy of Teachers in General Practice] Education Agenda; EURACT, Leuven 2005*). In particular, the educational program of the EURACT describes the main competencies that are considered necessary for the general practice in Europe. The curriculum is composed so that it includes all the main issues and diseases as envisaged by the above-mentioned document, showing the knowledge, skills and approaches that will enable a practicing family physician to demonstrate the competencies of the family physician in a specific (for a country) context. The most important is the fact that the preparatory program for "family physician" **includes 3 years (36 months) of rigorous preparation and is composed of three main stages – (a) introductory course in family medicine (6 months), (b) rotations in hospitals (18 months) and specialized course in family medicine (12 months).** The above-mentioned 3-years course of the Residency shall enable the Residency graduate to step-by-step acquire the knowledge and skills as described in the description of the specialization "family medicine", that constitutes the professional competence of a family doctor. The very content of the program consists of 115 printed pages. The implementation of the program shall be taking place in the university clinics and the medical institutions that had been accredited in line with the rule established by the legislation (*according to the respective Order of the Minister of Labour, Health and Social Protection of Georgia "On the participation in Alternative Postgraduate Education of Residency (professional preparation), its organization and the rule of assessment and on the accreditation criteria and the rule of accreditation of the medical institutions where postgraduate educational (professional preparation) course may be undertaken"*).

One of the key stages of the program is "the preparation on the second stage", which, as it has been mentioned, includes 18 months and the general part of which (15 month) is devoted to obligatory modules, whereas the remaining 3 months are devoted to elective modules. The person seeking the specialization shall cover the following from the obligatory modules (15 months in total):

a) Internal medicine – 4 months;

b) Urgent medicine and trauma – 3 months;

c) Child health – 3 months;

d) Women health and sexually transmittable diseases – 3 months;

e) Mental health – 2 months.

As for the elective modules, the teaching continues for 3 months in total and includes:

a) Otorhinolaryngology diseases (4 weeks);

b) Dermatology (4 weeks);

c) Ophthalmology (4 weeks);

d) Neurology (4 weeks);

e) Orthopedics (4 weeks);

f) Oncology (4 weeks);

g) Surgery (4 weeks).

As it is clear from the above-mentioned, the specialty candidate shall cover quite a voluminous and complex material, from the theoretical as well as practical perspectives. Three years duration is the minimum period established to this end as a standard in Georgia. The most complex component in the process of preparation is the development of practical skills, lacking which there is no point of having a family physician working in any way. The Program includes the list of the minimum treatment and diagnostics manipulations that a family physician shall be able to undertake independently:

a) General methods of physicial examination according to the systems of organs (checkup, palpacia, percussion, ausculation);

b) The maintenance of the main vital functions and cardio-pulmonic reanimation (in adults, children, infants and newborns);

c) The electrocardiogram (ECG) recording and interpretation;

d) Management and defibrillation of fatal arrhythmias;

e) Primary hygienic treatment of a newborn;

f) Microsurgical manipulations: primary treatment of injuries, placement and removal of surgical suture, infiltration anesthesia (open and closed circuit), dissection and opening of abscesses, whitlows, phlegmons, removal of ingrown nail, inoculation of soft tissue surface swelling, swathing, etc.;

g) Treatment of scorches and infected injuries;

h) Removal of extraneous floaters;

i) Injections: intradermal, subcutaneous, intramuscular, intravenous; intravenous infusion;

j) The assessment/examination of sight organ: checkup, assertion of the degree of a clear vision, ophtalmoscopy, fundoscopic examination;

k) Otoscopy, removal of sulfur corks with the water cannon;

l) rhinoscopy, pharyngoscopy, indirect laryngoscopy;

m) bimanual vaginal and urethrovaginal examination, use of vaginal speculum for inspection of the vaginal cavity;

n) external obsestric examination, the assessment of heartbeat of fetus;

o) The examination of how placenta is situated;

p) The evaluation of pregnant women by means of functional methods of diagnostics;

q) management of a delivery per vaginam;

r) bladder catheterization;

s) rectal manual examination and manual examination of testis;

t) correction of wrenches;

u) Immobilisation in cases of fracture of bones of limbs and vertebral fractures;

v) Smear tests for the bacteoriological and cytological examination;

w) Paracentesis, pleura function, transformation of tension pneumothorax to open pneumothorax.

The above listed is the description of specialties, and as it is defined by the Law of Georgia on Healthcare, this is a listed of the topics and skills, the comprehension of which is mandatory for a doctor with a right to independent medical activity in any of the medical specialties.

As it is shown, the program is quite complex and comprehensive. Nevertheless, the Ministry of Corrections and Legal Assistance still impelemnted the process of re-training of doctors and has let the so-called "specialty candidates" to go through the state license examination.

The study of the sector has revealed that the re-training of the doctors of the penitentiary healthcare system within "family medicine" program does not correspond to the standard existing in the country (the approved Program on the family medicine postgraduate medical education program). Instead of 3 years duration, doctors are re-trained in 7 months. Doctors do not cover all the main modules of the curriculum during the re-training. Apart from this, the most important component such as acquisition of practical skills is practically ignored in the process of "re-training". It shall be mentioned that some of the re-trained doctors and nurses have already left the penitentiary system. This number may increase in the future. Despite this, they have a State license of family physician. Such doctors may be employed in the future in any center of family medicine or any other respective institution, whereas their qualifications do not correspond to the recognized and established framework program in the country. Due to these circumstances, such doctors may pose a real threat not only to patients in the penitentiary system, but in general to the health and life of the population of Georgia at large.

An independent medical activity is a professional activity of a person with a higher medical education holding a State license proving a right to independent medical activity, for the results of which he/she is responsible in line with the rule established by the legislation of Georgia; the Law of Georgia on Healthcare, and in particular its Article 23 provides as follows: "the purpose of granting a State license is **the protection of the population of the country at large from the activities of unskilled medical personnel**" and upon the issuing a certificate a state is guaranteeing that a specialist possessing it is capable to perform an independent medical activity in line with the standards existing in the country. In this specific case the main principle envisaged by law is strictly violated, due to which the certification of doctors was introduced. Apart from this, Article 13 of the same Law clearly provides that "the provision of medical service to a person in the establishment of imprisonment or deprivation of liberty … is undertaken in accordance with the rules envisaged by this law". Deriving from this, the population of penitentiary establishments is already under the risk of provision of low quality medical service.

"Receiving" qualification of a family physician in such a manner does not correspond to the Law of Georgia on Doctoral Activity either. The very first Article of the Law mentions that "the purpose of the Law is to ensure the respective professional education and practical preparation of a subject of independent medical activity, the establishment of the state respective oversight over his/her professional activity, protection of his/her rights, as well as **provision of high quality medical service to the population of Georgia by means of establishment of medical standards and**

ethical norms as recognized in the country." According to the Law, one of the basis for the issuing a State license of a specialist doctor in Georgia is the undertaking of a postgraduate education (professional preparation) course (Residency or an alternative postgraduate education to Residency (professional preparation)) in the respective medical specialty and the description of the work undertaken by a candidate of the State license in the respective medical specialty during the last 2 years. The doctors "re-trained" in the penitentiary system could not satisfy any of the conditions during 7 months even theoretically. The admission of doctors re-trained in such a way to the State license examination represented the flagrant violation of Article 28 of the Law of Georgia on Medical Activity, according to which "to seek the State license a person who (...) has undertaken a course in the postgraduate education (professional preparation) in the respective medical specialty shall be admitted to an examination." The legislation of Georgia recognizes only 2 possible forms of postgraduate education. These are: Residency and the alternative postgraduate education to Residency (professional preparation). The alternative postgraduate education to Residency (professional preparation) covers all the modules of the Residency program without strictly defining the duration for each of the modules and the program altogether. Along with that, the maximum possible summed-up duration for the alternative postgraduate education to Residency (professional preparation) shall not be less than the duration of the Residency program in the respective specialty and shall not be twice as long as the latter one. Along with this, the course of postgraduate education (professional preparation) may only be undertaken in the medical and/or teaching institutions accredited according to the rule established by the Ministry. The accreditation of the medical and/or teaching institutions for the acquisition of a right to participation in the postgraduate education (professional preparation) is the competence of the Professional Development Council. Medical and/or teaching institutions may get an accreditation within the scope of one or several modules of separate medical specialty (specialties). It fact, Establishments No.8 in Tbilisi and No.6 in Rustavi are not educational institutions accredited by the Ministry of Labour, Health and Social Affairs. Respectively, it is doubtful that even 2-weeks long practical activity period in those institutions could correspond the educational program or satisfy the quality assurance standards even with any other criteria.

In addition to this, the changes in the normative acts, that shall be assessed as an attempt to "protect and legalize" particularly this illegal process, shall be mentioned. In particular, according to the legislation of Georgia, an independent medical practitioner holding a license in any medical specialty (specialties) has a right to get a State license in other medical specialty (specialties) as well. According to the Law, if an independent medical professional chooses a new medical specialty which is not adjacent to the one he/she already holds a State license in, the independent medical professional shall undergo the established postgraduate education (professional preparation) course in the respective medical specialty to acquire a new State license after passing the State license examination. If a new medical specialty chosen by an independent medical professional is adjacent to the specialty he/she already holds a State license of, the independent medical professional shall undergo a part of the established postgraduate education (professional preparation) course in the respective medical specialty. Its volume and duration is defined along with the Professional Associations of Doctors, by the Professional Development Council. Deriving from this, the analysis of the postgraduate education program of the "family physician" provides a ground to conclude that the family medicine may be considered as adjacent to the specialty "internal medicine". As for the specialties of the doctors in the penitentiary system, in the majority of cases it was "surgery" and not "internal medicine". Due to this fact, a change was introduced into Order No.136/M of the Minister of Labour, Health and Social Protection on "Defining the list of Profiles corresponding the Medical Profiles, Adjacent Doctoral Profiles and Sub profiles", dated 18 April 2007, with the 20 April 2011 Order No.01-17/M of the Minister of Labour, Health and Social Protection. In particular, according to paragraph 3 of the Order "medical specialty "family medicine" shall be defined as an adjacent specialty to the specialties established by the respective List of Medical Specialties, Adjacent Medical Specialties and Subspecialties (Attachment No.1), **with the exception of the following specialties: psychotherapy, psychiatry (with the respective adjacent specialties), children psychotherapy, lab medicine, pathologic anatomy-clinical pathology, clinical medicine, medical radiology (with the respective adjacent specialties), medical rehabilitation and sports medicine, clinical pharmacology, physical medicine and balneology, medical genetics, homeopathy.** Medical specialties, the adjacent to which is "family medicine", on their turn are not adjacent medical specialties to the family medicine and the preparation of the persons with the State license in "family medicine" shall be undertaken by undergoing the postgraduate education (professional preparation)/residential program". The mentioned change practically means that the "family medicine" became an adjacent of such specialties as surgery, cardio surgery, orthopedics-traumatology,

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neurosurgery, otorhinolaryngology, ophthalmology and others. This opportunity is certainly excluded by the Law of Georgia on the Doctoral Activities, according to which the adjacent specialties are defined as "doctoral specialties within one medical sector the educational program and the nature of the professional activities of which are to a degree matching each other." No doubt, it shall not be disputed that the educational programs of the "family physician" and the specialties listed above (surgery, cardio-surgery, orthopedics-traumatology, neurosurgery, otorhinolaryngology, ophthalmology and so on) and the nature of the professional activities not only do not match each other, but even totally differ. Thus, we may conclude that the changes introduced by Order No.01-17/M of the Minister of Labour, Health and Social Protection dated 20 April 2011, do potentially include risks and will negatively be reflected on the quality of the medical service delivered to patients.

PROBLEM OF TUBERCULOSIS IN THE PENITENTIARY SYSTEM

The problem of tuberculosis is particularly acute and problematic not only for the penitentiary system of Georgia, but for the penitentiary systems of the Eastern European states. The situation with the tuberculosis epidemiology has escalated in the region since 1990. The fight against tuberculosis in the penitentiary system is accompanied with a number of difficulties and specifics that are not intrinsic to the civilian sector. First of all it shall be mentioned that the strains of tuberculosis infection that prevail in the closed establishments, more often are resistant to ordinary anti-tuberculosis medications. The spread of tuberculosis is often 10-100 times higher than the same indicator in the same country in general. Apart from this, tuberculosis is often accompanied with virus hepatitis and Acquired Immune Deficiency Syndrome (AIDS) and emerges as co-infection. The factors contributing to spread of tuberculosis in prisons and considerably hampering the fight against this shall be mentioned as follows: the overcrowding of establishments, improper food ration, adverse impacts of aeration and ventilation system, and other factors of environment, insufficient sun light and air circulation. Apart from this the strategy of fight against tuberculosis in closed establishments is considered to be of the second-class importance as compared with the interests of regime and security of the establishment and this is why the patients infected with tuberculosis or patients at the treatment stage are often transferred to the place which is not suitable for the standards of disease management. Apart from the fact such approach negatively influences the health of the infected person, the latter poses a real threat to the health of others as well, due to which the mentioned shall be considered as one of the most acute problems of the public health.

Tuberculosis plays quite critical role in terms of the indicators of sickness and mortality rate among the prison population during the last several years. One of the main factors of death of prisoners during the recent years is tuberculosis, in particular – it's too progressed forms. Out of the 142 persons deceased in the penitentiary system of Georgia in 2010 49.3%, i.e. each of the second diseased prisoners, were infected with tuberculosis. Despite the anti-tuberculosis measures and the range of attempts undertaken in the system, the problem is becoming even more complex. Out of the 140 prisoners diseased in 2011, 31.5% had tuberculosis.

As for the problem of spread of tuberculosis in the penitentiary system, it shall be noted that there were 1651 new cases of tuberculosis revealed in 2011, 924 cases - in the first half of 2011 and 727 cases – in the second half of 2011. This on its turn is quite a high indicator.

The basic statistical details of the spread, diagnostics, treatment and management of tubercular infection is provided in the table below, reflecting the situation as of the first half of 2011 and the second half of 2011 respectively:

№	Name of the Establishment	Infrastructure for treatment of TB patients		Number of examinations	Screening	Analysis of sputum	Newly identified	Multi-resistance	Number of newly involved in the treatment course		N19 establishment transfer
		Cells	Places						DOTS	DOTS+	
1	№1 Tbilisi	4	80	772	463	420	43	0	43	0	27
2	№2 Kutaisi	3	11	1327	1327	275	42	0	37	0	47
3	№3 Batumi	1	4	190	698	196	9	0	9	0	12
4	№4 Zugdidi	1	8	101	653	54	5	1	4	1	7
5	№5 Rustavi	3	12	313	10	78	2	4	1	4	0
6	№6 Rustavi	4	60	259	673	115	34	0	34	0	17
7	№7 Tbilisi	0	0	1	0	1	0	0	1	0	0
8	№8 Tbilisi	0	0	198	741	170	17	0	25	0	37
9	№9 Tbilisi	2	10	48	641	1	0	0	0	0	0
10	№11 Tbilisi	0	0	239	239	23	0	0	0	0	0
11	№12 Tbilisi	0	0	0	1845	145	5	0	2	0	5
12	№13 Khoni	1	4	11	2	11	2	0	0	0	2
13	№14 Geguti	2	12	399	559	355	26	0	0	0	147
14	№15 Ksani	0	0	1164	6001	70	108	0	0	0	108
15	№16 Rustavi	0	0	593	613	671	58	2	103	2	98
16	№17 Rustavi	2	70	3864	338	400	130	0	29	0	150
17	№18 Tbilisi	10	40	1097	0	1097	160	12	160	12	170
18	№19 Ksani	-	540	486	-	6440	283	94	374	94	-
	Total:	33	851	11062	14803	10522	924	113	822	113	827

II half of 2011:

№	Name of the Establishment	Infrastructure for treatment of TB patients		Number of examinations	Screening	Analysis of sputum	Newly identified	Multi-resistance	Number of newly involved in the treatment course		N19 establishment transfer
		Cells	Places						DOTS	DOTS+	
1	№1 Tbilisi	4	80	3538	3004	534	30	0	40	0	19
2	№2 Kutaisi	3	11	3360	3360	557	54	0	54	0	51
3	№3 Batumi	1	4	193	1410	193	5	0	5	0	3
4	№4 Zugdidi	1	10	250	1047	196	5	0	5	0	6
5	№5 Rustavi	3	18	1555	1030	244	5	2	3	1	0
6	№6 Rustavi	4	60	561	2282	189	13	0	21	0	7
7	№7 Tbilisi	0	0	1	1	1	0	0	0	0	0
8	№8 Tbilisi	6	36	137	4127	466	16	0	29	4	31
9	№9 Tbilisi	3	12	678	2004	89	6	0	3	2	0
10	№11 Tbilisi	0	0	340	340	22	0	0	0	0	0
11	№12 Tbilisi	0	0	666	1247	411	7	0	6	0	7
12	№13 Khoni	–	–	–	–	–	–	–	–	–	–
13	№14 Geguti	2	12	1059	4677	1059	91	0	0	0	140
14	№15 Ksani	1	4	1048	3408	1048	78	2	0	0	78
15	№16 Rustavi	25	150	2054	3572	1793	48	-	47	0	104
16	№17 Rustavi	2	70	3132	2708	1438	71	0	35	23	100

2011

17	№18 Tbilisi	10	40	989	0	989	107	-	107	14	118
18	№19 Ksani	-	540	430	98	8943	191	-	292	115	-
	Total:	65	1047	19991	34315	18172	727	2[573]	647	159	664

As it is demonstrated from the table, there is currently no specific infrastructure for the treatment of tubercular patients in any the establishments of the penitentiary system. It has a formal character in some of the establishments. In the majority of the establishments, tubercular prisoners are transferred to one of the cells in order to isolate them. A special section in the medical unit specifically allocated to those diseased with tuberculosis exists in only a part of the establishments (e.g. Establishment No.2 in Kutaisi, Women Establishment No.5 in Rustavi). As for the Establishment No.19, which is the Medical Establishment for Tubercular Convicts, the patients are placed in 3 buildings. The total limit of occupancy for this establishment is 540. According to the data of 31 December 2011, there were 754 inmates placed in the establishment.

In Medical Establishment No.18, the tubercular patients are placed in the infectious diseases division which has 40 places. Even though all the 40 beds are certainly not for tubercular patients, the majority of patients here is diseased with tuberculosis. The next most frequent disease because of which the patients are placed in the division is viral hepatitis.

The division for tubercular patients is isolated from the medical unit in Women Establishment No.5 in Rustavi. This plays quite a positive role in the treatment and care of patients. The similar approach is employed in Establishment No.2 in Kutaisi as well. However, due to high number of diseased they are also placed in other cells. We shall mention herewith as well that the Establishment, due to its regime (strict) may still not be considered the best place to treat tuberculosis and manage infection. The tubercular prisoners in other establishments are placed in ordinary prison cells. In some of the establishments, there are dozens of prisoners placed in one of such cells. The prisoners are placed in the cells in accordance with the form of the disease (MGB-/MGB+) they have. The prisoners, who had returned from Medical Establishment No19 for Tubercular Convicts, completing the second phase of their treatment at the main places of serving their sentence, are placed in such infrastructure in some of the establishments (e.g. No.1 in Tbilisi, No.2 in Kutaisi, No.16 in Rustavi, No.17 in Rustavi). As stated by the Chief Doctor of Establishment No.15 in Ksani, they also plan the introduction of the similar arrangement as well. To recognize the occurrence of tuberculosis in a better manner the screening is constantly carried out in the establishments. The respective checklist that is filled-in upon the admission of each of the new prisoner is introduced to this end.

On 8 August, 2011, before the commencement of the monitoring, the Special Preventive Group of the Public Defender of Georgia applied in writing (N759-03) to the National Center for Tuberculosis and Lung Diseases requesting the information about the remand and sentenced prisoners who had been undergoing the treatment course in that institution in the first half of 2011. Additionally, the Office of the Public Defender of Georgia reqested information on the list of the doctors sent to the penitentiary establishments within the framework of the Strategy of Fight against Tuberculosis; what were the types and volume of the assistance provided by these persons to the penitentiary system and what were exactly the aspects of the mentioned cooperation. According to the reply letter (N1851/01-17) from the National Center on Tuberculosis and Lung Disease received on 18 August, 2011 there were 21 patients transferred to the inpatient treatment division from the penitentiary system in the reporting period of 2011. Out of this total number, 11 patients passed away, the surgical treatment was provided in 4 cases and the condition improved. In one case the positive dynamics was achieved as a result of conservative treatment, the conditions staid unchanged in 4 cases, whereas in one more case the condition initially improved, later on deteriorated resulting in acute abdomen and septicemia. The patient was still undergoing the treatment by the time when the reply letter was sent. In addition to this, we were notified with the letter that the Ministry of Corrections and Legal Assistance of Georgia has a labour contracts with three leading specialists of the Center (3 doctors), as consultants and their responsibilities include, in case of such need, consulting the remand and sentenced persons placed in the medical establishment of the penitentiary system.

[575] This figure does not include a data for Medical Establishments.

On 28 March 2011, the Memorandum of Understanding was concluded between the Ministry of Corrections and Legal Assistance, Ministry of Labour, Health and Social Affairs and the JSC "The National Center of Tuberculosis and Lung Diseases". According to the Memorandum, the specially trained nurses carry out routine screening for early identification of cases of tuberculosis within the program of TB control in the establishments of imprisonment and deprivation of liberty. In line with the Memorandum, the Ministry of Corrections and Legal Assistance of Georgia undertakes an obligation to ensure the construction of a new medical establishment for tubercular convicts before 2013, observing the engineering and administrative measures for the control of infection. The Ministry of Labour, Health and Social Protection of Georgia shall ensure the additional budgetary allocations for the State Program on the TB Control for the system of imprisonment and deprivation of liberty, within the program of TB control, in order to fully carry out the screening. The National Center of Tuberculosis and Lung Disease, according to the Memorandum, undertakes the obligation to ensure the full implementation of screening and the respective diagnostic examinations in the penitentiary establishments for early identification of tuberculosis, within the framework of the respective additional component of the State Program of TB control. In around a month after the conclusion of the Memorandum the nurses respectively trained in the field of screening and control of tuberculosis were seconded to the penitentiary establishments. The National Preventive Mechanism examined the main aspects of the mentioned personnel on spot. Their number and distribution according to the establishments as of the second half of 2011 is provided in the list below:

№	Name of the establishment	Number of nurses seconded	Note
1	Establishment №1	2	Since May
2	Establishment №2	2	Since 10 May
3	Establishment №3	1	
4	Establishment №4	1	Since April
5	Establishment №5	1	Since June
6	Establishment №6	2	
7	Establishment №7	0	Not seconded
8	Establishment №8	4	Since June
9	Establishment №9	1	
10	Establishment №11	1	
11	Establishment №12	1	Since May
12	Establishment №13	–	Not seconded
13	Establishment №14	2	Since June
14	Establishment №15	2	
15	Establishment №16	2	Since June
16	Establishment №17	2	Since May
17	Establishment №18	0	Not seconded
18	Establishment №19	0	Not seconded
	Total:	24	

For example, nurses in Women Establishment No.5 collect sputum, carry out tubercular screening. As for the treatment, this is the scope of responsibility of the local medical unit and the nurses do not interfere in that. The main function of the nurses working on the treatment of tuberculosis in Establishment No.6 in Rustavi is screening as well. According to the local Chief Doctor, one nurse stays constantly in the quarantine of Establishment No.6, where the main function of the nurse is the screening of each of the newly admitted prisoner. The Chief Doctor of Establishment No.8 in Tbilisi mentioned that the appointment of nurses for the fight against tuberculosis increased the statistics of identification of tubercular infection within the newly admitted prisoners. It was mentioned in Establishment No.1 that nurses conduct screening, collect the material for bacteriological examination, and this is undertaken with regard to each of the newly admitted prisoner. Periodically massive screening is also conducted. Taking all the mentioned into account, at the initial stage of the work of nurses there was an increase in identification of cases of tuberculosis, whereas later on the indicator of identification got stabilized. The treatment of patients is not the responsibility of nurses. This issue falls within the

scope of responsibility of the local medical unit. It was stated in Special Establishment No.11 for Juveniles that the massive screening had been taking place in the past as well. Therefore the identification rate remained the same as it was before – 150 persons were covered. As a result of the mentioned several suspicious cases were identified, however the further examination did not prove the cases of tuberculosis within juveniles. It was stated in Establishment No.16 that all the prisoners transferred to this Establishment, with the exception of those transferred from Establishment No.18 and Establishment No.19 went through the mandatory screening. The Chief Doctor of Establishment No.12 in Tbilisi mentioned that following the appointment of the nurses dealing with tuberculosis a massive screening was conducted. The screening and diagnostics of each of the newly admitted prisoners is also conducted without any difficulties. Therefore, taking into consideration the general trends and the outcomes, the introduction of the nurses dealing with tuberculosis is welcome by the local medical units of the penitentiary establishments. As a result of work of these nurses the workload and already overloaded schedule of the local medical units has considerably lightened. The Public Defender welcomes the mentioned initiative and expresses hope that the methods and programs of the fight against tuberculosis will further be activated and become even more comprehensive.

INFRASTRUCTURE OF THE PENITENTIARY HEALTHCARE SYSTEM

According to the Code on Imprisonment, "the medical service to an accused/convicted person shall be provided in accordance with the requirements of the medical service acknowledged in the healthcare sector in the country." Along with this, Article 121 of the Law envisages setting up of a doctor/medical unit in each of the establishment of imprisonment/deprivation of liberty. If it is not feasible to provide a treatment for an accused/convict in doctoral-medical unit of the establishment of imprisonment/deprivation of liberty, he/she will be transferred to the Medical Establishment of the Penitentiary Department or to the civil hospital. The articles of the Law cited above provide the basis for having the medical infrastructure in the form of doctoral medical units and medical establishments in the penitentiary system of Georgia. It shall also be mentioned herewith that before the entry into force of the Code on Imprisonment the Law of Georgia on Imprisonment regulated the issues related to the organization of healthcare in the penitentiary system in much more details and in a clearer manner. Those issues are left open in the new law. The mentioned may therefore not be considered as a progressive step in the Georgian legislation.

There are two medical establishments currently functioning in the system (No.18 and No.19), whereas the medical units function in all the other penitentiary establishments. These units provide outpatient medical services to the prisoners of the respective establishments. As for the inpatient treatment component, there are no opportunities of delivering such type of a medical service in all the establishments, as the inpatient medical units are not organized in all the establishments. According to the law in force, if the medical service may not be provided to an accused/convicted prisoner at the doctoral medical unit of the establishment of imprisonment/deprivation of liberty, he/she should be transferred to a medical establishment of the Department or to a civil hospital. Respectively, the transfers of patients from the establishments where no inpatient medical service may be provided to the institutions as established by the law shall be much more frequent. Despite this, the situations in the establishments are rather different in this respect. Before going into the consideration of this issue, the possibilities of the provision of outpatient and inpatient medical service in a variety of types of the penitentiary establishments shall be presented. This information is provided in the table below:

Name of the Establishment	Types of the medical service		Doctor/medical points	
	Outpatient	Inpatient	Number of wards	Number of beds
Establishment №1	+	+	5	25
Establishment №2	+	+	7	30
Establishment №3	+	+	3	16
Establishment №4	+	+	2	8

Establishment №5	+	+	16	60
Establishment №6	+	+	9	24
Establishment №7	+	-	0	0
Establishment №8	+	-	0	0
Establishment №9	+	+	3	12
Establishment №11	+	-	0	0
Establishment №12	+	+	2	9
Establishment №13	–	–	–	–
Establishment №14	+	+	8	40
Establishment №15	+	+	8	57
Establishment №16	+	+	5	25
Establishment №17	+	+	3	30
Establishment №18	+	+	64	180
Establishment №19	+	+	82	540
Total:	17	14	217	1056

As it is demonstrated in the table above, the access to outpatient medical service is provided in all the 18 penitentiary establishments currently functioning, whereas the access to inpatient medical service is only provided in 14 establishments. Inpatient treatment component is not envisaged in Establishment No.8 in Tbilisi, neither in Establishment No.7 in Tbilisi, nor in Juvenile Establishment No.11. The monitoring revealed that apart from the medical establishments of the penitentiary system there are 71 so-called "ward-cells" arranged in other establishments functioning currently. Outpatient medical service is provided there to accused/convicted persons. The occupancy of such unite is currently 336 beds in total. The mentioned so-called "ward-cells" under the medical units that constitute a part of their infrastructure, are ordinary imprisonment cells, without any particular conditions therein for medical service and treatment of ill accused/convicted persons. There are the same lighting, ventilation and other standards as well. The advantage given to the sentenced inmates placed in those so-called "ward-cells" is that they fall under the constant supervision of medical personnel and the access to a doctor may be organized in a quicker manner. The average number of patients in those cells equals to 5. Despite this, a number of patients in one cell of some of the establishments may exceed 10 or even 15 persons (e.g. Establishment No.17 in Rustavi). There are smaller cells as well, where patients receive medical service. It shall be mentioned that furniture in those "ward-cells" does not correspond to the requirements of the medical establishments. There are no functional beds in any of the "ward-cells". The floor, ceiling and walls of the storage are also inadequate and do not comply with the standards of medical institution's infrastructure. It shall be mentioned that water closets are arranged following different principles in different establishments. Showers, with some exceptions (Women Establishment No.5 and some of the cells of Establishment No.14 in Geguti), are always placed outside and toilets in some establishments are within the "ward-cell", whereas in some establishments they are located in a corridor of the medical unit. Due to the mentioned, the conditions of provision of adequate medical service to patients do not correspond to the existing requirements.

The X-ray equipments in several establishments are fixed in a specific place of the establishment. These establishments are: No.18, No.19 and No.12. There is a portable X-ray machine in Establishment No.14 in Geguti, which periodically is transferred to Establishment No.2 in Kutaisi. It shall also be mentioned here that the exploitation of the equipment takes place by disregarding and ignoring the requirements of 4 March 2003 Order No.41/M of the Minister of Labour, Health and Social Protection (on the Approval of the Norms Ensuring the Observance of Sanitary Norms during the Medical X-ray-radiological Diagnostic Procedures and Measures for Protection from Radiation during the Medical Treatment). As for the organization of X-ray and ultrasound examinations, the situation in this respect has been relative improved in the establishments. The frequency/regularity of radiological service as well as the rule of the delivery of this service varies in different penitentiary establishments. Echoscopy specialists and X-ray specialists visit some of the establishments on a regular basis and carry out examinations periodically, whereas their visits are not regulated by any of the rules and according to the Chief Doctors, "they are called on only based on need". However, the study revealed that the "based on the need" equals to either the minimum level of such calls and the examinations carried out, or leaving the patients without this service. The details in relation to the mentioned issue are summed-up in the table below:

I half of 2011:

№	Name of the Establishment	X-ray machine	Organization of X-ray examination		Organization of ultrasound examination	
			The frequency of the visits of the X-ray specialist	Number of the examinations carried out	The frequency of the visits of the echoscopy specialist	Number of the examinations carried out
1	Establishment №1	of the consultant	Once a month	140	Once a month	102
2	Establishment №2	of the consultant	Once a week	281	Once a week	288
3	Establishment №3	of the consultant	Once a week	55	Once a week	197
4	Establishment №4	of the consultant	Once a month	35	Once a month	40
5	Establishment №5	of the consultant	By contract	213	On the spot	199
6	Establishment №6	of the consultant	Once a month	230	Once a month	106
7	Establishment №7	of the consultant	As needed	7	As needed	5
8	Establishment №8	of the consultant	Once a month	185	On the spot	86
9	Establishment №9	of the consultant	As needed	3	As needed	25
10	Establishment №11	of the consultant	As needed	6	As needed	8
11	Establishment №12	of the consultant	Twice a month	96	Twice a month	52
12	Establishment №13	of the consultant	As needed	25	As needed	21
13	Establishment №14	portable	Once a week	321	Once a week	352
14	Establishment №15	of the consultant	Once a week	348	Twice a month	245
15	Establishment №16	of the consultant	Twice a month	244	Twice a month	302
16	Establishment №17	of the consultant	Twice a month	390	Twice a month	316
17	Establishment №18	stationed	On the spot	1961	On the spot	1063
18	Establishment №19	stationed	On spot	1642	Once a month	101
				6182		3508

II half of 2011:

№	Name of the Establishment	X-ray machine	Organization of X-ray examination		Organization of ultrasound examination	
			The frequency of the visits of the X-ray specialist	Number of the examinations carried out	The frequency of the visits of the echoscopy specialist	Number of the examinations carried out
1	Establishment №1	of the consultant	Once a month	168	Once a month	40
2	Establishment №2	of the consultant	Once a week	308	Once a week	254
3	Establishment №3	of the consultant	Once a week	40	Once a week	176
4	Establishment №4	of the consultant	Once a month	39	Once a month	31
5	Establishment №5	of the consultant	By contract	127	On the spot	243
6	Establishment №6	of the consultant	Once a month	213	Once a month	108
7	Establishment №7	of the consultant	As needed	5	As needed	8
8	Establishment №8	of the consultant	Once a month	164	On the spot	42
9	Establishment №9	of the consultant	As needed	19	As needed	95
10	Establishment №11	of the consultant	As needed	16	As needed	4
11	Establishment №12	of the consultant	Twice a month	27	Twice a month	95
12	Establishment №13	–	–	–	–	–
3	Establishment №14	portable	Once a week	365	Once a week	221
14	Establishment №15	of the consultant	Once a week	337	Twice a month	144
15	Establishment №16	of the consultant	Twice a month	227	Twice a month	181
16	Establishment №17	of the consultant	Twice a month	237	Twice a month	181

17	Establishment №18	stationed	On the spot	1808	On the spot	900
18	Establishment №19	stationed	On the spot	1563	Once a month	74
				5663		2866

As it is shown in the table, there were 11 845 X-ray examinations (6182+5663) (rentgenography as well as rentgenoscopy) and 6374 (3508+2866) sonographic examinations provided during the reporting period in total in the conditions of the visits by the consultants or the use of the locally installed equipment.

