



Report of the Public Defender of Georgia

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

2019

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Introduction

This report of the Public Defender of Georgia has been developed under Article 35 of the Constitution of Georgia, Article 22 of the Organic Law of Georgia on the Public Defender of Georgia and Article 163 of the Rules of the Parliament of Georgia. The report presents the challenges and progress in terms of protection of constitutional rights and freedoms in 2019 and discusses the situation in terms of compliance with the recommendations/proposals made by the Public Defender. The reporting period covers 2019; however, the report also analyses those problems that originated before and continued to persist in the present reporting period as well.

The Office of the Public Defender of Georgia received 6,737 applications about violations of human rights. Of these, 5,039 applications were admitted for the consideration of merits. There is a hotline in the Public Defender's Office that is open 24 hours to citizens to receive information or report breach of human rights. In 2019, 9,438 calls were received.

2,399 visitors to the Public Defender's Office received legal consultation in Tbilisi office. Regional offices of the Public Defender's Office (Eastern and Western Georgia) provided consultation to 4,448 interested persons over the telephone and in person. 990 meetings were held with the attendance of population and representatives of various local organisations.

In 2019, as a result of the examination of individual applications, the Public Defender drafted and issued 75 recommendations/proposals. The majority of the recommendations were addressed to local self-governments (19); as regards government agencies, most recommendations were addressed to the Ministry of Justice (10). In 2019, five constitutional complaints and fourteen *amicus curiae* briefs were prepared. The majority of *amicus curiae* briefs were submitted to Tbilisi City Court (6) and Tbilisi Appeal Court (4). In the reporting period, the Public Defender applied to the European Court of Human Rights as well and intervened as the third party in one case.

As a result of the examination of citizens' applications, in total, 405 visits were paid to penitentiary establishments, psychiatric establishments as well as temporary detention isolators and police agencies. 1,728 accused/detained persons were visited in total. Besides, within the National Preventive Mechanism, 88 visits were paid to closed establishments. Employees of the Public Defender's Office paid 15 visits to study the legal status of foreigners, among them, asylum-seekers and persons granted international protection placed in penitentiary establishments. To monitor asylum procedures and territorial accessibility, eleven visits were paid to the state border throughout the country; monitoring was conducted over 25 international flights in Tbilisi, Kutaisi and Batumi airports.

The Public Defender's Office visited 35 military units under the Ministry of Defence of Georgia in terms of protecting human rights in the field of defence. Within the monitoring of the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), 17 planned visits were paid to psychiatric establishments, three planned visits were paid to an overnight facility for persons with disabilities (PWDs); six planned visits were paid to a community organisation for PWDs; 26 visits were paid to day-care facilities for PWDs (in Tbilisi and six regions); eleven unplanned visits were paid to boarding

facilities for PWDs, social service centres and family-type homes for children. Within the monitoring of gender equality issues, employees of the Gender Department conducted monitoring of four shelters for victims of domestic violence and human trafficking and five crisis centres. Within the monitoring of child rights issues, monitoring was conducted in 143 early and preschool educational establishments in 46 municipalities; 46 associations of kindergartens; four families of foster care; 14 public schools; and six centres of social services. In the reporting period, concerning the protection of rights of asylum seekers, persons granted international protection and migrants, monitoring was conducted on 18 cases on determining the status; 15 cases of appealing before Tbilisi City Court and Tbilisi Court of Appeals individual administrative acts on refusal to grant the refugee status or humanitarian status by the Migration Department of the Ministry of Internal Affairs; monitoring of 15 court proceedings involving foreigners, including asylum seekers, placed in penitentiary establishments. In 2019, the Public Defender's Office visited more than 70 village ambulatories in 17 various municipalities of Georgia; monitoring was also conducted in Tbilisi and Kutaisi nursing homes for elderly persons.

15 Special Reports were prepared in 2019 concerning human rights protection in the fields such as sanitation and hygiene in public schools of Georgia; the right to fresh air, sexual and reproductive healthcare, childcare system, inclusive education, the effectiveness of an investigation, selection of judges of the Supreme Court of Georgia, juvenile justice, conditional early release of prisoners and disciplinary proceedings against prisoners.

General findings of the Public Defender of Georgia presented in each chapter of the Parliamentary Report are based on the information obtained by the above methods.

The Report Covers the Following Topics:

The 2019 Parliamentary Report of the Public Defender of Georgia starts with the discussion about the right to life. This chapter, in the first place, analyses the problems regarding somatic (physical) healthcare of beneficiaries of psychiatric establishments, which usually lead to worsening of patient's health and sometimes become the cause of death. Furthermore, the chapter discusses the pardoning of offenders by the President of Georgia and its compliance with the procedural limb of the right to life. In the Public Defender's opinion, the pardoning amounted to the violation of the right to life given the fact that the persons pardoned by the President of Georgia had not served most of their sentences. The chapter also scrutinises the results of discontinued investigations into the deaths of Temirlan Machalikashvili and Ia Kerzaia; the progress of an official inquiry instituted into the murder of two juveniles on Khorava Street.

The Public Defender maintains that it is imperative to reopen an investigation into the deprivation of Temirlan Machalikashvili's life, as several important investigative actions have not been conducted. Therefore, the Public Defender requested the Prosecutor General to resume and conduct an effective investigation into the deprivation of Temirlan Machalikashvili's life. As regards the case of the murder of juveniles on Khorava Street, the Public Defender proposed to the prosecutor's office to investigate alleged official misconduct committed in this case. The Prosecutor's Office of Georgia did not accept the Public Defender's proposal and, instead of an investigation, instituted an official inquiry. The official inquiry is

pending to this day. Concerning Ia Kerzaia's case, in the Public Defender's opinion, the belated investigation made it impossible to obtain crucial evidence and establish the truth.

Similar to the previous years, the fight against ill-treatment remains a challenge. In 2019, 128 applications were lodged with the Public Defender's Office, where citizens complained about incidents of ill-treatment by law enforcement officials. The majority of applications reported prison officers as possible perpetrators of alleged ill-treatment (54 applications) and informed about ill-treatment allegedly committed by police officers (50 applications).

Similar to the previous years, in 2019, systemic recommendations that are issued over years and crucial in terms of preventing torture and other ill-treatment remain mostly unfulfilled. Another unfulfilled recommendation made by the Public Defender concerns determining by secondary legislation of a doctor's duty to fill out an injury form, to take a photograph of a prisoner's injury and report it to investigative authorities, irrespective of the prisoner's informed consent, whenever he/she suspects that the prisoner could have been subjected to torture or other ill-treatment. Furthermore, the following remained problematic in the penitentiary system: lack of procedural and institutional safeguards against ill-treatment; maintaining order and security in penitentiary establishments; ensuring adequate conditions of imprisonment; shortage of activities aimed at prisoners' rehabilitation and resocialisation and lack of their contact with the outside world; shortcomings in medical care and preventive health care, and mental health care. In 2019, the Public Defender was particularly concerned about the informal rule existing in penitentiary establishments and its influence on the protection of prisoners' rights.

Unfortunately, systemic recommendations related to the system of the Ministry of Internal Affairs also remain unfulfilled in 2019. In particular, citizens in police custody are still not provided with sufficient safeguards against ill-treatment; officers of territorial agencies are not provided with body cameras with improved specifications; the duty of police officers to record communication with citizens is still not determined by legislation; recommendation about conducting audio and video recording of arrested person's questioning is unfulfilled, etc.

As regards psychiatric institutions, unfortunately, systemic recommendations also remain unfulfilled in this sphere. These recommendations have particular significance for the prevention of torture and other forms of ill-treatment. Proposals of the Public Defender regarding amending regulations on physical restraint of patients in psychiatric establishments are not fulfilled. Conditions and therapeutic environment existing in ten large psychiatric establishments in Georgia cannot ensure patients' dignified life or protection of their rights; the existing system of treatment with antipsychotic medicines also needs to be revised, updated and changed.

An effective investigation into incidents of alleged ill-treatment by law enforcement officers remains a systemic problem. The trend of instituting investigations into incidents of alleged ill-treatment is maintained especially where such crimes are reported by the Office of the Public Defender or NGOs. However, the systemic problem of delaying an investigation into such crimes clearly remains a challenge. The Public Defender welcomes the creation of the State Inspector's Service and it becoming operational.

We hope that with the active efforts of the State Inspector's Service the problem of an effective investigation of ill-treatment will be solved. The Public Defender commends active communication maintained by the State Inspector's Service with the Public Defender's Office from the first day of its creation and supplying detailed information about investigative actions conducted.

The Public Defender examines the investigation into exceeding official powers on 20-21 June 2019 in the prism of the state's responsibilities under the procedural limb of the prohibition of ill-treatment. In 2019, the Public Defender's Office addressed investigative authorities with six proposals when examining this ongoing criminal case. The Parliamentary Report presents the state of the fulfilment of these proposals. The main trend is that the investigation is focused on identifying criminal actions of individual law enforcement officers and assessing their individual roles; the investigation is not aimed at establishing the scope of responsibility of superior officials in charge. Besides, it is problematic that many investigative actions, which in the Public Defender's opinion, are necessary to ensure the effectiveness of the investigation, have not been conducted (for instance, various portable radio recordings have not been obtained or there has been no forensic examination of certain recordings, etc. The Public Defender's proposal about instituting criminal responsibility has not been fulfilled to this day.

One chapter of the Parliamentary Report is dedicated to the right to liberty and security and it discusses arrests of individuals in violation of statutory requirements. The chapter also discusses legislative shortcomings that allow unjustified interference with a person's right to liberty and security; the practice of application of preventive measures; cases where citizens of Georgia were prevented from crossing the state border of Georgia without reasons established by law; and shortcomings identified in police officers' actions. In terms of legislative shortcomings, the chapter discusses the problem related to the review of the legality of administrative arrest, and terms of administrative arrest under the Administrative Offences Code of Georgia. As regards the shortcomings identified in police officers' actions, the chapter examines the police officers' actions when arresting demonstrators during protests in 2019. The chapter also discusses deficiencies identified as a result of the examination of investigative actions carried out within the investigation resumed in Ivane Merabishvili's case.

Another chapter of the Parliamentary Report concerns the right to a fair trial and shortcomings identified in this regard. Firstly, the chapter reviews institutional problems existing in the court system and summarises the issues related to the staffing of the Supreme Court of Georgia and the Public Defender's involvement in the process.

Unfortunately, judges of the Supreme Court of Georgia were selected based on deficient and opaque procedures. The legislative framework in force was criticised by numerous local and international organisations. The existing regulations failed to ensure the selection of judges through duly transparent competition. The procedure allowed adopting arbitrary and unsubstantiated decisions. Furthermore, there were persons among candidates for judgeship, whose academic background gave rise to questions on whether the statutory requirement of the minimum academic degree was met. The Public Defender of Georgia challenged the legislation governing the selection of candidates for the Supreme Court judgeship before the Constitutional Court.

The same chapter discusses the legislative shortcomings that violate the privilege against self-incrimination, on the one hand, and, on the other hand, restrict a person's right to access to a court. Furthermore, the chapter scrutinises the cases heard in violation of the principle of legality.

In the reporting period, similar to the previous years, there were problems in terms of the right to respect for private life. In 2019, the state authorities failed again to prevent dissemination of covert video recordings depicting a person's private life. In 2019, court proceedings were still pending against 21 individuals charged with the breach of privacy. It is noteworthy that persons responsible for recording, storing and disseminating the footage are not identified to this day. In 2019, there were interferences with prisoners' right to respect for private life, including, placement in a penitentiary establishment located far from a prisoner's place of residence and other circumstances.

The year 2019 was significant in terms of the protection of the right to equality as the non-discrimination legislation was improved. The Public Defender commends the legislative changes made in February and May 2019 to the effect of extending the binding mechanising of enforcing the Public Defender's mandate to individuals, similar to subjects of public law. Determining sexual harassment as an administrative offence is also commendable; due to this amendment, a new legal remedy has emerged. The Law of Georgia on the Elimination of All Forms of Discrimination also determined harassment and sexual harassment as forms of discrimination. However, it should be pointed out that denial of reasonable accommodation, as a form of discrimination based on disability still has not become a part of Georgian legislation.

The practice of the Public Defender's Office shows that on many occasions, discrimination is caused by stereotypes about vulnerable groups and wrong perceptions that exist in the public. However, the state hardly takes any adequate measures to overcome them. In 2019, women, PWDs and representatives of the LGBT+ community remain to be the most vulnerable groups. The situation in terms of equality of religious and ethnic minorities is also critical.

The absence of a state programme tailored to the physiological and psycho-emotional needs of female victims of sexual assault remains problematic; access to maternity, childbirth and childcare leave for those employed in the private sector remains to be a challenge. Equality of persons with disabilities remains also problematic; there are shortcomings in terms of accessibility of various services for persons with a physical disability and visual impairment as well.

It is noteworthy that, in 2019, the Public Defender found victimisation in labour relations for the first time, when the employer cited the fact that an employee had applied to the Public Defender as one of the reasons for dismissal. The year 2019 showed that investigation and prevention of discriminatory crimes remain two of the main challenges of the country.

Achieving gender equality also remains a challenge in Georgia. According to the Global Gender Gap Index 2019, based on the political empowerment and women in parliament, Georgia is ranked 94 among 153 countries; there is still a difference between average indicators of estimated earned income of sexes. The challenges existing in terms of reproductive health care and effective realisation of rights are also negatively reflected on the legal status of women and the gender equality indicator.

Femicide also remains an alarming challenge. Femicide is a direct result of gender and social inequality in society. According to the data of the Office of the Prosecutor General of Georgia, in 2019, 19 incidents of femicide were identified, out of which, ten were committed as a result of domestic violence; and, out of 22 incidents of attempted femicide, 18 were committed as a result of domestic violence. Prevention of murder/attempted murder as a result of domestic violence as well as serious harm to health remains problematic. There have been no concrete measures taken to fight violence against women and domestic violence in terms of social work. The duties imposed on social service in terms of violence against women and domestic violence are practically ignored.

Based on the analysis by the Public Defender of the cases involving sexual violence, it can be said that there are shortcomings in terms of legislative regulation of crimes involving sexual violence and at the stage of investigation, criminal prosecution and court trial of such cases. These shortcomings violate the requirements of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). The low rate of identifying cases of human trafficking is another problem; more proactive efforts are necessary for identifying crime.

Unfortunately, the practice of early marriage and engagement remains one of the most important challenges. Similar to the previous years, the lack of coordination among law enforcement agencies, social services and establishments of secondary education concerning early marriage and engagement is problematic. There is no effective referral mechanism to identify and prevent incidents of early marriage and engagement. The Public Defender welcomes the large-scale campaign conducted by the Ministry of Internal Affairs about the prevention of early marriage.

The Public Defender welcomes that there are some projects and programmes aimed at economic empowerment of conflict-affected women. However, the lack of projects and programmes directed at the empowerment of women remains a challenge at the national and local self-government level.

The legal status of LGBT+ persons did not improve in 2019. Due to the increase in the number and influence of homophobic and anti-gender groups, LGBT+ persons are still subjected to oppression, violence and discrimination. Furthermore, because of the homophobic and transphobic perceptions in the majority of the society, LGBT+ persons experience obstacles in terms of exercising their labour rights, right to health and social security and right to education. According to the cases examined by the Public Defender of Georgia in 2019, the rate of violence against LGBT+ persons based on gender identity or sexual orientation remains high in the country. While private persons commit the majority of violations, the state stays inactive and does not fulfil its positive obligations. In the reporting period, the situation in

terms of the realisation of freedom of expression by members of the LGBT+ community was particularly critical.

Similar to the previous years, in 2019, in terms of the realisation of freedom of expression it was problematic to ensure free and pluralist media environment in the country. There were pressing questions regarding the attempt to modify the editorial policy, which was critical of the government, of the Ajara TV. The reporting period was punctuated with multiple criminal cases conducted directly or indirectly against owners of independent TV companies. This gives rise to questions about the attempts to persecute independent and critical media in the country. The state has not investigated the disappearance of an Azerbaijani journalist, Afgan Mukhtarli, to this day.