It shall be mentioned that following the provision of Women Establishment No.5 and Establishment No.8 in Gldani with the equipment, the echoscopy machine is permanently available in local medical units.

As for the changes in the infrastructure during the reporting period, there were the so-called primary healthcare points organized in Establishment No.6 in Rustavi and Establishment No.8 in Tbilisi. The family physicians re-trained within a new program work there along with other personnel.

As clarified by the Chief Doctor of Establishment No.6 in Rustavi, a pilot program within which the so-called primary healthcare points were formulated, commenced in the mid of summer. The aim of the program was to increase the communication between a patient and a doctor. To this end, after the morning-watch a primary healthcare doctor shall pay a visit to a certain number of prisoners (divided into groups) and shall decide on the appropriateness of the visit of a doctor in each case. Each of the doctors and nurses will be in charge of 400 prisoners, on the healthcare of which they will be responsible. The so-called "points" have been arranged for such medical personnel. The patients will be examined there, whereas for medical manipulations or any other medical aid they will be taken to the medical unit. The nurse will keep the control over the prescription of the doctor. All the medications as prescribed by the doctor will be distributed during the day. Only injections will be ensured at night. As stated by the Chief Doctor, he had raised an issue regarding the appointment of an additional doctor, who would be permanently based in the medical unit; however, this issue has not been decided yet. According to the information provided by the Chief Doctor, due to the switch to the new system, cardiograph and defibrillator machine were provided additionally to the medical unit. The primary healthcare units were also equipped with furniture, the medical records of prisoners were transferred to the units; and, doctors were provided with glucometers, otoscope, neurological hammer, medical light and a magnifier. The Chief Doctor stated that no guidelines, according to which the medical service shall be provided during particular nosologies, have been distributed to them so far. There was a certain deficiency with regard to provision of medications as well. Following the commencement of the pilot program of transfer to the primary healthcare model no doctor keeps duty at night in the Establishment. There is only a nurse on duty. Nurses were instructed to call the emergency healthcare brigade in case of a need. The Public Defender of Georgia considers that this approach could not be justified, as far as a nurse may not substitute doctor in the Establishment and the calling the emergency healthcare service to deal with this gap is an inefficient and inadmissible action. The very fact that took place in Establishment No.6 in Rustavi in the first half of 2011, resulting in death, supports our position and brings back on the agenda the issue of the reinstating the mandatory duty by doctors: prisoner V.K., 55 years old, passed away on 9 January 2011. As it can be seen from the medical record, 2 days before the death the patient had apparently applied to a doctor claiming a general frailty, pain in the area of stomach, nausea and vomiting. "Indicators of blood pressure, temperature and pulse do not call for attention. A soft stomach, mesogastrom area is sensitive. Normal breath, on both sides. The patient mentions that the commencement of these claims was related to the meal he had taken." The doctor considered that there was a case of food intoxication, due to which the patient was given rehydron, cerucal and transfusion of glucose along with the complex of group of "B" vitamins. The same night at 02.40 "the patient was laying on the floor of the cell, with cyanotic skin, emitting foam from his mouth, pulse could not be checked neither on periphery nor on carotid artery, arterial pressure may not be measured, does not breath." The convict was transferred to the medical unit, the performance of direct cardiac massage and artificial respiration with ambu bag started, adrenaline, atropine and mesatone, as well as calcium cloride were intravenously injected. Despite this, the undertaken measures did not provide a result and the patient died. The doctors considered that the diagnosis was sudden death, acute cardiac failure. The emergency healthcare brigade was called, which also confirmed the fact of death. According to the forensic medical examination report, the cause of the death of the patient was acute myocardial infarction. The late form of ischemic heart disease, coronaritis, pulmonary edema and pneumonia were also ascertained. None of the diseases listed in the

forensic medical examination report were registered in the lifetime of the patient in his medical records and even more, there was no suspicion even over these diseases. Neither ECG test, nor the determination of the enzymes in the blood and an array of other examinations, necessary by the contemporary standards in such situations, were provided to the patient. Deriving from this, it is doubtful whether a nurse will be able to deal with such problems at night and outside working hours and ensure the prevention of the lethal outcome.

As for the Establishment N8 in Gldani, a doctor keeps duty at night there. The pilot program of healthcare reform has been introduced here as well. The primary healthcare units in the blocks were equipped with the respective furniture, blood pressure apparatus, phonendoscopes, height measuring devices and weighing-machines. Apart from this, cardiograph, exhoscopy-machine, defibrillator, otoscope, ophthalmoscope, medical lighting, glicometer and boxes of primary medical aid were provided. According to the information provided by the Chief Doctor of Establishment No.8, such primary healthcare facilities were already introduced in the block 1 and the block 2. The prisoners were divided into groups having a doctor responsible for their primary healthcare. According to the Chief Doctor, there was no shortage of human resources in Establishment No.8. As for the newly admitted prisoners, a person responsible for their medical check-up stays in the quarantine unit constantly and does not take part in the pilot program. The Chief Doctor considers that the number of identified diseases increased and the efficiency of the respective activities has improved lately.

According to the findings of the Monitoring Team, the medical units of both establishments mentioned above were additional equipped during 2011. This fact shall be welcome. The considerable improvemen t is noted in this respect in Establishment No.5 for Women as well. The medical unit, located in the isolated block "B", was fully provided with new infrastructure. The office of the Chief Doctor, ordinatory, surgical bandage room, emergency ward, dentist's office, manipulation ward, gynecologist's office and pharmacy (with a separate entrance, related to the building with a window) were located on the ground floor. The showers, X-ray room, water closets and 4 wards (one for 2 persons, one for 4 persons and one for 5 persons) were also located there. The first floor accommodated the AIDS lab, 1 room for examination of a patient and consultations, as well as a dressing room for the medical staff. Two wards for 4 persons, five wards for 5 persons and two wards for 2 persons for the provision of the inpatient medical service were also located on the same floor. The emergency ward measured 17 m^2, equipped with a defibrillator, electrocardiograph, cardio monitors, X-ray machine. The medical closet, washbasin, table for medications, table for manipulations, closet for medications and tripod were also located there. The room for medical manipulations measuring 35 m^2, was equipped with 2 medical sofas, closets, a table, chairs, closet for medications and medical metal packing-cases (bixes). The surgical manipulation room measuring 12 m^2, was equipped with a table for medical manipulations, 2 sterilizers, light source, disinfection solutions, 2 tables for medical tools and a doctor's table. The gynecological chair, a closet for medications, the light source, medical sofa, a table and chairs were placed in a gynecological room. The AIDS room, representing 2 separated cubicles, was situated at the first floor, equipped with a refrigerator-closet, a table and chairs. The reception was equipped with a washbasin, a table and chairs. The consultation room was equipped with an eye chart measuring visual acuity. It shall be mentioned that the duty station of the prison personnel was also arranged in the medical unit and they are present at the territory of the medical unit constantly. As for the TB-wards of Establishment for Women No.5, they were separately located in a one-story building. There was a room for distribution of medications (furniture – a sofa, a washing basin, a table, a bookcase for documentation) as well as 3 wards in there. The building has a separate courtyard. The nurses of the TB National Program visit the TB-infected prisoners in this building. There was a corridor in the building with a common dining table, a wash-machine and a refrigerator. Each of the wards had a shower and a toilet.

As for the medical units of other penitentiary establishments, the boxes of the primary healthcare were added to their medical infrastructure in 2011. Apart from this, only minor medical inventory was provided to them.

Public Defender of Georgia has been stating in his Reports for the last several years that Medical Establishment No.18 for Pre-trial/Convicted Inmates (Central Penitentiary Hospital) had been functioning without the respective license throughout years. Contarry to the position of the Public Defender of Georgia, the representatives of both – the Ministry of Corrections and Legal Assistance as well as the Ministry of Labour, Health and Social Affairs were clarifying that the Establishment did not need such a license. The discussions and debates on this matter had been

taking place during the Parliamentary Committee hearings as well. The Chairman of the Parliamentary Committee of Health and Social Issues got personally interested in the issue and had mentioned several times in the subsequent speeches that the issue did in fact require consideration and resolution. Against this background, we welcome the fact that the license of the inpatient medical establishment was issued to the Medical Establishment No.18 pursuant to Order 02-176/N of the Head of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs on 8 April 2011.

The letter (No.02/13810) of the Head of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs sent on 13 May 2011, notified the Office of the Public Defender that "based on paragraph 1 of Article 1 of the Law of Georgia on Licenses and Permits (the version of 1 December, 2010) and Article 7 of the 17 December 2010 Resolution N385 of the Government of Georgia … the Medical Establishment No.18 of the Ministry of Corrections and Legal Assistance of Georgia submitted to the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs the licenses issued on those medical activities that are to be automatically substituted with the respective permit according to the above mentioned normative acts. The Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs issued (on 08.04.2011) the permit for inpatient medical establishment and the appendixes to the permit".

The following activities were included in the Order of 8 April 2011 of the Head of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Affairs:

	Title	Address	Appendix	Basis
1	Sub-agency - the structural entity of the Penitentiary Department "Medical Establishment No18 for the accused/convicted inmates (Central Penitentiary Hospital) under the Ministry of Corrections and Legal Assistance of Georgia"	Tbilisi, Gldani 7th district, 2nd km.	1) Treatment of infectious diseases; 2) TB treatment; 3) Psychiatry; 4) Surgical profile; 5) Resuscitation; 6) Radiological activities – X-ray examination; 7) Oncology; 8) Otorhinolaryngology; 9) Ophthalmology	Protocol N 33 of on-spot inspection, 06.04.2011 Explanatory Note of 07.04.2011

The mentioned step shall certainly be welcomed, although, the Medical Establishment No.18 (Central Penitentiary Hospital) got sharply increased responsibilities and accountability vis-à-vis the state healthcare regulator. Despite this, no changes were identified in practice of functioning of Establishment No.18 during the monitoring. The only modification undertaken was the decrease of the number of beds to 180. However, even this change was introduced only on paper, whereas the number of prisoners in the Establishment remained the same. Currently, the total limit of occupancy of the Establishment is 180 beds. The number of beds located according to the divisions is as follows:

	Name of the Division	Number of beds
1	Therapeutic Division	40
2	Surgical Division	66
3	Infectious Diseases Division	40
4	Psychiatric Division	26
5	Anesthesiology/resuscitation and Intensive Therapy Division	8

The Monitoring Group revealed a number of violations or shortcomings related to the functioning of the Establishment in conditions not complying with the requirements provided by the permit. Primarily this refers to formal decrease in a number of beds, as well as the fact that the Establishment keeps provision of "treatment and diagnostics" of the patients in the sectors that are not envisaged by the permit conditions and the respective appendixes. The Office of the

Public Defender of Georgia expresses the hope that the mentioned deficiencies will be eradicated in the nearest future and the issues mentioned will be put in compliance with the norms envisaged by the legislation.

As regards Medical Establishment No.19 for Tubercular Convicts, the Regulation of this Establishment was also approved by 30 May 2011 Order No.97 of the Minister of Corrections and Legal Assistance of Georgia (appendix N 5). The general provisions, the aims and purpose, functions, scope of capacity and obligations, as well as the issues related to management of the Establishment are based on exactly the same principles as the Regulation of Medical Establishment No.18 (Central Penitentiary Hospital) is based on. The Regulation considers the specifics of the treatment of tubercular patients. The structure of the Medical Establishment is dealt with in Article 18. The whole structure is divided into 2 parts: Administrative and Medical units. The Medical Unit is further divided into the following structural entities: a) the Division for Resistant-form tuberculosis; b) the Division for Sensitive-form tuberculosis; c) Outpatient Division. The main purpose of the Medical Unit is to provide medical aid to sentenced persons, to undertake medical control of the medical establishment and other rights/obligations as envisaged by the legislation of Georgia. The Regulation also mentions that the consilium of anatomical pathology, the instructions for the personnel according to the fields, the day schedule, the work plan (quarterly, yearly) of the medical establishment and the personnel also exist. As regard the "anatomical pathology consilium" it shall be mentioned that such a term is not at all known to the healthcare legislation of Georgia. The Law of Georgia on Medical Activity provides for a definition of a consulium and what purpose it serves. However, the functions vested onto the consilium according to the Regulation go beyond this definition. The Division for Resistant-form tuberculosis provides the inpatient and outpatient medical aid to the patients with resistant-form tuberculosis in accordance with the standards existing in the country. In case of need, it ensures consulting the outpatients. If so needed, it ensures sending the specialists of respective profile to the places of imprisonment/deprivation of liberty to consult prisoners. The Division for Sensitive-form tuberculosis provides the inpatient and outpatient medical aid to tubercular patients in accordance with the standards existing in the country. In case of need, it ensures consulting the outpatients. If so needed, it ensures sending of the specialists of respective profile to the places of imprisonment/deprivation of liberty to consult prisoners. As for the outpatient division, the latter, according to the Regulation, provides the outpatient medical aid to tubercular patients in accordance with the standards existing in the country. In case of need, it ensures consulting the patients. If indispensable, it ensures the sending of the specialists of respective profile to the places of imprisonment/deprivation of liberty to consult patients. Unfortunately, paragraph 4 of Article 23 of the Regulation, likewise in the case of the Regulation of the Establishment N18 states that "if a sentenced person harshly deliberately violates the Regulation of the Medical Establishment, the day schedule or/and the medical treatment regime, the Director of the Establishment is authorized to initiate the issue of transfer of the sentenced person from the establishment to the respective establishment upon the submission of the Chief Doctor, if the Law does not provide otherwise." It is also clear herein that the priority is given to the regime interests versus the interests of healthcare of a patient. This shall certainly not support the implementation of measures against tuberculosis in the penitentiary system.

PROVISION WITH MEDICATIONS AND THE WORK OF PHARMACIES

The issue of provision medications is diverse in different penitentiary establishments. Despite the fact that the amount allocated for purchasing medications was increased during 2010-2011, the list of the medications on the spot does not cover the needs in the penitentiary establishments. The delivery of medications is hampered at some of the establishments. Incorrect introduction of the tendering system for the procurement of a variety of groups of medication has also brought along a number of organizational and technical problems. Often tenders are held with delay, causing the impediments to the provision of medications. The increase in prices at the pharmaceutical market at large has created problems in the penitentiary healthcare system as well. It is either impossible to request and purchase expensive medications with the allocated budget for the medical units or the purchased medication is insufficient. This does not allow provision of an adequate treatment. Field specialists are employed at pharmacies in the medical units. Since the second half of 2010 the pharmacies had been renamed to "drug storage" and the respective personnel were defined as "persons responsible over the drug storage". It became possible to appoint a person without any pharmaceutical education to this position. Despite the above mentioned, since 2011, the Ministry of Corrections and

Legal Assistance has declared that the reform of the penitentiary healthcare system covered the pharmacies as well. This was reflected in the fact that the pharmacies became licensed.

The National Preventive Mechanism studied the issue of provision of the establishments of the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia with the medications and the medical items in 2011. It turned out that the situation differed in a variety of the establishments in this respect. In the past, the total amount for the purchase of medications by each of the establishments was defined in advance; although, the practice had changed during the year 2011. Therefore, there was no so-called "strictly established limit" there anymore. This approach has improved the situation; however the problems still remained in some establishments. The analysis of the amount allocated funds for the purchase of medications and the information on the persons with pharmaceutical education working in the establishments is provided below:

№	Name of the establishment	Amount allocated for pharmacies (in Georgian Lari)	
		I half of 2011	II half of 2011
1	№1 Establishment	6497	33241,3
2	№2 Establishment	13159	4361,53
3	№3 Establishment	3927	3180,71
4	№4 Establishment	7296	3050,01
5	№5 Establishment	22519	36833,2
6	№6 Establishment	11382	2644,06
7	№7 Establishment	899	-
8	№8 Establishment	31460	1627,73
9	№9 Establishment	11747	25222,2
10	№11 Establishment	2689	847,1
11	№12 Establishment	3039	0
12	№13 Establishment	4022	-
13	№14 Establishment	22053	12790,2
14	№15 Establishment	7680	0
15	№16 Establishment	4902	0
16	№17 Establishment	14210	41556,2
17	№18 Establishment	130021	29736,8
18	№19 Establishment	35726	206167,
	Total:	333228	401258

The Law of Georgia on the Medication and Pharmaceutical Activity aims at promoting the increased access of the population to the reliable pharmaceutical products. To this end the Law provides for the legal basis for the regulation of the turn-over of pharmaceutical products along with regulation of the rights and obligations of physical and legal persons involved in this field. The field of regulation envisaged by the Law extends on the circulation of pharmaceutical products as well. The latter activity includes the preparation, manufacturing, standardization, quality control, packing, purchase, sending and transportation, storage, selling of pharmaceutical product, as well as delivering the information about it to population at large and specialists, its advertisement, marketing, export, import, re-export, utilization, destruction and other actions related to pharmaceutical products.

Deriving from the specifics of penitentiary establishments, the principles of retail sales of pharmaceutical products shall first of all be taken into consideration. The retail sales of pharmaceutical products is undertaken by an authorized pharmacy, pharmacy (specialized trade unit), and retail realization trade unit and in cases envisaged by the legislation of Georgia – personnel with pharmaceutical education or a private person who is a subject of independent medical

activity. One of the directions of the healthcare reform of the Ministry of Corrections and Legal Assistance of Georgia was exactly the establishment of authorized pharmacies in penitentiary establishments and ensuring their functioning in line with the legislation. It shall be mentioned that the authorized pharmacies are subject to permit control and realization of pharmaceutical products belonging to the first, the second, and the third groups, as well as preparation of pharmaceutical product based on official or magisterial prescription is authorized there. The latter is of course impossible to undertake in establishments of the penitentiary system. The Law permits the realization of the second and the third group pharmaceutical products in the authorized pharmacy of the penitentiary establishment. Following the authorization, the requirements established by the Law for those selling pharmaceutical products will be extended to pharmacies of penitentiary establishments. This in particular includes ensuring the conditions for storage and distribution of pharmaceutical products and respective file-keeping required for the registration of the series of the sold product. The pharmaceutical product dealer is also obliged to introduce the contemporary means for the storage of pharmaceutical products and ensure their storage and subsequent realization in such conditions that protect the product from negative influences of outside factors (temperature, humidity). The pharmaceutical products dealer is obliged to keep the pharmaceutical product fully observing the sanitary-hygienic/technical conditions envisaged by the instruction of the respective product. Realization of the pharmaceutical products in the pharmacy, the storage and display shall be exercised with the strict observance of the sanitary-hygienic conditions. The pharmaceutical product belonging to the second group shall not be accessible to a consumer without responsible personnel. Pharmaceutical product the time for the use of which has expired or that has become unfit for consumption shall be kept separately and in isolation from other pharmaceutical products before its destruction.

In accordance with Order No.387/M of the Minister of Labor, Health and Social Affairs dated 24 November 2009, issued on the basis of Article 17, paragraph 5 of the Law of Georgia on Drugs and Pharmaceutical Activity; the sanitary/technical conditions were approved. The Order clarifies that the realization of the pharmaceutical products belonging to the second and the third groups is allowed in a pharmacy and the service is provided by a responsible personnel with the medical or pharmaceutical education. The medications belonging to the second group shall not be accessible for the users without responsible personnel whereas the pharmaceutical product belonging to the third group may even be accessible without responsible personnel. The staff of pharmacy is obliged to protect personal hygiene and wear special clothing corresponding to their obligations (doctor's coat, doctor's gloves – during the respective procedure). According to the Order, it is important to have enough space in the distribution hall of pharmaceutical products to have a possibility to provide pharmaceutical products and deliver consultations to customers. Apart from this, a pharmacy shall have the storage to observe the regime of storing pharmaceutical products and keep them in a warehouse. According to the sub-law, no smoking shall be allowed in a pharmacy. In case of a request of a customer, there shall be a possibility of checking the conditions of storing pharmaceutical products in a pharmacy by a customer, provided that the hygienic norms (wearing of sanitary clothing) will be observed by the latter. The conditions of storage, display and realization of pharmaceutical product shall be in line with the requirements envisaged by the annotation of the medicine and the Order referred above, including from the perspective of influence of the conditions related to the environment (temperature, lighting, humidity), taking into consideration the physical-chemical peculiarities of the ingredients of a medicine. The pharmaceutical product the time for the use of which has expired or that has become unfit for consumption shall be kept separately at a specifically designated place, in isolation from other pharmaceutical products. A pharmacy shall have a video surveillance system at the perimeter of a main entrance door (designated for customers), in line with the requirements of the video surveillance systems and the rules of their installation and exploitation as envisaged by the 29 August 2007 Order No.1143 of the Minister of Internal Affairs of Georgia "On the Approval of the Rule of Installation and Exploitation of Video Surveillance Systems at the Places and Outer Perimeter of the Places of Gambling and other Gainful Games (except for incentive draws)." Various pharmacies of the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia, in case they get the authorization, shall comply with the rules described above. Despite this, the monitoring has revealed that the established standards in this respect are not observed in all the establishments.

By the end of 2011, 12 pharmacies of the "Aversi" company were functioning at the establishments. This is a positive fact as far as represents the alternative way of provision the prisoners with medication. Though, it should be stressed in this respect that the way of adequate provision of the establishments with medication shall not be substituted by commercial pharmacies – the latter shall be only the additional source for purchasing the medication.

TYPES AND REGISTRATION OF TRAUMAS AND INJURIES

The penitentiary system is a risk zone, where violence against a prisoner may take place. Therefore, the immense importance shall be paid to the appropriate registration of the traces of physical or psychological violence exercised in the prison or during the detention, considering the national or international standards against torture. In this respect the medical personnel can provide enormous support both to a self-injured person as well as to investigation and in general – to the exercise of justice. As it was already mentioned, it is extremely important that during the physical examination of a prisoner (particularly, during the examination of a newly admitted prisoner) any traces of violence that could have been caused by improper treatment shall be identified, described and documented according to the respective rules both in a personal medical file of the prisoner and in the register for traumas. The same rules shall be applied for the registration of any psychological or psychiatric signs that might be indicating that the person had been subjected to improper treatment. Such an information, automatically and immediately shall be submitted to the management of penitentiary establishment and the investigative bodies. The prisoner shall at any point have a possibility to receive copy of the above mentioned document immediately upon request.

According to the Third General Report on the CPT's activities, "[p]rison 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."

There is a different practice and approach established in the penitentiary system of Georgia with regard to the registration of injuries. A part of the establishments ignores the abovementioned obligation in some cases whereas at best, the local doctors try to describe the fact as precisely as possible and help the patient in dealing with the healthcare needs that have emerged as a result.

The so-called "Register for Traumas" (Form No.15) used in the local medical units shall be outlined within the medical documentation in this respect. It does not at all comply with the standards of prevention of torture, however the precise registration of injuries in the Register mentioned is to a certain degree highly responsible and needed act to be performed by doctors. As it is shown from the title itself, Form No.15 is designated for the registration of incidents taking place on spot in the penitentiary establishment. As for the newly admitted prisoners, according to the existing practice, in case of potential injuries, the signs of those injuries are registered in the so-called "medical file". The current practice in this respect in the penitentiary establishments is also diverse. For example, penitentiary establishments in the Western Georgia and some of the establishments in the Eastern Georgia operate the so-called "Register for Medical Examination of Newly Admitted Prisoners", where in a brief manner, but still, in some cases the traces of injuries are registered. The information, as a rule, is scarce in this Register, at time it is also not of professional value. Upon the finalization of the monitoring of temporary detention isolators, the Special Preventive Group studied the documentation including the information on injuries of newly admitted prisoners in several penitentiary establishments selected randomly. The specific persons were identified by us who, according to the data acquired in the Temporary Detention Isolators, had injuries. It appeared that the injuries were registered in only 36% of cases after the transfer to penitentiary establishment. There were no records of any injuries on the bodies of the prisoners in other cases. The detailed information reflecting the above mentioned is provided in the list below broken down according to the monitoring periods in 2011:

Data for I half of 2011:

№	Name of the Establishment	The Register for Traumas (Form No.15		The Register for Injuries of newly admitted prisoners exists	The statistics of injuries of the newly admitted prisoners		
		The Register exists	Number of registered cases		The number of newly admitted	Injuries recorded	%
1	Establishment №1	+	42	-	411	0	0
2	Establishment №2	+	159	+	490	29	5.91 %
3	Establishment №3	+	17	+	527	54	10.24 %
4	Establishment №4	+	14	+	297	36	12.12 %
5	Establishment №5	+	45	+	220	4	1.81 %
6	Establishment №6	+	76	-	237	1	0.42%
7	Establishment №7	+	0	-	8	0	0
8	Establishment №8	+	2	+	3793	277	7.30 %
9	Establishment №9	+	1	-	575	1	0.17%
10	Establishment №11	+	1	-	86	4	4.65 %
11	Establishment №12	+	0	-	503	0	0
12	Establishment №13	+	2	-	2	0	0
13	Establishment №14	+	7	+	523	6	1.14 %
14	Establishment №15	+	106	-	625	0	0
15	Establishment №16	+	16	-	452	0	0
16	Establishment №17	+	58	-	139	8	5.75 %
17	Establishment №18	-	0	-	937	0	0
18	Establishment №19	+	16	-	859	0	0
	Total:	17	562	6	10684	420	

Data for the II half of 2011:

№	Name of the Establishment	The Register for Traumas (Form No.15)		The Register for Injuries of newly admitted prisoners exists	The statistics of injuries of the newly admitted prisoners		
		The Register exists	Number of registered cases		The number of newly admitted	Injuries recorded	%
1	Establishment №1	+	35	-	0	0	0
2	Establishment №2	+	121	+	496	43	8.67 %
3	Establishment №3	+	28	+	551	66	11.98 %
4	Establishment №4	+	5	+	220	30	13.64 %
5	Establishment №5	+	52	+	219	4	1.83 %
6	Establishment №6	+	58	-	258	0	0
7	Establishment №7	+	0	-	0	0	0
8	Establishment №8	+	8	+	3262	247	7.57 %
9	Establishment №9	+	0	-	241	0	0
10	Establishment №11	+	1	-	71	1	1.4 %
11	Establishment №12	+	1	-	750	0	0
12	Establishment №13	–	–	-	–	–	–
13	**Establishment №14**	+	18*	+	521*	0	0
14	Establishment №15	+	119	-	1080	3	0.28%

15	Establishment №16	+	23	-	401	1	0.25%
16	Establishment №17	+	48	-	374	0	0
17	Establishment №18	+	4	-	897	Not documented	0
18	Establishment №19	+	24	-	719	Not documented	0
	Total:	17	545	6	10060	395	

As it is clearly demonstrated in the table, the "Registers for Traumas" exist in 17 establishments out of 18. As for the Register for the Injuries of the newly admitted prisoners, it is run in only 6 establishments out of the 18. In the first half of 2011, the injuries were registered in only 420 cases out of the 10 684 new admissions and transfers in the penitentiary system establishments of Georgia. This makes 4% out of the total number. In the second half of 2011, the injuries were registered in 395 cases out of the 10 060 new admissions and transfers. This makes almost 3.92% out of the total number.

At some of the establishments, the injuries are not registered at all. The figures reflecting differences in practice per establishments in this respect is also provided in the table below. As for the description of traumas resulting from the alleged violence having occurred on spot or from any other action, there were only 1107 such cases registered throughout Georgia.

Coming from the importance of the issue, the National Preventive Mechanism studied the Registers for Trauma, the rules of filling-in them as well as the structure of the information provided therein in all the establishments.

The analysis of the information provided reveals that the wounds prevail within the types of injuries. The next most wide-spread injuries are bruises and blazes. Fractures are not rare as well. Visible hyperemia on different parts of bodies is relatively rare (mostly indicating to the newly acquired trauma). There are unspecified injuries as well documented in registers. It shall be mentioned that a number of burns has considerably increased in 2011. There had only been singular cases of burns registered during the previous years. According to the Chief Doctors of the majority of establishments, the cause of these burns is the pouring of boiling water from the electric water appliance onto prisoners. As for the separate establishments, a number of trends were identified in this respect as well. For example, blaze as a form of injury is most frequently registered in Establishment No.16. The bruise is the most wide-spread type of injury in Establishment No.17. Hyperemia (indicating a new injury) is the most often recorded injury in Establishment No.3. According to the number of injuries the first place is occupied by Establishment No.1 in Tbilisi. From the point of view of injuries to joint and bone systems (fracture, dislocation, etc.) the leader is still Establishment No.16 in Rustavi. Soft-tissue lesion and the swelling of one or the other part of the body dominate in Establishment No.14, whereas the burns dominate in Establishment No.4. The doctors of Establishment No.14 do not indicate the most frequent types of injuries. The mentioned statistical data is provided in detail in the list below (the data is provided in percentage).