Apart from the above-mentioned, in 2019, the unfortunate trend of legislative initiatives directed at restricting freedom of expression continued. In the Public Defender's opinion, the suggested legislative amendments allow interference in the contents of media programmes thus affecting the high standard of freedom of expression.

Issues related to the respect for freedom of assembly were particularly relevant in the reporting period. There were numerous demonstrations, protests, counter-demonstrations and picketing organised throughout the country. In the reporting period, the failure to adopt measures to prevent confrontations among groups with different opinions was identified as a particular problem; there were no adequate measures taken to stop demonstrators' illegal actions; in some cases, disproportionate and unjustified force was used against peaceful demonstrators.

In the reporting period, there were numerous incidents involving radical groups who interfered with the right of freedom of expression of members of the LGBT+ community and their supporters. In this case, the state authorities responded completely differently to the actions of aggressive groups who had attempted to violate the rights of other persons by resorting to violence under the pretext of freedom of assembly. In the Public Defender's opinion, holding such counter-demonstrations by homophobic groups, amounts to the abuse of the right and their violent actions are not protected by freedom of assembly.

Problems concerning the exercise of the right to freedom of assembly assumed particularly serious nature during the events unfolded on 20-21 June 2019. Before resorting to force, the authorities failed to carry out their statutory duties, which include warning the demonstrators in a clear and understandable manner about the use of special means. Police failed to give demonstrators a reasonable time to comply with legal requests.

The incidents involving obstructing journalists' professional activities covering current events from the demonstration venues, their arrest and inflicting injuries to them are noteworthy. Based on the challenges existing in terms of freedom of assembly in the year, the Public Defender is preparing a Special Report, which will be published in 2020.

In the Public Defender's opinion, 2019 was problematic also in terms of the situation of human rights defenders. In 2019, activists working in NGOs and independently in Georgia were faced with numerous challenges such as damaging reputation, physical or verbal assault, intimidation, etc. Women and LGBT+ human rights defenders are under particularly high risk.

Similar to the previous years, along with the difficult socio-economic situation in the country, environmental issues remained one of the main challenges. The following issues are particularly relevant in this regard: ineffectiveness of the measures carried out for improving the quality of air and realisation of the right to fresh air; need for legislative amendments to ensure the safety of natural gas consumption and their effective implementation; faulty regulations related to constructions; failure to take into account human rights in the implementation of large-scale infrastructural projects; the persisting problem related to the absence of policy related to the construction of hydropower plants and an inadequate process of environmental impact assessment.

2019 was also problematic in terms of improving the situation of occupational safety. In 2019, the analysis of the performance of the Department of Labour Inspection showed that, despite visible positive changes in terms of legislation governing occupational safety, the department's mandate and resources at its disposal are not sufficient for carrying out their important functions. According to the Ministry of Internal Affairs, in 2019, 49 persons died at a workplace and 142 persons were injured

The Public Defender maintains that, concerning the right to health, the effective implementation of universal, primary and anti-cancer health programmes remained problematic in 2019. Furthermore, there is a pressing need for a unified state programme to fight cancer. In 2019, the Public Defender's Office visited more than 70 village ambulatories in 17 various municipalities of Georgia. The monitoring revealed serious problems related to infrastructure (faulty buildings and communication systems, inadequate sanitation and hygiene systems) and lack of qualified support personnel (nurses). Problems related to the accessibility of medicines, active and consistent policy regarding their quality are particularly serious; there is a considerable deficit in terms of healthcare professionals as well.

In 2019, the Public Defender's Office supervised the protection of the right to social security. In this regard, despite positive changes in the methodology of surveying socio-economic situation in the reporting period, administering the terms of determining subsistence allowance and accessibility of the right to adequate food/free canteens remained problematic.

In 2019, issues related to the right to adequate housing were also problematic. Similar to the previous years, there is still no governmental strategy or a corresponding action plan for homeless persons; comprehensive legislative definition of a homeless person and regulatory framework necessary for the realisation of the right to adequate housing. It is still problematic that, in some municipalities, there are no unified local databases of homeless persons; budgetary and infrastructural resources are limited; there are no support programmes for persons placed in shelters and social housing; those programmes available in some municipalities are ineffective.

The Public Defender welcomes the committee studies launched by the Committee for Regional Policy and Self-Government of the Parliament of Georgia on the Situation of the Right to Adequate Housing in November 2019. This initiative is aimed at elaborating recommendations that will facilitate developing consistent policy on providing individuals with housing.

In 2019, the possible change of the election system was a particularly pressing issue not only from the standpoint of the right to elections but also from the point of view of the country's social and political life. Unfortunately, the parliament voted down the abolishment of the mixed electoral system for 2020 elections and transition to the proportional electoral system.

However, at the beginning of March 2020, as a result of lengthy negotiations, a political agreement was reached regarding the electoral system. The Public Defender maintains that it is imperative to have this agreement solidified by legislative regulations promptly and ensure that the parliamentary elections in 2020 are conducted in an equal, peaceful and healthy environment as possible.

In 2019, the Public Defender's Office supervised by-elections of municipality *Sakrebulo*s, extraordinary elections of mayors and related events. In the Public Defender's opinion, various violent incidents, altercations between political actors, breach of confidentiality of the ballot, alleged control of voter's will and alleged voter-bribery negatively affected the public interest of holding elections in a peaceful environment. Effective and timely response by law enforcement officers is imperative for the democratic development of the country. In this regard, it is noteworthy that not a single person has been recognised as a victim or charged in terms of the investigation of eight incidents of alleged voter-bribery committed in 2018.

Similar to the previous years, the introduction of effective legislative safeguards for the protection of monuments of cultural heritage and taking appropriate efficient measures by the state remain problematic. There are still no appropriate mechanisms for the protection of privately-owned monuments of cultural heritage. The lack of express separation of competences and duties of administrative bodies in terms of illegal works on monuments of cultural heritage remains problematic. The duty to maintain monuments of cultural heritage is not fulfilled and important criminal cases in this regard are still pending with no results.

The Public Defender's Parliamentary Report discusses teaching human rights as well. The respective chapter analyses the state policy and relevant strategic documents in this regard. The report presents an analysis of human rights teaching at the secondary and higher education levels; human rights education issues in vocational training of teachers and risks of proselytism and indoctrination in the school environment.

As regards the protection of the rights of the child, the adoption by the parliament of the Code of the Rights of the Child in 2019 is commendable. However, it should be pointed out that Georgian legislation does not determine in express terms proportionate and effective measures of responsibility for corporal punishment of children imposed under administrative or criminal law.

According to the 2019 data, compared to the previous years, there is an increase in the number of suicides and attempted suicides committed by juveniles in Georgia. There are no psychosocial protection and support systems for children; there are still no assistance and rehabilitation services for vulnerable children and victims of violence; the child suicide prevention strategy has not been elaborated to this day.

Protection from violence and rehabilitation of children placed in state care remain problematic in the country. Protection of beneficiaries placed in small family-type homes from sexual violence is critical; the indicator of leaving schools is high; children living and working in streets, marrying at a young age and involved in manual labour are particularly vulnerable. The care provided by the state for children placed in boarding schools under religious organisations remains problematic. Licensing of boarding schools, the inefficiency of state control and the failure to tailor the educational environment to the individual needs of beneficiaries remain problematic.

The issue of qualification of professionals working with children, especially those employed in secondary education establishments remains problematic in terms of timely identification of incidents of violence and responses that are oriented to the best interests of a child. In 2019, the state still had no uniform policy – strategy and action plan – to overcome violence, in particular, bullying.

Similar to the previous years, there are still numerous challenges in terms of equal and effective realisation of the rights of persons with disabilities (PWDs). In 2019, no essential changes were made in this regard. No significant steps have been made towards the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD); no agency has been designated to be responsible for the coordination of this process, and the Optional Protocol to the CRPD has not been ratified to this day.

It is particularly problematic that the state cannot ensure the accessibility of rehabilitation services for adult PWDs; measures taken in the field of mental healthcare for protecting the rights of persons with psychiatric problems are not sufficient; the number of community services is low, and their geographical coverage is not sufficient. Furthermore, in 2019, there was no improvement in terms of the realisation of the right of PWDs to be involved in the country's political and social life.

It is noteworthy that in 2019, the process of revision of domestic legislation governing the arrangement of accessible public spaces for PWDs and its harmonisation with CRPD was active. Furthermore, the Public Defender welcomes that in 2019, the draft Law on amending the Law of Georgia on Psychiatric Care was prepared. The registration of ten new organisations to provide services within the children's early development sub-programmes and trend of increasing community services in 2018-2019 are also commendable.

In the reporting period, the Public Defender's Office identified numerous violations of the rights of elderly persons during the monitoring carried out in specialised establishments for the elderly. In particular, there are problems in terms of elderly persons' healthcare, facilitation of their social activities and individual approach to their services. There are problems in terms of identifying incidents of violence against elderly persons and maintaining relevant statistics, as well as regarding the social welfare of elderly persons. In the same period, the Public Defender examined the legality of withholding more than 50% of elderly

persons' monthly pension by banks. Such a practice further aggravates pensioners' socio-economic situation. It was established that there is no regulation in force that allows withholding pensions.

In 2019, there were again challenges in terms of the protection of national minorities and civic integration. It concerns access to education as well as care for cultural heritage, preserving identity and involvement in the decision-making process. Furthermore, the lack of promoting the initiative at the local level is problematic.

In 2019, the situation concerning the respect for freedom of religion has not changed considerably. Tax and property issues related to religious organisations are still unresolved. There is a progress in this regard in terms of certain measures taken by the Ministry of Internal Affairs of Georgia against alleged religious hate crimes.

The Public Defender pays particular attention to the protection of human rights in the defence field. The Public Defender commends the fulfilment of the recommendation by the Government of Georgia, which was reiterated over years concerning all persons having a veteran status to receive a subsistence allowance. It is problematic that, like the previous years, in 2019, employees of the diplomatic representations' security service of the Police Department of the Ministry of Internal Affairs have to stay in small booths. The unresolved problem of the imposition of non-statutory punishments on conscripts in the cases of commission of a disciplinary offence remains problematic in many military units of the Ministry of Defence. The Parliamentary Report of the Public Defender discusses the need for improving the legal status of veterans and recommends increasing the relevant tax-cuts for them.

Similar to the previous years, in 2019, the situation of human rights protection was difficult in the occupied territories. Representatives of the occupation regimes directly involved in the murders committed last year have not been held responsible to this day. Furthermore, the lengthy lockdown of the so-called checkpoints in 2019 was alarming. It led to a humanitarian crisis and problems in terms of accessibility of medical services in the occupied Akhgori district. Several persons died due to the inability to receive adequate medical care. As regards occupied Abkhazia, in 2019, movement on the Enguri Bridge was restricted on several occasions. There was a serious challenge in terms of the occupation regime arresting/detaining Georgian citizens (among them, Vazha Gaprindashvili, MD) illegally for crossing the so-called border and resuming the so-called borderisation process.

The Public Defender believes that arbitrary restrictions of freedom of movement introduced by the *de facto* authorities negatively affect the realisation of various rights by the local population, including the right to health, right to education, right to security, right to an adequate standard of living, right to respect for family right and right to religion. The following problems persist in the occupied territories: beating, ill-treatment and torture of prisoners in TDIs and jails; obstacles in the realisation of the right to sexual and reproductive health; restriction of the right to education; in particular, instruction in the Georgian language is completely banned in primary classes of all schools on the occupied territories of Abkhazia and South Ossetia, Gali and Akhgori; Georgian as a foreign language is taught only in some schools.

Similar to the previous years, the Public Defender scrutinised the legal status of internally displaced persons (IDPs) who are faced with various problems, for instance, living in dilapidated buildings. Unfortunately, in 2019, the measures taken by the state in this regard were not sufficient and some IDPs continue to live in buildings and constructions that are dangerous to live in. In this regard, it is noteworthy that, in 2019, there were families resettled from the so-called dilapidating facilities, which is evaluated negatively by the Public Defender. However, the Public Defender welcomes the 2019 practice of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of providing internally displaced families with apartments purchased in Tbilisi Municipality for long-term resettlement of IDPs.

In 2019, the scarcity of funds allocated for the resettlement of eco-migrants and the lack of measures to eliminate reasons causing eco-migration remain to be the main challenges in terms of the legal status of eco-migrants. Besides, in 2019, there was an additional problem related to a non-uniform approach of local municipalities towards persons affected by natural disasters and needing resettlement. It is also noteworthy that the trend of an increase in the number of eco-migrant families is maintained in 2019. According to the 2019 data, there are 6,187 eco-migrant families registered in the databases of the LEPL Agency for IDPs, Eco-migrants and Livestock Provision. State authorities and international organisations provided 1,957 such families with housing.

In 2019, similar to the previous years, the Public Defender examined the legal status of foreigners in Georgia. While the number of applications filed by asylum-seekers increased in 2019, the rate of granting refugee status or humanitarian status remains low. Similar to the previous year, in 2019, there was also a problem of justifying refusals to grant asylum-seekers the refugee/humanitarian status based on security and integration-related reasons. There is also a problem in terms of the high number of refusals to grant residence permits based on the pretext of national security and/or public safety.

In 2019, the following issues remained problematic in terms of the legal status of stateless persons: prohibition of requesting the determination of the status of a stateless person in the expulsion procedure; restriction of the right to appeal decisions related to citizenship; restriction of registration in the unified databases of socially vulnerable families and exclusion of homeless stateless persons at the municipality level from exercising their right to adequate housing.

In conclusion, the Public Defender hopes that the fulfilment of the recommendations reflected in the report will be a priority for all the respective agencies, which in turn, will improve the situation of the protection of human rights and freedoms in Georgia.

1. Fulfilment of the Recommendations Made by the Public Defender of Georgia in the 2018 Parliamentary Report

1.1. Introduction

The Parliamentary Report of the Public Defender of Georgia contains recommendations and proposals that are addressed to the relevant state authorities and aimed at improving the state of human rights protection in a particular field through the elimination of violations identified in the report. The present chapter analyses the state of implementation of recommendations aimed at eliminating systemic shortcomings reflected in the Parliamentary Report of the previous year.

In the 2018 Parliamentary Report, the Public Defender of Georgia addressed state and local authorities with 310 recommendations and made 39 proposals to the Parliament of Georgia. Unfortunately, some recommendations and proposals are repeated over the years. This indicates the low quality of their implementation. In the reporting period, the state authorities failed again to fulfil the majority of the Public Defender's recommendations. Thus, the aforementioned negative trend continued in 2019.

The parliament's conclusion indicates further the inadequate fulfilment of the Public Defender's recommendations. The Parliament of Georgia examined the implementation of the tasks¹ determined by the Resolution of the Parliament of Georgia² based on the 2017 Parliamentary Report of the Public Defender of Georgia. In particular, according to the conclusion of the Committee of Human Rights and Civic Integration of the Parliament of Georgia, only 32% (73 recommendations) of the tasks (recommendations) determined by the Resolution of the Parliament of Georgia was implemented.³

Out of 310 Recommendations made in the 2018 Parliamentary Report, 250 recommendations were reflected in the parliamentary resolution;⁴ the parliament determined 259 corresponding tasks to be implemented by state and local authorities.

It is noteworthy that, due to changes in the wording of the recommendations reflected in the parliamentary resolution or changes made concerning the relevant agencies, it was impossible to evaluate the quality of implementation of recommendations in 18 cases. Out of them, concerning 11

¹ Under Article 163.1 of the Rules of the procedures of the Parliament of Georgia, based on the report of the Public Defender of Georgia, the Parliament of Georgia adopts a resolution which must contain assessment of the report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia as well as parliamentary tasks and deadlines for monitoring their implementation.

² Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018 on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017.

³ Conclusion no. 2-22095/19 of the Committee of Human Rights and Civic Integration of the Parliament of Georgia of 12 December 2019 on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017, and on the Implementation of Recommendations Determined by Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018.

⁴ Resolution no. 5003-IS of the Parliament of Georgia of 20 September 2019 on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2018.

recommendations, the parliament determined different objectives for state agencies in 11 tasks stipulated in the parliamentary resolution.