Data for the I half of 2011 (the data is provided in percentage):

№	Name of the Establishment	Blaze	Bruise	Hyperemia	Wound	Fracture/ Trauma	Soft-tissue lesion/ Swelling	Burns	Other/not specified
1	Establishment №1	0	17.94	0	78.21	0	3.85	0	0
2	Establishment №2	21.62	20.27	5.41	46.21	0.82	4.59	1.08	0
3	Establishment №3	13.04	30.43	8.69	30.43	0	4.37	13.04	0
4	Establishment №4	4.76	0	4.76	57.15	0	0	33.33	0
5	Establishment №5	3.52	12.28	8.77	57.89	8.77	0	0	8.77
6	Establishment №6	4.93	14.81	1.23	79.03	0	0	0	0

2011

7	Establishment №7	0	0	0	0	0	0	0	0
8	Establishment №8	0	0	0	50	0	0	50	0
9	Establishment №9	0	0	0	100	0	0	0	0
10	Establishment №11	0	0	0	0	0	0	0	0
11	Establishment №12	0	0	0	0	0	0	0	0
12	Establishment №13	0	50	0	50	0	0	0	0
13	Establishment №14	14.3	0	0	42.8	0	14.3	0	28.6
14	Establishment №15	5.39	14.23	0	72.05	2.94	5.39	0	0
15	Establishment №16	32.55	0	0	51.16	9.32	6.97	0	0
16	Establishment №17	18.44	31.06	0.97	33.98	6.79	4.85	0.97	2.94
17	Establishment №18	0	0	0	0	0	0	0	0
18	Establishment №19	9.37	12.51	0	68.75	3.12	6.25	0	0

Data for the II half of 2011 (the data is provided in percentage):

№	Name of the Establishment	Blaze	Bruise	Hyperemia	Wound	Fracture/ Trauma	Soft-tissue lesion/ Swelling	Burns	Other/not specified
1	Establishment №1	6.12	6.12	0	81.64	0	6.12	0	0
2	Establishment №2	16.02	1.85	0.62	76.8	0.41	2.47	1.03	0.82
3	Establishment №3	37.29	1.69	0	42.37	0	5.08	6.78	6.78
4	Establishment №4	16.67	8.33	0	66.67	0	8.33	0	0
5	Establishment №5	20.83	12.5	1.04	43.75	0	9.38	1.04	11.46
6	Establishment №6	6.82	14.39	0	71.21	0	0.76	1.52	5.3
7	Establishment №7	0	0	0	0	0	0	0	0
8	Establishment №8	38.46	7.69	0	53.85	0	0	0	0
9	Establishment №9	0	0	0	0	0	0	0	0
10	Establishment №11	0	0	0	100	0	0	0	0
11	Establishment №12	0	0	0	100	0	0	0	0
12	Establishment №13	–	–	–	–	–	–	–	–
13	Establishment №14	0	0	0	90.91	0	0	0	9.09
14	Establishment №15	12.32	14.9	0.29	58.74	2.87	10.32	0	0.57
15	Establishment №16	12.86	1.43	0	80	2.86	0	0	2.86
16	Establishment №17	21.43	9.18	0	51.02	1.02	10.2	1.02	6.12
17	Establishment №18	50	0	0	50	0	0	0	0
18	Establishment №19	9.84	1.64	0	88.52	0	0	0	0

The data on the location of injuries is similar to the data from previous years. In particular, the injuries are most often located on upper limbs and facial area. The injuries of lower limbs occupy the third place in the list according to this year's statistics. The numbers of injuries in the abdominal area and neck fluctuate approximately in the same frames. It shall be mentioned that the injuries located in the neck area have increase this year. Relatively less common places for the location of injuries are areas of chest and back. It shall be noted that the injuries in these areas dominated several years ago. As for the types of injuries inflicted at calvaria area, the indicator fluctuates in approximately the same range as the similar indicator of the last year.

As for the specifics according to the separate establishments, first of all it shall be mentioned that in the majority of establishments the prevailing area where injuries are inflicted corresponds with the average indicator of Georgia. The different indicators are recorded in Establishments No.3 and No.17, where the majority of injuries are in the facial area.

The specifics disaggregated according to the establishments, is provided in the tables below:

For the I half of 2011

№	Name of the Establishment	Calvaria	Face	Neck	Chest	Stomach	Back	Upper limb	Lower limb
1	Establishment №1	1.32	22.37	11.84	2.63	7.89	0	52.63	1.32
2	Establishment №2	2.75	39.4	2.21	1.37	1.92	4.43	41.59	6.33
3	Establishment №3	0	48	16	0	4	4	24	4
4	Establishment №4	0	34.78	4.34	0	4.34	0	47.85	8.69
5	Establishment №5	1.88	16.98	7.56	1.88	5.68	0	47.16	18.86
6	Establishment №6	2.99	24.58	5.98	1.79	10.79	1.79	50.89	1.19
7	Establishment №7	0	0	0	0	0	0	0	0
8	Establishment №8	0	0	50	0	0	0	50	0
9	Establishment №9	0	0	0	0	0	0	100	0
10	Establishment №11	0	0	0	0	0	0	0	0
11	Establishment №12	0	0	0	0	0	0	0	0
12	Establishment №13	0	0	0	0	50	0	0	50
13	Establishment №14	0	0	15	0	0	0	85	0
14	Establishment №15	7.33	28.35	3.62	0	6.71	2.46	42.26	9.27
15	Establishment №16	7.14	14.28	0	0	26.19	0	33.35	19.04
16	Establishment №17	7.76	50.48	4.85	0.97	4.85	0.97	25.27	4.85
17	Establishment №18	0	0	0	0	0	0	0	0
18	Establishment №19	0	34.37	0	3.12	3.12	3.12	43.75	12.52

For the II half of 2011:

№	Name of the Establishment	Calvaria	Face	Neck	Chest	Stomach	Back	Upper limb	Lower limb	Genitals	Unspecified
1	Establishment №1	4.08	20.41	4.08	0	2.04	0	67.35	0	0	2.04
2	Establishment №2	1.88	8.79	3.14	0	7.53	4.81	70.71	5.23	0	0
3	Establishment №3	3.64	12.73	5.45	0	25.45	3.64	36.36	7.27	1.8	3.64
4	Establishment №4	8.33	16.67	33.33	0	0	0	41.67	0	0	0
5	Establishment №5	5.26	14.74	2.11	3.16	4.21	2.11	48.42	14.74	0	5.26
6	Establishment №6	0.78	28.9	10.94	3.13	7.03	0	46.89	2.34	0	0
7	Establishment №7	0	0	0	0	0	0	0	0	0	0
8	Establishment №8	7.69	15.38	15.38	0	0	0	61.54	0	0	0
9	Establishment №9	0	0	0	0	0	0	0	0	0	0
10	Establishment №11	0	0	0	0	0	0	100	0	0	0
11	Establishment №12	0	0	50	0	0	0	50	0	0	0
12	Establishment №13	–	–	–	–	–	–	–	–	–	–
13	Establishment №14	0	9.1	22.73	0	4.55	0	54.55	9.1	0	0
14	Establishment №15	4.11	23.46	3.23	1.47	13.2	2.93	43.99	6.45	0.29	0.88
15	Establishment №16	1.43	8.57	2.86	0	0	0	62.86	24.29	0	0

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16	Establishment №17	2.1	44.21	2.1	0	8.42	1.05	31.58	10.53	0	0
17	Establishment №18	0	0	0	0	0	0	75	25	0	0
18	Establishment №19	0	6.56	3.28	0	9.84	0	80.33	0	0	0

While studying the injuries, soecial attention was paid to an issue of the origin of a trauma. The information provided by the patients, in particular, whether the injury was self-inflicted, was inflicted by one person to another mutually or by ascendency by another person or represented everyday life trauma, has immense importance in this regard. Unfortunately, in the majority of instances, the origin of injuries is still not specified. According to the registers, in 2% of instances the injuries were inflicted by another persons. In some of the cases it was clarified by whom, whereas at times it was registered that the injuries were inflicted by cell mates, etc. In 22% of instances there was everyday life trauma, typical examples of which were already considered, whereas in 30% of instances the facts of self-infliction of injuries are registered. We had identified the prisoners who periodically self-inflict the series of self-injuries on purpose. At a later stage it was also checked, whether such category of patients had been visited by a psychiatrist. Unfortunately, in the majority of cases the efforts of a psychiatrist were not sufficient for treatment of a psychiatric patient, whereas it also depends on the outside factors. The structure of the origin of injuries, disaggregated according to separate establishments, is provided in the list below:

Data for the I half of 2011:

№	Name of the Establishment	Self-inflicted injury	Everyday life trauma	Inflicted by another person	Is not specified
1	Establishment №1	0	0	0	100
2	Establishment №2	64.77	29.55	0	5.68
3	Establishment №3	29.42	17.64	0	52.94
4	Establishment №4	57.15	28.57	14.28	0
5	Establishment №5	37.77	53.33	8.9	0
6	Establishment №6	0	0	0	100
7	Establishment №7	0	0	0	0
8	Establishment №8	50	50	0	0
9	Establishment №9	0	0	0	0
10	Establishment №11	0	0	0	0
11	Establishment №12	0	0	0	0
12	Establishment №13	0	0	0	100
13	Establishment №14	43	0	0	57
14	Establishment №15	24.52	21.71	0	53.77
15	Establishment №16	50	18.75	0	31.25
16	Establishment №17	20.68	60.36	0	18.96
17	Establishment №18	0	0	0	0
18	Establishment №19	18.75	0	0	81.25

Data for the II half of 2011:

№	Name of the Establishment	Self-inflicted injury	Everyday life trauma	Inflicted by another person	Is not specified
1	Establishment №1	40	0	0	60
2	Establishment №2	59.45	36.93	0.9	2.7
3	Establishment №3	50	50	0	0
4	Establishment №4	60	40	0	0
5	Establishment №5	42.3	50	3.84	3.84
6	Establishment №6	0	0	0	100
7	Establishment №7	0	0	0	0
8	Establishment №8	12.5	0	0	87.5
9	Establishment №9	0	0	0	0
10	Establishment №11	100	0	0	0
11	Establishment №12	0	0	0	100
12	Establishment №13	-	-	-	-
13	Establishment №14	77.78	16.66	0	5.55
14	Establishment №15	47.89	37.81	0.84	13.44
15	Establishment №16	78.26	21.73	0	0
16	Establishment №17	33.33	43.75	0	22.91
17	Establishment №18	0	100	0	0
18	Establishment №19	54.16	0	0	45.83

As it is demonstrated in the table above the doctors do not indicate the origin of injuries at all in Establishments No.1, No.13 and No.16. In Establishments No.3, No.15 and No.19 the non-indication of the origin exceeds 50%. Deriving from the importance of the mentioned issue, relevant directions and recommendations shall be given to all these establishments in order to eradicate the mentioned deficiency and always indicate the origin of the injury, as a minimum according to the classification provided (self-inflicted injury, inflicted by one person to another mutually, everyday life trauma or inflicted by another person).

HIV/AIDS IN THE PENITENTIARY SYSTEM

In the region of Europe and particularly Eastern Europe the indicator of spreading of HIV/AIDS in the penitentiary system is much higher than a general, country-wide indicator. The studies implemented in a array of countries showed great variety of situations with regard to prevalence of HIV infection in prisons. Prisons represent places where the vulnerable HIV-infected groups are identified in the largest numbers. The reason of this is first of all the existence of intravenous drug abusers injecting not sterilized injections, sharing other injection means (water, spoon, etc.) and at times of means of everyday use (shaver, tooth brush), that also contributes to spread of hepatitis „B“ and „C“; tattooing, piercing and scarifications; unprotected sexual relations (prostitution, rape, etc.); accidental pricking by an infect needles (this often occurs during the search of cells); insufficient access to healthcare services; safety of medical tools and objects with medical purposes (dentist, medical and gynecological). The HIV infection epidemic reaches quite high indicators due to these reasons in developing states and countries in transition. Intravenous drug abuse is considered to be reaching 10% of the transmission of HIV throughout the world, whereas the same indicator in our region (countries of Eastern Europe and Asia) reaches 80%.

Office of the Public Defender of Georgia, as in the past, continues paying the respective attention to the problem of HIV/AIDS in the penitentiary system. These data are regularly reflected in Parliamentary, as well as Special Reports.

The reporting period of the year 2011 was not an exception in this respect. This period stands out due to the fact that in 2011, there the highest number of deaths of HIV-infected prisoners was documented in the penitentiary system as compared to the previous years. The data on the number of HIV-infected persons and the issues related to their treatment is provided in the table below for both periods of monitoring, I and II halves of 2011:

Name of the Establishment	Number of those examined on HIV infection		Number of HIV-infected persons		Number of newly identified		Number of those involved in treatment	
	I half	II half	I half	II half	I half	II half	I half	II half
№1 Establishment	60	145	3	5	0	2	3	1
№2 Establishment	46	156	5	-	1	6	0	1
№3 Establishment	80	121	2	1	2	1	0	4
№4 Establishment	85	230	1	2	0	2	1	0
№5 Establishment	59	98	3	3	0	0	0	1
№6 Establishment	0	123	7	6	0	0	0	0
№7 Establishment	0	0	0	0	0	0	0	0
№8 Establishment	6	114	6	7	2	0	2	0
№9 Establishment	30	117	1	2	1	0	0	0
№11 Establishment	35	53	0	0	0	0	0	0
№12 Establishment	47	160	6	3	1	0	1	0
№13 Establishment	0	-	2	-	0	-	0	-
№14 Establishment	125	104*	12	14	3	1	2	2
№15 Establishment	74	268	12	12	1	1	1	3
№16 Establishment	13	140	13	9	9	0	4	0
№17 Establishment	50	178	14	9	1	1	0	3
№18 Establishment	472	768	5	19	4	5	1	0
№19 Establishment	118	165	18	17	3	1	5	4
Total:	1300	2940	110	109	28	20	20	19

As seen from the table, there were 1300 examinations for diagnostics of the HIV infection in the establishments of penitentiary system in the first half of 2011 (the number of examined prisoners was even higher in the second half of 2011 – 2940) . There were 48 new cases confirmed during the examination, 39 out of these patients were included in anti-retrovirus treatment program. It is to be noted that there were in total more than 100 remand and sentenced persons, including 3 women, infected with HIV/AIDS in the establishments of the penitentiary system by the end of 2011. Fortunately, there were no juveniles within those infected or diseased with HIV/AIDS.

To study the situation more thoroughly, the Office of the Public Defender of Georgia applied with a letter to the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology (08.08.2011, No.758-3) requesting the information with regard to a number of issues.

According to the letter received in reply (N01-19/473) on 7 September 2011 from the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology, there were 285 HIV-infected persons registered from year 1997 to 17 August 2011. They have served sentence in different penitentiary establishments at different times. Out of 285 patients 277 were men, whereas 8 were women. Out of them 60 HIV-infected persons were deceased (59 male and 1 female). 41 Out of the 60 deceased prisoners passed away in penitentiary establishments.

According to the data as of 17 August 2011, there were 110 AIDS-infected persons in the penitentiary establishments, out of which 107 were male and 3 - female. 67 Patients were undergoing anti-retrovirus (anti-AIDS) treatment, 66 of them were male, and 1 was female.

The Scientific-Practical Center of Infectious Pathologies AIDS and Clinical Immunology closely cooperates with the Penitentiary Department. With the support of the HIV Center, the rooms for consulting and testing AIDS were set up

in the penitentiary establishments. All the sentenced persons have a possibility to undergo the consultation and testing if they wish so. Along with that, the doctors of the AIDS Center have trained the doctors, doctor-lab specialists, guards and other employees of the penitentiary establishments on the issues of HIA/AIDS. The Program Manager for the HIV/AIDS program of the penitentiary establishment Mr Kote Turashvili is at the same time the doctor-consultant of the AIDS Center, in which he is responsible for HIV-infected patients from the side of the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology.

HIV-infected prisoners in penitentiary establishments are provided with free of charge specific medical aid, provided in line with international standards. HIV/AIDS patients have consultations with a specialist doctor and undergo control checks regularly (once in 3-4 months). HIV-infected patients are provided with the necessary anti-viral medications once a month. In case of need, the patients are transferred to the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology for in-patience treatment.

The Office of the Public Defender of Georgia applied to the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology with a letter (N758-3) on 8 August 2011 requesting the information on the remand or sentenced prisoners who had been transferred to the Center for diagnostics or treatment during the first half of 2011. In the reply letter (N01-19/473) the Head of the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology notified us that "from 1 January, 2011 to 1 July, 2011 no remand/sentenced person had been transferred to our institution for in-patient treatments (there was no need for that)." During the monitoring, examination of the documents revealed that this information did not correspond to the reality – on 14 March 2011, the patient T.P. (born on 1980) passed away in the intensive therapy unit of the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology. According to the health certificate No.1086 issued by the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology, the patient had been placed in the institution for in-patient treatment on 25 February 2011. He had spent 17 days in the Scientific-Practical Center of Infectious Pathologies, AIDS and Clinical Immunology before he passed away.

Therefore, there is a trend of increase in a number of HIV-infected patients in the establishments of the penitentiary system in parallel and proportionally to the epidemiological indicator of the country.

SANITARY-HYGIENIC AND EPIDEMIOLOGICAL ISSUES

The control of the sanitary and epidemiological conditions in the establishments of the penitentiary system of the Ministry of Corrections and Legal Assistance falls within a competence of local doctors and in general, the medical personnel employed in doctoral-medical units. According to Article 35 of the Law of Georgia on Public Healthcare, it is a competence of the Ministry of Corrections and Legal Assistance of Georgia to a) supervise the observance of the sanitary and hygienic norms in the places of imprisonment and deprivation of liberty, and b) undertake the preventive measures related with healthcare.

Along with this, the Ministry of Labor, Health and Social Affairs of Georgia and the Ministry of Corrections and Legal Assistance of Georgia establish together the respective sanitary and hygienic norms for the establishments of imprisonment and deprivation of liberty. According to Article 125 (2) of the Code on Imprisonment, the Minister of Corrections and Legal Assistance of Georgia and the Minister of Labor, Health and Social Protection were tasked to ensure the issuance of the joint order on the nutrition norms for remand/sentenced prisoners within 2 months after the entry into force of the Code.

Apart from the healthcare legislation, the obligation of controlling sanitary-hygienic and epidemiological situation is also provided by the Code on Imprisonment. Article 15 of the Code establishes the requirements for the living conditions of accused/convicted prisoners. In particular, according to it, the living space of a accused/convicted person shall be in compliance with the sanitary-hygienic norms established by the Joint Order of the Minister of Corrections and Legal Assistance of Georgian and the Minister of Labor, Health and Social Affairs of Georgia and shall ensure the maintenance of a health of a remand/sentenced person.

According to Articles 15 (1), 125 (2) of the Code on Imprisonment and Article 35 (5) of the Law of Georgia on Public Healthcare, Joint Order No.87-83/M of the Minister of Corrections and Legal Assistance of Georgian and the Minister of Labour, Helath and Social Proteciton of Georgia, dated 20-25 May 2011, approved the sanitary-hygienic and nutrition norms for remand/sentenced persons. According to the mentioned Order, the respective doctoral-medical personnel of the establishment are obliged to check on a regular basis:

"a) The quality and amount, as well as the conditions of the preparation of food for remand/sentenced persons;

b) The sanitary-hygienic condition of the territory and buildings of the establishment;

c) The condition of the cloth and bed linen of remand/sentenced persons and in case of identification of inappropriate relation with the seasonal conditions and notify the administration of the establishment in writing.

3. The personnel of a doctoral-medical unit are obliged to notify the administration of the establishment in writing in the case of identification of violation of sanitary-hygienic conditions.

4. If the eradication of the identified violations related to sanitary-hygienic conditions is not possible with own resources, the administration of the establishment is obliged to apply with the Explanatory Note to the administration of the Department. The Note shall be accompanied with a letter of the doctoral-medical unit or a doctor."

According to Article 3 of the Appendix 2 to the Order, the infrastructure organization of the space allocated for the persons in the establishment shall ensure that these persons have a possibility to satisfy natural physiological needs; observe personal hygiene, maintain and support their health without infringing the honor and dignity of a person. It implies the following: provision with safe and sufficient potable water of high quality (no less than 2,5 liters per person per day); provision with sanitary-technical infrastructure of water supply and sewage connected with central circulation network for the observance of personal hygienic rules (washing hands and face, hygienic treatment of mouth, washing body no less than once a week, hairdresser's services: shaving, cutting hair and nails) and the sanitary-technical infrastructure and hygienic means (soap, tooth paste, body shower brush, towel); provision with a bed and bedding (mattress, pillow, duvet); provision with new bed linen no less than once a week, as well as provision and change as necessitated of season-specific special clothing; optimal observance of micro-climate in the premises (18-25 C^0); natural and artificial lighting, ventilation; provision of timely disposal of waste; cleaning of living space, furniture and windows every day, organization of periodic disinfection arrangements; provision of living space of prisoners with the furniture for common use (table, chair, locker, cupboard, etc.); undertaking of periodic medical check-up, preventive vaccinations and other anti-epidemiology measures. Pregnant women, breast-feeding mothers, juveniles, sick and persons with disabilities shall be provided with the respective living conditions and nutrition in line with the requirements of the legislation.

In line with the norms listed above, the National Preventive Mechanism paid particular attention during the monitoring to the proper observance and control of sanitary-hygienic and epidemiological conditions.

First of all, the frequency and efficiency of the disinfection, deratisation and disinsection works undertaken in the establishments was checked during the monitoring. It turned out, that the contractor organization visits all the establishments periodically; however, the frequency of works varies in different establishments. The volume and types of works are also different. It was established, that the disinsection and deratisation are conducted on spot, whereas disinfection is not undertaken in all the establishments. We paid attention to spreading loose, bug, rodents, insects, parasites, mange, and infectious diseases in cells. Likewise as during the previous reporting period, it again became clear that in the establishments, which work in the conditions of overcrowding or old and outdated infrastructure (there were repeated recommendations issued by the Public Defender to close them down), the sanitary work has not brought along any effect. The facts of spreading loose among newly admitted prisoners were confirmed in Establishment for Women No.5 in Rustavi, Establishment No.8 in Tbilisi and Establishment No.15 in Ksani. The Chief Doctors of other establishments have categorically refused the existence of the mentioned problem. The existence of bugs in the

cells and inside beds of prisoners was confirmed in conversations with medical personnel and in general population of penitentiary establishments as well as by visual examination in the following establishments: No.1 in Tbilisi, No.2 in Kutaisi, No.3 in Batumi, No.4 in Zugdidi, No.6 in Rustavi, No.9 in Tbilisi, No.12 in Tbilisi, No.13 in Khoni, No.15 in Ksani, No.16 in Rustavi and No.19 for Tubercular Convicts in Ksani. As for the spread of mange, the medical personnel mentioned in all the establishments, that the occurrence of this disease has sharply dropped recently. There were singular cases registered in the following establishments: No.5 for Women in Rustavi, No.8 in Tbilisi, No.16 in Rustavi and No.19 for Tubercular Convicts in Ksani. The Chief Doctors of other establishments absolutely reject the existence of this problem; however, this has not been confirmed in some of the establishments by the records of the dermato-venerologist consultant. The occurrence of the cases of Hepatitis "A" during the reporting period was rejected in all the establishments. The situation in establishments varied in terms of the spread of infectious diseases. Food intoxication case was recorded in Establishment No.5 in Rustavi, which touched several prisoners at once during the summer period. Several cases of chickenpox were recorded in Establishment No.8 in Tbilisi. This infection specific to child-age was also recorded in Special Establishment for Juveniles No.11. Three cases of chickenpox were also confirmed by the Chief Doctor of Establishment No.15 in Ksani, whereas during the monitoring of Establishment No.19 for Tubercular Convicts we were told in the medical unit that singular cases of infectious diseases had been periodically identified in this Establishment as well. Despite these data, no harsh deterioration of epidemiological situation had been noted and all the problems were overcome by the doctoral-medical units practically by means local resources.

As for the frequency and the type of the sanitary measures undertaken by the contractor organizations in the penitentiary system, the table below demonstrates this data:

N	Name of the Establishment	Frequency of undertaking measures	Measures implemented		
			Disinsection	Disinfection	Deratisation
1	№1 Establishment	Once in 2 month	+	+	+
2	№2 Establishment	Once a month	+	–	+
3	№3 Establishment	Once a month	+	–	+
4	№4 Establishment	Once a month	+	–	+
5	№5 Establishment	Once a month	+	+	+
6	№6 Establishment	Twice a month	+	–	+
7	№7 Establishment	Once a month	+	–	+
8	№8 Establishment	Once a month	+	–	+
9	№9 Establishment	Twice a month	+	–	+
10	№11 Establishment	Once a month	+	–	+
11	№12 Establishment	Once a month	+	+	+
12	№13 Establishment	Once a month	+	–	+
13	№14 Establishment	Twice a month	+	+	+
14	№15 Establishment	Once a month	+	+	+
15	№16 Establishment	Once a month	+	+	+
16	№17 Establishment	Once a month	+	+	+
17	№18 Establishment	Three times a month	+	+	+
18	№19 Establishment	Once a month	+	+	+

According to the National Calendar for Preventive Vaccination, the Chief Doctor of Juvenile Establishment No.11 stated that the negotiations were underway with the National Center for Disease Control to conduct the last planned vaccination "DTW" (Diphtheria, Tetanus, Whooping-cough) in an organized manned, without any impediments.

It is important to note that in some of the establishments, cases of biting prisoners by pets occurred quite often. Establishment No.15 in Ksani shall be particularly outlined in this regard. In the majority of such cases, the prisoners underwent in-patient treatment by means of the anti-rabies vaccination. It shall be mentioned in this regard, that despite

considerably high number of self-inflicted injuries, everyday life traumas and other types of traumas, anti-tetanus vaccination is provided only in exceptional cases. This poses serious risk for healthcare of patients.

As it has already been mentioned above, Appendix No.1 to Joint Order No.87-83/M of the Minister of Corrections and Legal Assistance of Georgia and the Minister of Labour, Health, and Social Affairs of Georgia dated 20-25 May 2011, approves the nutrition norms. Strict observance of the established rules is required for the provision of safe nourishment to imprisoned persons. The Appendix establishes the organization of provision of food, which shall comply with the two principles: the nutrition shall be balanced and full, to ensure the maintenance of health of persons in the establishment. The Order outlaws the reduction of the calorie value of food with the purpose of undertaking disciplinary punishment measures. According to the Order, remand/sentenced prisoners with special (diet) nutrition needs shall be provided with the products necessary for their medical treatment nutrition, as decided by the doctor in line with the medical needs of the patients. The diet tables and their description are established by the respective normative act of the Minister of Labor, Health and Social Affairs of Georgia. The nutrition regime of remand/sentenced persons determines the number of meals a person shall have during a day, including the observance of the physiologically justified breaks between them, as well as the purposeful distribution of dosage as established by the respective normative acts during a day and a week, and eating in the periods strictly defined by the schedule. Despite this, in some of the establishments, due to high number of prisoners or lack of local resources, the decisions made on the nutrition violate the physiologically justified breaks between the meals. According to the Order, the remand/sentenced persons shall be provided with the three meal a day. The gap between the meals shall not be over 5-6 hours. It is not allowed to have the same meals included the menu-schedule three times a day. Along with this, a daily ration broken down to calories shall be distributed observing the following requirements:

a) Breakfast – 30 – 35%;

b) Dinner – 40 – 45%;

c) Supper – 30 – 20%.

The menu, as a rule, shall be established for one week prior, taking into account the everyday norms, in three copies. The first copy (original) shall be kept in the Penitentiary Department, the second one - in the establishment, whereas the third one shall be displayed in the corridor for the information of remand/sentenced persons. In this respect, there is no possibility for each of the remand/sentenced persons to be acquainted with the menu. According to the Order, sick persons, who are in need of the special diet according to the prescription of a doctor, may get one product substituted by another one so that to have the nutrition value of the food received complying with the above-mentioned norms, whereas the weekly nutrition norms for remand/sentenced persons diseased with tuberculosis, dystrophy, ulceral vitamin A deficiency, malignant tumor, undergoing in-patient treatment, are regulated separately.

The monitoring revealed that the doctor of the local medical unit examines the food three times a day. The examination of food contemplates its organoleptic assessment and tasting. The samples of food are kept in the majority of the establishments according to the established duration. As stated by the Chief Doctors, the fact of written disapprobation had not been registered during the reporting period, however the majority of them had mentioned that they provided verbal recommendations to the kitchen. As stated by the Chief Doctor of Establishment No.5 in Rustavi, following a recommendation of the Doctor the food was not distributed once. The Chief Doctor in Establishment No.9 stated that he also remembered the case when he verbally addressed the manager of the nutrition block concerning the quality of brown bread. The doctors of Establishment No.9 issued recommendations over the saltiness and volume of fat in food. The similar recommendations had been periodically issued by the Chief Doctor of Establishment No.14 in Geguti as well. It shall be mentioned that in cases of sick patients, including the ones diseased with diabetes mellitus, there were no diet tables provided. In the best case, the patients diseased with diabetes received brown bread "based on the prescription of a doctor". In this regard, it shall be mentioned that the diet table corresponding the needs of tubercular convicts was organized in Establishment No.19 for Tubercular Convicts. The Medical Establishment No.18 for Pre-trial/convicted Inmates (Central Penitentiary Hospital) was the only establishment in the penitentiary system where a doctor-nutritionist was employed. Following the interview with the doctor it was made clear that there

were tables No.1, No.5, No.9 and No.11 functioning in the Establishment. As stated by the nutritionist, before the distribution each time the food was checked by the doctor on duty in the reception unit. It was revealed during the monitoring that the there was a case when the nutritionist had made a decision to send back a quantity of purchased bread that was unprecedented decision within the penitentiary system.

THE ISSUES RELATED TO SICKNESS OF PRISONERS AND TRANSFER OF PATIENTS IN THE ESTABLISHMENTS OF THE PENITENTIARY SYSTEM

The study of the issues of sickness in the establishments of the penitentiary system is of utmost importance, as the assessment of the efficiency of the system, as well as planning and development of human and other types of resources shall be based exactly on the specificities of the mentioned indicator. The structure of the indicator of sickness shall be the basis for any type of a reform and strategy, as well as for the development plan of the penitentiary healthcare system. The indicator of sickness in prisons is important in general for the consideration of the public healthcare in the country as well. The Office of the Public Defender of Georgia has been observing this direction and studying the prevalence of a particular group of sickness in prisons for the last several years. The sickness, in general, represents the indicator for the limitation of condition, capacity or obliteration of health of sick persons due to any reason. The term may also be used to describe a particular form of sickness or the degree of healthcare condition in situations when a sickness results into the damaging health of a patient. The term co-sickness shall herewith be also identified. This contemplates the co-existence of more than one medical condition in one person. The study of the indicators of sickness in the population of penitentiary system does not take place in line with the established rules and standards. Despite this, recently the special forms had been elaborated by the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia. The doctoral-medical units of the penitentiary establishments use these forms to register on a monthly basis the newly identified forms of sickness and provide the information to the Information Department. Despite the fact that the mentioned method does not at all comply with the very concept of the indicator of "sickness" it may still provide important and valuable information. It shall also be mentioned herewith that the local medical personnel does not provide the standardized collection and processing of this information. This very fact further increases the risk of the possible collection of the imprecise information for the database. The standard table, according to which the local doctors keep the statistical data about the newly identified sickness, does not comply with the established and internationally recognized epidemiological criteria and requirements.