The parliament did not incorporate in the parliamentary resolution 60 recommendations made in the 2018 Parliamentary Report of the Public Defender. As a trend, the majority of these recommendations concerned the protection of the rights of foreign nationals, stateless persons, improvement of the legal status of the LGBT+ community and ensuring sexual and reproductive education. The resolution did not incorporate those recommendations of the Public Defender that concerned ensuring higher transparency of law enforcement authorities, such as providing body cameras to law enforcement officers taking part in special operations; installation of CCTV systems everywhere in police departments, divisions and stations, where an arrested person or a person willing to give a statement has to stay, etc.

The quality of the implementation of recommendations given in the 2018 Parliamentary Report of the Public Defender, which were not incorporated in the parliamentary resolution, is extremely unsatisfactory. Out of 60 recommendations, state authorities complied with the Public Defender's recommendation only in two cases.⁵

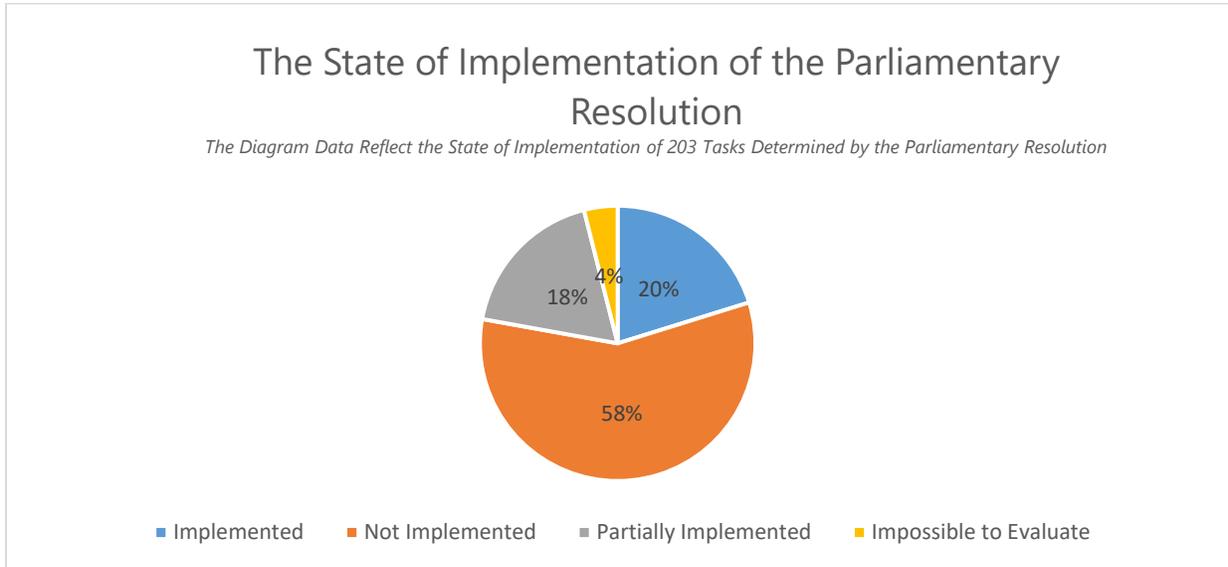
As mentioned above, the parliament gave 259 tasks to respective public agencies, based on the recommendations made by the Public Defender in the 2018 Parliamentary Report. Out of the 259 tasks, 27 tasks were given to local self-governments and the quality of their implementation is discussed in a separate subchapter of this chapter. It was also mentioned above, that due to changes in the wording of recommendations or changes made concerning the relevant agencies, it was impossible to evaluate the quality of the implementation of recommendations in 18 cases. Due to the failure of state agencies to provide the requested information to the Public Defender's Office, it is also impossible to evaluate the implementation of another 11 tasks. Based on the foregoing, the state of the implementation of 203 tasks reflected in the parliamentary resolution is discussed in the first part of the present chapter.

As of 31 March 2020, out of 203 tasks mentioned above, 20% are implemented and 58% are not implemented. Based on the performance of a state agency, 18% of parliamentary tasks are evaluated as partially implemented. The data are given in numbers below:

- Implemented: 41 parliamentary tasks;
- Partially implemented: 37 parliamentary tasks;
- Not Implemented: 117 parliamentary tasks; and

⁵ The recommendations not included in the parliamentary resolution were addressed to the State Audit Service and the Ministry of Internal Affairs. 1) *to the State Audit Service*: to examine in a timely fashion all incidents involving alleged illegal donations and voter-bribery discussed in the present chapter and informed by public sources; based on the examination outcomes, to take measures in accordance with law and inform the public about the aforementioned; 2) *to the Ministry of Internal Affairs*: to amend Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data Therein and determining 14 days as the minimum term for storing video recording obtained through surveillance systems installed in police departments, divisions and units.

- Impossible to evaluate the implementation of eight parliamentary tasks for the reasons beyond the agency's control.



Analysis of the above data shows that the quality of the implementation of parliamentary tasks given to state agencies remains unsatisfactory like in the previous years.

The Public Defender's Office will present detailed and full information in the Special Report on the quality of the implementation of the parliamentary tasks given to state agencies under the parliamentary resolution on the 2018 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia. This report will be presented before the Committee of Human Rights and Civic Integration of the Parliament of Georgia during deliberations on the reports submitted by relevant state agencies concerning the implementation of parliamentary tasks.

The Public Defender of Georgia reminds each state agency that they are bound by human rights and freedoms as directly applicable law when exercising their powers. Under Article 35 of the Constitution of Georgia, the Public Defender supervises the protection of human rights in Georgia; furthermore, under the Organic Law of Georgia on the Public Defender of Georgia, each state agency has a duty to supply information to the Public Defender's Office. The central and local authorities must show their political will for the protection of human rights and freedoms, which will ensure that problems remained unsolved for years are remedied in future.

As already mentioned, the Public Defender of Georgia addressed 39 proposals to the Parliament of Georgia in the 2018 Parliamentary Report. It is noteworthy that a working group to discuss the fulfilment of the proposals made to the Parliament of Georgia was set up within the parliament on 24 February

2020.⁶ Recommendations and proposals made in a report of the Public Defender of Georgia are aimed at remedying systemic problems. Therefore, it is imperative to respond to them in a timely and effective manner. We hope that the working group will start working on time and the steps towards the fulfilment of our proposals will be made actively.

Below is a brief overview of the quality of the fulfilment of the Public Defender's important recommendations made in the 2018 Parliamentary Report. The overview is given in the order of state agencies, rights and groups of rights. Detailed information about these issues is given in the respective chapters.

1.2. State of Fulfilment of Recommendations by State Agencies

Court System

In the 2018 Parliamentary Report, the Public Defender addressed the Parliament of Georgia with nine proposals and made one recommendation to the Ministry of Justice of Georgia for ensuring the right to a fair trial and institutional development of the court system. Unfortunately, the Parliament of Georgia fulfilled only one proposal; the Public Defender's other proposals and one recommendation remain unfulfilled.

The Public Defender addressed the Parliament of Georgia with a proposal for ensuring disciplinary responsibility of judges to be based on clear and foreseeable grounds. The Public Defender welcomes making amendments to the Organic Law of Georgia on Common Courts⁷ and commends the fulfilment of the Public Defender's proposal by the parliament.

Unfortunately, while it was planned to have parliamentary deliberations on the new Code of Administrative offences during the spring session in 2019,⁸ the draft has not been initiated in the parliament to this day (as of 31 March 2020).

In the 2018 Parliamentary Report, the Public Defender paid particular attention to the importance of the procedure of electing common court judges. The Public Defender addressed the parliament with a proposal to reform the process of selection and appointment of judges so that the criteria are envisaged objectively; to ensure transparency and to abolish judicial appointments for a probationary period. Unfortunately, this proposal has not been fulfilled yet.

⁶ Letter no. 2437/4-2-1/20 of the Committee of Human Rights and Civic Integration of the Parliament of Georgia, dated 26 February 2020.

⁷ Regarding amending the Organic Law of Georgia on Common Courts, 13 December 2019.

⁸ See the short-term plan of the legislative activities of the Government of Georgia for the 2019 spring, p. 129, para. 106, available at: < <https://bit.ly/2CJRVdc> > [accessed 19 March 2020].

System of the Prosecutor's Office

In the 2018 Parliamentary Report, the Public Defender made 25 recommendations to the prosecutor's office. The Public Defender addressed the parliament as well to start the reform of the Office of the Prosecutor General of Georgia and take the prosecutorial council's constitutional role into consideration. The prosecutor's office fulfilled six recommendations of the Public Defender, partially fulfilled two recommendations and did not fulfil 17 recommendations. Unfortunately, the Parliament of Georgia also failed to fulfil the Public Defender's proposal.

In the 2018 Parliamentary Report, the Public Defender paid particular attention to the cases of Temirlan Machalikashvili and the murders on Khorava Street. The investigation of the use of force against Temirlan Machalikashvili was discontinued on 25 January 2020 due to the absence of a crime. The investigation conducted by the prosecutor's office was punctuated with shortcomings. Therefore, the Public Defender's recommendation concerning conducting an effective investigation is deemed unfulfilled.

Similarly, the public has not been informed about the outcomes of the official inquiry instituted on account of shortcomings identified in the investigation of the murder of two juveniles on Khorava Street, contrary to one of the recommendations made by the Public Defender.

Penitentiary system

In the 2018 Parliamentary Report, the Public Defender of Georgia made 32 recommendations to the Ministry of Justice of Georgia, one recommendation to the Government of Georgia and addressed the Parliament of Georgia with five proposals for improving human rights protection in the penitentiary system.

The Parliament of Georgia has not accepted any of the Public Defender's proposals. The Government of Georgia also did not fulfil the Public Defender's recommendation. The Ministry of Justice of Georgia did not fulfil 16 recommendations; fulfilled four recommendations and partially fulfilled three recommendations. It is noteworthy that due to the failure of the Ministry of Justice to supply the requested information, the Public Defender's Office could not evaluate the quality of the fulfilment of eight recommendations made to the ministry. Due to the changes made in the penitentiary system, the Public Defender's recommendation cannot be evaluated.⁹

⁹ The Public Defender's recommendation to the Ministry of Justice concerned taking all the measures to ensure that the Inspectorate General controls and monitors the practical implementation of the requirement under Article 14.1³ of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015, which implies that in all cases of transfer of a convicted person due to security reasons from establishment of one type to an establishment of a different type within 20 days, risk of the convicted persons must be reassessed and the convicted person must be transferred to the establishment of an appropriate type. The Ministry of Justice of Georgia, due to legislative changes in the field of the penitentiary service does not reassess prisoners' risks when they are transferred from one penitentiary establishment to another type.

In the 2018 Parliamentary Report, the Public Defender made one recommendation to the Government of Georgia concerning elaborating a plan ensuring the practical implementation of the guiding principles under the Istanbul Protocol to be used during forensic medical examinations and their implementation promptly. The Public Defender, in the 2018 Parliamentary Report, made a recommendation to the Ministry of Justice of Georgia about determining statutory guidelines for the criteria of selecting suspicious injuries by medical professionals for effective identification and adequate documentation of incidents of alleged ill-treatment.

Despite the fact that the Government of Georgia of the Ministry of Justice had the duty to fulfil the above-mentioned recommendations in accordance with the parliamentary resolution, it was established through the communication maintained with these authorities that the government had not fulfilled the recommendation. According to the ministry, work is underway to develop the guidelines, which is commended by the Public Defender. However, the recommendation was not fulfilled in the reporting period.

The fulfilment of the Public Defender's recommendation concerning increasing the term of storage of video surveillance recordings in penitentiary establishments by the Ministry of Justice is commendable. Under the order of the Minister of Justice of 13 May 2019, the term of storing video surveillance recordings in penitentiary establishments was set at 30 days.¹⁰

Article 6.1 of the Order no. 131 of the Minister of Corrections and Probation of Georgia remains to be flawed. Under the provision concerned, a medical professional employed in a penitentiary establishment has a duty to report an injury found on a prisoner's body to the General Inspection of the Ministry of Justice of Georgia. The latter is a structural unit of the Ministry of Justice and is neither independent nor impartial institutionally.

Despite the Public Defender's recommendation, the Ministry of Justice of Georgia did not determine the maximum term of 24 hours of placing a prisoner in a de-escalation room. Similarly, prisoners placed in a de-escalation room are still not provided with a multidisciplinary service involving a psychologist, a psychiatrist, a social worker, a doctor, and staff members of other units of the establishment. The ministry did not fulfil the recommendation about ensuring a safe environment in de-escalation rooms, including lining the walls and floors with soft material.

System of the Ministry of Internal Affairs

In the 2018 Parliamentary Report, the Public Defender made 39 recommendations to the Ministry of Internal Affairs of Georgia.¹¹ The ministry fulfilled seven recommendations fully and fulfilled eight

¹⁰ Order no. 403 of the Minister of Justice of Georgia of 13 May 2019 on Amending Order no. 35 of the Minister of Corrections and Probation of Georgia of 19 May 2015 on Determining the Rules of Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings.

¹¹ Therefore, due to the absence of information, the fulfilment of the Public Defender's one recommendation cannot be evaluated.

recommendations partially, made by the Public Defender. The Ministry of Internal Affairs of Georgia failed to fulfil 23 recommendations of the Public Defender.

In the 2018 Parliamentary Report, the Public Defender recommended the Ministry of Internal Affairs to develop a guideline document/instruction for police officers regarding informing arrested persons about their rights. According to the response received from the ministry, work is underway to develop the draft document on Standard Operational Procedures of Arrest, which envisages explaining rights to arrested persons. This effort is commended by the Public Defender. Furthermore, the Public Defender requested the ministry to ensure, in a pilot mode, uninterrupted audio and video recording of questioning arrested persons in several police agencies; to determine guidelines on interviewing victims of violence and persons affected by violence, including sexual violence, to protect them from secondary victimisation. The Parliamentary Report pointed out the importance of maintaining uniform and detailed statistics about violence, especially sexual violence against persons with disabilities. As a result of the communication with the Ministry of Internal Affairs of Georgia, it was revealed that the agency had not fulfilled these recommendations in the reporting period.

The Public Defender welcomes increasing the number of temporary detention isolators of the Ministry of Internal Affairs of Georgia, where arrested persons will be provided with services of a medical unit.

Psychiatric Establishments

In the 2018 Parliamentary Report, the Public Defender of Georgia addressed the parliament with five proposals for improving the situation in psychiatric establishments. However, none of these proposals was fulfilled. The Public Defender also made nine recommendations to the executive authorities and only two recommendations were fulfilled.

The Public Defender of Georgia, in the 2018 Parliamentary Report, recommended it to the Government of Georgia to introduce in the relevant legislation¹² the special procedure of procuring medicines by psychiatric establishments (LTD), more than 50% of shares of which are owned by the state and to determine that these establishments are allowed to use simplified procurement of medicines. The Public Defender also recommended the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to ensure needs-assessment of patients placed in psychiatric establishments for more than 6 months, for discharging and referring them to community-based services; to elaborate a plan of setting up shelters based on the estimated number of potential beneficiaries. However, the Government of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia failed to fulfil these recommendations.

Legal Status of Children

In the 2018 Parliamentary Report, the Public Defender of Georgia made 26 recommendation regarding the rights of the child. Out of them, two recommendations were addressed to the local self-governments. State authorities did not fulfil 19 recommendations out of the other 24 recommendations. Only one

¹² The Law of Georgia on Public Procurement, Article 3.a)-h).

recommendation can be deemed as fulfilled comprehensively. In the other four cases, recommendations were only partially fulfilled.

Identification of needs of families living in poverty and avoiding placing children in state care based on poverty remained problematic over the years. The 2018 Parliamentary Report paid attention to the necessity of elaborating psychosocial and rehabilitation programmes tailored to the needs of children with behavioural difficulties and traumatic experience, who are placed in state care. Despite the pressing need for fulfilling these recommendations, they were not implemented by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

According to the recommendation of the Public Defender, the Government of Georgia was also requested to elaborate an action plan in accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Unfortunately, this recommendation was not fulfilled either.

Rights of Persons with Disabilities

In the 2018 Parliamentary Report, the Public Defender of Georgia made 45 recommendations for improving the protection of rights of persons with disabilities (PWDs). Out of them, ten recommendations were addressed to local self-governments; out of other 35 recommendations, as a result of activities carried out by state authorities, three recommendations were fulfilled comprehensively, and seven recommendations were fulfilled partially. Based on the performance of state agencies, the Public Defender's recommendations are evaluated as not fulfilled in 23 cases; the information necessary for evaluating the quality of the fulfilment of two recommendations was not supplied to the Public Defender's Office.

In 2019, no effective steps were made to ensure the realisation of the rights of PWDs. The authorities did not approve national standards on accessible and usable buildings and facilities compatible with the requirements of the CRPD and the principles of universal design. Stemming from the employment needs of PWDs, the Public Defender made numerous recommendations in the Parliamentary Report concerning maintaining detailed statistics to facilitate the employment of PWDs; providing those patients with requisite medications who are not recipients of social benefits and do not have a support network. Unfortunately, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia failed to take effective steps in this regard in the reporting period.

The ministry was also recommended to elaborate the deinstitutionalisation strategy within the shortest terms possible after which it would start implementing community-based services. The ministry failed to fulfil this recommendation and another recommendation concerning introducing and implementing an effective mechanism of preventing violence against PWDs as well as developing the corresponding methodology.

The Public Defender welcomes the increase in the budget and those components of the community organisations of the State Programme for Children’s Social Rehabilitation and Care that will be spent on community services for PWDs and elderly persons.

Rights of Elderly Persons

In the 2018 Parliamentary Report, the Public Defender of Georgia made twelve recommendations to the state authorities for improving the legal status of elderly persons. Out of them, only one recommendation was fulfilled by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. The Public Defender has been pointing out the need for approving the national concept on state policy on ageing. The national concept of state policy on ageing has not been approved in the reporting period. A new national action plan was not approved either. The absence of relevant standards of 24-hour community services for elderly persons remains problematic.

Gender Equality

In the 2018 Parliamentary Report, the Public Defender of Georgia made 23 recommendations to state authorities for ensuring gender equality. Three recommendations can be deemed as fulfilled; five recommendations are partially fulfilled and the other 15 recommendations have not been fulfilled. The Public Defender also addressed the Parliament of Georgia with one proposal as well, but unfortunately, it is also unfulfilled at this stage.

In the 2018 Parliamentary Report, the Public Defender discussed the need to amend the rule of providing maternity, childbirth and childcare leave and relevant compensation to both parents with the equal possibility to use; the report also pointed out the need to elaborate a systemic approach towards antenatal care and to integrate psychological assistance services in the former. However, no positive steps were made to fulfil these recommendations.

The recommendation about introducing measures towards assisting single parents and parents with multiple children can be deemed partially fulfilled. Under the government resolution, since 2019, a person with the status of a parent having multiple children, having four minor children and/or adopted children, will benefit from respective subsidies in terms of use of electricity.

Legal Status of Conflict-Affected Persons

In the 2018 Parliamentary Report, the Public Defender made ten recommendations for improving the legal status of the conflict-affected population. The relevant state authorities fulfilled six recommendations fully and one recommendation partially. The Public Defender’s three recommendations were not fulfilled.

In the 2018 Parliamentary Report, the Public Defender made a recommendation to the Temporary Governmental Commission Responding to the Needs of the Conflict-Affected Population in the Villages along the Boundary Line to enhance programmes for rehabilitation/compensation of property damaged

during the 2008 war, employment of local population and finding sources of income. Unfortunately, this recommendation was not fulfilled.

The Public Defender evaluates positively the fulfilment of the recommendation, given in the 2018 Parliamentary Report, by the Office of the State Minister of Reconciliation and Civic Integration of Georgia which was manifested in conducting regular consultations with representatives of civil society regularly and conducting talks with various donor organisations to facilitate informal education opportunities for school pupils and youths in Abkhazia, the Gali district, in particular.

The Public Defender evaluates positively the efforts to ensure the involvement of medical doctors living in the occupied territories in retraining programmes as well as the accessibility of the Georgian language courses for youths living in the occupied territories.

Unfortunately, the Office of the Prosecutor General of Georgia failed to inform the public about the progress of the investigation of the disappearance of persons during the war of August 2008.

Freedom of Belief and Religion

In the 2018 Parliamentary Report, the Public Defender of Georgia made seven recommendations to the state authorities concerning freedom of belief and religion. Only one recommendation was fulfilled out of the seven recommendations; six recommendations are not fulfilled.

Investigation of religious hate crimes is one of the major challenges. The responsible agencies still have not supplied any information concerning investigation into alleged religious persecutions and incidents of obstruction of religious worship committed against Muslims in various areas of Georgia in 2012-2014; no information has been supplied about measures against alleged violations committed against Jehovah's Witness and representatives of other religious minorities.

Similar to the previous years, the state did not take any measures to study and return the places of worship seized during the Soviet period to their historical owners. Communication with the Administration of the Government of Georgia has not revealed any specific activities in this regard.

Protection of National Minorities and Civic Integration

In the 2018 Parliamentary Report, the Public Defender of Georgia made 15 recommendations to state authorities for remedying the problems related to national minorities. The state authorities failed to fulfil ten of the Public Defender's recommendations; four recommendations are evaluated as partially fulfilled, and only one recommendation was fully fulfilled.

In the reporting period, no facilitation programmes for teaching the languages of smaller ethnic minorities were implemented. National minorities were not involved in the so-called New School Model within the Education System Reform.

There were positive steps made in 2019 in terms of enhancing teaching the state language in the regions densely populated by national minorities by recruiting educators with requisite qualifications and ensuring their appropriate remuneration.

Social and Economic Rights

The present subchapter discusses the quality of the fulfilment of recommendations made by the Public Defender in several chapters of the 2018 Parliamentary Report¹³ for ensuring social and economic rights. The Public Defender made 18 recommendations to the state authorities and addressed the Parliament of Georgia with four proposals.¹⁴

Out of the recommendations made by the Public Defender to state agencies, only one recommendation is deemed to be fulfilled. The same applies to the indicator of the partial fulfilment of recommendations. Unfortunately, 13 recommendations and four proposals made to the parliament are not fulfilled.¹⁵

For ensuring the realisation of the right to social security, in the 2018 Parliamentary Report, the Public Defender of Georgia made a recommendation to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia concerning amending relevant normative acts to the effect of reducing the terms of determining subsistence allowance. This recommendation is not fulfilled.

The Government of Georgia did not elaborate on the recommended state programme that would ensure diagnosing oncological diseases promptly and accessibility of adequate treatment for oncological patients.

The Public Defender welcomes the adoption of a resolution by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia in 2019,¹⁶ which ensures retraining nurses within the framework of the medical education programme and the introduction of a sustainable system of professional regulation.

While the Parliament of Georgia is currently deliberating on the draft law within a working group, no legislative changes have been made to this day to enable labour inspectors, similar to their powers in terms of oversight of labour safety, to inspect compliance with other requirements of the labour legislation at workplaces without employers' permission and determine sanctions for their violations.

Similarly, the Labour Code has not been amended to the effect of determining the maximum duration of working hours and the minimum limit for weekly continuous rest for workers.

¹³ Right to Social Security, Right to Adequate Housing, Right to Healthcare, Right to Property, Right to Work.

¹⁴ Right to social security – three recommendations; right to adequate housing – two recommendations, right to healthcare – eight recommendations and one proposal; right to property – three recommendations and one proposal; right to work – two recommendations and two proposals.

¹⁵ It is impossible to evaluate the fulfilment of three recommendations due to the absence of the relevant information.

¹⁶ Resolution no. 334 of 16 July of 2019 on the Strategy of Nursing Activity Development Strategy.

Legal Status of Foreigners in Georgia

In the 2018 Parliamentary Report, the Public Defender of Georgia made three recommendations for improving the legal status of foreigners in Georgia. The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia fulfilled one recommendation fully and one recommendation partially.¹⁷

The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia ensured accessibility of the Georgian language course for asylum seekers, which is commended by the Public Defender. The recommendation made by the Public Defender regarding holding outreach meetings concerning programmes on integration of persons granted international protection and raising awareness among beneficiaries and local communities can be deemed partially fulfilled. In 2019, the Labour and Employment Policy Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia held several workshops about programmes on integration of persons granted international protection. Furthermore, the department announced a grant competition and the winning organisation implemented educational projects at the Integration Centre.

Legal Status of Stateless Persons

The Public Defender made two recommendations for improving the legal status of stateless persons and addressed the parliament with one proposal. Unfortunately, none of them is fulfilled.

Despite the Public Defender's recommendation, Order no. 225/N of the Minister of Labour, Health and Social Affairs of Georgia of 22 August 2006 on the Procedure for Determining and Issuing Targeted Social Allowance has not been amended to the effect of referring in express terms to a stateless person having the status in Georgia as a beneficiary irrespective of the type of residence permit. Similarly, the Governmental Action Plan for Human Rights Protection has not been amended to incorporate activities aimed at improving the legal status of stateless persons, *inter alia*, by eliminating inconsistencies in domestic legislation with relevant international standards.

1.3. State of Fulfilment of Recommendations by Local Self-Governments

The Public Defender's Office addressed 63 self-government authorities and requested information to examine the fulfilment of recommendations. Unfortunately, 16 municipalities¹⁸ failed to respond to any of the letters sent by the Office.

¹⁷ One recommendation could not be evaluated due to the absence of relevant information.

¹⁸ Municipalities of Qeda, Sachkhere, Kvareli, Dusheti, Tianeti, Kazbegi, Lentekhi, Tsageri, Tsalenjikha, Chkhorotsku, Mestia, Akhalkalaki, Gardabani, Tsalka, and Kaspi; and the Self-Governing City Hall of Rustavi.

Below is given the general state of the fulfilment of significant recommendations made to local self-governments in the 2018 Parliamentary Report that were addressed to all self-government authorities.

It is commendable that there are councils to ensure gender equality within the local self-government bodies as well as corresponding action plans. The municipalities were recommended to ensure retraining of gender advisors at the municipalities and continuously monitor the implementation of the action plan by them; research women's needs at the local level to identify problems in gender equality and improve women's legal status, and plan and implement projects towards the economic and political empowerment of women at the local level.

Based on the activities carried out by the Public Defender's Office and the information received from municipalities, it is clear that gender advisors and officials responsible to ensure gender equality have not been retrained in monitoring the action plan or relevant reporting issues.

Most municipalities have not researched women's needs to ensure gender equality and the lack of projects oriented towards economic and political empowerment of women is explained by the absence of budgetary funds.

Most local self-governments believe that they take decisions about recreational territories with due respect for the public interest of maintaining the territory; access to information on environmental issues is guaranteed in accordance with the Aarhus Convention. However, representatives of the Public Defender's Office identified cases in Batumi and Kazbegi where decisions about recreational territories were made without considering public interests and access to information on environmental issues was not guaranteed in accordance with the Aarhus Convention.

It is imperative for local self-government authorities to realise the importance of the issues reflected in the recommendations and, when discharging their official powers, be guided by the Public Defender's recommendations and tasks determined in the parliamentary resolution.

The municipalities cite the absence of corresponding financial resources as the reason for faulty municipal transportation. However, in certain cases, there is an attempt on the part of self-governing authorities to remedy problems related to faulty transportation.¹⁹

Despite local self-governments' activities towards improving the situation in nurseries and kindergartens, there are still problems concerning the compliance of establishments with Technical Regulations on Approving Sanitation and Hygiene Standards in Early and Preschool Education Establishments and on Approving Standards of Organising Nutrition and Nutritional Value of Food Rations in Early and Preschool Education Establishments.

Municipalities' activities are unsatisfactory in terms of studying challenges regarding inclusive education in preschool education establishments and the allocation of appropriate funds. Contrary to the Public Defender's recommendations, local self-governments do not conduct any need-assessment surveys.

¹⁹ Municipalities of Ambrolauri, Borjomi and Tkibuli.

While there are consultation councils set up at preschool education establishments within the majority of local self-governments, that part of the Public Defender's recommendation cannot be deemed fulfilled under which self-governments are requested to supervise the performance of preschool education establishments in accordance with the Law of Georgia on Early and Preschool Education.

Unfortunately, municipalities failed to fulfil the Public Defender's recommendation regarding introducing standards for arranging public areas accessible for persons with disabilities as well as introducing relevant construction standards.

The Public Defender made two recommendations to several municipalities regarding drafting and approving qualification requirements for the position of a preschool education establishment's director and a teacher's professional standard. In the reporting period, only the municipalities of Mtskheta, Kazbegi and Khashuri adopted the above-mentioned document.²⁰

Those local self-government authorities that were recommended by the Public Defender of Georgia regarding the protection of national minority rights, obviously need to be more active in the process of the fulfilment of recommendations as their performance does not ensure the implementation of these recommendations so far.

None of the municipalities made any steps towards attracting Roma children to kindergartens and preschool establishments and their enrolment in these institutions.

The national minority issues are not adequately addressed in municipalities. Among them, there are issues of attracting and retraining national minority members. In the reporting period, local self-governments have carried out no activities in this regard that would be aimed at enhancing the representation of national minorities.

The quality of the fulfilment of the recommendation regarding teaching the Georgian language in preschool education establishments is relatively commendable. There are Georgian language learning groups in preschool education establishments of the majority of municipalities.

Based on the above data, it can be concluded that the quality of the fulfilment of recommendations, made by the Public Defender in the 2018 Parliamentary Report, by local self-governments is unsatisfactory. It is imperative for local self-governments to apply more efforts in this regard. The Public Defender, in her part, expresses full readiness to impart her knowledge and experience in the field of human rights protection, if needs be.

²⁰ The following municipalities have yet to adopt qualification requirements for a director's position: Dedoplistskaro, Khoni, Tchiatura, Sighnaghi, Zestaponi, Lagodekhi, Lanchkhuti, Tkibuli, Kaspi, and Tianeti; a teacher's professional standard has to be elaborated in the following municipalities: Dedoplistskaro, Zestaponi, Zugdidi, Lagodekhi, Lanchkhuti, Sighnaghi, Tkibuli, Tchiatura and Khoni.

2. Right to Life

2.1. Introduction

Like the previous years, in 2019, investigation conducted into incidents of deprivation of life failed to meet the standard of an effective investigation. Questions posed in the high-profile cases of the previous years, unfortunately, remained unanswered in 2019. In parallel, new problematic cases emerged raising the issue of state responsibility.

In 2019, due to the restricted mandate in terms of the right to life,²¹ the Public Defender's Office continued to face considerable obstacles concerning the examination of case-files of criminal cases in a timely and effective manner. Unfortunately, the parliament did not accept the Public Defender's proposal made in the 2018 Parliamentary Report regarding amendment of the Organic Law of Georgia on the Public Defender of Georgia.²²

The present chapter discusses problems regarding somatic (physical) healthcare of beneficiaries of psychiatric establishments, which usually lead to worsening patient's state of health and sometimes become the cause of death. The chapter discusses the pardoning of offenders by the President of Georgia and its compliance with the procedural limb of the right to life; the results of closed investigations into the deaths of Temirlan Machalikashvili and Ia Kerzaia; the progress of the official inquiry instituted into the murder of two juveniles on Khorava Street.

In the 2018 Parliamentary Report, for securing the right to life, the Public Defender made five recommendations to the Office of the Prosecutor General of Georgia and three proposals to the Parliament of Georgia. The Office of the Prosecutor General of Georgia failed to fulfil the majority of recommendations and fulfilled partially only two recommendations concerning the continuation of the investigation into Zviad Gamsakhurdia's alleged murder and supplying information to the Public Defender's Office about the investigation in cases of deprivation of life. The Office of the Prosecutor General of Georgia has not fulfilled other recommendations of the Public Defender and the Parliament of Georgia has not accepted the proposals mentioned above.

²¹ Under the legislation in force, the Public Defender does not have access to the case-files of ongoing investigations, the Organic Law of Georgia on the Public Defender of Georgia, Article 18.e).

²² The 2018 Parliamentary Report of the Public Defender of Georgia, p. 38. On 29 November 2018, the Public Defender made a proposal to the parliament and requested granting access to case-files of ongoing investigations into ill-treatment and/or deprivation of life. The Committee of Human Rights and Civic Integration of Georgia of the Parliament of Georgia rejected this legislative proposal, see the committee's conclusion no. 2-6694/19 of 12 April 2019, available at: < <http://bit.ly/2J9lyq1>, > [accessed 14.03.2020].