The information collected in the mentioned field in 2011 broken down according to the periods of monitoring, is provided in the tables below:

Data for the I half of 2011;

Newly identified sickness broken down according to the establishments	Cardio-vascular	Respiratory system	Digestive system	Urethral-genital system	Nervous system	Psychic diseases	Endocrinological	Hematological	Sense organs	Infectious	Bones, joints and connective tissues	Skin and venereal	Surgical	Oncological
Establishment №1	66	198	141	72	24	18	9	0	109	10	112	0	26	0
Establishment №2	22	56	29	26	66	57	8	0	90	2	0	0	8	0
Establishment №3	23	106	44	73	18	16	6	0	20	7	17	1	29	2
Establishment №4	36	27	46	18	32	4	6	0	12	26	5	25	3	2
Establishment №5	171	50	62	137	186	86	110	6	92	0	68	1	49	0
Establishment №6	0	93	27	0	11	1	1	0	0	0	0	1	0	0
Establishment №7	0	0	1	5	4	0	0	0	9	5	0	4	0	0
Establishment №8	9	0	0	25	25	80	16	0	64	2	14	1	0	0
Establishment №9	12	5	12	0	0	0	0	5	24	0	0	0	0	0

Establishment №11	8	22	2	8	38	4	1	0	50	26	1	49	0	0
Establishment №12	21	23	34	47	19	3	1	0	36	0	3	0	0	0
Establishment №13	0	4	1	5	4	0	0	1	2	49	2	0	0	0
Establishment №14	9	190	10	1	5	0	0	3	1	0	0	0	4	0
Establishment №15	52	182	71	86	77	60	9	0	111	0	15	4	7	1
Establishment №16	45	55	104	183	72	12	5	0	262	8	0	1	10	0
Establishment №17	220	650	290	60	112	80	30	1	118	6	1	1	30	1
Establishment №18	53	40	74	63	41	49	1	7	35	115	21	15	33	19
Establishment №19	61	55	0	36	6	53	0	0	45	0	0	13	1	1
Total	808	1756	948	845	740	523	203	23	1080	256	259	116	200	26

Data for the II half of 2011

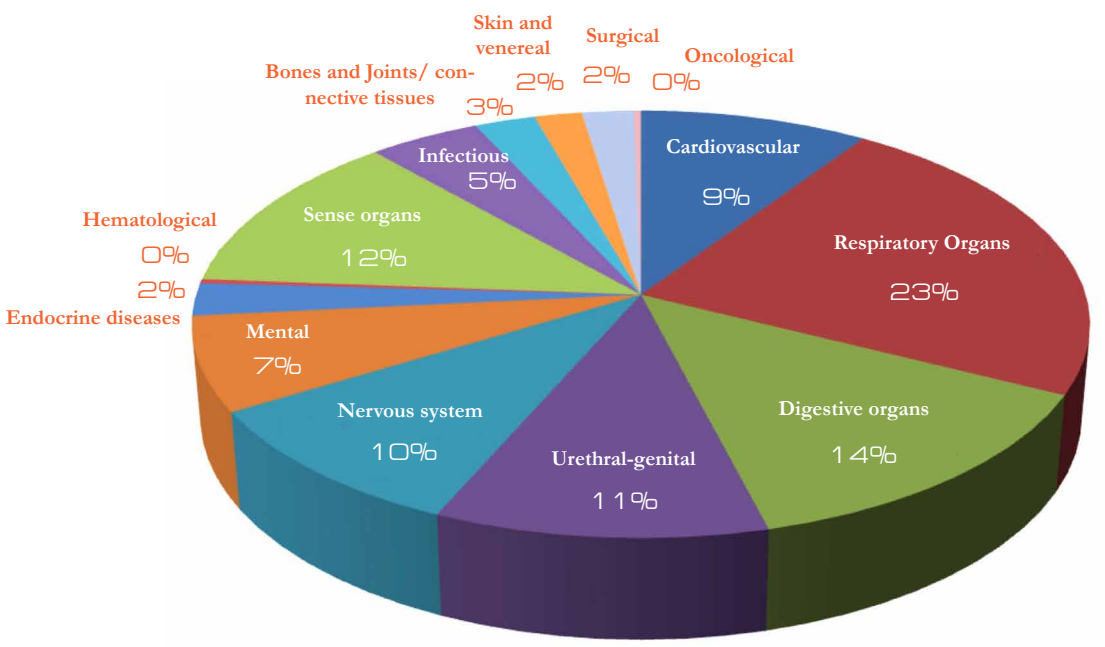
Newly identified sickness broken down according to the establishments	Cardio-vascular0	Respiratory system	Digestive system	Urethral-genital system	Nervous system	Psychic diseases	Endocrinological	Hematological	Sense organs	Infectious	Bones, joints and connective tissues	Skin and venereal	Surgical	Oncological
Establishment №1	41	264	72	34	30	18	6	0	55	3	63	40	12	0
Establishment №2	6	34	60	33	105	59	1	2	94	2	5	0	19	1
Establishment №3	25	67	57	42	23	8	12	0	28	10	7	0	31	4
Establishment №4	39	58	68	27	19	11	12	0	22	34	29	13	3	0
Establishment №5	87	8	11	68	94	19	35	0	50	0	20	3	20	3
Establishment №6	40	114	56	39	72	143	4	0	0	8	0	33	0	0
Establishment №7	1	1	0	1	0	0	0	1	2	0	0	5	0	0
Establishment №8	3	0	0	22	67	76	23	0	69	0	0	1	0	0
Establishment №9	9	18	9	17	5	3	2	0	5	0	5	0	4	0
Establishment №11	0	9	1	6	21	7	0	0	14	16	1	71	0	0
Establishment №12	13	9	21	13	8	19	1	6	32	0	2	0	2	0
Establishment №13	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Establishment №14	25	168	94	40	50	8	1	1	18	149	8	3	8	0
Establishment №15	53	110	65	78	73	39	22	0	115	1	27	0	6	0
Establishment №16	15	46	162	138	33	10	3	0	240	105	4	5	4	0
Establishment №17	352	1317	696	355	287	56	106	1	244	113	7	0	28	4
Establishment №18	56	46	63	60	36	59	3	15	34	84	4	34	29	13
Establishment №19	80	20	0	38	47	194	0	5	61	29	0	18	9	0
Total:	845	2289	1435	1011	970	729	231	31	1083	554	182	226	175	25

As it is demonstrated in the table, the most frequently recorded sicknesses in the establishments of the penitentiary system is the respiratory system diseases. The next place in the list according to the data of the I half of 2011 is the attributed to the identification of sense-organ diseases. In the second half of 2011, the second place was overtaken by digestive system diseases, thus shifting the sense-organ diseases to the third place. If we take into consideration the fact that there were only two specialist doctors working for the management of this group of diseases (ophthalmologist and oto-rhino-laryngologist), it may be stated that in the first half of 2011 the newly identified cases of the eye and oto-rhino-laryngic diseases had one of the leading positions in the establishments of the penitentiary system. The hematologic diseases belong to the least identified group of diseases together with the oncologicsl diseases. It shall be mentioned that the death rate due to the oncological diseases was particularly high in the first 6 months of 2011. Along with these cases, we came across the situations when there was a partial or no diagnostics provided at all.

This was the reason for diagnosing the oncological diseases only by the forensic medical examination, as a result of histolomorphological examination.

As for the tubercular diseases, the registration of the newly identified cases of this nosology, deriving from its particular specificity, is undertaken separately in the penitentiary system. Due to this, in this case tuberculosis is not included into any other group (e.g. group of infectious diseases, or lung diseases in the group of diseases of respiratory system).

The proportions of the diseases within the general data, is provided in the diagram below:



The Monitoring Group has noted the inconsistencies identified as the disproportion of the newly revealed diseases as compared with the indicator of consultations delivered by the respective specialists and corresponding instrumental, lab and clinical examinations. For example, against the background of having the traumatologist accessible only in the Medical Establishment No.18, and having practically insignificant number of consultations delivered by the doctors of this profile at other places of serving the sentence, the number of newly identified diseases of bones and joints system was quite high in the general picture of diseases. The same may be noted with regard to neurological pathologies as well. The number of the consultations delivered broken down according to establishments was considered in the respective chapter of this Report. As for the undertaken instrumental and lab examinations, their number in the reporting period of 2011 is provided in the table below:

I half of 2011:

№	Name of the Establishment	Instrumental examination					Lab examination				
		X-ray examination	Ultrasound	Electro-cardiogram (ECG)	Endoscopy	**Total**	General blood test	Urine clinical	Blood biochemistry	Of sputum	**Total**
1	№1 Establishment	140	102	27	0	269	3	0	4	420	427
2	№2 Establishment	281	288	51	4	624	169	75	240	275	759
3	№3 Establishment	55	197	80	0	332	28	0	14	196	238
4	№4 Establishment	35	40	11	1	87	7	0	0	54	61

5	№5 Establishment	213	199	64	0	476	52	12	135	78	277
6	№6 Establishment	230	106	33	0	369	45	7	24	115	191
7	№7 Establishment	7	5	2	1	15	6	0	4	1	11
8	№8 Establishment	185	86	12	16	299	73	31	30	170	304
9	№9 Establishment	3	25	13	0	41	8	0	6	1	15
10	№11 Establishment	6	8	8	0	22	20	0	8	23	51
11	№12 Establishment	96	52	43	0	191	4	0	5	145	154
12	№13 Establishment	25	21	8	0	54	17	1	10	11	39
13	№14 Establishment	321	352	66	2	741	135	106	85	355	681
14	№15 Establishment	348	245	68	10	671	19	4	41	70	134
15	№16 Establishment	244	302	66	5	617	18	0	30	671	719
16	№17 Establishment	390	316	171	0	877	25	4	20	400	449
17	№18 Establishment	1961	1063	1031	278	4333	2594	1119	516	1097	5326
18	№19 Establishment	1642	101	52	0	1795	1195	199	873	6440	8707
Total:		6182	3508	1806	317		4418	1558	2045	10522	

For the II half of 2011:

№	Name of the Establishment	Instrumental examination					Lab examination				
		X-ray examination	Ultrasound	Electrocardiogram (ECG)	Endoscopy	**Total**	General blood test	Urine clinical	Blood biochemistry	Of sputum	**Total**
1	№1 Establishment	168	40	28	0	236	3	0	8	534	545
2	№2 Establishment	308	254	14	0	576	136	86	146	557	925
3	№3 Establishment	40	176	59	0	275	37	0	6	193	236
4	№4 Establishment	39	31	5	0	75	7	2	5	196	210
5	№5 Establishment	127	243	119	21	510	40	25	89	244	398
6	№6 Establishment	213	108	53	0	374	12	1	29	189	231
7	№7 Establishment	5	8	2	0	15	0	0	2	1	3
8	№8 Establishment	164	42	85	15	306	43	23	10	466	542
9	№9 Establishment	19	95	27	2	143	24	6	26	89	145
10	№11 Establishment	16	4	2	0	22	33	0	0	22	55
11	№12 Establishment	27	95	39	0	161	28	1	12	411	452
12	№13 Establishment	–	–	–	–	–	–	–	–	–	–
13	№14 Establishment	365	221	41	0	627	116	99	94	1059	1368
14	№15 Establishment	337	144	73	3	557	43	1	156	1048	1248
15	№16 Establishment	227	181	34	3	445	13	1	13	1793	1820
16	№17 Establishment	237	181	124	1	543	57	0	60	1438	1555

17	№18 Establishment	1808	900	939	269	3916	2430	1818	7430	989	12667
18	№19 Establishment	1563	74	69	0	1706	968	217	1194	8943	11322
Total:		5663	2866	1710	314		3990	2280	9280	18172	

The table demonstrates the main types of the lab examination provided in the penitentiary system. The same may be noted with regard to the instrumental examinations. As for other types of instrumental and lab examinations, they in general take place in the system (e.g. CT and MRT examinations), however they are provided in the specialized medical establishments and their number, unfortunately, does not adequately correspond to the actual need.

Within the framework of the monitoring undertaken by the National Preventive Mechanism, the due attention was devoted to the study of such diseases in the penitentiary system as diabetes, asthma and epilepsy. It shall be noted that due to the fact that these diseases are widely spread, the mentioned problems had been outlined by the Public Defender repeatedly in the past as well. In particular, the attention had been paid to the provision of the system of treatment and taking care of, as well as of adequate diet, the respective treatment nutrition and supervision for diseased persons.

In the first half of 2011 there were in total 203 newly identified cases of endocrine diseases registered by the doctoral-medical points of different establishments of the penitentiary system. The majority of these were diabetes. According to the same source, insulin was prescribed in total to 84 patients within the entire system, whereas Desmopressin was prescribed to 65 patients. The chart below shows the data for the I half of 2011:

Name of the Establishment	Number of diseased with diabetes	Number of the patients using insulin	Hypo/hyper glycemia coma was noted	Issues of diet nutrition	Remark
№1 Establishment	3	1	0	Black bread and diary products	
№2 Establishment	5	2	0		
№3 Establishment	2	2	0		
№4 Establishment	5	1	0		
№5 Establishment	29	7	0	Black bread	
№6 Establishment	2	2	0	Black bread	
№7 Establishment	0	0	0		
№8 Establishment	42	8	0		
№9 Establishment	15	10	0	Brown bread	
№11 Establishment	0	0	0		
№12 Establishment	5	2	0		
№13 Establishment	0	0	0		
№14 Establishment	5	1	0		1 patient with Diabetes insipidus
№15 Establishment	20	8	1	They buy black bread on their own	
№16 Establishment	7	3	0	Black bread	
№17 Establishment	42	9	1	Matsoni (Georgian sour yogurt) Black bread, boiled meet	
№18 Establishment	8	7	0		
№19 Establishment	5	5	0		
Total:	195	68	2		

As for the data of the II half of 2011, According to the same source, insulin was prescribed in total to 84 patients within the entire system, whereas Desmopressin was prescribed to 65 patients (see the Chart below).

Name of the Establishment	Number of diseased with diabetes	Number of the patients using insulin	Hypo/hyper glycemia coma was noted	Issues of diet nutrition	Remark
№1 Establishment	7	1	0	Black bread and diary products	Diet for I inmate (insulin-dependent)
№2 Establishment	5	3	0	Carbohydrate, black bread, buckwheat	
№3 Establishment	20	3	0	Hercules, black bread, buckwheat	
№4 Establishment	4	2	0	Unsalted cheese via parcel	Only for insulin-dependents
№5 Establishment	30	5	3	Black bread, backwheat	All three cases were pre-coma
№6 Establishment	4	1	0	Black bread	
№7 Establishment	0	0	0		
№8 Establishment	21	6	0	Carbohydrate	
№9 Establishment	32	7	1	Black bread and carbohydrate	
№11 Establishment	0	0	0		
№12 Establishment	5	2	0		
№13 Establishment	–	–	–		
№14 Establishment	17	5	0	Meat diet and dairy products	
№15 Establishment	29	8	1-2 cases	They buy black bread on their own	No diets but recommendations are provided regarding the purchase of products at the shop
№16 Establishment	8	3	0	Black bread	
№17 Establishment	26	13	Coma recorded Twice	Matsoni (Georgian sour yogurt) Black bread, boiled meet, eggs, sour cream, cottage cheese	
№18 Establishment	11	8	0		Dairy Products
№19 Establishment	7	5	0	Carbohydrates are limited because of TB, vegetables, meat, dairy products are allowed	
Total:	226	72	8		

As it is demonstrated in the table above, according to the information collected by the Monitoring Group, 206 persons are diseased with diabetis mellitus in the penitentiary system. Along with that, 72 undergo insulin treatment, whereas the other patients get the pill treatment. There were 10 instances of hypo- and hyperglycemia coma recorded due to

diabetes. As for the special nutrition issues, this issue has not been solved in any of the establishments. In this regard, Chief Doctors of some of the establishments have explained that they were able to provide only black bread, at times even provided based on the doctor's prescription. The comments made by doctors were indicated in the table above.

The Monitoring Group of the Public Defender of Georgia, as it was mentioned, got interested into the system of spread of bronchial asthma and epilepsy along with diabetes.

The information collected for the I half of the year 2011, is provided in the table below:

Name of the Establishment	Bronchial asthma			Epilepsy		
	Number	Severe forms	Status	Number	Severe forms	Status
№1 Establishment	1	0	0	5	0	0
№2 Establishment	3	0	0	2	0	0
№3 Establishment	1	0	0	2	0	0
№4 Establishment	3	0	0	1	1	0
№5 Establishment	2	0	0	4	0	0
№6 Establishment	1	0	1	2	1	1
№7 Establishment	0	0	0	1	1	1
№8 Establishment	4	0	1	20	0	1
№9 Establishment	5	1	0	1	0	0
№11 Establishment	0	0	0	1	0	0
№12 Establishment	3	1	0	7	0	0
№13 Establishment	1	0	0	3	0	0
№14 Establishment	7	0	0	15	0	1
№15 Establishment	18	2	1	15	2	0
№16 Establishment	8	1	0	25	1	1
№17 Establishment	10	1	0	30	0	0
№18 Establishment	0	0	0	0	0	0
№19 Establishment	2	1	1	3	1	1
Total:	69	7	4	137	7	6

The data for the II half for the year 2011:

Name of the Establishment	Bronchial asthma			Epilepsy		
	Number	Severe forms	Status	Number	Severe forms	Status
№1 Establishment	3	0	0	4	1	1
№2 Establishment	0	0	0	4	0	0
№3 Establishment	3	0	0	0	0	0
№4 Establishment	0	0	0	1	1	0
№5 Establishment	1	0	0	3	0	0
№6 Establishment	0	0	0	2	0	0
№7 Establishment	0	0	0	1	1	1
№8 Establishment	5	0	1	Could not identify	0	0

№9 Establishment	5	1	2	1	0	0
№11 Establishment	0	0	0	1	0	0
№12 Establishment	0	0	0	2	0	0
№13 Establishment	–	–	–	–	–	–
№14 Establishment	15	0	0	0	0	0
№15 Establishment	25	1	2	3 (others do not have convulsions and "epilepsy" is not confirmed	2	0
№16 Establishment	4	0	0	35	1	0
№17 Establishment	20	0	0	10	1	1
№18 Establishment	2	0	0	3	0	0
№19 Establishment	5	1	1	3	3	3
Total:	88	3	6	73	10	6

The local medical units have registered 88 prisoners diseased with bronchial asthma throughout the entire system. This is, certainly far less than the real figure. According to the mentioned statistics, the highest number of the patients diseased with asthma is concentrated in Establishments No.15 and No.17. The severe forms of the disease are registered in cases of seven patients; asthmic status had been developed only in ten cases.

As for the such a widespread neurologic pathology as epilepsy, 137 persons diseased were registered in the penitentiary system in the first half of 2011. According to the information provided by chief doctors of the penitentiary establishments, in the second half of 2011, 73 cases of asthma were documented. In 10 cases, the severe form of epilepsy was recorded, whereas the epileptic status was recorded in 12 cases. The highest number of diseases was recorded in Establishments No.14, No.15, No.16, No.17 and No.8. It shall be herewith mentioned that in the conditions of absence or insufficient provision of qualified neurological assistance, large part of patients have no access to the adequate diagnostic and treatment services. Due to this reason, considerable part of the persons diseased with epilepsy, remain to be unregistered and without the respective treatment. The local doctors and particularly the Chief Doctors note that despite the fact that they become aware of development of convulsions, they could not diagnose patients without a consultation of neurologist and the respective examinations. In the case of a visit of a neurologist, the latter always notes in writing that "convulsions were noted – as this was told to me", whereas the EEG, MRT and CT examinations, for the confirmation of a diagnosis are either not prescribed for the confirmation of a diagnosis or are often not implemented.

The Special Preventive Group devotes great attention to the problems of mental health in the penitentiary system and the ways of their solution. It shall be noted in this regard, that the situation created in the establishments is not favorable (see the Charts below for the I and the II halves of 2011).

I half of 2011:

№	Name of the Establishment	Consultations of a psychiatrist	Newly identified patients	Persons with psychic problems (registered)	Suicide	Para suicide
1	№1 Establishment	18	18	1	0	0
2	№2 Establishment	259	57	57	0	2
3	№3 Establishment	137	16	8	0	0
4	№4 Establishment	73	4	5	0	0
5	№5 Establishment	72	86	22	0	1
6	№6 Establishment	77	1	40	1	0

7	№7 Establishment	1	0	1	0	0
8	№8 Establishment	62	80	12	0	0
9	№9 Establishment	0	0	1	0	0
10	№11 Establishment	8	4	1	0	0
11	№12 Establishment	0	3	24	0	0
12	№13 Establishment	6	0	8	0	0
13	№14 Establishment	90	0	20	0	0
14	№15 Establishment	128	60	45	1	0
15	№16 Establishment	23	12	24	0	0
16	№17 Establishment	26	80	20	0	2
17	№18 Establishment	168	49	83	1	3
18	№19 Establishment	78	53	5	0	0
	Total	1226	523	377	3	8

II half of 2011:

№	Name of the Establishment	Consultations of a psychiatrist	Newly identified patients	Persons with psychic problems (registered)	Suicide	Para suicide
1	№1 Establishment	17	18	–	0	0
2	№2 Establishment	370	59	32	0	2
3	№3 Establishment	76	8	23	0	0
4	№4 Establishment	52	11	–	0	0
5	№5 Establishment	55	19	2	0	1
6	№6 Establishment	143	143	40	1	0
7	№7 Establishment	1	0	1	0	0
8	№8 Establishment	76	76	–	0	0
9	№9 Establishment	17	3	19	0	0
10	№11 Establishment	16	7	0	0	0
11	№12 Establishment	45	19	9	0	0
12	№13 Establishment	–	–	–	0	0
13	№14 Establishment	103	8	–	0	0
14	№15 Establishment	54	39	45	1	0
15	№16 Establishment	24	10	25	0	0
16	№17 Establishment	59	56	31	0	2
17	№18 Establishment	0	59	29	1	3
18	№19 Establishment	194	194	3	0	0
	Total:	1302	729	*****	3	8

As it is demonstrated in the table above, there were 2528 primary and repeated consultations provided by psychiatrists in the penitentiary system of Georgia. Out of the total number, 1252 newly identified cases had been documented. Due to the absence of systematized records, it turned out impossible to identify the number of persons already registered at the local medical units. Those persons undergo the medication treatment that is subject to special control, based on the prescription of a psychiatrist. The system of delivering, prescription and usage-registration of the mentioned medications varied in different establishments. The situation had relatively improved in this respect during the reporting period; however, it was still accompanied with considerable gaps and violations. As an example, we herewith cite the information provided by the Chief Doctor of Establishment No.5 for Women about the prescription of psychotropic medication. As clarified by the Doctor, the medication shall be prescribed by a doctor psychiatrist, who periodically

visits the Establishment for consultations. The prescription provided by the consultant is reviewed by the Chief Doctor following which, the medication is dispensed and respectively registered. This is the way that e.g. Zolomax, Diazepam (in ampoule, as well as in pills) and other medications are prescribed. As for the transfer of the patients due to the deterioration of mental health conditions, the Chief Doctor noted that there were four sentenced prisoners who had undergone the examination by the psychiatric commission during the reporting period; all of them were transferred to the Kutiri mental health center. As for the mechanism of submitting a patient to the Commission, the Doctor described this as follows: following the provision of the first consultation to a patient, the primary diagnosis is established. Following this, a psychiatrist shall visit the patient and make appropriate records at least twice a week. After approximately 7-8 such records, the Chief Doctor intercedes respectively and applies to the administration of the establishment, which, on its turn, provides the documentation and information to the Penitentiary Department. The Department on its turn sends the documentation of the patient to the Commission. If the Commission issues a recommendation for transferring the patient, the conclusion is sent to the forensic medical examination approximately within a week. The forensic medical examination is undertaken in the State Bureau, lasting for around 20 days. The Commission meetings are held twice a month, in the Ministry of Corrections and Legal Assistance. The results of the forensic medical examination are sent to the court and the judge makes the final decision.

The medications such as Diazepam, Optimal, Amitriptilin, Haloperidol, Zolomax, Azaleptin, Ciklodol, etc. are available on spot in Establishment No.6 in Rustavi.

The Chief Doctor of the Establishment N17 in Rustavi mentions that at times he has to bring the medications from outside.

As the statistical information provided above shows, there were 6 cases of suicide documented in the establishments of the penitentiary system of Georgia in 2011. There were 16 cases in 2011, classified by doctors as suicide attempts. In some cases, the records in the Register for Injuries clearly showed that there might have been a case of suicide attempts; though, the facts are not classified accordingly. Following the suicide attempts, as a rule, patients with such a risk are visited by psychiatrist. However, according to the international standards, prevention shall be undertaken at an earlier stage.

The Special Report on Right to Health and Problems Related to Exercise this Rights within Penitentiary System of Georgia (for 2009 and the first half of 2010) contained full and comprehensive information about the drug addicted patients in the penitentiary system. No changes have occurred in this respect in 2011. Drug addicted persons are not registered separately in almost any of the establishments. There were only separate facts of narcological consultations registered during the same period. The majority of the Chief Doctors of the establishments consider that they do not have this problem in reality, as since the imprisonment the drug-addicted patients have to quit in a compulsory was; and, the acute period had already passed for them. This view may certainly not be taken on board in the establishments where the prisoners are admitted at the initial stage. The Methadone Program[576] functions in Establishment No.8. That Program was described in details in the previous Report. Despite the fact that the head of the Program was claiming that its implementation was going on without any impediments and it was fully covering the needs, the Monitoring Group personally met a prisoner who had been in a quite acute conditions due to the deficiency syndrome and was asking to be included into the Program. The prisoner had submitted the documentation proving that before the deprivation of liberty he had been participating in the Methadone Program; he was allowed to participate in the Programme even while being held at the temporary detention isolator. Despite this, he was not included into the Methadone Program in Establishment No.8 that leads the Monitoring Group to consider that there might be other similar cases as well.

As stated by the Chief Doctor of Establishment for Women No.5, "they did not need the Methadone Program." Drug addict persons do not cause disturbances, and in case of need, a narcologist may be called. This had been required only once during the reporting period.

The issue of dissemination of viral hepatitis in the penitentiary system, still remains to be one of the most acute issues. Great part of the diseased prisoners in 2011 had diagnosis of viral hepatitis, accompanied with portal hypertension

[576] It is planned to launch the Methadone Programme in Establishment No.2 in Kutaisi from the beginning of 2012.

and respective complications in the form of bleeding, cirrhosis, ascites, and other conditions dangerous for life. The monitoring undertaken by the Special Preventive Group revealed that the doctors of the penitentiary establishments still considered viral hepatitis as one of the most widely spread diseases. Despite this, no exact registration of viral hepatitis or any other statistics are kept in this respect in the prisons of Georgia. The doctors possess information only about the cases when hepatitis is proved via lab examination. During the monitoring we noted that a considerable number of prisoners with the clinically expressed signs of liver-damage were not at all examined on the hepatitis. The examination is not always undertaken in cases of epidemiologically negative environments either.

On 25 June 2009, the Minister of Labor, Health and Social Affairs of Georgia and the Minister of Corrections and Legal Assistance of Georgia issued the Joint Order (№267-219/M), approving the Strategy on Provision of Medical Services to Sentenced and Remand Persons diseased with the hepatitis "C". According to the Order, the Ministries were tasked to draft the Action Plan in line with the Strategy approved with the Order. Despite the fact that the issues required the immediate regulation and solution, even 2 years later since the issuance of the Order the Action Plan has not been elaborated, whereas the situation in the penitentiary establishments in this respect remained alarming. The information collected during the monitoring, from the perspective of the situation with regard to the hepatitis in the penitentiary system is provided in the tables below:

Data for the I half of 2011

№	Name of the Establishment	Number of inmates examined on hepatitis	Number of inmates under the treatment with Interpherone
1	№1 Establishment	8	
2	№2 Establishment	8	
3	№3 Establishment	0	
4	№4 Establishment	0	
5	№5 Establishment	4	
6	№6 Establishment	9	1
7	№7 Establishment	0	1
8	№8 Establishment	6	1
9	№9 Establishment	1	
10	№11 Establishment	1	
11	№12 Establishment	2	1
12	№13 Establishment	0	
13	№14 Establishment	17	
14	№15 Establishment	7	
15	№16 Establishment	2	
16	№17 Establishment	5	
17	№18 Establishment	659	
18	№19 Establishment	123	
	Total	852	

Data for the II half of 2011:

№	Name of the Establishment	Number of inmates examined on hepatitis	Number of inmates under the treatment with Interpherone
1	№1 Establishment	3	0
2	№2 Establishment	6	0
3	№3 Establishment	0	0
4	№4 Establishment	2	0
5	№5 Establishment	5	0
6	№6 Establishment	23	0
7	№7 Establishment	0	0
8	№8 Establishment	3	0
9	№9 Establishment	1	0
10	№11 Establishment	0	0
11	№12 Establishment	2	0
12	№13 Establishment	–	–
13	№14 Establishment	22	0
14	№15 Establishment	1	0
15	№16 Establishment	5	0
16	№17 Establishment	24	0
17	№18 Establishment	794	6
18	№19 Establishment	144	0
	Total	1035	

As demonstrated in the table above, there were 852 prisoners examined to diagnose hepatitis in the first 6 months of 2011; and, 1035 prisoners - in the second half if 2011. The prescription of Interpherone is practiced to treat hepatitis only in Medical Establishment No.18 (Central Penitentiary Hospital). Not all the patients remain there before the end of the course of treatment. The monitoring revealed that 4 patients continued the treatment course with Interpherone in Establishments No.6, No.7, No.8 and No.12. As for the data of the second half of 2011, 6 inmates were undergoing treatment with Interpherone at Medical Establishment No.18.

As for the venereal diseases, the targeted examination of patients have not been undertaken to identify these diseases. The information collected in this direction covering the year 2011 is provided in the table below (broken down according to 2 monitoring periods of the I and the II halves of 2011):

I half of 2011

№	Name of the Establishment	Newly revealed cases of dermato-venereal pathologies	Were examined on the venereal diseases
1	№1 Establishment	0	1
2	№2 Establishment	0	1
3	№3 Establishment	1	1
4	№4 Establishment	25	2

5	№5 Establishment	1	19
6	№6 Establishment	1	1
7	№7 Establishment	4	0
8	№8 Establishment	1	2
9	№9 Establishment	0	0
10	№11 Establishment	49	0
11	№12 Establishment	0	0
12	№13 Establishment	0	0
13	№14 Establishment	0	0
14	№15 Establishment	4	8
15	№16 Establishment	1	4
16	№17 Establishment	1	0
17	№18 Establishment	15	205
18	№19 Establishment	13	0
	Total	116	244

II half of 2011:

№	Name of the Establishment	Newly revealed cases of dermato-venereal pathologies	Were examined on the venereal diseases
1	№1 Establishment	40	2
2	№2 Establishment	0	0
3	№3 Establishment	0	0
4	№4 Establishment	13	0
5	№5 Establishment	3	20
6	№6 Establishment	33	1
7	№7 Establishment	5	0
8	№8 Establishment	1	2
9	№9 Establishment	0	3
10	№11 Establishment	71	2
11	№12 Establishment	0	1
12	№13 Establishment	-	-
13	№14 Establishment	3	5
14	№15 Establishment	0	2
15	№16 Establishment	5	11
16	№17 Establishment	0	0
17	№18 Establishment	34	294
18	№19 Establishment	18	0
	Total	226	343

As demonstrated in the tables, there were in total 577 patients examined on venereal diseases. The profiling diseases were diagnosed by dermato-venerologist to 342 convicted persons (majority of them are skin diseases). It was identified during the monitoring that the local doctors did not consider venereal diseases to be a serious problem due to their low number. Only very few cases of such diseases as gonorrhea and pox were identified.

2011

The Monitoring Group paid a particular attention to studying the types of dental services in the penitentiary establishments. As it was identified, the total number of dental services provided to sentenced and remand prisoners in all the establishments of the penitentiary system in 2011 was 17 267 (8634 times in the I half of 2011; and, 8633 times – in the II half of 2011). The mentioned number includes the primary dental services, as well as the repeated consultations and types of services.