2.2. Treatment of Somatic Health Problems in Psychiatric Establishments

The state has a duty to provide inpatients of psychiatric establishments with adequate healthcare services. The failure to provide a beneficiary of psychiatric establishments with adequate care and treatment that caused the death was assessed as a violation of the right to life by the European Court of Human Rights.²³

The environment of psychiatric establishments faces considerable challenges in terms of accessibility of medical services. In the reporting period, the State Programme of Healthcare,²⁴ similar to 2020,²⁵ failed to incorporate monitoring and treatment of somatic (physical) health problems of psychiatric establishments' inpatients.

The need for the provision of adequate medical services to address somatic health problems of inpatients of psychiatric establishments is discussed in detail in the Special Report of the Public Defender of Georgia on Thematic Monitoring of the "Academician B. Naneishvili National Centre for Mental Health."²⁶ The report reviews the systemic challenges in this regard as well. Even though statistics are not maintained in psychiatric establishments about deceased persons, the Public Defender's representatives obtained and examined some medical cards of deceased persons. The examination of those medical cards shows that a sudden death and cardiovascular insufficiency are indicated as the causes of death in most cases. The possible reason could be insufficient monitoring of patients' somatic condition and the failure to take risk factors into account.

As already mentioned, the State Programme of Healthcare does not incorporate adequate safeguards for monitoring and treating somatic (physical) health problems of psychiatric establishments' inpatients. According to the Special Report mentioned above, several inpatients in the psychiatric establishment died from tuberculosis. However, medical cards maintained in the clinic did not contain any information about this diagnosis.²⁷ According to the report, in several cases, worsening of problems of somatic health could be attributed to the overdose of antipsychotic medicines or risky combination of prescribed medicines (such as "Zopin" (Clozapine) with other antipsychotic medicines).²⁸

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report also discusses inadequate treatment of patients' somatic health problems and problems faced by

²³ See, *inter alia*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, application no. 47848/08, judgment of the Grand Chamber of the European Court of Human Rights of 17 July 2014, paras. 143-144.

²⁴ Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving the 2019 State Healthcare Programmes, Annex no. 11 Mental Health (programme code 27 03 03 01).

²⁵ Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving the 2019 State Healthcare Programmes.

²⁶ The Special Report of the Public Defender of Georgia on Thematic Monitoring of the Academician B. Naneishvili National Centre for Mental Health, available at: < <http://bit.ly/3dgnXhB> > [accessed 13.03.2020].

²⁷ *Ibid.* p. 24.

²⁸ *Ibid.* p. 25.

indigent patients due to financial barriers preventing them from having access to somatic healthcare services.²⁹ The Committee recommended that urgent action be taken to remedy the problem.³⁰

The above-mentioned circumstances clearly demonstrate the shortcomings of the existing regulatory framework. This situation is not compatible with the minimum standards of the protection of the right to life. It is, therefore, imperative for the state to take all necessary measures promptly to prevent deaths due to the failure to provide adequate care and treatment.

2.3. Case of Presidential Pardon

On 27 December 2019, the President of Georgia pardoned 34 persons.³¹ Among those pardoned were offenders serving sentences for premeditated murders. Most of them had not served essential part of their sentences.³²

The president's decision was met with legitimate public outcry. The Public Defender of Georgia called upon the president to inform the public in detail about the reasons behind the pardon. However, the respective justification has not been imparted to this day.³³

While, under the Constitution of Georgia, the President of Georgia enjoys absolute discretion in terms of pardon, there is a close link between this mechanism and the procedural limb of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms. According to the European Court of Human Rights, the right to life is violated whenever domestic authorities show unreasonable leniency towards persons sentenced for murder,³⁴ which amounts to their virtual impunity.³⁵ Considering that the above-mentioned persons were pardoned by the President of

²⁹ Patients have to pay 25 GEL for a consultation with a GP.

³⁰ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 128, available in English at: < <http://bit.ly/2J9leHP> > [accessed 13.03.2020].

³¹ The statement of 27 August 2019 made by the Administration of the President of Georgia, available at: < <http://bit.ly/3d80aA5> > [accessed 14.03.2020].

³² In particular, convicted person A.B. was sentenced to nine years of imprisonment and served about two years and two months. A.B. was pardoned six years and ten months earlier; R.D. was sentenced to twelve years of imprisonment and served about four years and eight months; R.D. was pardoned seven years and four months earlier; Z.N. was sentenced to fifteen years of imprisonment and served about eleven years and five months. Z.N. was pardoned three years and seven months earlier.

³³ Statement of the Public Defender of Georgia of 17 September 2019, available at: < <http://bit.ly/2U1Ry6L> > [accessed 14.03.2020].

³⁴ *Enukidze and Girgvliani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights of 26 April 2011, paras. 269-275.

³⁵ *Marguš v. Croatia*, application no. 4455/10, judgment of the Grand Chamber of the European Court of Human Rights of 27 May 2014, para. 127.

Georgia while they had not served the most of their sentence, the pardon amounted to the violation of the right to life.

2.4. Case of Temirlan Machalikashvili

Temirlan Machalikashvili's case is a subject of the Public Defender's particular interest as a human life was taken through the use of force by state agents during a special operation planned and executed by the state.

The Public Defender started *ex officio* the examination of the case of Temirlan Machalikashvili. The Public Defender paid attention to this case also in the 2017 and 2018 Parliamentary Reports.³⁶ In the 2018 Parliamentary Report, the Public Defender made a recommendation to the parliament about setting up a temporary investigative committee to establish the truth about circumstances surrounding the death of Temirlan Machalikashvili. Based on the application of the Public Defender, the Agency of State Regulation of Medical Activity examined the adequacy of medical treatment provided for Temirlan Machalikashvili. According to the results of the examination of the case-files and the agency's communication, no violation of substantive rights has been found in this regard.³⁷

The prosecutor's office instituted an investigation into Temirlan Machalikashvili's case under Article 333.3.b) of the Criminal Code of Georgia (exceeding official powers committed by use of force) and on 25 January 2020, by a final decision, discontinued the investigation due to the absence of a crime. In February 2020, a representative of the Public Defender's Office studied the complete case-files of the criminal case at the office of Tbilisi Prosecutor's Office.

Under the case-law of the European Court of Human Rights, any use of force must be "no more than absolutely necessary" for achieving a legitimate aim, that is, it must be strictly proportionate in the circumstances.³⁸ To establish whether it was absolutely necessary for the special operation team to use a lethal weapon, it is necessary to assess the plan of the special operation (in Machalikashvili's case, the arrest plan) and the control over the operation. The Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.³⁹

According to the European Court of Human Rights, while there may be obstacles or difficulties, which prevent progress in an investigation in a particular situation, a prompt response by the authorities is

³⁶ The 2017 Parliamentary Report of the Public Defender of Georgia, pp. 7-40; the 2018 Parliamentary Report of the Public Defender of Georgia, pp. 32-33.

³⁷ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 33.

³⁸ *Nachova and Others v. Bulgaria*, applications nos. 43577/98 and 43579/98, judgement of the Grand Chamber of the European Court of Human Rights of 6 July 2005, para. 94; *McShane v. the United Kingdom*, application no. 43290/98, judgement of the European Court of Human Rights of 28 May 2002, para. 93.

³⁹ *McCann and Others v. the United Kingdom*, application no. 18984/91, judgment of the Grand Chamber of the European Court of Human Rights of 27 September 1995, para. 161.

essential in maintaining public confidence in their adherence to the rule of law.⁴⁰ The investigation must be based on a complete, objective and impartial analysis of relevant circumstances. Investigative authorities must take all reasonable measures to obtain evidence. Any deficiency in the investigation which undermines its ability to establish concrete circumstances of the case or person/s responsible will risk falling foul of the standard of an effective investigation.⁴¹

The examination of case-files revealed that portable radios were used as a means of communication during the arrests. It is noteworthy that the portable radio recordings have not been obtained during the investigation, which, considering the absence of other video/audio/photo material depicting the measure, could give particularly relevant information for the case.

Furthermore, there is no information obtained about telephone communications, telephone calls, short text messages, telephone applications or social networks used by the officials in charge of the operation and its supervision⁴² when maintaining communication with each other during the operation.

The Public Defender maintains that the investigation into the deprivation of Temirlan Machalikashvili's life must be resumed, as certain key issues remain unresolved and open. These issues need to be investigated further in accordance with international standards on an effective investigation. Given the importance of the issue, the Public Defender proposed to the Prosecutor General of Georgia requesting the investigation of criminal case no. 043261217801 concerning the deprivation of Temirlan Machalikashvili's life to be reopened. The Public Defender hopes that the proposal about reopening the investigation will be accepted. The Public Defender's Office will further study this issue and inform the public in this regard in future.

2.5. Murder of Juveniles on Khorava Street

The Public Defender's Office examined case-files of investigation instituted into the murder of two juveniles on Khorava Street on 1 December 2017. The Office identified multiple important shortcomings in the investigation, which are discussed in detail in the Public Defender's Parliamentary Report of 2018.⁴³

⁴⁰ *Association "21 December 1989" and Others v. Romania*, application no. 33810/07, judgment of the European Court of Human Rights of 24 May 2011, para. 134.

⁴¹ *Mizigarova v. Slovakia*, application no. 74832/01, judgment of the European Court of Human Rights of 14 December 2010, para. 93.

⁴² Based on a decision of Tbilisi City Court of 21 October 2019, investigative authorities obtained information about Ioseb Gogashvili's telephone calls made from his telephone number as well as text messages, internet browsing details, information about persons involved in the communication and information received from telephone towers in Tbilisi, indicating the telephone number concerned, within the period of 25-27 December 2017 (examination report of 31.10.2019).

⁴³ The 2018 Parliamentary Report of the Public Defender of Georgia, pp. 33-34.

As a result of the scrutiny by the Public Defender's Office, it was established that either or both elements of the crime committed by public officials was present, viz., official negligence or abuse of official power. The Public Defender requested the prosecutor's office to investigate the alleged official misconduct.⁴⁴

The Prosecutor's Office of Georgia did not accept the Public Defender's proposal and instead of investigation instituted an official inquiry. The official inquiry is still pending to this day.⁴⁵ Unfortunately, the prosecutor's office failed to fulfil additional recommendations made by the Public Defender on informing the public about the outcomes of the official inquiry and allowing the Public Defender to study case-files of the official enquiry.

2.6. Case of Ia Kerzaia

In the reporting period, the Public Defender's representative examined case-files of the investigation into Ia Kerzaia's death and made a statement on the investigation's results.⁴⁶

While the investigation was instituted and progressed during the examination of the case-files by the Public Defender's representative under Article 332 of the Criminal Code of Georgia – abuse of official power, the Public Defender was guided by the standard of an effective investigation as a part of the state's positive obligations to secure the right to life as established by the case-law of the European Court of Human Rights.

On 26-27 November 2018, during presidential elections, Ia Kerzaia spoke publicly about political pressure on her. She died of a stroke on 9 December. Within ten days, the son of the deceased, Bachana Shengelia, requested the prosecutor's office to institute an investigation.

The prosecutor's office instituted an investigation on 11 February 2019, in about two months after receiving the request. This indicates unacceptable delay. The reason why the prosecutor's office initiated the investigation with such delay is unclear.

In the Public Defender's opinion, the belated investigation made it impossible to obtain crucial evidence and establish the truth. The prosecutor's office requested additional information with delay when the investigation had already been delayed. This led to discontinuing the investigation without a result.⁴⁷ Furthermore, the Public Defender maintains that it was unacceptable to conduct superfluous procedural actions before instituting the investigation.

⁴⁴ Proposal no. 15-11/9172 of the Public Defender of Georgia of 11 July 2018 requesting the prosecutor's office to initiate investigation.

⁴⁵ Letter no. 13/86091 of the Prosecutor General of Georgia, dated 9 December 2019.

⁴⁶ The Statement of the Public Defender of Georgia of 29 November 2019, available at: <<http://bit.ly/3b6mlF1>> [accessed 18.03.2020].

⁴⁷ The Prosecutor's Office of Georgia discontinued the case of Ia Kerzaia on 26 September 2019.

Proposals

To the Parliament of Georgia:

- To amend the Organic Law of Georgia on the Public Defender of Georgia to the effect of vesting the Public Defender with the power to access case-files of cases involving ill-treatment and/or deprivation of life before the termination of investigations.

Recommendations

To the Prosecutor General of Georgia:

- To reopen and conduct the investigation of deprivation of Temirlan Machalikashvili's life effectively;
- To inform the public regularly about the outcomes of an official inquiry instituted on account of shortcomings identified in the investigation of the murder of juveniles on Khorava Street; to share the case-files of the inquiry with the Public Defender's Office; based on the outcomes of the official inquiry, to consider instituting an investigation on account of either official negligence or exceeding official powers;
- The Prosecutor General of Georgia to present an opinion – submitted following Article 172 of the Rules of the Parliament of Georgia – concerning the effectiveness of the investigation on deprivation of life; and
- Within the framework of the investigation into deprivation of life, to supply to the Office of the Public Defender of Georgia requested information regarding investigative and procedural actions, indicating respective dates.

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

- To amend the mental health programme to the effect of determining the provision of somatic healthcare patients in mental establishments; until then, the ministry should ensure accessibility to a GP for inpatients of psychiatric establishments and their transportation to a medical clinic as a provisional measure;
- To amend the mental health programme and, in accordance with the guidelines in force in the country, to ensure the management of side-effects of medicines through appropriate diagnostics and consultations; and
- To ensure systematised maintenance of statistics about deceased persons in psychiatric establishments indicating the cause of death.

3. Prohibition and Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

3.1. Introduction

In 2019, 128 applications were lodged with the Office of the Public Defender where citizens alleged incidents of ill-treatment committed by law enforcement officers. Among others, possible perpetrators of alleged ill-treatment were prison officers, according to 54 applications and police officers, according to 50 applications; 14 applications concerned degrading conditions in penitentiary establishments and 10 applications were filed regarding delaying an investigation into allegations of ill-treatment.

In 2019, following up on citizens' applications as well as acting proactively, i.e. responding to information disseminated publicly, in total, representatives of the Public Defender paid 405 visits to penitentiary establishments, psychiatric establishments, temporary detention isolators and territorial agencies of police. 1,728 accused/detained persons were visited in total.

The Public Defender of Georgia performs the function of a National Preventive Mechanism under the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The National Preventive Mechanism prevents ill-treatment by regular and random visits to places of detention and inspects detention conditions and treatment of prisoners. In 2019, the Special Preventive Group paid 88 such visits.

However, similar to the previous years, in 2019, there were cases where the Special Preventive Group faced obstacles in terms of full access to special category personal data.⁴⁸ It is noteworthy that Article 20.b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment determines in express terms the obligation of the States Parties to the protocol to enable the national preventive mechanisms to fulfil their mandate by granting them unimpeded access to all information referring to the treatment of those persons as well as their conditions of detention.

In 2019, ten Special Reports were prepared regarding the prevention/investigation of ill-treatment or prisoners' rights. It is one of the main tasks of the Office of the Public Defender to inform the public and raise awareness about the situation of human rights protection at the places of imprisonment and deprivation of liberty. To this very end, on 21 January 2020, the Public Defender informed Members of the Parliament and the public about outcomes of the monitoring carried out by the National Preventive Mechanism in penitentiary establishments nos. 2, 8, 14 and 15 in the summer of 2019.⁴⁹ In particular, the aforementioned monitoring revealed the scope of the informal rule in penitentiary establishments. It is

⁴⁸ Obstacles faced by the National Preventive Mechanism in terms of accessing special category personal data are also discussed in the 2018 Report of the National Preventive Mechanism, (pp. 6-7).

⁴⁹ The Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, available at: <<https://bit.ly/2TAljFE>> [accessed 16.01.2020].

noteworthy that the Public Defender's findings are similar to and in line with the findings reflected in the CPT report.⁵⁰

On 21 January 2020, in response to the Public Defender's report, the Minister of Justice, instead of engaging in discussions about recommendations presented to solve problems, attempted to discredit the Public Defender, her Office and the National Preventive Mechanism during a hearing of the Committee of Human Rights and Civic Integration. Furthermore, in gross violation of the law, at the hearing, the minister showed video recordings depicting the Public Defender's representative's confidential meeting with a prisoner in a cell. The Organic Law of Georgia prohibits in absolute terms any kind of eavesdropping and surveillance of a meeting held between the Public Defender's representative and a prisoner.⁵¹ Furthermore, disclosure of those video recordings that identify a person, violates the requirements of the Law of Georgia on Personal Data Protection. Unfortunately, the Committee of Human Rights and Civic Integration did not accept the findings of the Public Defender's Special Report; the committee's report failed to discuss the above-mentioned violations as well.⁵²

A few days after the above-mentioned events, the Special Penitentiary Service/Ministry of Justice attempted to obstruct the Public Defender's activities. In particular, the Special Penitentiary Service and the Ministry of Justice disclosed the information about a meeting with specific prisoners in a penitentiary establishment as soon as the meeting was over.⁵³ Thus, the Special Penitentiary Service/Ministry of Justice grossly violated Article 19 of the Organic Law of Georgia on the Public Defender of Georgia, under which, the Public Defender's meeting with a prisoner is confidential and no eavesdropping or surveillance is allowed. The provision determines that the Public Defender's any meeting with prisoners must be confidential until otherwise decided by the Public Defender. The same requirement is determined by Article 21 of the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment under which no personal data shall be published without the express consent of the person concerned.

Article 35 stipulates in express terms that obstructing the Public Defender's activities is punishable by law. The activities of the Public Defender of Georgia as an institution and a constitutional body is based on such central and fundamental principles as full independence from any branches of the government, impartiality, objectivity and confidentiality in discharging official duties. To disclose information about the Public Defender's meetings increases the risk of ill-treatment of prisoners and/or other illegal actions and affects the protection of their rights. Disclosure of such information may discourage prisoners from meeting with or applying to the Public Defender in future.

⁵⁰ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), < <http://bit.ly/38p44kK> >[accessed 30.01.20].

⁵¹ The Organic Law of Georgia on the Public Defender of Georgia, Article 19.3.

⁵² Conclusion no. 2-3429/20 of the Committee of Human Rights and Civic Integration of 26 February 2020.

⁵³ Available at: < <https://bit.ly/3cpdxvo> >[accessed 28.03.2020].

Disclosure of names and surnames of those prisoners who meet with the Public Defender and/or the Public Defender's representatives constitutes an attempt to influence her activities and it is imperative to institute appropriate investigation under Article 352 of the Criminal Code of Georgia. This article penalises any form of influence exerted on the Public Defender aimed at obstructing the Public Defender's activities.

The above attacks on the Public Defender were assessed as interference in the Public Defender's activities by the United Nations Special Rapporteur on the Situation of Human Rights Defenders, the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance of National Human Rights Institutions (GANHRI), the International Ombudsman Institute (IOI) and the European Network of Equality Bodies (EQUINET).⁵⁴

Unfortunately, the Office of the Prosecutor General did not comply with the Public Defender's request to initiate an investigation into obstructing the Public Defender's activities. According to the Office of the Prosecutor General, divulging the confidential meeting of the Public Defender with a convicted person did not amount to the breach of confidentiality of the meeting of the Public Defender and a convicted person and, therefore, there was no legal or factual ground for instituting an investigation.

In addition to the above-mentioned facts, it is noteworthy that, similar to the previous years, the practice of the Ministry of Justice of not providing various data to the Public Defender's Office continued in 2019. In particular, the Ministry of Justice failed to submit to the Office of the Public Defender information requested regarding the fulfilment of recommendations made concerning the agency in the 2018 Parliamentary Report.

The present chapter discusses the challenges existing in the reporting period in terms of prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment. In particular, this chapter consists of five parts. The first three parts review the risk factors pertaining to the systems of the penitentiary and the Ministry of Internal Affairs as well as psychiatric establishments that are conducive to ill-treatment of persons deprived of their liberty; the fourth chapter discusses the main shortcomings of investigations into incidents of ill-treatment due to which investigation does not meet the effectiveness standards. Chapter Five discusses the effectiveness of investigation into the events of 20-21 June 2019. Under the well-established case-law of the European Court of Human Rights, recourse to physical force by law enforcement officers, which has not been made strictly necessary by a person's own conduct, is in principle an infringement of the right set forth in Article 3 (prohibition of torture) of the European Convention on Human Rights. Accordingly, investigation of these events will also be assessed for its compatibility with the Convention.⁵⁵

In 2019, torture and other ill-treatment by law enforcement officers was not a large-scale problem. However, similar to the previous years, there were isolated incidents of ill-treatment. In terms of treatment of arrested persons by police, compared to 2018, the situation did not change in 2019 and the trend of

⁵⁴ Available at: < <https://bit.ly/3cs1eyF> > [accessed 29.01.20].

⁵⁵ See, *inter alia*, *İzci v. Turkey*, application no. 42606/05, judgment of the European Court of Human Rights of 23 July 2013.

worsening of treatment of persons arrested in administrative proceedings continues. It is noteworthy that, in 2019, there were also cases of alleged ill-treatment of juveniles.

As regards positive changes made by the state in 2019, the indicator of involvement of a lawyer in a case within the first 24 hours significantly improved. Furthermore, there were certain steps made towards the improvement of the physical environment, sanitation and hygiene in psychiatric establishments, penitentiary establishments and the system of the Ministry of Internal Affairs.

In the annual reports, the Public Defender has been continuously pointing out those factors that give rise to risks of ill-treatment of prisoners by law enforcement officers in our country. In particular, the following issues require legislative regulation: documenting injuries found on persons deprived of their liberty and reporting them to investigative authorities; duty of video recording communications of patrolling inspectors with citizens; duty to use alternative methods (de-escalation technique) to physical and chemical restraint and the duty to document and justify the use of the latter, etc.

The following issues are among the trends identified in penitentiary establishments: scope of the criminal underworld in penitentiary establishments; the practice of placing prisoners in de-escalation rooms and solitary confinement cells for a long time; obstructing prisoners' right to appeal; the problem of state supervision of adequate psychiatric care and monitoring of the protection of patients' rights, etc.

Personnel related problems still pose obstacles in terms of the fight against ill-treatment such as the lack of penitentiary establishments' personnel, heavy work schedules and lack of adequate qualifications. Persons in custody of law enforcement officers are still not provided with sufficient procedural or institutional safeguards against ill-treatment.

Fight against ill-treatment is considerably impeded by the impunity of law enforcement officers for such crimes. The trend of investigating incidents of an alleged ill-treatment is maintained especially where such crimes are reported by the Office of the Public Defender or NGOs. However, the systemic problem of delaying investigating such crimes is still clearly challenging. We hope that the State Inspector's Service created to solve this systemic problem will eliminate all those shortcomings related to the investigation of cases of ill-treatment accumulated before its creation, which are discussed in detail in subsequent chapters.

As regards the investigation currently conducted by the Office of the Prosecutor General of Georgia into exceeding official powers, committed by use of force by certain officers of the Ministry of Internal Affairs of Georgia when dispersing the demonstration of 20-21 June 2019, the main trend is that the investigation is focused on identifying criminal actions of individual law enforcement officers and assessing their individual role; the investigation is not aimed at establishing the scope of responsibility of superior officials in charge. Besides, it is problematic that many investigative actions, in the Public Defender's opinion, which are necessary to ensure the effectiveness of the investigation have not been conducted. For instance, parts of video footage have not been examined, forensic examination of the ministry's high-ranking officials' portable radio recordings have not been scheduled or conducted, etc.

In the end, we would like to mention reporting on Georgia's international undertakings before the United Nations Committee against Torture (CAT).⁵⁶ Georgia acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1994 and submitted the first state report in 1996. Presently, Georgia has to submit the fifth periodic report. The date of submitting the fifth report was initially set for 2011 and later, by the CAT's decision, the submission date was set for 2015. However, this obligation was not fulfilled in the mentioned year either. Based on the aforementioned, the Public Defender calls upon the Georgian authorities to submit the belated report to the CAT as soon as possible.

3.2. Penitentiary System

In the 2018 Parliamentary Report, the Public Defender of Georgia made 32 recommendations to the Ministry of Justice of Georgia, one recommendation to the Government of Georgia and five proposals to the Parliament of Georgia, aimed at improving the human rights situation in the penitentiary system.

The Parliament of Georgia has not accepted any proposals made by the Public Defender; the Government of Georgia has not fulfilled the Public Defender's recommendation; the Ministry of Justice has not fulfilled 16 recommendations, fulfilled four recommendations and fulfilled partially three recommendations. It is noteworthy that due to the failure of the Ministry of Justice to supply the requested information, the Public Defender's Office could not assess the situation of the fulfilment of eight recommendations by the ministry. Because of changes made to the penitentiary system, the fulfilment of one recommendation made by the Public Defender cannot be assessed.⁵⁷

Similar to the previous years, in 2019, systemic recommendations issued over years and are crucial in terms of preventing torture and other ill-treatment remain mostly unfulfilled. In this regard, Article 6.1 of the Order no. 131 of the Minister of Corrections and Probation of Georgia remains to be flawed. Under the provision concerned, a medical professional employed in a penitentiary establishment has the duty to report an injury found on a prisoner's body to the General Inspection of the Ministry of Justice of Georgia. The latter is a structural unit of the Ministry of Justice and is not independent or impartial institutionally. Another unfulfilled recommendation made by the Public Defender concerns a doctor's duty, determined by secondary legislation, to fill out an injury form, take a photograph of a prisoner's injury and report it to investigative authorities irrespective of the prisoner's informed consent, whenever

⁵⁶ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, Article 19.1.

⁵⁷ The Public Defender recommended the Ministry of Justice to take all the measures to ensure that the Inspectorate General carries out its functions and ensures during a transfer of a convicted person due to security reasons from establishment of one type to an establishment of a different type reassessment of risk of the convicted persons within 20 days and the convicted person must be transferred to the establishment of an appropriate type. The Ministry of Justice of Georgia, due to legislative changes in the field of the penitentiary service does not reassess prisoners' risks when they are transferred from one penitentiary establishment to another type.

he/she suspects the prisoner could have been subjected to torture or other ill-treatment. The CPT made the same recommendation to the Government of Georgia in its report on the visit to Georgia.⁵⁸

The Public Defender's Office welcomes the fulfilment of several recommendations and steps made to improve conditions in penitentiary establishments in 2019. The following measures taken in 2019 are commendable: starting the renovation of establishment no. 8; elimination of problems of water supply in the establishment and installation of telephone booths in establishment no. 3;⁵⁹ conducting screening for non-infectious diseases in penitentiary establishments as well as the steps made towards fulfilment of certain recommendations.

In the Public Defender's opinion, similar to the previous years,⁶⁰ the following remained problematic in the penitentiary system: lack of procedural and institutional safeguards against ill-treatment; maintaining order and security in penitentiary establishments; ensuring adequate conditions of imprisonment; shortage of activities aimed at prisoners' rehabilitation and resocialisation and lack of their contact with the outside world; shortcomings in medical care and preventive health care; mental health care; creation of penitentiary establishments based on equality, etc. In 2019, the Public Defender was particularly concerned about the informal rule existing in penitentiary establishments. The criminal underworld poses danger to the safety of prisoners in penitentiary establishments and it is important to fight it with effective means.

Forms of Violence Against Prisoners by Prison Officers in Penitentiary Establishments

Physical violence – in the reporting period, the Special Preventive Group revealed during the monitoring that there are only isolated cases of alleged violence against prisoners by prison officers in closed-type prison facilities.

Psychological violence – prisoners in closed-type prison facilities complained about the unethical conduct, offensive and discriminatory attitude of prison officers sometimes.

Placement in de-escalation rooms and solitary confinement (the so-called safe) cells as informal punishment – similar to the previous years, the practice of placing prisoners in de-escalation rooms and solitary confinement cells remained problematic. In the Public Defender's opinion, virtually uninterrupted placement of prisoners in de-escalation rooms and solitary confinement cells for lengthy periods amounts to inhuman and degrading treatment.

⁵⁸ 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 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 80, available at: < <http://bit.ly/38p44kK> > [accessed 09.01.2020].

⁵⁹ However, in order to ensure a confidential environment, it is necessary to equip offices with additional insulation.

⁶⁰ The 2018 Public Defender of Georgia, p. 41.

Compared to accommodation cells, prisoners face extremely dire conditions in a de-escalation room and a solitary confinement cell; they have limited access to personal hygiene items and dishwashers; prisoners' access to their clothes is limited. During their stay in a de-escalation room, prisoners are mostly prohibited from taking a shower and having a stroll; their right to use the shop, make a phone call, maintain correspondence and have visits are limited. The existing sanitation and hygiene conditions are unsatisfactory. According to prisoners, they cannot call the Public Defender or their lawyer, when kept in a de-escalation room; they cannot have a cigarette, the cell window is shut and it is stuffy in the room. Therefore, prisoners perceive this measure as a punishment.

Similar to the previous years, the practice of virtually uninterrupted and prolonged placement of prisoners in de-escalation rooms in penitentiary establishment no. 3 and in de-escalation rooms and solitary confinement (the so-called safe) cells in penitentiary establishment no. 8 continues. According to the CPT standards, the maximum term of placing a prisoner in a de-escalation room should never exceed 24 hours.⁶¹ Placement in a solitary confinement cell should also be as brief as possible.⁶² Under some circumstances, the placement of a prisoner in solitary confinement may amount to inhuman and degrading treatment.⁶³

Due to the absence of psychosocial support services and other resources to manage situations in penitentiary establishments, administration places prisoners with mental health problems in a cell for prolonged period. Stemming from such prisoners' psycho-emotional state, it leads to the risk of inflicting harm to oneself and others.

The Public Defender believes that placing prisoners with psychiatric problems in de-escalation rooms should be a measure of last resort and the use of a de-escalation room for security purposes should be preceded by other, less intrusive measures such as personal supervision by a staff member and video monitoring. In those cases, where these means prove to be insufficient, transfer to a de-escalation room should be used as an urgent measure, the duration of which should not be more than 24 hours. At the same time, adequate care by a joint multidisciplinary team (a psychologist, a social worker, a doctor and a psychiatrist, if necessary) should be provided. If placement in a de-escalation room for 24 hours and the care by a multidisciplinary team prove to be insufficient for security purposes, a prisoner with psychiatric problems should be immediately transferred to the psychiatric unit of medical establishment no. 18 for accused and convicted persons or another psychiatric clinic.

The use of internal classification cells for ulterior reasons – during a visit to establishment no. 8, the Special Preventive Group found out that (so-called quarantine) prisoners are transferred from accommodation

⁶¹ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 94.

⁶² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), extract from the 2nd General Report of the CPT, [CPT/Inf(92)3], para. 56.

⁶³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), extract from the 2nd General Report of the CPT, [CPT/Inf(92)3], para. 56.

blocks and placed in internal classification cells for prolonged periods.⁶⁴ This serves the purpose of “teaching them a lesson” and punishing them. It should be borne in mind that the conditions in internal classification cells cause discomfort to prisoners as they are damp and lack sufficient ventilation, satisfactory hygiene and sanitation. Besides, prisoners in internal classification cells are not allowed to spend time in the open air or use a shower, maintain contact with the outside world and use the establishment’s shop.⁶⁵

The Public Defender was informed by the Ministry of Justice of Georgia that the Special Penitentiary Service is currently drafting instructions to implement an effective practice of transferring prisoners from their residential cells to the internal classification cells.⁶⁶ The Public Defender maintains that the practice of transferring prisoners from their residential cells to the internal classification cells and its statutory determination is unacceptable as this could lead to conflicts between a prisoner recently admitted to the penitentiary system and a prisoner with possibly troubled behaviour transferred from a residential cell. In this regard, the practice of placing accused and convicted persons together is also problematic.⁶⁷ In this regard, it is noteworthy that, in establishment no. 8, convicted persons brought from accommodation blocks into internal classification cells are placed with accused persons newly admitted to the establishment. This contradicts the requirements of Article 9.2⁶⁸ of the Imprisonment Code of Georgia and Article 14.2 of the Statute of establishment no. 8⁶⁹.