Data for the first half of 2011:

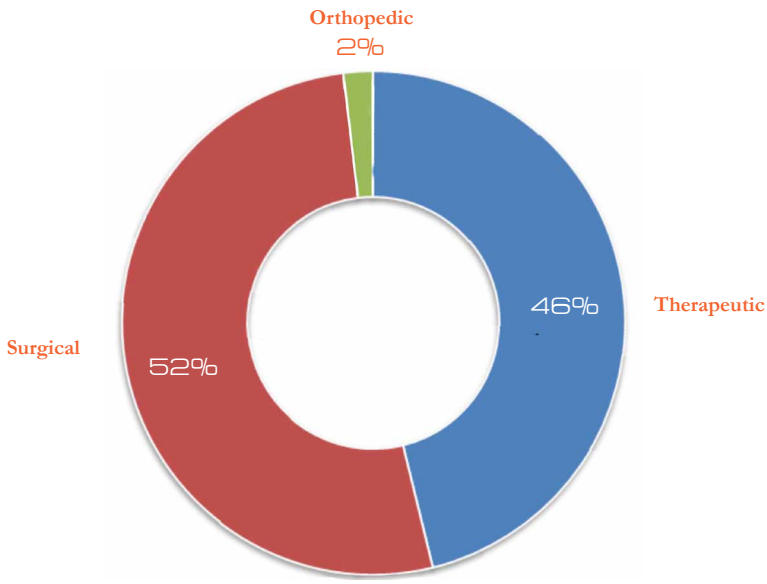
№	Name of the Establishment	Newly identified dental diseases	Total number of patients treated by dentists	Types of services		
				Therapeutic	Surgical	Orthopedic
1	№1 Establishment	322	412	48	347	17
2	№2 Establishment	1242	1234	747	481	6
3	№3 Establishment	47	310	132	165	13
4	№4 Establishment	111	111	43	65	3
5	№5 Establishment	963	1021	601	411	9
6	№6 Establishment	136	544	255	277	12
7	№7 Establishment	48	20	18	2	0
8	№8 Establishment	923	1082	625	457	0
9	№9 Establishment	125	125	20	104	1
10	№11 Establishment	170	156	121	35	0
11	№12 Establishment	298	298	260	37	1
12	№13 Establishment	97	97	80	17	0
13	№14 Establishment	646	638	42	592	4
14	№15 Establishment	1090	1072	492	553	27
15	№16 Establishment	518	518	117	390	11
16	№17 Establishment	395	612	162	450	0
17	№18 Establishment	172	172	108	42	22
18	№19 Establishment	195	212	129	69	14
	Total	7498	8634	4000	4494	140

Data for II half of 2011:

№	Name of the Establishment	Newly identified dental diseases	Total number of patients treated by dentists	Types of services		
				Therapeutic	Surgical	Orthopedic
1	№1 Establishment	445	445	142	269	34
2	№2 Establishment	1424	1424	721	700	3
3	№3 Establishment	313	313	141	151	21
4	№4 Establishment	76	76	50	24	2
5	№5 Establishment	1092	1092	701	344	47
6	№6 Establishment	481	481	228	235	18
7	№7 Establishment	42	42	24	18	0

8	№8 Establishment	1027	1027	505	522	0
9	№9 Establishment	109	109	49	60	0
10	№11 Establishment	128	197	90	38	0
11	№12 Establishment	328	328	222	102	4
12	№13 Establishment	–	–	–	–	–
13	№14 Establishment	573	573	21	546	6
14	№15 Establishment[575]	843	843	340	489	14
15	№16 Establishment	419	419	26	386	7
16	№17 Establishment	873	873	453	417	3
17	№18 Establishment	163	163	105	41	17
18	№19 Establishment	228	228	124	94	10
	Total	8564	8633	3942	4436	186

As it is demonstrated in the tables, there were 7498 (I half of 2011) and 8564 (II half of 2011) new dental problems identified. As for the types of service, therapeutic dental treatment was provided 7942 times, surgical – 8930 times, whereas orthopedic – 326 times. The co-relation of the types of dental services is provided in the graphic below:



It shall be mentioned that recently, the number of therapeutic dental services gradually increase and almost becomes equal to the number of surgical dental treatment, the latter had been considered to be the only type of dental treatment in the prisons in the past. Apart from this, the orthopedic dental treatment has also emerged and been gradually developed, which was not accessible service to the prisoners in the past. This fact shall be considered as a positive step forward.

Within the framework of the monitoring of healthcare in the penitentiary system, the issues and data of the prisoners for whom long-term imprisonment was inappropriate were traditionally studied. The situation in this regard has been intensely deteriorating. Looking through the causes and statistics of death records during the reporting period, it become evident that in most cases, the deaths were caused by the terminal forms of strong and incurable diseases. Despite this, the issues of release or postponing the sentence had not been raised before the death of these prisoners. This represents one of the clear examples of their inhuman treatment. The data on the categories of prisoners, in need of special care, were also studied during the monitoring. In practice, there were no conditions of providing the special care in the establishments. The information collected in this respect is hereby provided in the tables below:

[577] Does not include the data for the month of September.

Data for the I half of 2011:

№	Name of the Establishment	Oncological disease	Tuberculosis MDR/XDR	Amputated limb	Neurologeous deficiency	Moves with wheelchair	Moves using crutch	lethality	Postponement of sentence or releasing from serving sentence	Medical/psychiatric examination conducted
1	№1 Establishment	0	3	2	1	1	2	0	0	0
2	№2 Establishment	1	0	3	4	0	0	0	0	1
3	№3 Establishment	0	1	1	2	0	1	0	0	0
4	№4 Establishment	2	1	0	0	1	0	0	0	1
5	№5 Establishment	2	1	1	2	3	1	1	0	6
6	№6 Establishment	1	1	1	1	0	10	2	0	0
7	№7 Establishment	1	0	0	1	1	1	0	0	0
8	№8 Establishment	3	0	3	3	0	2	0	0	1
9	№9 Establishment	0	3	0	0	0	2	0	0	0
10	№11 Establishment	0	0	0	0	0	0	0	0	0
11	№12 Establishment	3	0	2	5	1	2	0	0	3
12	№13 Establishment	1	0	0	1	0	0	0	0	0
13	№14 Establishment	1	2	6	15	0	4	1	0	0
14	№15 Establishment	3	0	1	50	3	15	4	0	0
15	№16 Establishment	1	0	1	0	1	3	1	0	1
16	№17 Establishment	1	2	10	5	4	0	1	0	4
17	№18 Establishment	17	12	8	12	6	12	43	0	0
18	№19 Establishment	1	94	0	5	1	5	3	1	1
	Total	38	120	39	107	22	60	56	1	18

Data for the II half of 2011:

№	Name of the Establishment	Oncological disease	Tuberculosis MDR/XDR	Amputated limb	Neurologeous deficiency	Moves with wheelchair	Moves using crutch	lethality	Postponement of sentence or releasing from serving sentence	Medical/psychiatric examination conducted
1	№1 Establishment	0	0	2	0	2	2	0	0	0
2	№2 Establishment	1	0	5	12	0	2	1	0	1
3	№3 Establishment	0	0	0	0	0	0	1	0	0
4	№4 Establishment	0	0	0	0	0	0	0	0	0
5	№5 Establishment	3	2	1	0	3	1	2	3	–
6	№6 Establishment	1	0	1	2	0	2	1	0	1
7	№7 Establishment	0	0	0	0	0	0	0	0	1
8	№8 Establishment	3	12	0	0	0	0	0	0	0
9	№9 Establishment	0	5	1	2	1	1	0	0	0
10	№11 Establishment	0	0	0	0	0	0	0	0	0
11	№12 Establishment	0	0	0	2	2	0	0	0	0
12	№13 Establishment	–	–	–	–	–	–	–	–	–
13	№14 Establishment	1	0	5	1	6	2	0	0	0
14	№15 Establishment	1	0	3	22	3	20	6	2	1

15	№16 Establishment	0	0	3	3	1	0	0	0	0
16	№17 Establishment	3	0	3	10	5	10	3	0	0
17	№18 Establishment	7	6	1	6	15	0	45	0	0
18	№19 Establishment	1	502***	0	3	0	5	3	10	0
	Total	21	527	23	62	38	45	62	15	4

***No.19 – Out of 520, 242 are involved in DOTS programme, 260 quitted treatment and result was documented as "unsuccessful".

The placement of the patient – whether in the medical establishment, general place of serving the sentence or some of the civilian medical sector hospital – directly influences the indicator of the identification of diseases. In this regard, first of all, we shall take into consideration the factors and reasons accompanying the transfer of prisoners. Medical Establishment No.18 (Central Penitentiary Hospital) as well as the Medical Establishment for Tubercular Convicts work in the conditions of sharp over-crowding. Against this background, is some of the establishments even the so-called "queues" are created, to transfer the prisoner to the establishment, notwithstanding the health conditions of the patient. In such conditions, the transfer is hampered and the priority is given to the patients with the particularly poor health condition, or those whose health conditions deteriorate instantly. In order to speed up the implementation of the request of transfer, the prisoners often inflict self-injuries of different types of gravity or violate the regime that results in imposing different types of punishment measures against them. The issue of transfer of prisoners to medical establishment is currently regulated by the 10 March 2011 Order No.38 of the Minister of Corrections and Legal Assistance of Georgia (On the Rule Approving the Transfer of Sick Remand/Sentenced Prisoners from the Establishments of Imprisonment and Deprivation of Liberty to Hospitals of General Profile, Medical Establishment for Tubercular Convicts and the Medical Establishment No.18 for Remand/Sentenced Persons of the Penitentiary Department). It shall be noted that the Rule approved by the Order was numerously changed throughout the last 2 years. The recent changes into the Order were introduced on 31 March 2011. According to the current provisions, the norms approved by the Order regulate the rule of transfer of diseased remand/sentenced persons from the establishments of imprisonment and deprivation of liberty to hospitals of general profile, Medical Establishment for Tubercular Convicts and the Medical Establishment No.18 for Remand/Sentenced Persons of the Penitentiary Department. The Order in practice replaced the 29 December, 2009 Order No.902 of the Minister of Corrections and Legal Assistance of Georgia "On the Approval of the Rule on Transfer of Diseased Sentenced and Remand Prisoners from the Penitentiary Establishment to the Hospital of General Profile, Medical Establishment for Tubercular Convicts and the Medical Establishment for Remand and Sentenced Persons". According to the Order No.38 of the Minister, the planned or emergency transfer of diseased remand/sentenced persons from the establishments of imprisonment and deprivation of liberty for the purpose of diagnostic examination or/and treatment to the Medical Establishment for Pre-trial/Convicted Inmates (Central Penitentiary Hospital) and the Medical Establishment for Tubercular Convicts of the Penitentiary Department shall be implemented based on the Order of the Director of the Department issued on the basis of the recommendation issued by the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia. Along with this, the recommendation of the Medical Department over the transfer of the remand/sentenced person to the medical establishment is considered based on the submission of the doctor of the establishment. The doctor submits one copy to the Director of the establishment. In case of the emergency transfer, the recommendation and submission of the doctor as mentioned in the Order may be received by the addressee by means of tele-phonogram or fax, in the extraordinary cases – via other means of communication. The written consent of the Director of the establishment, and in severe cases when emergency transfer is required – via communication means shall be immediately notified to the First Deputy Head of the Penitentiary Department (in case of absence – to one of the deputies), to bailiff service and the Medical Department. The written negative response of the Director of the Establishment on the transfer of a remand/sentenced person to a medical establishment shall be substantiated and immediately notified to the Penitentiary Department and the Medical Department. It seems that the Order allows the Director of the Establishment to refuse the transportation of the patient to the medical establishment, despite the recommendation issued by the doctor, It is not clear, what arguments and amplification may the Director of the prison bring against the conclusion of the doctor in this case.

As for the rule of transfer of prisoners to the civilian hospitals, according to the Order, the planned or emergency transfer of diseased remand/sentenced persons from the establishments of imprisonment and deprivation of liberty for the purpose of diagnostic examination or/and treatment to the general medical institutions shall be implemented based on the recommendation of the Medical Department, with the Order of the Head of the Penitentiary Department. The recommendation of the Medical Department about the transfer of the remand/sentenced person to a general profile hospital shall be developed based on the submission of a doctor of the Medical Establishment, one copy of which is submitted by the doctor to the Director of the Establishment. As soon as the Director of the Establishment receives this copy, he is obliged to submit the information to the Head of the Penitentiary Department about the transfer. It shall be noted that in case of such transfer the Chairman of the Penitentiary Department is authorized to refuse the transfer of the prisoner. The written negative response of the Chairman on the transfer of a remand/sentenced person shall be substantiated. The unclear situation emerges here as well, as the best interest of the patient moves to the second place and the priority is given to the "arguments" of the Chairman of the Penitentiary Department.

The Order also regulates the issues related to the transfer of remand/sentenced persons from general profile hospitals to other general profile hospitals. This shall be implemented based on the decision of the doctor leading the treatment process, based on the recommendation of the Medical Department, followed by the Order of the Penitentiary Department. As for the return of the remand/sentenced person from the medical institution to the penitentiary establishment, this process is implemented based on the Order of the Head of the Penitentiary Department, following the submissions of the Director of the Establishment and the Chief Doctor. The return of the remand/sentenced persons from the general profile medical institutions to the penitentiary establishment or the Medical Establishment No.18 shall be exercised based on the decision of the treatment doctor about the health condition of a remand/sentenced person. In case of such a need, a remand/sentenced person may be transferred to the Medical Establishment based on the Order of the Head of the Penitentiary Department, following the submission of the Head of the Medical Department. As regards the last part of the Order, which regulates the transfer of a prisoner from one hospital in a city to another one, and the return of a prisoner to the penitentiary system, this is a novelty as compared to the preceding Orders regulating the same subject matter.

According to the instruction in force, the movement of the remand and sentenced prisoners, deriving from their health conditions, between different establishments during the reporting period of 2011, is provided in the table below:

Data for the I half of 2011:

№	Name of the Establishment	Number of transferred prisoners			
		Medical Est. No.18	Medical Est. No.19	To civilian sector	Total:
1	№1 Establishment	87	27	4	118
2	№2 Establishment	33	47	17	97
3	№3 Establishment	22	12	2	36
4	№4 Establishment	8	7	1	16
5	№5 Establishment	33	0	114	147
6	№6 Establishment	93	17	15	125
7	№7 Establishment	10	0	4	14
8	№8 Establishment	127	37	1	165
9	№9 Establishment	26	0	4	30
10	№11 Establishment	20	0	2	22
11	№12 Establishment	26	5	11	42
12	№13 Establishment	3	2	3	8
13	№14 Establishment	87	147	8	242

14	№15 Establishment	155	108	26	289
15	№16 Establishment	98	98	42	238
16	№17 Establishment	124	150	20	294
17	№18 Establishment		170	402	572
18	№19 Establishment	77		5	82
	Total	1029	827	681	

Data for the II half of 2011:

№	Name of the Establishment	Number of transferred prisoners			
		Medical Est. No.18	Medical Est. No.19	To civilian sector	Total:
1	№1 Establishment	74	19	3	96
2	№2 Establishment	33	51	13	97
3	№3 Establishment	16	3	4	23
4	№4 Establishment	18	6	10	34
5	№5 Establishment	65	0	195	260
6	№6 Establishment	97	7	20	124
7	№7 Establishment	8	0	2	10
8	№8 Establishment	100	31	5	136
9	№9 Establishment	34	0	19	53
10	№11 Establishment	7	0	0	7
11	№12 Establishment	24	7	6	37
12	№13 Establishment	-	-	-	-
13	№14 Establishment	57	140	12	209
14	№15 Establishment[576]	145	78	72	295
15	№16 Establishment	96	104	117	317
16	№17 Establishment	107	100	17	224
17	№18 Establishment		118	404	522
18	№19 Establishment	99		16	115
	Total	980	664	915	

As it is demonstrated in the tables above, totally there were over 5000 transfers of prisoners implemented during the reporting period. The most frequent (2009 cases) transfers were made to the Medical Establishment No.18 for Pre-trial/Convicted Inmates (Central Penitentiary Hospital). There were 1491 patients transferred to the Medical Establishment for Tubercular Convicts; whereas there were 1596 transfers to the civilian sector healthcare institutions accompanied by guards. In approximately 75% of these cases, the transfer to the city hospital was undertaken either from the Medical Establishment No.18 or via passing through this Establishment, whereas in 25% of cases the transfer to the city institutions took place directly from the places of serving sentence. It shall be mentioned that a number of these transfers, in this case, includes as outpatient, as well as in-patient treatment purpose. In a great majority of the cases, the transfer of prisoners was undertaken exactly for the purpose of provision of outpatient medical support, following which the patients were returned to the penitentiary establishments on the same day.

[578] Does not include the data for the month of September.

ISSUES RELATED TO THE MEDICAL REHABILITATION OF PRISONERS, WOMEN AND JUVENILE PRISONERS

According to the international standards, one of the priorities for the penitentiary system shall be the smooth return of a person deprived of liberty to the society after serving the sentence. Respectively, the preparation of prisoners in the establishment of deprivation of liberty for re-socialization shall be considered as an important issue. In order to reach this goal, the respective rehabilitation programs shall be established in the establishments, which, apart from psychological, social, legal and other aspects, shall also include medical components. Unfortunately, the programs operating during the reporting period did not include medical components. The webpage of the Ministry of Corrections and Legal Assistance provides the information about the existence of such programs, though, this information seems to be far from the reality as far as the monitoring results did not prove their existence; therefore, we could not describe them as the psycho-medical rehabilitation programs. Apart from this aspect, during the monitoring the attention was paid to all those activities included in the rehabilitation programs. Mainly, such programs were functioning for women and juvenile prisoners. Out of 18 establishments within the penitentiary system of Georgia, there were no rehabilitation programs functioning in 13 establishments. In 5 establishments, only separate components of rehabilitation programs were implemented.

The psychological rehabilitation program implemented by the Fund "Global Initiative in Psychiatry" was functioning in Establishment No.5 for Women in Rustavi. Five staff members of the organization used to visit the Establishment every second day and work with remand prisoners only. The group of professionals included a psychologist as well. According to the local Chief Doctor, there was no psychiatrist involved in the program. There was a plan, to commence the work with the sentenced prisoners as well from September.

In the Establishment No.8, where the juvenile prisoners have been placed recently, a psychotherapist used to pay visits. As the local Chief Doctor stated, he was not aware either to which organization this person belonged or the nature of plan/program of work the psychotherapist used while performing his duties.

As for the Special Establishment for Juveniles No.11, the so-called "Individual Sentence Management Program" was implemented there. Within this program, the group of specialists, composed of a psychologist, a teacher, a representative of the Social Service and a doctor, was tasked to elaborate the individual sentence plan. The meetings were periodically held to discuss these plans. As stated by the Chief Doctor, the non-governmental organization GCRT had its program as well in the Establishment, having the links with the social service of the Establishment. The doctor was not aware of the details related to their work.

In the Establishments in Kutaisi and Batumi, where women and juveniles were also held, no specific rehabilitation programs were operational as stated by the medical personnel. The Chief Doctor of Establishment No.4 in Zugdidi stated that there were "representatives of some of the NGO" visiting the Establishment to discuss the development of the rehabilitation program for juveniles, however no specific steps had been undertaken so far. The project was at the negotiation stage yet.

In Establishment No.2, likewise as in the case of Establishment No.4, there was no position of gynecologist at the medical unit. As stated by the local personnel, the need for a service of gynecologist had not emerged during the reporting period. The members of the Special Preventive Group were told in the Establishment in Zugdidi that they had a contract with a gynecologist. No pregnant or newly born persons were in any of the establishments, apart from Establishment for Women No.5 in Rustavi. There was a gynecologist in Establishment for Women No.5 in Rustavi employed. There were 3 pregnant women and 8 women with the children of the age below 3 years in the Establishment during the reporting period. Each of the prisoners had delivered in the place of deprivation of liberty. The Medical Unit was covering the needs of juveniles in the past. Starting from January onwards, this responsibility was shifted to the Penitentiary Department, which ensured the provision of the establishment with the child nutrition and diapers. The vaccination of children according to the Calendar was ensured on the spot, supervised by the local pediatrician.

In majority of the establishments, the program of the organization "Tanadgoma" was operational during the reporting period. The program was oriented at the issues of AIDS. With the support of "Tanadgoma", labs were set up and

examinations conducted in some of the establishments. Unfortunately, the program ended in February. The negotiations were ongoing to renew the program.

As stated by the Doctor of Establishment for Tubercular Convicts No.19 in Ksani, the "anti-nicotine" program was also operational there. The program was basically providing awareness raising assistance and limited its activities to printing and disseminating the posters.

As for the programs aimed at providing the support to drug addicted and at promoting their rehabilitation process, the Methadone Program was operational in Establishment No.8 in Tbilisi. The program "Atlantis" was operational in three establishments of the Penitentiary System of Georgia as well. The Program "Atlantis" did not include medical component. Therefore, existence of the Methadone Program shall be considered as a positive trend. It is advisable to have this service spread over those penitentiary establishments as well where the remand prisoners and especially women are held, who were deprived of such a service.

During the reporting period, 3 women prisoners died in the Penitentiary System of Georgia. This indicator was the highest as compared to the data of the previous years. The women prisoners were placed in five different establishments of the Penitentiary System of Georgia in the regions of Eastern as well as Western regions of Georgia. Their basic part was concentrated in Establishment for Women No.5 in Rustavi. The conditions and means of medical service in Establishment No.5 were much better as compared to the other establishments. The mentioned Establishment is the only place where women-specific healthcare issues were solved within the scope of possibility. Here it shall be noted that as far as the inpatient medical treatment was not provided to women in Medical Establishment No.18 for Pre-trial/ Convicted Inmates (Central Penitentiary Hospital), the indicator of transfers of women prisoners to civilian hospitals was high in Establishment No.5 for Women. The problems related to mental health shall be particularly outlined in the group of women prisoners. The sharp increase in the number of women prisoners since summer 2010 shall also be noted. Opening of the new Establishment for Women with the improved medical infrastructure in the vicinity of Rustavi, shall be noted as a positive trend.

In the first half of 2011, juvenile prisoners were serving sentence in five different Establishments of the Penitentiary System of Georgia. The situation of juveniles in terms of conditions and medical programs was similar to those of women, marked a geographic disparity. In September 2011, the wards for juvenile prisoners were closed in Establishments No.3 in Batumi and No.4 in Zugdidi due to inadequate living conditions there.

In autumn 2010, the juveniles were transferred from Establishment for Women and Juveniles No.5 to Prison No.8 in Tbilisi. Even though the juveniles were isolated there, such approach towards the juveniles was inconsistent the international standards. It is impossible to monitor and address the health needs of juveniles in the establishments for elderly to the same degree and observing the same standards as if it were in the relevant establishment.

THE ISSUES RELATED TO MEDICAL DOCUMENTATION, CONFIDENTIALITY OF MEDICAL STATISTICAL DATA AND CONFIDENTIAL INFORMATION IN THE PENITENTIARY SYSTEM

The Public Defender of Georgia has noted in several Parliamentary Reports that the medical services of the penitentiary system do not observe the legislative norms and standards in the process of keeping the medical files, thus violating both, the Georgian legislation and the international standards.

According to the legislation of Georgia, a doctor and other medical personnel are obliged to make the notes in the medical files in line with the established rules, as set by the Ministry of Labor, Health and Social affairs. The 2010 Parliamentary Report noted that Order No.486 (24 June 2002) of the Minister of Justice of Georgia approved the Temporary Forms (templates) of Medical Documentation for the medical establishments and medical units (27 forms in total) of the Penitentiary Department. These forms quality-wise and content-wise are sharply different from the forms that are being used in the healthcare system of Georgia. They are quite outdated today. The rules of filling in

and keeping them differ as well. However, in the absolute majority of the establishments, such documents are used as standard ones. Apart from this, the Order No.771 of 10 November 2009 of the Minister of Corrections and Legal Assistance of Georgia approved a form (template) of medical files of the Medical Department of the Ministry (the Order was several times annulled afterwards and re-issued; however, its content has not been changed substantially); this form is also inconsistent with the medical documentation forms used in the general healthcare system of Georgia. Order No.158 of the Minister of Corrections and Legal Assistance dated 11 November 2010 "on the approval of the medical file form for the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia" annulled Order No.771. Order No.158 approved a medical form for remand and sentenced prisoners. The mentioned issue provides one more explicit example of the fact that the penitentiary healthcare system artificially distances itself from the country healthcare system.

Keeping of the forms in line with the requirements of the 22 August, 2009 Order No.224/M of the Minister of Labor, Health and Social Affairs of Georgia "on the Approval of the Forms of the Primary Medical Files, their Keeping and the Rules of Filling-in them in the Primary Healthcare Institutions" was obligatory for all the medical institutions throughout the country. Moreover, the law as well as the sub-law norm requires the unified approach in keeping the medical files throughout Georgia. The medical file form approved by Order No.158 of the Minister of Corrections and Legal Assistance was completely inconsistent with the form established by the Order of the Minister of Health. Order No.01-41/M of the Minister of Labor, Health and Social Affairs of Georgia dated 15 August, 2011 ("on the approval of the rule of keeping the outpatient treatment medical documentation"), in line with Article 43 (2) of the Law of Georgia on Healthcare, approved the new version of the keeping the medical documentation for outpatient treatment. The same Order annulled Order No.224/M of the Minister of Labor, Health and Social Affairs of Georgia "on the Approval of the Forms of the Primary Medical Files, their Keeping and the Rules of Filling-in them in the Primary Healthcare Institutions" dated to 22 August 2009. According to the last paragraph of the Order the new forms shall be used starting from the 1 January, 2012. The Public Defender of Georgia once again expresses the hope that the above-mentioned new forms will be introduced in the penitentiary healthcare system services as obligatory forms from the time envisaged by the normative act.

As for the keeping the outpatient medical documentation, the situation in this respect has been changed. Keeping the outpatient medical documentation in the penitentiary system is the responsibility of Establishments No.18 and No.19. The National Preventive Mechanism got interested in this matter during the monitoring process. Order No.108/M of the Minister of Labor, Health and Social Affairs of Georgia, dated 19 March 2009, approved the rule of keeping the outpatient medical documentation in the medical institutions. The Order was based on Article 43(2) of the Law of Georgia on Healthcare. The above-mentioned Order, despite the date of issuance, entered into force on 1 January 2010. The Order, likewise as the Law, elucidates that the rule of the keeping the medical documentation is uniform for all the existing medical institutions, providing inpatient medical service and the inpatient medical documentation shall be kept in an uniform manner. The change introduced into the Order on 11 February 2010 (11.02.2010, N37/M) gives a right to the administration of the establishment "to introduce additions without a change of a rule of keeping medical documentation; along with that, taking into consideration the profile of the establishment and the scope of the medical service provided [the administration of the establishment] shall also use the forms needed from the list of inpatient medical documentation approved by Articles 3-19 of this Order, as well as modify them, with maintaining and taking into consideration in an obligatory manner the principle information to be contained in them." The above mentioned change is directly in line with the situation in the penitentiary system establishments, based on which the Medical Department of the Ministry of Corrections and Legal Assistance should have acted adequately. Despite this, the introduction of the standard forms into the penitentiary system was delayed. Considering the time-span between 19 March 2009 and 1 January 2010, i.e. from the moment of issuance of the Order to the moment of its entry into force, the Ministry of Corrections and Legal Assistance had enough time and possibility to undertake all the preparatory work and provide all the necessary instructions as well as solve the technical issues accompanying the entry into force of the Order.

The monitoring has revealed that the forms of inpatient treatment medical documentation were provided to the medical establishments from February 2011.

The monitoring results has proved once again that the principles and rules of keeping the medical documentation, regulated by the Order of the Minister of Labour, Health and Social Affairs, are grossly violated in the medical establishments of the Penitentiary System. In particular, Order No.198/M of the Minister of Labor, Health and Social Affairs of Georgia dated 17 July 2002 regulates the rule of the keeping the medical records in medical institutions. The Order had been issued pursuant Article 56 (3) of the Law of Georgia on Medical Activities. The implementation of the latter shall be highly responsible and essential measure for a medical institution. The results of the monitoring revealed that the medical documentation was kept on spot (in the Medical Units) in Establishments No.2, No.3, No.4, No.5, No.7, No.8, No.12, No.15, No.16 and No.17. The practice of handing over the medical documentation to the administration existed in Establishments No.1, No.6, and No.13. The Chief Doctors of Establishments No.5, No.6, No.7, No.12 stated, that they did not know how to act, as nobody has given them any relevant instruction or any type of reference yet. The Chief Doctor in Establishment No.14 stated that after his appointment on this position he was keeping all the medical documentation; along with this, he was not aware about the location of the documentation processed before his appointment. The majority of the Chief Doctors stated that the medical card is attached to the personal file of the prisoner, whereas the registers are kept by them. In Establishment No.15, such documentation was sent to the Special Unit, whereas in Establishment No.13 in Khoni, the documentation was kept in the chancellery. As for the time limits for the maximum duration for keeping documentation the Chief Doctor of Establishment No.6 mentioned that no instructions were given to him on this matter. The doctor of Establishment No.9 stated that "the commission comes once in three years to obliterate the documentation. Otherwise, the documentation is probably kept for 10 years". The monitoring Group doubts that the provided information is not credible as the mentioned doctor had only been employed in the penitentiary system for only several months; respectively, he would not have had the relevant experience. The Chief Doctor of Establishment No.6 in Rustavi stated that all the documents were kept on the spot for the last 5 years and he was able to provide each of them in case of such a need. As for the medical establishments, the doctor of the Establishment for Tubercular Convicts No.19 in Ksani stated that medical documentation was kept on the spot and disposed once in 10 years. There is an archive in Medical Establishment No.18 (Central Penitentiary Hospital); the position of registrar exists there as well. Despite this, the Chief Doctor of the Establishment has introduced his own rule on the issuing a document from the archive or providing a copy of the document or an extract from a document kept in the archive. This is incompatible with the legislation related to archives, as well as with the requirements envisaged by the Order of the Minister of Health, Labor and Social Affairs N0.198/M dated 17 July 2002 (on the rule of keeping medical records in medical institutions). In particular, the Chief Doctor clarified that the provision of information on the medical service delivered to the patient is under the responsibility not of the staff of the archive, but of the Head of the Unit of the relevant medical profile working at that moment.

It seems that the protection of and keeping the confidential information about a patient is not considered as an obligation or even the value for the medical service of the penitentiary system, that leaves this field unorganized and unprotected.

The medical statistical data was not kept in the penitentiary healthcare system of Georgia in line with the rules established by the legislation of Georgia. In line with Articles 20, 43 and 55 of the Law of Georgia "on Healthcare" as well as Articles 2, 6, 11, 12, 17 of the Georgian Law " on Statistics", for the purpose of establishing and further upgrading the unified information system of the medical statistics, Order No.101/M (5 April 2005) of the Minister of Labor, Health and Social Affairs approved the rules of keeping and providing the medical statistical information. The appendixes approved by the Order included forms (templates) of registration and notification of epidemiological supervision and control of the transmittable diseases in Georgia, as well as the rule of their maintenance and analysis and the time-periods for their submission. According to the Order, medical institutions irrespective their structural affiliation and form of ownership, shall ensure the collection of statistical information relevant to the activities of the institution and the submission of the latter to the Legal Entity of Public Law „L. Sakvarelidze National Center of Diseases Control". Despite this, the provision of the obligatory information by the penitentiary establishments has not been ensured to date. Instead of this, the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia has elaborated different forms for the collection of statistics. Thus, we could conclude that the collection of information bears an automatic character and the calculation of health parameters and the results does not take place in line with the rules of keeping biomedical statistics. Due to the mentioned, it is impossible to adequately analyze the

spectrum of healthcare conditions within the penitentiary establishments, process the data, compare or take them into consideration for the further development.

Apart from the trends described above, the rights of patients are harshly violated, as the confidentiality of medical information is not protected being available to outsiders in the penitentiary healthcare system. Disregarding the principle of confidentiality and doctoral secrecy shall be particularly outlined here. The protection of these principles is envisaged by the international conventions ratified by Georgia and the healthcare legislation of the country. In the process of the medical service delivery in the penitentiary establishments, outsiders attend examinations, manipulations and other medical procedures almost at all places. Medical documentation is not protected so that an outsider would not get an access to its content. The staff of the establishment, who are not medical personnel and do not at all participate in the process of treatment and care of a patient sign the medical documentation often. Due to the above mentioned practices, not only healthcare legislation, but also the standards of prevention of torture are also harshly violated in the penitentiary establishments.

The monitoring revealed that the necessity for the informed consent of a patient is not considered as an obligation within the system. There are some exceptions to this. For example, the majority of the establishments do not require the informed consent from patients, as according to them "we are not undertaking any manipulations that need consent". Despite this, the doctors could not indicate to any of the regulating laws or sub-laws that establish in which case the written consent shall be acquired. The new trend was identified during the reporting period – the doctors stated that during the provision of information to some of the addressees they had let the patients to have written consent. This fact shall be welcome; however, this initiative shall be reviewed and elaborated further. In some of the establishments, the patients were required to give a written consent only when refusing any type of medical aid. In Establishment No.19 for Tubercular Convicts, there was a practice of collecting a written consent of a patient before involvement into the "DOTS" program. In Medical Establishment No.18 (Central Penitentiary Hospital) the mentioned problem was relatively regulated and the acquisition of a written consent from a patient took place before the commencement of surgical treatment or any other type of treatment. The monitoring of the penitentiary system has revealed that the absolute majority of the patients had practically no access to the medical records about them. The medical staff clarified that the prisoners rarely asked to have the medical documentation shared with them or copied for them. However, as observed by the monitoring group, this did not correspond the reality – a significant part of authors of complaints submitted to the Office of the Public Defender of Georgia (by prisoners or their family members) requested the assistance in exactly collecting the information about health condition, as they were not in a position to receive the mentioned information from an penitentiary establishment.