In the opinion of the Public Defender of Georgia, in those cases where due to security considerations it is necessary to remove a prisoner from a residential cell, the prisoner should be taken to an alternative area and not to internal classification cells, where newly admitted accused and convicted persons are held or they should be placed in these cells only when there are no recently admitted prisoners.

Identifying, Documenting and Reporting Incidents of Violence to Investigative Authorities

Under the statute of a penitentiary establishment, whenever a doctor comes across a suspicious injury, he/she is obliged to follow the procedure established by Order no. 131 of the Minister of Corrections and

⁶⁴ During the first seven months in 2019, there were 551 cases of transferring prisoners from accommodation blocks to internal classification cells.

⁶⁵ For detailed information about using internal classification cells for punitive reasons, see the Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, available at: < <https://bit.ly/2TALjFE> > [accessed 16.01.2020].

⁶⁶ Letter no. 371652/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, dated 13 December 2020.

⁶⁷ Under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by resolution 70/175 of the United Nations General Assembly, untried prisoners shall be kept separate from convicted prisoners (Rule 11.b).

⁶⁸ Under Article 9.2 of the Imprisonment Code, in a mixed-type facility, accused persons shall be isolated from convicted persons at least by accommodation areas separated from one another.

⁶⁹ Under Article 14.2 of the Statute of establishment no. 8, “Convicted persons and accused persons shall be placed separately from each other in the establishment.”

Probation of Georgia of 26 October 2016 (hereinafter Order no. 131). Under this order, the ground for documenting an injury is a suspicion that a medical professional might have about alleged torture or other ill-treatment of a prisoner. There is a risk that a medical professional will fail to identify fully and comprehensively an incident of alleged ill-treatment as there are no statutory criteria for medical professionals to use in selecting suspicious injuries when documenting them.

Stemming from the above-mentioned, the Public Defender made a recommendation in the 2018 Parliamentary Report to the Ministry of Justice of Georgia about determining statutory guidelines on the criteria for medical professionals to use in selecting suspicious injuries when documenting them. According to the response received from the Ministry of Justice of Georgia, guidelines are being developed, which is commendable.

Inspection of penitentiary establishments revealed problems in the practice of medical professionals employed by the establishments in identify and document incidents of alleged ill-treatment. In semi-open prison facilities, upon finding suspicious injuries on a prisoner's body, doctors do not document them in accordance with the procedure determined by Order no. 131. In closed-type prison facilities, injuries are documented only in those cases where, at the time of admission into an establishment, an accused person reports ill-treatment by police officers.

According to the Ministry of Justice of Georgia, from 1 January 2019 to 30 November 2019, 316 incidents involving a prisoner inflicting an injury on another person were reported in penitentiary establishment nos. 2, 8, 14, and 15. In all these cases, there are elements of a violent act committed against a prisoner. However, injuries have not been documented in any of these cases in accordance with Order no. 131.

The Public Defender of Georgia maintains that the faulty practice of identifying and documenting incidents of alleged violence, among other factors,⁷⁰ is preconditioned by the inadequate qualifications of doctors, absence of confidential environment for doctor-prisoner meetings; the duty to obtain informed consent from a prisoner and other normative shortcomings.⁷¹ Among these shortcomings is also Article 6.1 of Order no. 131 according to which a doctor reports a suspicious case of torture or other ill-treatment to the Inspection General of the Ministry of Justice.

According to the Ministry of Justice of Georgia, in those cases where there is a reasonable ground to suspect torture, other cruel, inhuman or degrading treatment has been committed by an officer of the Ministry of Internal Affairs, an official of a penitentiary establishment, or a member of the escorting group or other investigative authority, the case is immediately sent from the investigative unit of the Inspection General of the Ministry of Justice and the investigative unit of the Investigative Department to the

⁷⁰ For instance, the influence of the informal rule in penitentiary establishments (under the informal rule, a victim of violence cannot reveal a sustained injury, moreover, its reasons and lack of trust of victims of violence in investigative authorities.

⁷¹ For detailed information, see the 2019 Report of the National Preventive Mechanism.

prosecutor's office for immediate follow-up⁷² and, since 1 November 2019, to the State Inspector's Service. This practice is problematic as the Investigative Department of the Special Penitentiary Service is not an institutionally independent agency and it acts as an intermediary in this case. In addition, it decides whether to notify the prosecutor's office and the State Inspector's Service.

In the light of the above-mentioned, the Public Defender maintains that, in those cases where a person implicated in alleged torture or other ill-treatment is an officer of the Ministry of Internal Affairs, a penitentiary establishment's employee or an escorting group member, the case must be reported to the State Inspector's Service directly.

According to the Office of the Prosecutor General of Georgia, from 1 January 2019 to 31 October 2019, they received twelve notifications from penitentiary establishments about documenting alleged facts of torture, other cruel, inhuman or degrading treatment recorded by the doctors of these penitentiary establishments. According to the prosecutor's office, it was established that injuries had been inflicted through torture, ill-treatment or physical abuse by the officers of the Ministry of Internal Affairs or other investigative body or prison officers. Thus, an investigation has not been instituted in any of these cases.⁷³

It should be noted that, according to the outcomes of the monitoring carried out by the Special Preventive Group, investigative authorities do not concern themselves with the information given in the forms documenting injuries and do not consult these documents. From 2017 to the time of the monitoring, investigative authorities have not examined a single document depicting injuries in accordance with the Istanbul Protocol; investigative authorities have not extracted the filed documentation or photographs taken. As regards, photo cameras, which are used to document injuries, are kept in a specially allocated metal safe, which was sealed on 30 March 2017 and the seal has not been broken at the date of the monitoring.⁷⁴ Therefore, it is unclear how the prosecutor's office established, without extracting and consulting the documents and photos compiled by doctors, that the said injuries had not been inflicted as a result of torture, ill-treatment and physical abuse by law enforcement officers.

In 2019, the Public Defender's Office made one recommendation to the Ministry of Justice to institute disciplinary proceedings against a doctor of a penitentiary establishment for documenting physical injuries in an incomprehensive manner. This recommendation was not accepted by the Ministry of Justice of Georgia.

Furthermore, for effective documenting and investigating of torture and other cruel, inhuman or degrading treatment or punishment, it is necessary to ensure that forensic examinations are conducted in the country in compliance with the Istanbul Protocol. It is noteworthy that the wording of the findings of the forensic examination conducted by the LEPL Levan Samkharauli National Forensics Bureau

⁷² According to Letter no. 13/974 of the Prosecutor General of Georgia, dated 10 January 2020, investigation into alleged ill-treatment of prisoners by prison officers were instituted in 19 criminal cases from 1 January 2019 to 30 November 2019. All these cases are currently pending; criminal prosecution has not been instituted against a specific person at this stage.

⁷³ Letter no. 13/3295 of the Prosecutor General of Georgia, dated 20 January 2019.

⁷⁴ July-August 2019.

regarding incidents of torture and other ill-treatment do not comply with the requirements under chapters V, VI and Annex 1 (Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) of the Istanbul Protocol.⁷⁵

Order and Security, Managing a Safe/Secure Penitentiary Establishment

The Public Defender's Office uses multiple components for assessing the management of a penitentiary establishment. Firstly, it is important to inspect whether the level of staffing is sufficient in establishments. Secondly, the regime in closed-type prison facilities is inspected. There is a separate discussion on the informal rule and disciplinary proceedings.

Overcrowding

The number of the legal regime and security officers in penitentiary establishments is not sufficient to ensure a secure, protected and safe environment in the establishments.

According to the assessment made by the Special Preventive Group, the insufficient number of staff members undermines the security of both prisoners and officers. There are incidents where one officer was unable to diffuse an inter-prisoner conflict promptly as he had to wait for his colleague for a long time. Such delay can give rise to a real threat to the prisoners' life and limb.

Special-Risk Prison Facilities

The high-security prisons are based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. According to the assessment of the Special Preventive Group, such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and eventual social reintegration. Prisoners of special-risk prison facilities are locked up in their cells for 23 hours in a state of enforced idleness and can only spend one hour in the open air.

Furthermore, a certain part of the prison population placed in penitentiary establishments is in *de facto* isolation for months on and even years in some cases. Under the statutes of special-risk prison facilities,⁷⁶ an establishment's director, based on an application of an accused/convicted person or his/her, takes a decision about placing an accused/convicted person separately for no more than 30 days. In case of necessity, this term can be extended for another 30 days by the director's decision. It should be pointed out that long-term isolation of a prisoner might amount to inhuman and degrading treatment.

⁷⁵ The 2018 Report of the National Preventive Mechanism, pp. 29-30.

⁷⁶ Penitentiary establishments nos. 3, 6 and 7.

Informal Rule

For years, the Public Defender has been pointing out that the informal rule existing in the penitentiary establishments creates serious threats of ill-treatment of prisoners. The informal rule often leads to inter-prisoner violence and bullying.

With the influence of the criminal underworld, prisoners are divided informally. As a result, a certain segment of prisoners that enjoy privileges rules with repressive methods, which often lead to inter-prisoner violence and are manifested in taking punitive measures against those prisoners that disobey the informal rule.

According to some prisoners, there are convicted persons who have close relations with the administration of establishment no. 8, enjoy certain influence over other prisoners and, if need be, the administration uses them to “sort out problems” with other prisoners (complaints filed during a hunger strike, expression of dissatisfaction in another form or conflict situations, etc.).

Members of the criminal underworld move freely within the establishment, control prisoners, collect the so-called kitty,⁷⁷ enter cells and physically assault disobedient prisoners. Whoever disobeys their orders is marginalised and taken to another block. They take away the clothes from prisoners that their families send. The so-called prison “watchers” control the sums deposited on prisoners’ cards through prisoners employed in household services. For this purpose, they have special books with prisoners’ name and surname, the time of verification of the card and the amount of the sum deposited on the card at the time.⁷⁸

In the establishments visited in the course of the monitoring,⁷⁹ especially in semi-open prison facilities, the order is mostly maintained by informal leaders. The misleading sense of order existing in the establishments is based on violent methods and rather fragile in reality. It may subject prisoners’ life and security to greatest threats in the long run or even from a short-term perspective. It is also noteworthy that, over the years, along with the strengthening of the influence of the informal rule, the number of applications lodged from semi-open prison facilities with the Public Defender is reduced.

It is important to ensure that the measures aimed at overcoming the criminal underworld are taken with due respect for prisoners’ rights and their security; violent measures and reprisals should be excluded.

The Practice of Disciplinary Proceedings Against Prisoners

The effectiveness of disciplinary proceedings against prisoners is particularly important for maintaining order in penitentiary establishments. They should be ensuring both maintaining order and protecting prisoners’ rights in full.

⁷⁷ A combination of material items and donations accumulated in the hands of informal leaders and also managed by them.

⁷⁸ For details about this issue, see the Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, available at: < <https://bit.ly/2TALjFE> > [accessed 16.01.2020].

⁷⁹ Penitentiary establishments nos. 2, 8, 14 and 15.

The Criminal Justice Department of the Office of the Public Defender of Georgia examined 307 decisions about the imposition of disciplinary responsibility that were adopted in 2018. The outcomes of this examination are reflected in the Special Report.⁸⁰ According to the report, both the regulatory framework and practical implementation of disciplinary proceedings against prisoners are problematic.

The examination shows numerous problems of systemic nature: prison directors do not rely on neutral evidence in the process of disciplinary punishment of a prisoner; a disciplinary violation is only corroborated by prison officers; there are formulaic and stereotypical statements regarding disciplinary violations in the decisions; no detailed information is given about the incident that was considered to be a disciplinary violation on the part of a prisoner; there are no arguments given regarding the proportionality of a particular sanction imposed; there seem to be different sanctions imposed on prisoners in the cases of the commission of the same disciplinary violation and the ground for such an irregular approach is not clear; there was no oral hearing in any of the cases and accordingly, the prisoner was not given the possibility to defend himself/herself before the competent official examining his/her case; lawyers were not involved in any of the cases; decisions contain no information about aggravating or mitigating circumstances; there are no stages of disciplinary inquiry and procedural time-frames are not determined; there are no means to ensure effective defence in the proceedings and there are no alternative measures to disciplinary penalties.⁸¹

Detention Conditions

As the CPT observes, ill-treatment can take numerous forms, many of which may not be deliberate but rather the result of organisational failings or inadequate resources.⁸² Placement of prisoners in conditions respecting their dignity applies to material conditions as well as the daily regime and those specific activities that are offered to prisoners. The dire living conditions existing in penitentiary establishments, lack of rehabilitation programmes and idle stay in a cell for a long time are those factors that cumulatively affect the psycho-emotional state of a prisoner and can amount to inhuman and degrading treatment.

Prisoners' Rehabilitation and Resocialisation

The Public Defender of Georgia observed in the 2018 Parliamentary Report that activities carried out in penitentiary establishments in terms of rehabilitation and resocialisation are sporadic and are not tailored to individual needs of convicted persons.⁸³ In 2019, there were no major changes in this regard in penitentiary establishments. The situation is particularly problematic in special-risk prison facilities,⁸⁴

⁸⁰ The Special Report of the Public Defender of Georgia on Disciplinary Proceedings against Prisoners in Georgia, 2019, available at: < <http://bit.ly/2PNyPsW> > [accessed 20.02.2020].

⁸¹ *Ibid.* pp. 26, 27, 29, 31, and 32.

⁸² CPT, the 2nd General Report on the CPT's Activities, [CPT/Inf(92)3], covering the period 1 January to 31 December 1991, para. 44.

⁸³ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 46.

⁸⁴ For instance, there was neither individual sentence planning nor, consequently rehabilitation activity carried out in establishment no. 3 from 1 January 2019 to the day the Special Preventive Group visited the establishment.

which, similar to the previous years, is caused by the lack of sufficient personnel with adequate qualifications.

The amendment made to the Imprisonment Code⁸⁵ is commendable; it provides for vocational training and retraining of offenders by the Centre for Vocational Training and Retraining of Convicted Persons from 1 January 2020. The Public Defender hopes that, with the centre's help, convicted persons will be offered vast opportunities to be involved in diverse educational/vocational programmes. However, it should also be pointed out that among other factors⁸⁶ there are such factors as the criminal underworld and lack of incentives among prisoners that prevent their active involvement in rehabilitation activities.⁸⁷

In terms of the situation of resocialisation and rehabilitation in penitentiary establishments, it is imperative to increase the number of social workers and psychologists in penitentiary establishments in 2020, so that these human resources for rehabilitation activities are used to the maximum extent.⁸⁸ Besides, the majority of social workers employed in penitentiary establishments do not have the qualification required by the Law of Georgia on Social Work.

Early conditional release and commutation of an unserved sentence with a lesser penalty are statutory means to give an offender an incentive to be fully oriented towards resocialisation and rehabilitation after conviction and to hope to use these mechanisms effectively.

It should be noted in a positive context that there is a positive trend in the number of the councils' positive decisions, which is reflected in approximately 6-8% increase in the number of positive decisions in 2019, compared to 2018. However, there are numerous shortcomings identified in terms of the practical functioning of this mechanism.

According to the Special Report of the Public Defender of Georgia, there are legislative and practical shortcomings identified in terms of conditional early release and commutation of unserved sentence with a lesser penalty.⁸⁹ The analysis of decisions adopted by the local councils showed the problem related to the lack of reasoning.⁹⁰ In the opinion of the Public Defender of Georgia, the decisions adopted by the local councils about rejecting motions for conditional early release are mostly worded stereotypically and

⁸⁵ On 31 December 2019, Order no. 492 of the Minister of Justice approved the Regulations of the LEPL Centre for Vocational Training and Retraining of Convicted Persons. The centre aims at facilitating resocialisation and rehabilitation of offenders through their education, vocational training and retraining, and employment.

⁸⁶ For detailed information, see the 2018 Report of the National Preventive Mechanism, pp. 43-44, available at: < <http://bit.ly/2TFwRfh> > [accessed 05.03.2020].

⁸⁷ See the 2018 Report of the National Preventive Mechanism, p. 44, available at: < <http://bit.ly/2TFwRfh> > [accessed 22.01.2020].