As for the implementation of the novelties introduced in the healthcare system of the country in the penitentiary healthcare system, it shall be noted, that in line with Article 43 of the Law of Georgia on Healthcare, Order No.92/M of the Minister of Labor, Health and Social Protection of Georgia, dated 12 April, 2010 (on the Approval of the Rule of Use of Medical Classification for Keeping Medical Documentation), which entered into force on 1 March, 2011, approved the rule of usage of the primary healthcare international classification ICPC-2-R; the rule of use of classification of the North countries' surgical procedures (NCSP); The International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10), medical classification list for the coding of diseases, guidelines. The standards and guidelines listed above have not been implemented yet, thus violating of the above-mentioned Law.

The 7 December, 2010 Order No.398/M of the Minister of Labor, Health and Social Affairs of Georgia "on the Approval of the rule of keeping a register and the form and the rule of the obligatory notification of the provider of the highly risky outpatient/day center medical activity/service" has not been implemented either. The document was elaborated in line with Article 154(7) of the Law of Georgia on Healthcare.

The Plan submitted by the Ministry of Corrections and Legal Assistance of Georgia over the establishment of the electronic database of the medical records of patients was particularly disturbing. As stated by the Ministry, one of the purposes of this initiative was to have the records centralized – to have them accessible for the leadership of the Ministry, including for the leadership of the Medical Department. This shall automatically lead to the revealing the confidential

information that on its turn constitutes a violation of law. Apart from this, while the general healthcare system of the country has not yet moved to such type of a service, it is not clear how such information may be added to the system which shall be linked with the portion of treatment of prisoner patients in civil medical institutions. We consider that transfer of only penitentiary healthcare system to such style shall result in its more marginalization and isolation from the general healthcare system of Georgia. All the efforts shall be made not to have the mentioned initiative contributing to further advancing the gaps existing in the process of protection of equivalency and confidentiality of healthcare services. The leadership of the Ministry, including the Head of the Medical Department, is tasked to undertake the general management of the system. This in no way means the management of treatment of specific patients and they have no right to have access to the records about the patients without the consent of the latter.

Deriving from all the above mentioned, we consider it inadmissible to have the medical information of patients placed in the database with wide access.

The 25 May 2011 Order N0.90 of the Minister of Corrections and Legal Assistance of Georgia (on the Approval of the List of the Persons Specially Authorized to Acquaint with the Personal File of a Remand/Sentenced Person) includes provisions harshly violating the Georgian and international legal framework. Article 2 of the Order envisages the approval of the list of persons authorized to have access to personal file of a remand/sentenced person, apart from medical file (Annex N2), whereas Article 3 envisages the approval of the list of persons authorized to have access to medical file only (Annex N3).

This means that the Minister of Corrections and Legal Assistance, having issued the sub-law, authorized particular category of persons to have the access to the medical confidential information of patients about their health without their consent. This violates the Constitution of Georgia and the legislation in the field of healthcare of the country (the laws of Georgia on Healthcare, on the Rights of Patients, on the Medical Activity), as well as the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, which had been signed and ratified by Georgia and has entered into force for Georgia almost 10 years ago already without any reservation.

Recommendations to the Minister of Corrections and Legal Assistance of Georgia:

To ensure that the medical units of the penitentiary establishments keep the medical statistical information in line with the established rules (as established by the 5 April, 2005 Order No.101/M of the Minister of Labor, Health and Social Protection of Georgia) and transmit the information to the National Center for Disease Control in line with the established rules as well;

- **To ensure the revision of the "temporary forms" of medical documentation in order to bring them in compliance with the rules established by Legislation;**
- **To ensure that the respective recommendations and instructions are given to the medical units of the penitentiary system regarding the rules of keeping medical documentation in line with Order N0.198/M of the Minister of Labor, Health and Social Affairs of Georgia, dated 17 July, 2002;**
- **To ensure that the protection of confidentiality of the patient is respected in the process of provision of healthcare services in line with the legislation of Georgia and international treaties. To this end, to ensure that non-medical personnel do not participate in the medical examination, treatment or other similar processes apart from the necessary exceptions; that non-medical personnel do not have an access to the information neither in written nor in verbal form related to the health of the patient;**

- **To invalidate Articles 2 and 3 of Order No.90 of the Minister of Corrections and Legal Assistance of Georgia dated 25 May 2011, which contradict the legislation of Georgia and the obligations undertaken by international treaties. The mentioned issues shall be regulated by means of straightforward protection of the legislation in force;**

- **To have the issues of introduction of electronic records about patients considered carefully. To have an open and versatile discussion and consideration with healthcare professionals, human rights defender organizations and variety of interested circles of the society commenced before undertaking concrete measures in this sector.**

Recommendation to the Head of the Agency for State Regulation of Medical Activity under the Minister of Labor, Health and Social Protection:

- **To ensure that strict control is imposed over the keeping medical files in the penitentiary system in line with the standards existing in the country.**

- **To ensure regular control over the compliance of the functioning of medical establishments in the penitentiary system with the Permit conditions.**

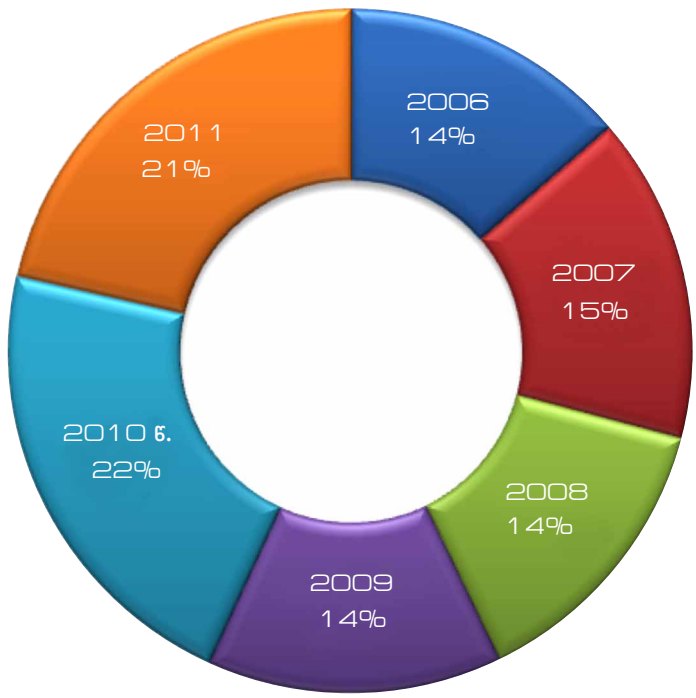
DEATH RATE IN THE ESTABLISHMENTS OF THE PENITENTIARY SYSTEM

Public Defender of Georgia has been studying the mortality rate issues in the penitentiary system of Georgia for the last several years. The analysis of these data was performed based on several sources, out of which the following shall be noted: the information submitted by the Ministry of Corrections and Legal Assistance, the information submitted by the Penitentiary Department, the information provided by the Medical Establishment No.18 for Pre-trial/convicted inmates (Central Prison Hospital), and the conclusions on death cases made by the Samkharauli National Forensics Bureau. The data collected from all of these sources were compared with the very information collected in the penitentiary establishments during the monitoring. As a result, the full and clear picture was established about the death rate in the penitentiary system. The data collected and analyzed, showed that 653 prisoners have died during the last 6 years (2006 – the first half of 2011, included) in the penitentiary system of Georgia. This data is broken down to years and months as follows:

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2006		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	11	91
2010	7	12	7	10	13	10	13	15	15	14	12	14	142
2011	11	12	21	10	14	9	7	14	11	8	14	9	140
Total	51	51	63	43	63	57	52	56	57	48	58	54	653

As it is clearly shown from the data provided in the table, the number of the deceased prisoners during first half of the year was at a maximum level in 2011; as for the second half of the year, the maximum number fall on the part of 2010; the second half of 2011 is on the second place though. The last two years are marked with the highest rate of mortality. For the first time this tendency revealed by the end of 2010, when the mortality rate in the Penitentiary system increased by 60% as compared to the previous year. Unfortunately, this tendency stayed unchanged in 2011. According to the statistics for the last 6 years, the average number of the deceased prisoners per year was 108. The same data for the year 2011 exceeds the above-mentioned one with 30% (the similar indicator occurs for the year 2010).

The percentage of the mortality rate per each of the last 6 years is presented below in the diagram:

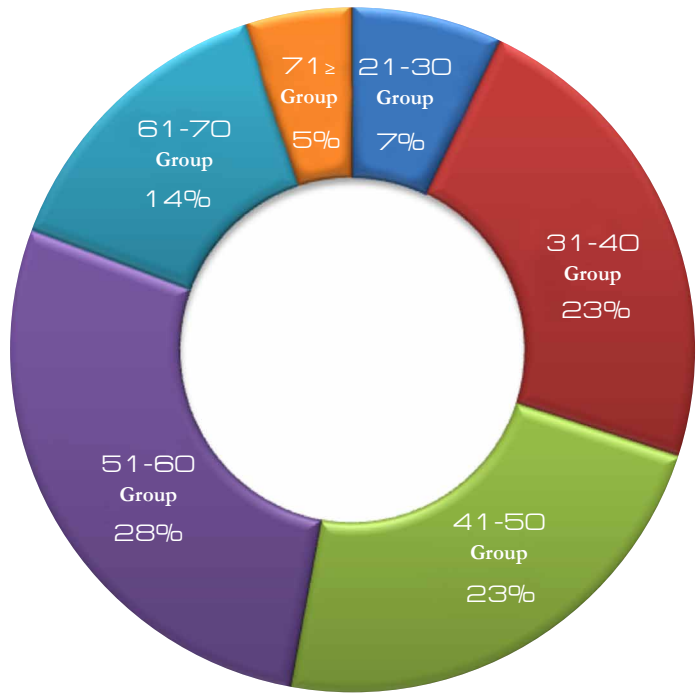


As it is demonstrated from the provided statistics, if the death rate was more or less stable during 2006-2009, in 2010 and 2011 this indicator reached the peak and increased considerably as compared with the previous years.

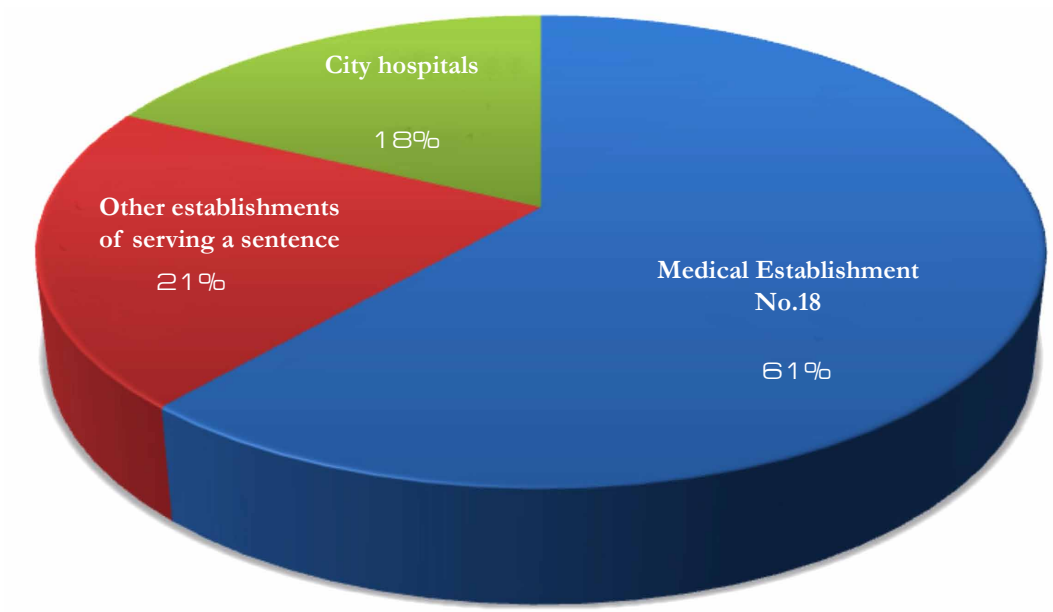
According to the data, the total number of deceased prisoners in the penitentiary system was 140. Out of the total number, 77 cases (55%) were documented in the first half of 2011 and 63 cases (45%) - in the second half of 2011. There were 5 women (4%) and 136 (96%) men out of 140 prisoners deceased during 2011. We have studied and analyzed the age groups of those deceased in the penitentiary system. The youngest of those deceased persons was 22 years old, whereas the oldest one was 80 years old. The average age of the deceased comprised 46 ± 4 years in the first half of 2011 and 50 ± 4 – in the second half of 2011. There is insignificant increase in this respect as compared with the previous years. As for the age groups of those deceased in 2011, the information is provided in the table below:

21 - 30	7.14 %
31 - 40	22.89 %
41 - 50	22.89 %
51 - 60	27.8 %
61 - 70	14.28 %
71 ≥	5 %

As provided in the table above, the maximum number of deceased falls within the"age group of 51-60 years". This group is followed by the „age group of 31-40 years and 41-50 years olds". The distribution of the age groups is also provided on the diagram below:



As for the place of death of prisoners, an interesting trend was revealed in this respect as well in 2011. In particular, 17.85% of deaths were registered in different city hospitals, which is considerably lower than the total data of 2010; 61.42% died in the Medical Establishment No.18 for Pre-trial/Convicted Inmates (Central Penitentiary Hospital), whereas in 20.73% deaths were registered in other places of serving the sentence. The mentioned ration is provided in the table below:



Compared with the data of 2010, the situation has considerably changed in this regard. Over a half of instances of deaths were registered in Medical Establishment No.18. With this, the statistics got back to the 2009 indicator. The percentage of the prisoners deceased in the city hospitals and places of serving a sentence is also similar to the data of 2009.

The study conducted by us has revealed that a great part of the deceased prisoners had diagnosed with serious and incurable diseases (terminal stage of cancerous tumors, portal hypertension with encephalopathy, bleeding and ascites developed as a result of viral hepatitis, terminal stage of HIV/AIDS infection, tardy form of tuberculosis, including the combination of multi-resistant and extra-pulmonary forms, tardy forms of serious and irreversible pathologies of heart and vein system diseases, etc.). Despite this, the issue of release of these prisoners or postponement of serving sentence by these prisoners had not been raised. The inadequate treatment and care conditions of the prisoners for whom long-term imprisonment is incompatible shall be separately outlined. Each of such instances shall be separately assessed as inhuman treatment and both – medical and not medical personnel of the Ministry of Corrections and Legal Assistance shall be responsible for this. Unfortunately, this issue stays outside the scope of interest from the year to another, whereas the successful healthcare reform is being underlined with its unclear outcomes, the assessment of which is not based on the medical classification and does not reflect the real situation.

As it was mentioned above, the portion of prisoners transferred and deceased in different of civilian medical institutions comprised almost 17.85% in 2011. Most of the cases occurred in the first half of the year. The National Center for Tuberculosis and Lung Diseases still remains on the leading position in this respect with 44% out of the total indicator of prisoners deceased after the transfer to the civilian hospitals. The second place is occupied by the Tbilisi Referral Hospital and Gudushauri National Medical Center, with 12% of the same indicator each. The cardiological clinic "Guli" and National Center of Oncology share respectively the 4th and the 5th places with 8%. During the reporting period the death rate in the Center for AIDS and Clinical Immunology made up to 4%. Batumi Republic Hospital and Kutaisi Medical Center shared the same places. It shall be mentioned here that 1 prisoner died in the in the Tbilisi City Court during the hearing. The above mentioned information is fully provided in the table below:

The National Center for Tuberculosis and Lung Diseases	44%
Tbilisi Referral Hospital	12%
Gudushauri National Medical Center	12%
Clinic "Guli"	8%
Scientific Research Center for Oncology	8%
Center of Infectious Pathologies, AIDS and Clinical Immunology	4%
National Medical Center of Kutaisi	4%
Batumi Republic Clinical Hospital	4%
Court Hall of the Tbilisi City Court	4%

For the comparison it shall be stated that during 2009 and particularly 2010 over 50% of deceased prisoners had passed away in the Gudushauri National Medical Center. Following the extremely negative assessment and coining the term "export of death" by the Public Defender of Georgia to name the process of transferring the prisoners in terminal health condition to city hospitals, the trend was suspended as shown by the data of the first half of 2011. Therefore, the Medical Establishment No.18 regained its 1st place on the list. It shall be noted that the tendency of increase in the death rate in the establishments of serving a sentence is visible.

As it was already mentioned above, around 20.73% out of the total number of deceased prisoners had passed away in different establishments of penitentiary system, i.e. at the main place of their sentence serving (apart from Medical Establishment No.18). The mentioned statistics, broken down according to the Establishments is provided in details in the table below:

№	Penitentiary Establishment	%
1	Establishment №15 (Ksani)	34.48
2	Establishment №19 for Tubercular Convicts (Ksani)	20.68
3	Establishment №6 (Rustavi)	10.34
4	Establishment №5 for Women (Rustavi)	10.34
5	Establishment № 16 (Rustavi)	3.46
6	Establishment №17 (Rustavi)	13.78
7	Establishment №14 (Geguti)	3.46
8	Establishment №2 (Kutaisi)	3.46

As it is demonstrated in the table, the number of deaths were highest in Establishment No.15 in Ksani; Medical Establishment No.19 for Tubercular Convicts located in settlement Ksani follows; the third place is occupied by the Establishment No.17 in Rustavi; Establishment No.5 and No. 6 in Rustavi share the 4th and he 5th places followed by Establishments No.16, No.14 and No.2 with 3.46%.

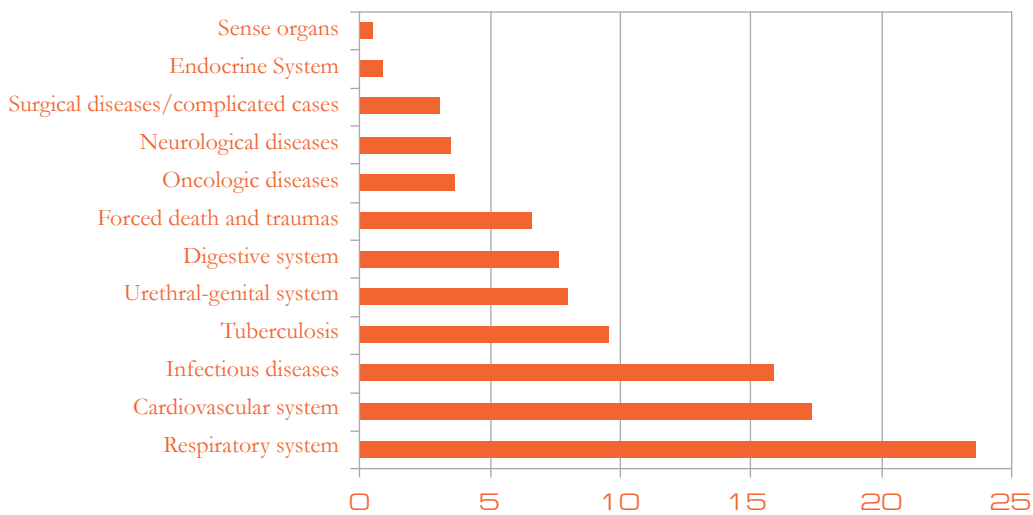
To study the reason of deaths of prisoners in 2011, the Prevention and Monitoring Department of the Office of Public Defender of Georgia collected the findings of the monitoring undertaken in all the penitentiary establishments of Georgia as well as the results of analysis of other documents. The information about the deceased prisoners and the reasons of death were requested from the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia. The forensic medical examination conclusions over the deaths of deceased prisoners were also requested from the Legal Entity of Public Law Levan Samkharauli Medical Forensics National Bureau. Some of the copies of the inpatient treatment medical files of the deceased prisoners were received from the Medical Establishments No.18 as well as from civilian medical institutions. The collected information was revised and analyzed. The results of the forensic medical examination, as well as in some of the instances the analysis of the information available in the inpatient treatment medical files of the prisoners were used. The list of the diagnosis to the deceased prisoners (respectively the results of forensic medical examination) was broken down according to separate nosologies, as provided in the table and diagram below:

№	Nosologies	2011 (%)	
		I half of 2011	II half of 2011
1	Respiratory system	25.43	21.98
2	Infectious diseases	17.53	14.15
3	Cardiovascular system	16.29	18.97
4	Tuberculosis	10.37	6.32
5	Forced death and traumas	7.16	6.02
6	Urethral-genital system	6.92	9.33
7	Digestive system	5.18	10.84
8	Surgical diseases/complicated cases	3.45	2.71
9	Neurological diseases	3.22	3.91
10	Oncologic diseases	3.22	4.21
11	Sense organs	0.74	0.33
12	Endocrine system	0.49	1.23

As demonstrated in the table, percentage of diseases fluctuates in the first half and the second half of the year. For example, on one hand there was a 4% decrease in the indicator for the tuberculosis in the second half of the year compared to the first half while the indicator for the digestive system diseases almost doubled. As regards the other diseases, the situation remained stable.

Here we suggest the table and the diagram for the indicators per nosologies that have caused deaths in 2011:

№	Nosologies (diseases)	2011 (%)
1	Respiratory system	23.62
2	Cardiovascular system	17.31
3	Infectious diseases	15.83
4	Tuberculosis	9.53
5	Urethral-genital system	7.91
6	Digestive system	7.65
7	Forced death and traumas	6.57
8	Oncologic diseases	3.62
9	Neurological diseases	3.48
10	Surgical diseases/complicated cases	3.08
11	Endocrine system	0.87
12	Sense organs	0.53



As it is clearly demonstrated in the diagram and the table above, over one fourth of the deceased prisoners had some of the pathologies of respiratory system (Tuberculosis of lungs or upper respiratory tracts is not included in this class, as it is considered separately). This indicator has been stable during the recent years.

During the reporting period, according to the diagnosis based on the medical forensic examinations of deceased persons, the second most frequent diseases are cardiovascular diseases. The frequency of cardiovascular disease and of myocardium infarction as one of one of its forms has considerably increased and shifted to the younger age group. Infectious diseases are on the third place primarily unifying viral hepatitis and HIV infection in this group. Their

complicated forms are also covered therein, which are identified as separate nosologies in the diagnoses established by the forensic medical examinations. It shall be noted that infectious diseases occupied the third place according to the 2009 data.

The diagnosis of tuberculosis has moved to the fourth place, moving down with one step as compared with the annual indicator spectrum of 2010. Though, Anti-tubercular strategy of the penitentiary system still contains deficiencies and gaps which should be the subject to improvement for the effective fight against tubercular diseases and the lethal outcome.

The sixth place is occupied by the pathologies of urethral-genital system, having sharply increased as compared with the previous years with the 7.91% among the nosologies for 2011.

The pathologies of digestive system, with the exception of liver viral diseases, had slightly decreased during the reporting period of 2011 and along with this the cases of traumas and the forceful deaths shared the 7th place. In terms of the frequency of spreading, there has been no change noted in case of oncologic diseases, which traditionally still occupy tenth place. Though, widening if the spectrum of diseases within this nosology was visible. The oncologic diseases, in the great majority of cases (where such a diagnosis had been established), were immediate cause of death. The cases occurred with terminal aggravation of onco-pathological diseases. There were cases when the doctors failed to make a diagnose, which was revealed after the death of the prisoner by forensic histological medical expertise.

Neurological pathologies, according to their share, occupy the ninth place and show the trend of decrease. Though, it shall be noted that the most cases of neurological pathologies have been revealed in the last two years.

The surgical diseases occupy the tenth place showing increase in the statistics of the second half of 2011. Bleedings within the digestive tract as well as within the respiratory organs becoming the cause of death among the prisoners were included into this nosology.

The tenth place with 0.87% and the eleventh place with 0.53% are occupied by the diseases of endocrine system and sense organs diseases The latter unifies the dysfunction of the visual and hearing organs.

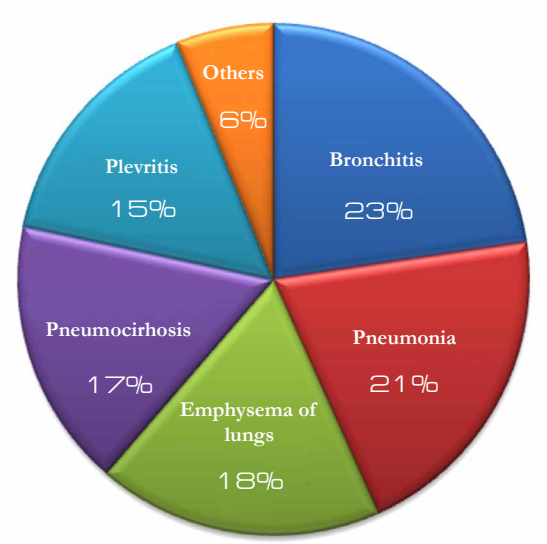
Out of the diseases of respiratory system, during the reporting period, bronchitis was recorded most often (only bronchitis of bacterial [exudative] etiology were included herewith. As for tubercular bronchitis, they will be considered along with tuberculosis), the number of which was the highest in the group. The next most frequent was pneumonia (inflammatory condition of the lung), which we also categorized in two groups (tubercular and bacterial pneumonia); we included in this group only the processes of bacterial etiology, which had been developing being accompanied with the purulent niduses and were identified by the forensic medical examination diagnosis as pneumonia. In total, out of 140 deceased patients 40 patients were diagnosed with purulent pneumonia, making almost 28.5% of the total number. As it was already mentioned, caseous pneumonia is not included in this group and it will be considered together with tuberculosis. It shall be mentioned that according to the forensic medical examination conclusions, which also provide the partial overview of the medical documentation of the patient, pneumonia is often not recognized by the prison doctors, and respectively, no treatment had been provided. Pneumonia, in some of the cases, represents the complication existing during the stay of the patient in the intensive care unit. The inflammatory condition of both lungs has often particularly complicated the health conditions of the patient and caused breathing insufficiency, apart from the fact that intoxication, on its turn, in synergy influenced the negative factors caused by the man diseases. The development of pneumonia is frequent in the patients who stay in the bed for long time, as due to a variety of reasons they undergo inpatient treatment course. In such a case the intoxication caused by pneumonia often becomes the immediate factor causing death.

Among the respiratory diseases of the deceased prisoners, lungs Emphysema take the third place with 35 cases, that shows the tendency of sharp increase compared to the previous years. Pneumo-cirrhosis was morphologically ascertained in approximately in 33 cases being the high indicator like in previous years. 30 Cases of Plevritis of non-tubercular genesis were recorded. Often Plevritis accompanies pneumonia and presumably, represents its complication, resulting from the

inadequate treatment and diagnostics of inflammation of lungs. Plevritis is often exudative (fibrinopurulent), acutely complicating the overall health condition of the patient.

Within the diseases of respiratory system we note also epneumo/hemo/hydor-thorax, lung infraction and lung abscess; as in the instances last year, the forensic medical examination conclusions still note a case of morphologically confirmed anthracosis and pneumoconiosis also (3%). This disease, as a rule, is a professional disease, and its essence is the accumulation of industrial dust (in this case containing carbon) in lungs. The spread of this disease was identified in the previous years as well. As it was noted in the report last year, the research in this direction requires more attention and analysis.

The share in percentage of the above listed separate nosologies, among the respiratory system diseases of the deceased patients is provided in the table and diagram:



Bronchitis	22.68 %
Pneumonia	20.61 %
Emphysema of lungs	18.04 %
Pneumocirhosis	17.04 %
Pleuritis	15.46 %
Pneumo/Hydo-Thorax	3.09 %
Anthracosis/pneumoconiosis	1.54 %
Abscess of lung	1.03 %
Infarction of lung	0.51 %

Patient N. N. (female), 60 years old (Code I N0.27), passed away on 5 March 2011 in Establishment No.5 for Women in Rustavi. According to the forensic examination, the death was caused by breathing insufficiency, developed as a result of double croup-type pneumonia;

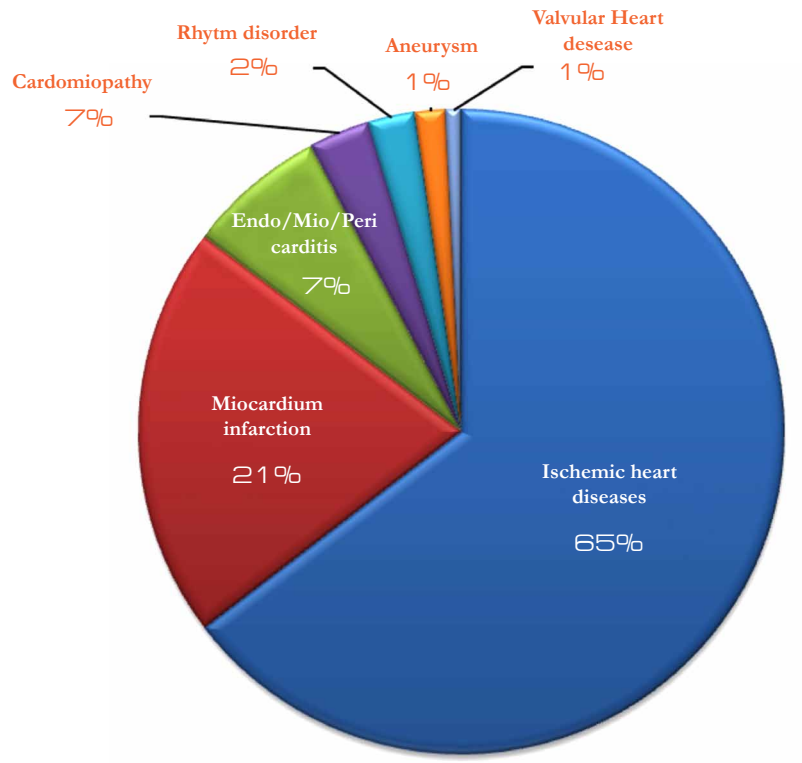
Patient N. M. (male), 37 years old (Code I No.68) passed away on 29 May 2011, in Establishment No.18. According to the forensic medical examination, the cause of death is the breathing insufficiency developed as a result of abscess-alike bronchial pneumonia.

Patient S. G. (male), 65 years old (Code II No.35) passed away on 2 October 2011, in Establishment No.18. According to the forensic medical examination, the cause of death is the breathing insufficiency developed as a result of abscess-alike bronchial pneumonia.

Patient A.R. (male), 72 years old (Code II No.38) passed away on 17 October 2011, in Establishment No.18. According to the forensic medical examination, the cause of death is the breathing insufficiency developed as a result of bronchial pneumonia.

Patient S. G. (male), 65 years old (Code II No.54) passed away on 29 November 2011, in Establishment No.18. According to the forensic medical examination, the cause of death is the breathing insufficiency developed as a result of abscess-alike bronchial pneumonia.

As for the **cardiovascular system diseases,** as it was already mentioned, similar to the previous years, the trend of increasing this indicators was still maintained in the first half of 2011. The role of cardiological diseases in causing the death is provided in the diagram and the table below:



Ischemic heart disease	64.61 %
Acute myocardium infarction	20.76 %
Endo/Mio/Peri Carditis	6.92 %
Cardiomiopathy	3.07 %
Cardio-rhythm disorder	2.35 %
Aneurysm	1.53 %
Valvular Heart disease	0.76 %

As the statistical data represented herewith reveal, ischemic heart disease was recorded in 65% of cases of 140 deceased persons. Out of these, myocardium infarction was morphologically ascertained in 27 cases, i.e. in approximately 20.76%. This is quite a high indicator and it exceeds the annual indicator of the previous reporting period. It shall be noted that as compared with the previous years, the trend of making the myocardium infraction "younger" was still identified, i.e. this disease moves more and more to younger age groups. In the first half of 2011 the age of those who had died as a result of myocardium infarction fluctuated between 22 and 54 years of age, at average making 44±2 years. The number of prisoners deceased in the second half of 2011 sharply increased.

Our monitoring has revealed that qualified cardiologic assistance was not available in penitentiary establishments. Prisoners were not screened and risk groups were not detected; even in cases of confirmed diagnosis patients were not provided with adequate treatment. Often the patients took self-prescribed medications or continued taking medications prescribed to them by a doctor before their detention. In such situation, dosage of or, in general, prudency of treatment with these medications was not reviewed at all, in fact. On the other hand, the local medical units could not offer the patients qualified medical assistance. Vast majority of the medical units of the penitentiary establishments did not have even a cardiograph, not to speak about the possibility to have myocardium ischemia confirmed by a lab test (using enzymes). Such types of diseases caused due to permanent stress and the existing substrate injuries often ended up with fatality. This may explain the trend identified during the reporting period; the diagnosis was not established until the patient passed away. Respectively, no treatment and/or its timely commencement had taken place.

Patient T. B. (male), 50 years old (Code II No.10), passed away on 1 August 2011, in the establishment No.15. According to the forensic examination, the death was caused by hearth muscular infarction;

Patient G. D. (male), 59 years old (Code II No.31) passed away on 23 September 2011, in Establishment No.17. According to the forensic medical examination, the cause of death is acute heart infarction caused as a result of aggravation of Ischemic disease.

Patient G.M. (female), 64 years old (Code II No.49), passed away on 16 November 2011 in Establishment No.5 for Women in Rustavi. According to the forensic examination, the death was caused by cardiovascular deficiency as a result of the ischemial damage of left ventricle.

Patient K.B (male), 42 years old (Code II No.51) passed away on 18 November 2011, in Establishment No.18. It should be noted that the death of the patient was recorded in on hour after his transfer to the Inpatient unit. This fact allows us to consider that the patient was transferred to Establishment No.18 in aggravated health condition. According to the forensic medical examination, the cause of death is the acute repeated heart infarction.

Infectious diseases, as it was already mentioned, occupied the third place among the indicators on diagnosis of the decease persons in the first half of 2011. The problems of spread of infectious diseases, in particular of viral hepatitis remained one of the traditional and acute problems within the penitentiary system. Despite this, no efficient and effectual ways have been identified to solve the problem. Even though the Strategy has been approved by the Joint Decree of the Minister of Corrections and Legal Assistance of Georgia and the Minister of Labor, Health and Social Affairs of Georgia, no further efficient measures followed. The Action Plan has still not been developed and therefore the mentioned Strategy so far remains as only a declarative document. It is exactly due to the absence of efficient measures of solving the problem, in the conditions of inefficient prevention, diagnostics and treatment of this disease that the problem of viral hepatitis has further deepened, abruptly negatively influencing both the medical aspects of the system in general, as well as the solution of the problem. Due to this very fact, the rate of death caused by viral hepatitis has been steadily increasing from the year to another. During the reporting period, the share of the Hepatitis among the infectious diseases constituted 62.15%. It should be noted that the share of the hepatitis among the diseases is equal in the first half and the second half of the year 2011.

This group mainly unifies the diagnosis of viral hepatitis and HIV infection. Apart from this, one of the deceased prisoners was also diagnosed with chickenpox before the death, however according to the forensic medical examination conclusion the mentioned disease did not cause the death. The group also unifies the persons deceased as a result of complication of viral hepatitis, in particular, the patients who developed cirrhosis of liver and portal hypertension as a result of hepatitis and respectively, ascites. Out of the viral hepatitis, according to the medical files of the decease persons, HCV virus was noted in an absolute majority of cases, whereas in some of the cases HBV was also indicated. Hepatitis „δ“ is also noted along with HBV. The combination of a variety of viral hepatitis is not rare either. It shall be noted that viral hepatitis, along with tuberculosis, represented one of the most serious problems for all the establishments. Screening of possession of hepatitis is not provided on spot. The commencement of treatment is also related to great difficulties. Ethiotropic therapy has been prescribed to only few patients. In the best case, the liver protection medications are prescribed to patients. The condition is further complicated with the fact that there

is no adequate diet nutrition, being important for treatment and finding solution to these problems, provided in the establishments.

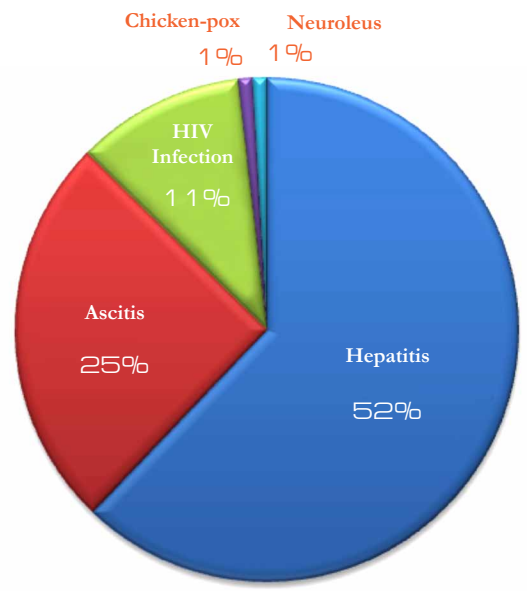
In 2011, 12 HIV infected persons died in the establishments of the penitentiary system of Georgia. This indicator is the highest one as compared to the data of the previous reporting years (in 2010, 8 HIV-infected prisoners died). The disproportion is visible between the data even in 2011; 11 prisoners out of 12 died in the first half of 2011. As it is known from the previous reports of the Public Defender, no forensic medical examination of deceased prisoners with HIV/AIDS had been undertaken during the previous years. The Public Defender assessed this as a discrimination of HIV-infected persons and recommended to solve the problem. L. Samkharauli National Forensics Bureau implemented the recommendation of the Public Defender – despite the fact that the diagnosis were known in advance, forensic medical examination of all deceased HIV-infected prisoners had been conducted in accordance with the established rule.

It shall be mentioned that the research undertaken during the previous years in Georgia as well as in a number of states throughout the world have identified that HIV infection, tuberculosis and viral hepatitis often co-exist, as a rule complicating the conditions of the patient and often having the lethal outcome within a short period. We studied the instances of co-existence of these three acute diseases within the deceased patients in 2011 as well.

It turned out that the co-existence of viral hepatitis, HIV infection and tuberculosis was recorded in 11.7% of instances in the first half of 2011. As for the co-existence of HIV infection and hepatitis, these were recorded in 13% of cases of deceased persons, whereas the co-existence of HIV infection and tuberculosis was recorded in the same number (13%) of cases of deceased persons. As for the prisoner deceased in the second half of 2011, he was diagnosed with co-existence of HIV infection and hepatitis as well.

To sum-up the shares of the mentioned nosologies and syndromes are provided in the table and diagram below:

Hepatitis	62.15 %
Ascitis	25.22 %
HIV Infection	10.81 %
Chicken-pox	0.91 %
Neurolues	0.91 %

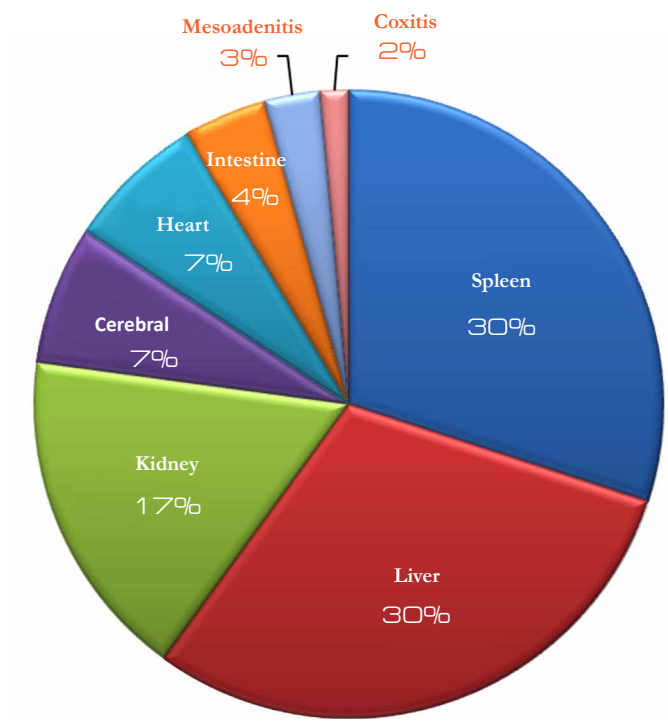


Apart from this, the ascitis caused from the cirrhosis of liver as a result of viral hepatitis had been ascertained in cases of 25.22% of deceased persons.

The spread of **tuberculosis** within prisoners occupies the forth place, similar to the data of 2010. It shall be noted, that one or the other belated forms of lung tuberculosis were noted in cases of a large number of deceased prisoners. The spread of tuberculosis in prisons had not decreased and tubercular infection in fact remains one of the main causes of death of prisoners. Out of the prisoners who died in the first half of 2011, lung tuberculosis was noticed in 54.5% of cases, whereas in the second half of 2011, the indicator was fluctuating around 34%. The forensic medical examination reports also refer to multi-resistant forms of tuberculosis, which were identified in approximately 26% of the cases of tubercular patients in the first half of 2011 and in 33% in the second half.

As mentioned above, Caseous pneumonia was morphologically ascertained in cases of 9% of deaths in the first half of 2011 and in cases of 11% deaths in the second half of 2011. Apart from this, unfortunately, similar to the previous years, the extra-pulmonary forms of tuberculosis were documented quite often in 2011, such as tuberculosis of liver, intestines, kidney, spleen, pleura, heart, greater sac, central nervous system and bone-joint system. The spectrum and share of extra-pulmonary forms of tuberculosis is provided in the table and diagram below:

Spleen	30 %
Liver	30 %
Kidney	17.14 %
Cerebral	7.14 %
Heart	7.14 %
Intestine	4.28 %
Mesoadenitis	2.85 %
Coxitis	1.45 %



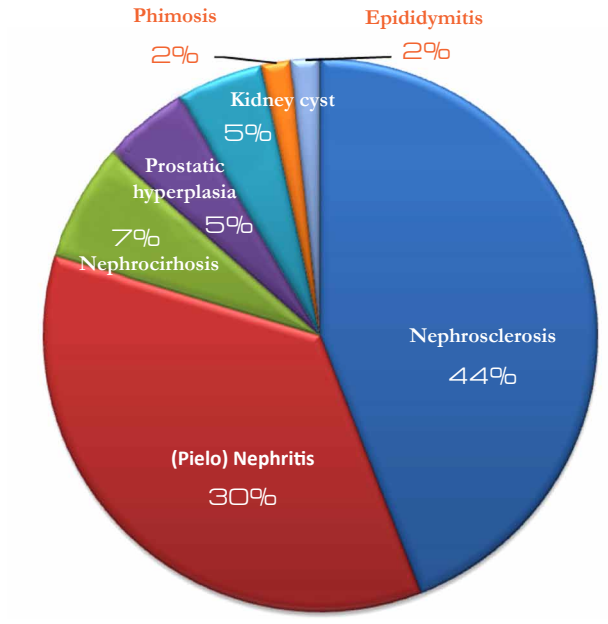
Such a diversity of extra-pulmonary tuberculosis and high percentage is a direct result of inappropriate management of tubercular infection (*WHO Regional Office for Europe (2007). Status paper on prisons and tuberculosis. Copenhagen, WHO Regional Office for Europe* www.euro.who.int/document/e89906.pdf). In this respect, the particular attention shall be paid to frequent instances of termination of the treatment course or insufficient places in the Medical Establishment for Tubercular Convicts, on its turn contemplating the delay in commencing the treatment course or undertaking the treatment course in other inappropriate conditions. Inadequate ventilation, insulation, nutrition, lack of fresh air and

placement of tens of prisoners in multi-occupancy cells causes the difficulties for the prevention and management of tuberculosis. It shall also be mentioned that the types of medical services provided to the persons deprived of their liberty in the Medical Establishment for Tubercular Convicts in Ksani are accessible to convicted persons only. Remand prisoners in fact have no access to these types of services. The existence of facts of coercive termination of the treatment course as a means of punishment for the violation of regime and transfer of the sentenced person to another establishment is added up to this. In this case, infection becomes dangerous not only for the diseased person, but also for those in contact with them. Taking all the above mentioned into consideration, the strategy and the principles of the management of infection in the penitentiary system of Georgia requires serious revision and changes.

In 2011, as in previous years, several patients (in this case – 7% of the total deceased by different forms of tuberculosis) died of cerebral tuberculosis. This disease represents the most acute form of tuberculosis and it is difficult to say whether the patient would have survived if treated adequately. However, it is the fact that we witness late and inadequate management of infections, the prevention of which would have been certainly possible. Tubercular infection, particularly it's extra-pulmonary forms in some cases were not identified until the forensic medical examination of the deceased patient.

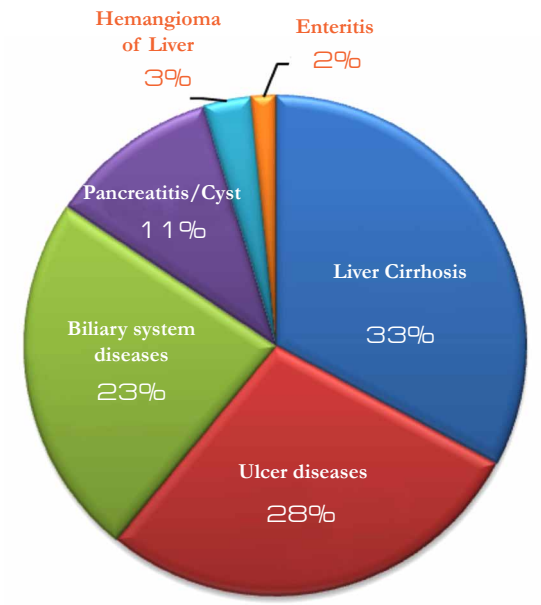
Within the deceased prisoners during the first half of 2011, the indicator of diseases of **urine-genital system** and mainly of kidneys remained to be high. The mentioned diseases were noted in about 8% of the deceased prisoners. This group does not include the cases of tubercular damage of kidney, which, as one of the forms of extra-pulmonary tuberculosis, was considered together with the statistics of tuberculosis. The cases of nephrosclerosis had been morphologically ascertained in 44.06% of cases of the deceased prisoners with the pathologies of kidney. The next most frequently identified disease was pielo-nephritis, composing 35.59% of the diseases in the group. The third most frequently registered disease was nephro-cirrhosis, having been noted in 6.77% of the cases. The prostatic hyperplasia and kidney cysts are noted in the forensic medical examination diagnosis in 5.08-5.08% of patients with this group of diseases. The statistical characterization of the mentioned group, is provided in the table and diagram below:

Nephrosclerosis	44.06 %
(Pielo)Nephritis	35.59 %
Nephrocirhosis	6.77 %
Prostatic hyperplasia	5.08 %
Kidney cyst	5.08 %
Phimosis	1.71 %
Epididymitis	1.71 %



Among the diagnosis of the deceased persons in 2011, numerous types of **digestive system diseases** take the 6th place with the indicator of 7.65%. The following diseases: Liver Cirrhosis, Peptic Ulcer disease, diseases of Hepatobiliary system, Pancreatitis, etc. The most frequently registered disease was Liver Cirrhosis, followed by Gastric Ulcer or Duodenal Ulcer joined by different forms of Gastritis and Esophagitis (28.12%), whereas in 23.47% of cases, pathologies of Biliary system was ascertained. The inflammation of Pancreas was noted in 10.93% of cases; besides, the Hemangioma, Enteritis, etc are documented as well in the medical forensic examination results. The group does not include the tubercular diseases of digestive system, which had been considered along with the statistics of tuberculosis. The percentage share of the diseases unified in the mentioned group is provided below in the table and diagram:

Liver Cirrhosis	32.81 %
Ulcer diseases	28.12 %
Biliary system diseases	23.47 %
Pancreatitis/Cyst	10.93 %
Hemangioma of Liver	3.12 %
Enteritis	1.55 %



The late forms of the ulcer diseases are often complicated with bleeding. The monitoring revealed that the patients are not provided with the adequate medical assistance in cases of gastric concerns. The rate of the usage of endoscopic examination in cases of need is extremely low. The only means provided to the patients in such a case is the medication available in medical units – Omeprazole. The local doctors are not aware of and respectively, do not use the European Guidelines for the Management of Helicobacter pylori Infection (Maastricht Consensus), respectively, no standard treatment of the first or the second line is prescribed in any of the establishments. The contemporary studies ascertain that wide and uncontrolled use of the first-line proton pump inhibitors (PPIs) (Omeprazole) creates the steady hypo acid condition, which represents one of the risk factors for the development of the gastric cancer; this very approach leads to the complicated forms of these diseases that had been identified, which often creates the real threat to life and health of a person. The cases of bleeding developed from the upper parts of the digestive tract often resulting in immediate death will be considered in the group of surgical diseases.

According to forensic medical examination diagnosis of deceased prisoners, the next common cause of **death is forced death and/or variety of injuries**, making 6.57% in the entire spectrum of diagnosis. During the reporting period, 5 cases of suicide were recorded, making 3.57% of total instances of death. The mechanical asphyxia was the cause of death in four cases, with the blocking of respiratory tract resulting from the looping the neck area. In the fifth case, the death was caused by acute hemorrhagic shock as a result of bleeding from the veins of upper extremity

injuries. In 2 cases, death was recorded in Establishment No.18 for Pre-trial/Convicted Inmates (Central Penitentiary Hospital); 1 case of death was registered in Establishment No.15 in Ksani, 1 case - in Establishment No.6 in Rustavi; 1 case - in Establishment No.15 for Women and 1 more case was in Establishment No.19 for Tubercular Convicts. The latter died as a result of bleeding of injured veins. There was one more accident, when the prisoner died of pwer stroke (at Establishment No.6).

Deceased prisoner L.J. 34 years old, male (Code N I-09). The death was registered in Establishment No.15 in Ksani. The forensic medical examination report provides in principle one sentence about the circumstances of the case. The report does not consider any of the medical documentation, and therefore the circumstances of the case are outlined in a vague manner. According to the report of the forensic medical examination, the cause of L.J.'s death was "mechanical asphyxia as a result of blocking the respiratory tract". Apart from describing the strangulation groove, according to the report of the forensic medical examination, the corps had variety of injuries, in particular, blazes in the areas of upper and lower limbs. The injuries had been inflicted with some solid blunt object before the death and their age does not contradict the time of death. Despite the fact that the mentioned injuries did not have direct causal relation with the result, the investigation should have get interested in their origin and nature.

Deceased patient P.Sh. 36 years old, male (Code N I-17). The death was registered in Establishment No.18 (Central Penitentiary Hospital). The forensic medical examination report indicates in the factual circumstances of the case that the sentenced prisoner P.Sh. was placed in the Medical Establishment No.18 on 18 October 2010. The death was registered on 22 February 2011. "22 February, 2011, 00:05 am. According to the personnel on duty, the patient attempted to commit a suicide. Upon entering the ward, the patient was found laying down unconscious. The patient was laying in the bed in a passive way; pinkish strangulation groove was noted in the neck area. No blood pressure and pulse were measured on periphery. The patient was taken to the intensive care unit". Despite the reanimation measures, biological death was registered at 00:30 am. The mentioned record causes uncertainty. In particular, it is not clear as to in what condition and position did the convicted person hang himself. It is not clear easer who put him in the bed and why the material of the loop used to commit the suicide is not indicated along with mentioning the strangulation groove.

Deceased prisoner O.R., 36 years old male (Code N I-26). The death was registered in Establishment No.18 (Central Penitentiary Hospital). According to the record, on 4 March 2011, the notification was received from the Medical Establishment No.18, according to which on 4 March 2011, at 06:40 a.m. the prisoner O.R. died in the intensive care unit. According to the medical file (the Medical File of the Establishment No.18), "O.R. was placed in the Medical Establishment at 06:25 a.m. on 04.03.11. The diagnosis upon the entry: attempted suicide with mechanical asphyxia. The general condition of the patient upon the placement in the inpatient treatment facility was most critical, no contact could be established, cyanosed, singular breath moves were noted, no pulse was measured on periphery and central blood-vessels. The strangulation groove was noted on both – right and left halves of the neck area in the form of bruise and blaze. A cross-cut wound in the right half of neck, sized 5x1 sm.; Numerous cut wounds in the areas of both forearms. Small number of bruises from these wounds were noted. Cicatrices of old wounds in ileocecal area were noted as well. No pulse was measured in periphery and central blood-vessels. No heart sounds were heard. No arterial blood pressure could be measured. The patient was unconscious, no contact may be established. Eye pupils were widened medially. No photoreactions were caused. The reanimation of heart and lung started immediately." Despite the measures undertaken the functioning of heart could not be restored and at 06:40 a.m. biological death was registered.

The records are at times illogical and include the mutually exclusive facts. There is a basis to presume that the prisoner O.R. was brought to the Medical Establishment No.18 after he had died. According to the records, he had no sign of life any more. All the signs were mentioned in the records that are used to describe the death ("No heart sounds are heard. No pulse is noted in periphery and central blood-vessels. No breath is noted, eye pupils are widened"). Apart from this, there was only 15 minutes interval noted from the point of entry to the Establishment and the registration of death. In this time period, taking into consideration the existing situation, it is hard to believe that it was possible to admit the patient, examine him, establish all these signs, afterwards taking him to intensive care unit and undertaking the reanimation measures there. The Special Preventive Group consider that investigative bodies shall get interested in this issue and shall establish in what circumstances and where did the patient passed away. Apart from this, according to the forensic medical examination report, "relatively right-angled wounds were noted on the corps of O.R. in the upper third of the neck and both upper limbs, which must have been developed by means of using some object with cutting

capacity … the wounds had been inflicted before the death, they must have been developed immediately during the short period before the death".

Deceased prisoner T.K., 27 years old, male (Code N I-54). The death is registered in Establishment No.6. According to the examination report – "on 30 April 2011, at around 10:30 the corps of the sentenced prisoner T.K. hanged by bed sheet was found in the toilet of cell No.3 in Establishment No.6 of the Penitentiary Department". The examination report does not review the medical documentation and it seems that the expert had not been guided by any of the records made by a doctor. According to the report of the expert, "the cause of T.K.'s death was mechanical asphyxia caused by blocking the respiratory tract, as a result of looping. By the time of forensic medical examination of the corps, approximately 3-4 hours should have been passed from the point of death." Apart from the strangulation groove noted on the as provided above, "three surface right-angled wounds were also noted on the front surface of the lower third of the left forearm, with reddish hemorrhages in the curves. The injuries were caused by using some object with sharp surface, inflicted before the death, immediately during the short period before the death. The injuries were of approximately 10-12 days old".

Deceased prisoner E. B., 50 years old, male (Code N II-15). The death is registered at Establishment No.19 of Tubercular Convicts. The forensic examination report described the factual circumstance of the case in one sentence; the medical files were not analyzed practically (the analysis is limited to diagnosis); therefore, the essence of the case is vague and unclear. The forensic examination report says the following: "general blood deficiency caused by cutting the veins at the joints of the left and the right elbows. The record is made 4-5 hours later after the death of the patient."

Deceased prisoner I. Z., 46 years old, male (Code N II-17). The death is registered at Establishment No.6 in Rustavi. The factual circumstance of the forensic examination report describes the information copied from the order on appointing the forensic examination, namely, where and when the body was found. The medical files were less informative. The forensic examination report says the following: "Electro-trauma, proved by the signs of electro-burning in the breast area and the changes on the body. The examination was undertaken after the death of the prisoners, 6-7 hours later. The expertise examination says as well that "apart from the signs of electro-burning on the breast, the signs of life-time notches we visible around the nose, developed exactly before the death and the notches on back, developed 8-10 days prior the death, these notches are very light and could not cause the death." The expertise says as well that chemical-toxical examination of the blood of the deceased person revealed the presence of 0.56 promille of ethyl alcohol.

Deceased prisoner M. L., 56 years old, male (Code N II-53). The death is registered at Establishment No.5 in Rustavi. The forensic examination report described the factual circumstance of the case in one sentence, saying that the body was found in the shower room of Establishment No.5. The forensic medical examination says that the death was caused by "mechanical Asphycxia, developed by tightening the loop around the neck. The expertise was undertaken 4-6 hours later, after the death of the prisoner. One trace of strangulation was visible in the upper neck, inflicted during life-time of the deceased, referring to the severe injury rate." It shall be mentioned here that 18:30 is documented as the rime of the death of the prisoner. Considering the fact that the forensic medical expertise took place 4-6 later after the death, i.e within the period of 13:00-03:00, it becomes vague and unexplainable what was the reason for conducting the forensic medical expertise at midnight in the conditions of artificial lighting (lighting is not mentioned in the expertise report).

Consideration of the forensic medical examination reports drawn with regard to the prisoners who died in the first half of 2011 makes it clear that 23 bodies of the prisoners out of the 77 deceased prisoners, i.e. almost 30% had some type of injuries located at different parts. As for the data of the second half of 2011, 17 bodies (27%) out of 63 deceased prisoners had different types of injuries on. The indicator for the year 2011 in total shows that injuries were visible on 40 bodies (28.5%) out of 140 deceased prisoners. The forensic medical examination reports often include the records such as:

(Code N I-1) "The injuries in the form of bruises and blazes were noted on the corps of A.A., which had been caused by using some sharp object, in case of examination of alive person such injuries carry the signs of light injuries. The mentioned injuries are not related with the result and had been inflicted in the period preceding death".

(Code N I-16) E.G.'s "corps have visually noticeable blazes and one bruise, caused by using some solid-blunt, which in case of examination of live persons carry the signs of light injuries. The injuries had been inflicted before the death, of at least 4-5 days old and they have no relation with the fact of death."

(Code N I-18) G.E.'s "corps have visually noticeable life-time right-angled sutured surface wounds on the right side surface of the neck, right-angled wounds and blazes on the back surface of the right hand. The right-angled wounds in the areas of neck and right hand are inflicted with some sharp object and belong to the light degree injuries, with short-time damage to health. The blazes in the right hand area were developed as a result of using some solid-blunt object and belong to the light degree injuries, without damage to health".

(Code N I-20) D.M.'s "corps have wounds in the forms of bruises and blazes in the upper and lower extremity areas that had been inflicted long before the death with some solid-blunt object, which in case of examination of alive persons are classified as light injuries and they have no relation with the result."

(Code N I-28) A.G.'s "corps had noticeable life-time injuries during the examination: bruises on the back surface of the chest. Sutured wound in the right hip dent and numerous surface cut wounds. The bruises are inflicted immediately before the death with some solid, sharp object and belong to the light degree injuries, without damage to health. The sutured wound in the right hip dent and numerous surface cut wounds were developed 4-5 days before the death with some cutting surface object and in cases of examination of live persons they are categorized as light degree injuries, with short-term damage to health. The mentioned wounds are not in casual relation with the established result – the death."

(Code N I-49) E.K.'s "corps had noticeable blazes and bruises inflicted with some solid-blunt object. Blazes covered with thick brownish scab, at places with scab removed and bruises in the right forearm area, which must be developed 7-9 days before the death, whereas the bruises on the mucous of the lower lip and on the subcutaneous soft tissues of the skull were developed immediately before the death".

(Code N I-62) U.I.'s "corps had noticeable wounds: uneven angled wounds, bruises and the fracture of the left hip bone – the wounds seem to be inflicted during the life time; developed as a result of using some solid-blunt object(s), before the period of death. The wounds with bumpy angles, blazes and bruises all considered together belong to light degree damage of body, whereas the fracture of the left hip bone belongs to the less light damage of the body, with the signs of long term damage of health".

(Code N I-66) T.K.'s "corps had noticeable wounds: blaze on the rights side of the merge of apex and nape. In the left side, bruise at outer brink of lower eyelid, belonging to the light degree damage without distortion of health. Internal examination revealed the following: fracture of right 8th and left 7th ribs. Hemorrhages are noted in the soft tissues respectively along with fractured ribs. Spacious hemorrhages at the inner surface of the soft tissues of skull at the merge of apex and nape and at the right side in the area of temple. Trauma injury of jejunum. The wounds have been inflicted with some solid blunt object. Fractures of the right 8th and left 7th ribs belong to less heavy degree of damage, whereas traumatic fragmentation of jejunum belong to the serious damage, as dangerous for life, the complication of the latter became the cause of death. The wounds are life time."

(Code NI-70) S.S.'s "corps had noticeable wounds: right-angled wounds on the left side surface of the neck, pricked wound on the front surface of chest, at the lower margin of right clavicle. All the wounds noticed on the corps had been inflicted during the life time. Right-angled wounds in the neck area had been inflicted with some sharp-edged subject. During the establishment of the degree of the injury of the body by means of forensic medical examination of alive persons, separately as well as together belong to light degree of damage with the distortion of health. Due to the short-term damage to health these are not in causal relation with the result established. They do not contradict with the date indicated in the medical file. The pricked wound represents a trace of medical manipulation."

(Code N I-72) "The following wounds had been recorded as a result of the external and internal examination of O.Tch's corps: blaze on the back surface of thorax – on the vertebral line, crossing the area of waist. The injury had been inflicted with some solid, blunt subject and belongs to light degree of damage. The wound is of life time, inflicted with several days before the death and it is not in causal relation with the death of O.Tch."

Special interest shall be devoted to the Case of S.T deceased in the second half of 2011. The Office of Public Defender studied this case in details. According to the forensic medical expertise, the death of male prisoner, 58-years old, is

recorded in Establishment No.18. the injuries described in the expertise report draws the attention while being of different ages. Namely, the bruises visible on the deceased person were the following:

1. Round-oval bruises of violate-green-yellow colors in the middle of the front-side of a right shoulder, inflicted 5-6 days prior the death;

2. In the same place, in the middle and upper parts of the shoulder back, there were bruises of violet color, with granny-yellowish shadows in the periphery – inflicted 6-8 days prior the death;

3. Reddish bruises in the middle of the front shoulder. The reddish color indicated that the bruises were inflicted several hours prior to the death of the prisoner;

4. Reddish-violet bruise was visible around the open cutting on the corner of the right eyebrow indicating to the fact that the injuries were inflicted not more than 1 day prior to the death of the prisoner

Apart from the bruises, different types of lesions and wounds were documented by the expertise. There were also the traces of medical manipulations (inflicted during the reanimation process) that we will not discuss together with the above-mentioned injuries.

It shall be noted that the description of injuries provided by the forensic medical examination fully corresponds with the medical files of inpatient treatment (No.1332) made by the doctor, making more convincing the above-mentioned facts.

According to the expertise, all the injuries were inflicted during the lifetime of the patient. As for the age of the injuries, according to the statement of the expert, they were inflicted within 7-9 days prior to the death of the prisoner. We share the statement made by the expert.

In the part "data of the medical files" of the forensic medical examination report, it was mentioned that the patient was placed in reanimation ward of Establishment No.18 at 22:30 on 23 September 2011, whereas the death of the latter was recorded at 22:50. Therefore, it seems that the patient was immediately taken to the reanimation ward upon admission to the Establishment where he stayed alive for 30 minutes. In spite of the mentioned fact, there we no signs of life described in the medical files during these 30 minutes. According to the files, "the patient is unconscious, no contact could be made, does not react to any external irritants; no pressure is measure, no pulse is measure. Cyanosis is visible on the face, neck veins are widened, breathing is superficial, the eye pupils moderately widened, without photoreaction." Later the reanimation manipulations were undertaken by the doctors, though without any result followed by the register of biological death. The information provided gives the ground for the doubts whether the patient was alive upon the admission to the Establishment or not. The only phrase that proves that he was still alive is "breathing superficial" that might have been written artificially as far as when there is no pulse, no pressure can be measured, the pupils are widened and no photoreaction is notice, serious doubts emerge that the patient is dead. Therefore, we have doubts that the patient died during the transportation and/or body of the deceased person was admitted to the reanimation; such facts have been numerously recorded before in the past at Establishment No.18, when the life of already decease patient was artificially prolonged in order to change the place of death of the prisoner. In case of the alleged development of the facts, we have the signs of falsification of medical files that needs separate study not only in this certain case, but in general as well.

The same part of the document shows that the doctors recorded "Coma of unknown etiology; acute deficiency of blood vessels" as a final clinical diagnosis. This does not correspond to the diagnosis of forensic medical examination. The existence of signs of direct or indirect coma can be proved neither by means of macro-morphological nor histological examinations.

As it is known, Coma may result from a variety of conditions, including intoxication (such as drug abuse, overdose or misuse of over the counter medications, prescribed medication, or controlled substances), metabolic abnormalities, central nervous system diseases, acute neurologic injuries such as strokes or herniations, hypoxia, hypothermia, hypoglycemia or traumatic injuries such as head trauma. It may also be deliberately induced by pharmaceutical agents in order to preserve higher brain functions following brain trauma, or to save the patient from extreme pain during healing

of injuries or diseases. Generally, coma is a state of unconsciousness that lasts more than 6 hours and is preceded by pre-comatose condition. While assessing the state of the patient as a Coma, the doctors have not used the Glasgow or any other scales that proves once more out doubts that upon the admission to the reanimation ward, the patient was dead.

The forensic medical examination had not found any of the conditions that could be resulted in Coma neither by means of morphological or histological examination. On the other hand, neither the injures documented in the files could result in coma or cause the immediate death. These injures could only aggravate the condition of the patient.

The internal examination of the body of the deceased, has not revealed any cerebral injuries (in case of coma lasting for hours, minimum Brain Edema should have occurred resulting in changes in the brain structure). Therefore, we could not indicate to any cerebral trauma as result of the death. Chemical-toxicological examination excluded the existence of methyl, ethyl or isopropyl alcohol in the blood. The examination of blood and internal organs did not reveal as well the existence of Opiate, Methadone, Marijuana, Barbiturates, Buprenorphine, Amfetamine, Metamfetamine, Benzodiazepines, Antidepressants, cocaine. Neither other toxicological agents were found that could directly or indirectly cause the coma. Therefore, is we consider the chemical-toxicological examination trustworthy, we could state that there was not any intoxication that could result in coma.

The medical forensic examination does not provide any grounds to consider that either uremic or hypoglycemic coma could be developed as far as the micro and macro-morphological analysis of urine-genital and endocrine organs did not prove any existence of pathology. Moreover, neither direct nor indirect signs were found to indicate to the existence of such.

During the examination of the chest and abdominal cavity, no signs were found that could cause the lethal outcome. The expertise excluded as well the existence of thromboembolic pulmonary hypertension. Macromorphological examination did not show any substantial changes in respiratory system; though, micromorpholigical examination proved the existence of interstitial lung pneumonia. It shall be noted that the difference in the results of micro and macromorphological examinations are visible. Namely, histologist Gogitauri indicated that "pulmonary edema" had been developed, while expert Kamushadze did not describe these signs. It seems that the type of pneumonia that could only be revealed by means of micromorphological examination and did not show any macromorphological changes could not become the reasons of acute intoxication resulting in coma and the lethal outcome respectively.

No pathology in the urine system was revealed by means of macromorphological examination. Moreover, the results of the expertise stated that the bladder was empty. In such cases, the following clinical data should be taken into consideration: whether a catheter was inserted into the bladder or whether the involuntary urination took place. Otherwise, the emptiness of bladder could be explained by the kidney deficiency on the against the background of progressive and prolonged hypotension. Unfortunately, the description of kidney does not exist in the results of histological examination; it seems that either examination material was not taken or the results were not included in the report deliberately.

The forensic medical examination indicates to the existence of problems in cardiovascular system. There are no reasons not to believe to the results of forensic medical examination in this regard as far as the patient had ischemic heart disease as proved by the micromorphological examination (coronary atherosclerosis and post-infarction signs in myocardium). Though, according to the available documents and examination reports it is not possible to prove categorically whether the ischemic heart disease was a result of the death of the prisoner. In order to further study the case, it is important to provide comprehensive analysis of all the medical files and reports made during the lifetime of the prisoner.

Finally, analyzing the available documents, we could state the following:

1. It is doubtful that the patient was admitted to the Medical Establishment No.18 alive;
2. The clinical diagnosis made at Medical Establishment No.18 does not correspond to the forensic medical examination results and do not explain the reasons of death of the patient;

3. The forensic medical examination results contain number of deficiencies (do not contain the results of histological examination of kidney; macromorphological description of lungs is inconsistent with the micromorpholigical examination results; the experts did not try to study the differences in these two results further);

4. It is clear that the patient had number of injuries inflicted in different time periods during his lifetime by hard blunt object; the ages of these injuries show that they were inflicted repeatedly with some intervals (minimum 3 times) within the periods of 7-9 days prior to death. In spite of the fact that these injuries separately were not so severe to cause immediate death, taking into consideration the conditions and circumstances in which they were inflicted, they could further aggravate poor health conditions and cause the negative dynamics of its development;

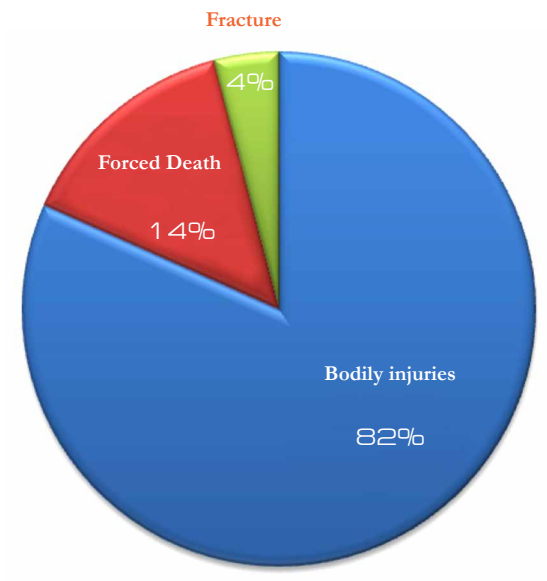
5. Further analysis of the case needs comprehensive and complex examination of all the medical files and other documents of the patient produced during the lifetime of the prisoner.

Along with several examples listed above many other facts may be cited where the experts note and describe the life time wounds. Despite this, as during the previous years, the investigation, as also revealed with the experience of previous years had not devoted the respective attention to this, respectively bluntly violating the international and national standards of prevention of torture. The fact that the nature of the wounds is not heavy and they have no direct causal relation with the death, in the absolute majority of the cases turn to be the cause due to which the investigation does not get interested into the mentioned facts.

The study has revealed that more than half of the deceased prisoners in Establishment No.18 for Remand and Sentenced Persons had some type of wound on the body noted. Apart from this, three prisoners out of the prisoners deceased in the National Center for Tuberculosis and Lung Diseases had wounds of bodies registered as well. These prisoners had passed away in approximately 1-3 days after being transferred to the National Center for Tuberculosis and Lung Diseases. Presumably, their transfer into the mentioned Establishment was undertaken from the Medical Establishment No.18. Three out of the four prisoners deceased in Establishment No.15 in Ksani had bodily injuries of variety of types and gravity. Investigative bodies shall inevitably get interested into the mentioned circumstances.

Therefore, all the cases of death considered above had grouped the **forced death** during the reporting period, all of which were mechanical asphyxia, by blocking the respiratory tract with a loop, range of degrees and localization of bodily injuries and fractures. The co-relation of the mentioned types of wounds is provided below in the table and diagram:

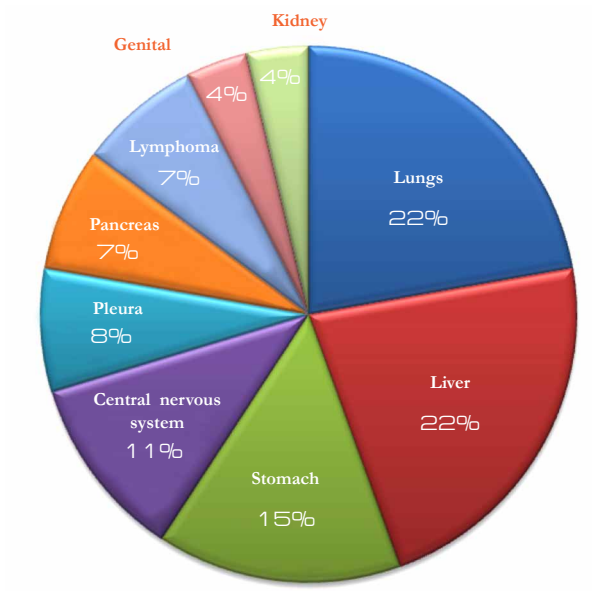
Bodily injuries	81.64 %
Forced death	14.28 %
Fracture	4.08 %



2017

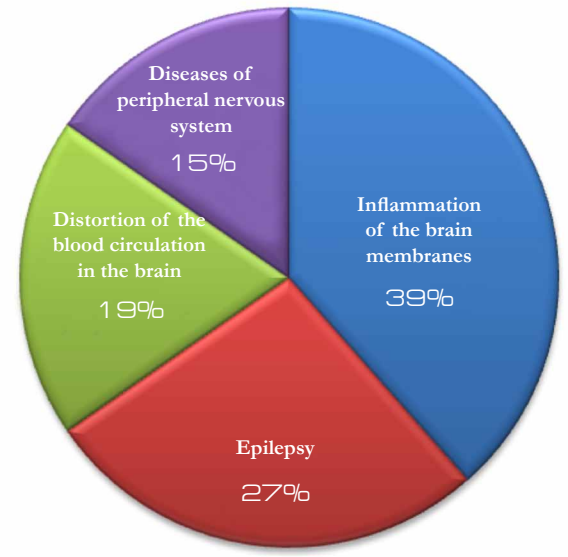
The cases of the death of prisoners with **malignant tumor** composed 3.62% in 2011. In the first half of 2011 the percentage of the death caused by this disease was 3.22%, while in the second half of 2011 – 15.87%. As for the share of malignant tumor among the diseases in the Penitentiary system generally, it constituted 16.88% in the first half of 2011 and 22.2% in the second half of 2011. As the statistics shows, the second half of 2011 is marked with the increased number of deceased prisoners caused by malignant tumor. Despite this, it shall be mentioned that the great majority of the deceased prisoners had the belated forms of tumours at the latest stages of the diseases, with the developed metastases. There were 27 cases of the malignant tumor registered altogether. The most widely spread was the lung cancer (6 cases); the next widely spread was the liver cancer (6 cases); gastric cancer (4 cases); followed by cancer of Pleura, Pancreatic cancer as well as Lymphoma (2 cases). There were single cases of genital cancer and kidney cancer. As during the previous reporting period the facts of inconsistency between clinical and forensic medical diagnosis were noted. Types of cancers, to demonstrate them better are provided below at the diagram and in the table:

Lungs	22.22
Liver	22.22
Stomach	14.81
Central nervous system	11.11
Pleura	7.40
Pancreas	7.40
Lymphoma	7.40
Genital	3.72
Kedney	3.72



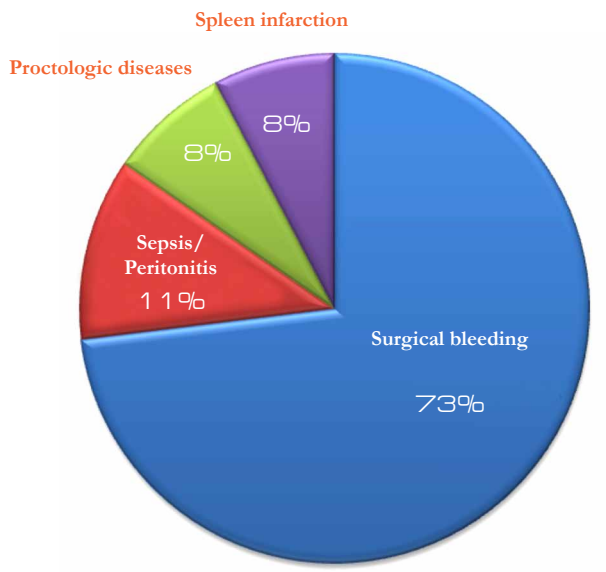
Within the diagnosis of the deceased persons the next most spread disease is the group of **neurological diseases**. As it was already mentioned, 3.48% of the deceased prisoners had one or the other neurological disease, whereas in some of the cases these very diseases turned out to be the direct cause of death. It shall also be mentioned herewith that as compared with the data of the previous year the death caused by neurological pathologies considerably decreased in 2011. Despite this, unfortunately, such serious neurological conditions as the inflammation of the brain shell as well as of the membrane of central nervous system and the acute types of the distortion of brain blood circulation are still registered. The spectrum of the above mentioned diseases is provided in the table and diagram herewith:

Inflammation of the brain membranes	38.46 %
Epilepsy	26.93 %
Distortion of the blood circulation in the brain	19.23 %
Diseases of peripheral nervous system	15.38 %



As it is demonstrated in the table the most frequent neurologic pathology within the patients deceased during the first half of 2011 was the inflammation of the central nervous system membranes. The mentioned was primarily represented in the form of tubercular genesis meningitis and arachnoditis. The neuropathies and polyradiculoneuropathies shall be singled out from the diseases of the peripheral nervous system. The mentioned diseases had not become the direct causes of death; however in the forensic medical examination reports over the deceased prisoners, similar to the previous years, are still noted. All this takes place against the background of noting the insufficient number of neurologists in the penitentiary system. There was only one doctor neuropathologist employed in Medical Establishment No.18, and in various penitentiary establishments the doctor of this profile and experience was rarely found.

The surgical diseases are registered in the 3.08% of the forensic medical examination reports made with regard of the deceased prisoners, taking the 10th position the other diseases. The mentioned indicator practically corresponds to the annual indicator of the last year. In some of the instances, surgical pathology has turned to be the direct cause of death of the patient. The spectrum of the surgical diseases is provided both in the diagram and the table below:



2011

Surgical bleeding	73.07 %
Sepsis/peritonitis	11.55 %
Proctologic diseases	7.69 %
Spleen infarction	7.69 %

As it is seen in the table, the surgical bleeding occupies the first place in the list. The source of bleeding in variety of cases was digestive tract or respiratory system.

The case of the patient G.N. is provided here as an example (Code I N3). The patient died in the Establishment No.18 (Central Penitentiary Hospital). The medical file kept in the same establishment reveals that due to the baseline diseases the bleeding from the esophagus varicose started, and due to this the loss of blood caused heavy hemorrhagic shock and anemia, that at the end turned to be the cause of death. The diagnosis respectively notes "varicose of esophageal veins 1-2 d. heavy bleeding from the varicose esophageal veins". The patient before the death also had endoscopically ascertained gastric ulcer. The medical file directly notes that "the probable reason of death is the hemorrhagic shock developed as a result of the heavy bleeding from varicose esophageal veins." Despite this, the forensic medical diagnosis established as a result of the forensic medical examination does not mention bleeding, anemia or hemorrhagic shock and it clearly establishes that "the cause of G.N.'s death is liver function deficiency, developed as a result of liver cirrhosis". It is clear that liver cirrhosis itself represents baseline disease, whereas the direct cause of the death, in this specific case, is hemorrhagic shock, proving which several macro and micro-morphological signs are described in the forensic medical examination report. Despite this, the direct cause of death does not include the bleeding. Taking the mentioned into consideration, it is clear that either the patient's medical file or the report of the forensic medical examination are deficient and one of the documents had been composed with gross flaws. To finally clarify the issue the file for the consideration shall be submitted to the Agency for State Regulation of Medical Activity under the Ministry of Labor, Health and Social Protection. The scope and adequacy of the medical assistance delivered to the prisoner shall also be assessed herewith, which presumably, do not correspond with the standards established in the country.

The same type of the case is herewith considered: the late patient G.Ts.'s (Code I N42) forensic medical examination report makes it clear that 30 years old prisoner passed away in the Medical Establishment for the Tubercular Convicts. The medical file reveals that at 08.45 am on 28.03.2011 "the patient died of the profuse bleeding from the lungs". Despite this, the forensic medical examination report mentions only one sentences, in particular, "the cause of G.Ts.'s death was lung tuberculosis." There is no mention of the bleeding and the direct cause of the death. Taking all this into consideration the impression is again created that either the medical file or the forensic medical examination report are insufficient and poorly kept. This shall instantly become the subject of interest of the respective structures responsible for quality assurance.

The death as a result of bleeding is ascertained in the expert report over the examination of the patient G.S. (Code I N45). The forensic medical examination report ascertains that the patient G.S. was admitted to the Establishment for the Remand and Sentenced Persons N18 on 31 March, 2011. The concerns of the patient are formulated as follows: "the general condition of the patient is not satisfactory, the patient complains about the generic overall weakness, heart waving, unpleasant feelings in the area of chest, the restriction of blood passing in the left upper limb, diarrhea, flatulence. The medical file reveals that in the morning the patient was brought from the medical unit of the Establishment in the soporosal condition, where the primary medical assistance was provided, following which the patient was transferred to the Medical Establishment for the further examination and treatment, as an emergency case". The general condition of the patient in the Medical Establishment was assessed as the average severity condition. The consultation of the surgeon was provided, the chronic gastritis may be presumed. To assess the situation and precise the diagnosis carrying out the fibroesophagogastroduodenoscopy was recommended. The consultation of the neuropathologist, the X-ray examination of the chest area, the clinical analysis of blood were carried out at a later stage and the suspicion was raised of existence of the voluminous process in the mediastino. To ascertain or to exclude the mentioned the computer tomographic examination was planned. The fibroscopic examination as requested by the surgeon could not be arranged and the conducting the mentioned examination was scheduled for the next day. Against this background, the health condition of the patient suddenly deteriorated by the morning, started hematemesis (vomiting of blood), hemodynamic

indicator deteriorated, no peripheric pulse could be measured, the contact may not be established. The artificial ventilation of the lungs of the patient started. Nasogastric tube was placed, the blood was received via it. Despite the undertaken treatment and reanimating measures the patient died. According to the diagnosis in the medical file, the patient had "voluminous formation in the mediastino, gastroduodenal bleeding, hemorrhagic shock, acute respiratory failure". The voluminous process of the mediastino was not ascertained during the forensic medical examination. Even the lymphatic nodes had retained their ordinary size. The histologic examination ascertained gastric ulcer, which was the reason of bleeding, as well as post hemorrhagic anemia. According to the forensic examination "Cit. S.G. died of acute anemia of internal organs caused by bleeding developed as a result of gastric ulcer".

Therefore, in the case of the late patient S.G., the gastric ulcer could not have been ascertained for a long period of time, respectively, no adequate treatment ws provided to the patient in the penitentiary establishment where the latter remained (the number of the establishment is not indicated). Even when the gastric ulcer got complicated with bleeding, the diagnosis could still not have been ascertained, including neither in the Medical Establishment for Remand and Sentenced Persons. Despite the consultations provided by the surgeon, the diagnostics was directed to the wrong direction, during which the repetition of the bleeding resulted into the death of the patient. The mentioned case – the management of the patinet (as at the place of the serving sentences, as well as in the Establishment N18) and the issues related to it shall be studied by the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection.

Patient K.K. (Code I N57) 33 years old male was transferred to the Gudushauri National Medical Center due to the deterioration of the health condition from the Establishment N18 for the Remand and Sentenced Persons. The reason of the transfer was liver cirrhosis and the episodes of gastroduodenal bleeding developed against this background. Despite this, the patient was returned to the Establishment N18 after one day with the respective recommendations. Some time after this the patient passed away. According to the forensic medical examination report, "K.K.'s death was caused by acute anemia, developed as a result of the bleeding from the varicose widened blood vessels of the esophagos".

Patient S.V. (Code I N61) 52 years old male. As it is revealed from the medical file kept in the Establishment for Remand and Sentenced Persons N18 the patient seems to have been placed in the mentioned Establishment at 10:55 on 16.05.2011. According to the data in the medical file, the patient started bleeding since 10:20. Upon the delivery to the Medical Establishment the patient was in comatose condition, hemorrhagic shock was noted. The patient was immediately taken to the intensive care unit. According to the record, the patient could not be contacted, "the pulse on the wrist and the arterial blood pressure could not be measured, the heart tones could not be heard, the type of breath – none. There is no reaction on prickling and thermal irritation. Cyanosis is expressed, eye pupils are widened, cornea reflex and photoreaction may not be caused, the isoline is noted on the monitor, no spontaneous breath is recorded." Despite the undertaken resuscitation measures, the biological death was registered. The forensic medical examination of the patient ascertained the existence of the adenocarinoma of the lungs. According to the situation described, the late form of oncological pathology is registered. Despite this, the patient remained at the place of serving the sentence. Apart from this, it also attracts the attention that upon the admission to the Medical Establishment no signs of being alive were noticed on the patient. The records indicate that the corps was delivered to the Establishment already. The transfer of the patient was already the belated process.

The patient G.T. (Code I N65) 46 years old male was transferred from the Medical Establishment N18 for Remand and Sentenced Persons to the Referral Hospital, where soon after the admission of the patient the biological death was registered. Anamnesis of the patient (for the last 15 years) notes the surgery conducted on the stomach as well as two episodes of bleeding. A year ago the varicose of the esophageal veins as well as callosum gastric ulcer. Some hours before the death the bleeding re-started from the upper parts of the digestive system (melena, hematemesis (vomiting of blood)), due to what the patient had been transferred to the intensive care unit of the first Clinical Hospital, whereas from the patient in the most acute condition was transferred to the referral hospital. In around an hour from the point of admission to the hospital biological death was registered. According to the forensic examination report, the cause of the death was the anemia developed as a result of the bleeding from the various veins of the esophagus. In this case as well the transfer of the patient to the medical institution was already belated. It is also vague, as to why was the patient

in the most acute terminal condition transported from the First Clinical Hospital to the Referral Hospital and whether the negative influence of the transportation could have been noted in this case.

The 65 years old male prisoner S.A. (Code I N74) died of the bleeding from the respiratory tract as well. The patient had been ascertained of the belated form of the cancer of the lung (IV stage), with metastasis. The patient was in the most acute condition. The issue of acting the prisoner had not been considered against the background of this most acute pathology. The patient was transferred to the Medical Establishment for the Remand and Sentenced Persons, where he remained before the death. According to the records in the documentation, the case had been considered as incurable, therefore only symptom treatment had been undertaken. Apart from the main oncologic disease, the patient also had the ischemic heart disease, tension stenocardium, the arterial hypertension, chronic bronchitis, epilepsy, duodenal ulcer, bronchial asthma. Against this background the bleeding from the respiratory tract developed. This was not clinically ascertained. According to the forensic medical examination report, "the cause of S.A.'s death is severe anemia of the internal organs due to the bleeding from veins damaged as a result of the left lung cancer".

The Public Defender of Georgia considers that keeping the patient with such most acute health condition in the penitentiary system, the condition of whom was considered to be incurable, represents inhuman treatment. In such a situation the serving the sentence loses the sense and deriving from the principles of humanity, all the mechanisms existed in the legislation of Georgia to have had the motion requesting the release of the patient due to the health condition submitted to court.

As for the case of such dangerous surgical complication as diffuse peritonitis, the 55 years old male patient T.K. (Code I N74) died with this diagnosis in the Establishment N18 for Remand and Sentenced Persons. The case attracts the attention as apart from the blunt violations during the medical assistance the violent treatment of the prisoner was noted, that is the competence of the investigative bodies. The patient T.K. passed away in the Establishment N18 at 02:10 on 28 May, 2011. As the records in the medical file reveal the patient was placed in the Medical Establishment at 22:00 on 25 May, 2011, i.e. three days before the death. Upon the admission to the Establishment for the Remand and Sentenced Persons, "the general condition of the patient is acute, he is conscious. The coercive pose. As clarified from the record of the doctor on duty the patient was dizzied due to low arterial blood pressure, fell down, and was injured in the chest area. The cut wound in the area of sinciput covered with scab with the size 1.5 sm. Bruises in the left side area of zygomatic bone, the right side of cheek, light, bluish bruise on the left half of the chest. Bruise underneath the right knee 70/30 mm. Pulse 70 with weak replenishment. The breath is loosened in the lower parts of the lungs. Subcutaneous emphysema crepitation noted with palpation. At 20:30 on 26.05.2011 the patient was transferred from the surgical unit to the intensive care unit in serious condition. The patient feels pain in the chest area, particularly in the left side as well as in the stomach. On the left side of the chest area, the lateral side of the backside, as well as subcutaneous emphysema in the underarm dent – the characteristic subcutaneous crepitation." The stomach is soft, painful diffusely with palpation. Small amount of liquid is noted in the abdominal cavity with the ultrasonographic examination. At 13:00 on 27.05.2011 the operation was done (laparotomy, synechiolysis, revision, enterography, sanation of abdominal cavity, drainage) … a large amount of turbid liquid discharge of the color of amber is noted in the abdominal cavity, the content of the intestinum tenue is pulled out, the defect of the jejunum is noted. The two-layer nodular suture was done. Drainages were placed. The wound was sutured. Post-operation diagnosis: the closed trauma of abdominal cavity, trauma injury of jejunum. Diffuse ferment-fibrinic peritonitis". Following the surgery the patient was provided with the respective treatment. Despite this, the condition got complicated and at 02.10 on 28.05.2011 the biological death was registered. "The cause of the death is the acute cardiovascular infussiciency developed against the background of toxic shock. Clinic diagnosis: the closed trauma of chest and abdominal area. The fractures of the right 8th and the left 7th ribs of the chest. The trauma injury of jejunum. Diffuse ferment-fibrinic peritonitis. Toxic shock. Acute cardiovascular insufficiency. Myocardial front wall infarction suffered in the past. According to the forensic medical examination report, the cause of T.S.'s death is the "purulent-fibrinic peritonitis, developed as a result of the trauma fragmentation of jejunum. … the corps has visually noticeable blaze at the right side of the merge of the apex and nape. The bruise on the left side, at the outer brink of the lower eyelid that belongs to the light degree of injury without the distortion of health. The internal examination revealed the following: the fractures of the right 8th and the left 7th ribs, hemorrhages in the soft tissues respectively along with fractured ribs. Spacious hemorrhages at the inner surface of the soft tissues of skull at the merge of apex and nape and at the right side in the area of temple. Trauma injury of jejunum. The

wounds have been inflicted with some solid blunt object. Fractures of the right 8th and left 7th ribs belong to less heavy degree of damage, whereas traumatic fragmentation of jejunum belong to the serious damage, as dangerous for life, the complication of the latter became the cause of death. The wounds are life time.""

It shall be noted that as it was indicated in the previous records, we can absolutely not agree with the fact that the patient "was dizzied due to low arterial blood pressure, fell down, and was injured.. The sides where the injuries are noted (both – the left and the right sides), variety of their location (areas of neck, head, chest and abdominal cavity) and their degrees (fracture, abrasions, the fragmentation of intestine which had not been morphologically altered) do virtually exclude the mentioned possibility. It may be suggested that as it is noted in the report of the expert, the mentioned injuries were inflicted onto the patient with some solid blunt subject. As to the ascertaining what this "some solid blunt subject" was, whether this was a weapon, natural object or a part of the human body or all of these, this belongs to the competence of the investigative bodies and the mentioned should necessarily have become the main subject of the interest of the investigation. In this particular case it does not cause any doubt that the patient got the injuries by forceful means, resulting later in the death. As for the further management of the patient, as of an injured person, a serious mistake was made in this respect as well. In particular: the patient was transferred to the Medical Establishment N18 for the Remand and Sentenced Persons at 10:00 p.m. on 25 May. The gravity and the type of the wounds were not assessed adequately in the Medical Establishment. The examination was undertaken insufficiently and inadequately. The most disturbing is the fact that the patient who had the fragmented intestinum tenue and the free amount of liquid was noted in the abdominal cavity with the ultrasound examination, was operated belated. In fact in three days since the hospitalization, that was sharply increasing the chance of death the condition of the patient deteriorated as a result of the peritonitis and intoxication. The conditions of the patient were also deteriorated by the accompanying diseases that at the end caused the death of the patient. The mentioned issues related to the treatment and the management of the patient shall necessarily become the subject of the interest of the Agency for State Regulation of Medical Activity under the Ministry of Labor, Health and Social Protection in order to assess as to how timely and adequate medical assistance was provided to the deceased patient.

Only 0.53% of the deceased patients had various diseases of endocrinal organs. Those were mainly diseases corresponding to the pancreatic diseases and were clinically manifested mainly in the form of diabetes mellitus.

The 0.87% of the deceased patients in the penitentiary system establishments during 2011 had the diseases of sense organs. As it was mentioned already this group unifies numerous diseases of sight and hearing organs. One case of eye retinal detachment was registered, and there were two cases of hearing distortion were recorded as well.

Therefore, we considered the forensic medical diagnosis of the deceased prisoners in detail according to the nosologic groups. We got also interested in what was the **immediate cause of death of the patients** during the reporting period of 2011. To that end we analyzed all the reports of the forensic medical examination available to us. We took into consideration the immediate cause of deaths as outlined by the forensic medical examination expert, i.e. we counted the causes of death in this case only taking into consideration **only the leading (main) causes** of death mentioned in the forensic medical examination report. Therefore in this case we did not take into consideration the accompanying disease, which, on its turn, was considerably contributing to the complication of the health condition. The mentioned statistics is provided in the table below:

№	Immediate cause of death	%	Remark
1	Tuberculosis	31.59	* of lung/extra-pulmonary
2	Malignant tumors	14.42	
3	Myocardium infarction	10.77	
4	Heart ischemic disease	10.54	* apart from myocardial infarction
5	Bleeding	8.65	* from the respiratory and digestive system
6	Pneumonia	5.94	

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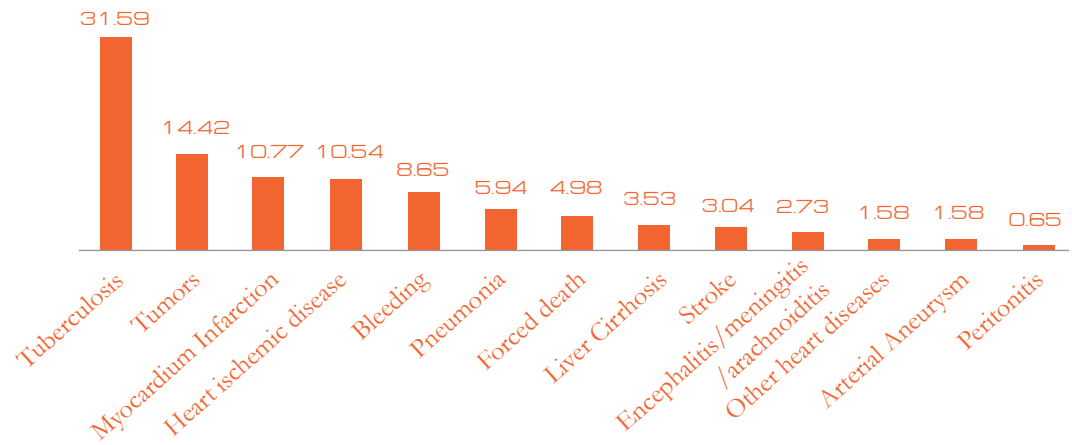
7	Forced death	4.98	
8	Liver cirrhosis	3.53	
9	Stroke	3.04	
10	Encephalitis/meningitis/arachnoiditis	2.73	
11	Other heart diseases	1.58	
12	Arterial Aneurysm	1.58	
13	Peritonitis	0.65	

The percentage distribution of these diseases is provided in the diagram below:



As seen in the table above, Tuberculosis remained to be cause No.1 of deaths of prisoners at the Penitentiary system of Georgia. Though, the figures of the first and the second halves of 2011, sharply differ. Namely, if the in the first half of 2011 tuberculosis was a cause of death in 44.15% of cases, the same figure for the second half of 2011 constituted 19.05%.

Another tendency worth to be mentioned is sharp increase in death cases caused by malignant tumor. These disease took the second place in the overall indicator. Myocardium infarction shows the same tendency as being not only one of the most wide-spread reasons of deaths of prisoners but as becoming typical for the younger age-group as well.

As for Pneumonia, being an immediate cause of death, unfortunately, the situation in this regard remained stable and problematic in spite of the efforts undertaken to solve this issue. The death cases caused by neurological diseases showed the tendency of decrease in 2011.

The Public Defender of Georgia considers that the study and analysis of the above-mentioned tendencies will extremely contribute to the planning and management process of the healthcare reform within the Penitentiary system.