⁸⁸ According to monitoring conducted in 2019, there were averagely 563-1073 prisoners per psychologist; and averagely 153-271 prisoners per social worker.

⁸⁹ The Special Report of the Public Defender of Georgia on the Practice of Conditional Early Release and Commutation of Unserved Sentence with a Lesser Penalty in Georgia, available at: < <http://bit.ly/2Tr29b5> > [accessed 01.02.2020].

⁹⁰ *ibid.* p. 23.

contain formulaic references to the criteria based on which the negative decisions were made in a concrete case.⁹¹

Apart from the above-mentioned, the non-uniform nature of decisions is also problematic. The examination of the local council's decisions revealed a trend of adopting different approaches in identical cases. Furthermore, the councils often disregard statutory limitation for disciplinary offences, their seriousness, the seriousness of imposed sanctions and positive changes in an offender's behaviour in the aftermath of the disciplinary offence. There are substantive inaccuracies in the councils' decisions, which in most cases serve as a precondition for adopting negative decisions; the reasoning of decisions in favour of an oral hearing is not foreseeable; the judicial practice is not uniform and sometimes it is confusing as well.

It is important to mention that the Special Penitentiary Service shares those recommendations made in the Public Defender's Special Report.⁹²

Physical Environment

It is commendable that establishment no. 12 moved to a new building on 12 February 2019. However, conditions existing in several penitentiary establishments still need to be considerably improved and brought closer to international standards.

In 2019, the following remained problematic: sanitation and hygiene conditions in cells, ventilation and light⁹³ and provision of all convicted persons with minimum living space of 4² metres.⁹⁴ The latter was problematic in establishments nos. 2, 8, 14, 15 and 17. Besides, barrack type dormitories are still functioning in penitentiary establishment no. 17.⁹⁵

Penitentiary Healthcare

In the context of the fight against ill-treatment, it is imperative to provide prisoners with adequate, quality and timely medical services. The absence of such services can amount to ill-treatment under certain circumstances. It is noteworthy that, similar to the previous years, in 2019, inadequate and delayed medical care remained problematic in the penitentiary system. In 2019, the Public Defender's Office received 433 applications from prisoners. Apart from the delay in providing medical care, this chapter discusses those

⁹¹ Idem.

⁹² Letter no. 17246/01 of the Director General of the Special Penitentiary Service, dated 20 January 2020.

⁹³ For detailed information about sanitation and hygiene conditions, adequate ventilation and sufficient light in establishments nos. 2, 8, 14 and 15, see the Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, pp. 31-35, available at: < <http://bit.ly/2PP1UEs> >[accessed 05.03.2020].; see also the Report of the National Preventive Mechanism on a Monitoring Visit to Establishment no. 3, pp. 17-18.

⁹⁴ Article 15 of the Imprisonment Code of Georgia determines the duty of providing the minimum personal space of 4² metres for convicted persons.

⁹⁵ Convicted persons are not provided with the minimum personal space of 4² metres in these accommodation facilities. Due to the number of convicted persons and lack of adequate ventilation, the air is filled with smoke and it is difficult to follow sanitation and hygiene rules.

challenges that contribute eventually to the problem of inadequate medical services in penitentiary establishments.

Somatic (Physical) Health

In 2019, the following remained problematic in the penitentiary healthcare system: the number⁹⁶ and qualification⁹⁷ of the medical personnel, adequate maintenance of medical documentation,⁹⁸ respect for medical confidentiality, screening for non-infectious diseases, timely medical referral and the situation in terms of preventive healthcare.

Medical services must have timely access to primary healthcare in penitentiary establishments. It is less difficult for prisoners in semi-open prison facilities to meet the primary healthcare doctor as they go to the former even though they often have to queue. As regards closed-type prison facilities, the great demand for primary healthcare doctors is a problem as is the fact that a prisoner is brought by a prison officer to the doctor.⁹⁹

Based on the medical personnel's work schedule, it can be concluded that the ratio of doctors and convicted persons in penitentiary establishments is high.¹⁰⁰ This, in turn, makes it difficult to provide medical services in a timely manner. It is noteworthy that medical personnel have to perform several functions in some penitentiary establishments. Such a busy work schedule of medical personnel creates risks for their professional burnout, which in its turn is reflected in the quality of medical services.¹⁰¹

Referrals to specialised doctors are important for timely and adequate medical care as are timely referrals to medical establishments. It should be noted concerning timely medical care that a project began in December 2019, which is aimed at providing medical care for all on the waiting list since 2016. The Public Defender welcomes this initiative and hopes that the waiting list will gradually shorten.

Furthermore, apart from delays in providing medical care in the penitentiary system, there are also problems identified in terms of delays in the court-mandated forensic psychiatric examination of accused persons placed in remand custody. Due to months-long delays in forensic psychiatric examination

⁹⁶ The CPT pointed out in its report on the visit to Greece in 2007 that ideally, staffing levels should be equivalent to roughly one medical doctor for 300 prisoners and one qualified nurse for 50 prisoners. There is a high ratio between the number of nurses and prisoners in all penitentiary establishments. See the Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, p. 15.

⁹⁷ There are still problems in the field of continuous medical education.

⁹⁸ Chronology is not followed and there is no description of either dynamics of the treatment or prescribed treatment's outcomes; besides, medical documentation is maintained in a defective manner.

⁹⁹ There is a particularly serious problem of accessibility of the primary medical unit in establishment no. 8.

¹⁰⁰ Doctors and nurses on duty have a shift once in four days. In establishment no. 2, one doctor and two nurses are on duty during the weekend and non-working hours; in establishment no. 8, two doctors and eight nurses are on duty; in establishment no. 14, one doctor and one nurse are on duty; and in establishment no. 15, one doctor and two nurses are on duty.

¹⁰¹ In its report to the Georgian Government on the visit to Georgia, carried out in 2018, the CPT recommended that more nurses should be recruited at penitentiary establishments nos. 8 and 15.

placement of patients in in-patient facilities is considerably delayed. Thus, prisoners with specific psychiatric problems have to stay in detention in penitentiary establishments for months.¹⁰²

The inconsistency of medical cards and the absence of reference to therapeutic outcomes make it difficult to examine the adequacy of treatment provided in penitentiary establishments. Based on the examination of medical cards, it can be concluded that in some cases treatment of patients is inconsistent and intermittent;¹⁰³ in some cases, medical personnel neglects a patient's condition or does not conduct analysis based on complaints.¹⁰⁴ Therefore, it is imperative to maintain medical summaries¹⁰⁵ so that important information does not escape medical personnel's notice. Besides, the issue of supply of medicines is noteworthy. It is a particularly serious problem in establishment no. 8.

In the reporting period, there were other numerous problems identified in penitentiary establishments in terms of medical services. For instance, according to several prisoners interviewed in establishment no. 8, there are frequent conflicts with the personnel when prisoners request medical services; prison officers speak to them rudely, provoke them, threaten them with isolation and worsen their conditions. They reprimand prisoners as to why they are bothering the medical personnel with medical complaints. These circumstances might create obstacles in terms of receiving required medical care.

Mental Healthcare

Managing psychiatric problems remains a serious challenge for the penitentiary healthcare system. Early diagnostics and identification of mental health problems are particularly important for managing psychiatric problems.

Mental health screening in establishment nos. 2 and 8 during the primary admission is limited to the filling of a questionnaire, which is insufficient and does not ensure the identification of psychiatric problems on time. It is also problematic that GPs do not have any tools for the objective evaluation of prisoners' mental health condition. According to the Special Penitentiary Service,¹⁰⁶ a document of permanent mental health screening is being elaborated in the Medical Department, which is commendable.

It is also problematic that there is no psychiatrist as a regular staff member in penitentiary establishments. There is a psychiatrist as a regular staff member only in establishment no. 8. Thus, prisoners often have to wait for a long time to receive a psychiatrist's consultation. Besides, psychiatric care in prison establishments is limited to single or repeated consultations with a psychiatrist and medical treatment; psychiatric incidents are not evaluated or managed by a multidisciplinary group.

¹⁰² The 2019 Report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

¹⁰³ For instance, there were gaps in the administration of medicine in the medical card of one patient with arterial hypertension in establishment no. 14. The same problem was observed in another patient's case.

¹⁰⁴ The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, p. 57.

¹⁰⁵ Finding of a doctor, an exhaustive explanation in writing about the origins of a disease, its development, progress, the nature of treatment and its outcomes.

¹⁰⁶ Letter no. 371652/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, dated 13 December 2019.

It is commendable that, since November 2019, three mobile groups based on a civil sector model and staffed with civil sector specialists started functioning in establishment no. 8.¹⁰⁷ To ensure access of prisoners with mental health problems to adequate psychosocial rehabilitation programmes, it is necessary to mobilise required personnel in establishments, attract service providers and involvement of the civil sector.

The staff and medical personnel of penitentiary establishments do not have a psychiatric crisis management system or verbal de-escalation skills. In times of crisis, a patient is placed in a solitary confinement cell under video surveillance and later is transferred to the psychiatric unit of establishment no. 18, in accordance with an emergency delayed procedure.¹⁰⁸ In many penitentiary establishments, crisis management is limited to placing a prisoner in a de-escalation room, which often is a repeated and permanent measure.¹⁰⁹ Furthermore, in the cases of psychotic conditions, it is complicated to transfer a prisoner to a psychiatric unit due to the lack of free psychiatric beds.¹¹⁰

There are neither clinical-laboratory analyses nor physician's inputs provided to manage the side effects of antipsychotic medications.

In the assessment of the Special Preventive Group, certain medicines¹¹¹ are often administered for other purposes, which is against the CPT standards.¹¹² Monitoring outcomes show that there are cases in establishments where medicines from the benzodiazepine¹¹³ group are prescribed in high dosages for long periods. There is a danger of dependence syndrome, especially when it involves prisoners with a history of personality disorders and psychoactive substance abuse. These problems are worsened by giving psychotropic medicines at once, in the first half of the day, when it is impossible to establish whether a patient took the medicine himself/herself or gave it to somebody else or combined all the medicines and took them at once. Mixing medicines and the use of these medicines for reasons other than intended can worsen a patient's state of health.

¹⁰⁷ According to the civil sector model, mobile groups are staffed with a psychiatrist, a psychologist and a nurse.

¹⁰⁸ Such practice was identified in establishments nos. 14 and 15.

¹⁰⁹ Penitentiary establishments nos. 2, 3 and 8.

¹¹⁰ For instance, transfer of a prisoner from establishment no. 8 to a psychiatric wing at establishment no. 18 might require 1-1.5 month in some cases.

¹¹¹ For instance, the use of Zopin (active ingredient Clozapine) is noteworthy both on its own and in combination with other antipsychotic and psychotropic medicines of a different group.

¹¹² 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 10 to 21 September 2018, (CPT/Inf (2019) 16), available in English at: <<http://bit.ly/38p44kK>> [accessed 20.09.2019].

¹¹³ Any compound from a group of aromatic lipophilic amines having a characteristic cyclic structure. Affects gamma-aminobutyric acid (GABA) receptors and is used as an anxiolytic, hypnotic and anticonvulsant in clinical practice. Almost 50% of patients develop [dependence syndrome](#) after treatment with benzodiazepine (even with therapeutic dosages) for 6 months and more.

Requests/Complaints

The Special Preventive Group established as a result of monitoring conducted in establishments nos. 2, 8, 14, and 15 that prisoners face obstacles in establishments when exercising their right to a request/complaint; confidentiality of requests/complaints is not secured in prison establishments.¹¹⁴ During the monitoring visits to establishments nos. 2 and 8, members of the Special Preventive Group received numerous complaints that confidential complaints addressed to the Public Defender are monitored by the administration and often not dispatched to recipients.¹¹⁵ Often, administrations do not supply prisoners with confidential envelopes. Unfortunately, in establishment no. 8, some of the complaint boxes fall within the area of video monitoring, which allows the identification of a complainant.

The Special Preventive Group personally witnessed the breach of confidentiality. During the visit to establishment no. 2, in the administration office, the group members saw an open envelope of a confidential complaint addressed to the Public Defender. The Public Defender submitted a proposal to the Minister of Justice of Georgia and requested a follow-up to this incident.¹¹⁶ According to the Special Penitentiary Service, the Monitoring Department conducted an official inquiry and a social worker and an employee of the administration office at penitentiary establishment no. 2 were disciplined.

Apart from the above-mentioned, it is problematic that, under the Imprisonment Code of Georgia, an accused person can maintain correspondence (controlled by administration) at his/her own expense and have three calls, each not exceeding 15 minutes in a month.¹¹⁷ The same restriction applies to convicted persons placed in closed-type prison facilities.¹¹⁸ Besides, prisoners placed in special-risk prison facilities can only have two telephone calls at their own expense in a month;¹¹⁹ they can only call pre-determined telephone numbers. These provisions do not allow exceptions for the use of the Public Defender's hotline by an accused/convicted person. Therefore, under the existing legislation, an accused/convicted person cannot call the Public Defender's hotline if needed.

While an accused/convicted person can apply to the Public Defender's Office in writing about violations of his/her rights, alleged ill-treatment. However, by using a hotline, if prisoners had unhindered access to it, they would contact the Public Defender's Office more promptly. Besides, considering the specific nature of the penitentiary system and prisoners' particularly vulnerable situation, it is often more convenient for them to have a direct contact instead of written communication, which is exactly what the hotline allows.

¹¹⁴ An accused person/convicted person has the right to apply to an addressee with a confidential complaint placed in a sealed envelope and the penitentiary establishment has the duty to ensure the confidentiality of the complaint.

¹¹⁵ According to one of the prisoners, a doctor took away his written complaint about medical personnel. Two prisoners stated that they had sent letters to the Public Defender's Office; however, after verification, it turned out that our office had not received them.

¹¹⁶ Letter no. 03-2/10583 of the Public Defender, dated 1 October 2019.

¹¹⁷ The Imprisonment Code of Georgia, Article 79.1.c).

¹¹⁸ The Imprisonment Code of Georgia, Article 65.1.c).

¹¹⁹ The Imprisonment Code of Georgia, Article 66.2.c).

Furthermore, as mentioned above, there were cases identified where prisoners' complaints have not been dispatched.

To address the above problems, the Public Defender of Georgia addressed the parliament with a proposal,¹²⁰ which the Parliament of Georgia did not accept.¹²¹ On 15 August 2019, the Public Defender applied to the Constitutional Court and requested the lifting of general restrictions imposed on prisoners' access to the Public Defender's hotline in penitentiary establishments.¹²²

In the reporting period, the prison informal rule exerted pressure in this regard. According to some prisoners, after having been admitted to cells, informal leaders explained to them the "prison rules", their rights and duties and warned them about the consequences of violations. In particular, "watchers" tell new prisoners to approach them and not the administration or the Public Defender's Office should they have any problems.

According to prisoners, complaints are not recommended as they run counter to the informal rule; a complainant will be identified eventually and punished accordingly. Several prisoners in semi-open prison facilities told the Special Preventive Group that they had obtained permission from influential persons to talk to them. Besides, the Special Preventive Group witnessed an incident when a prisoner was going to discuss health problems and other prisoners silenced him. Unfortunately, along with the strengthening of the influence of the informal rule, the number of applications lodged from semi-open prison facilities with the Public Defender is reduced.

Equality

The National Preventive Mechanism, during the visits carried out in 2019, similar to the previous years, established that juvenile prisoners lack those rehabilitation services in establishments nos. 2 and 8 that are offered to juvenile prisoners in establishment no. 11.

Unequal treatment of prisoners remains problematic. The problem is that equality takes a form of psychological violence against prisoners. Prisoners placed in closed-type prison facilities spoke about unethical, sometimes offensive and discriminatory treatment on the part of the personnel. Such treatment is particularly manifested in verbal abuse by prison officers of prisoners employed in household services

¹²⁰ Proposal no. 15-11/6315 of the Public Defender of Georgia of 3 May 2018. The proposal concerned allowing unimpeded use of the Public Defender's hotline for persons placed in penitentiary establishments, irrespective of a disciplinary penalty imposed or having exhausted the monthly limit of telephone calls afforded by legislation.

¹²¹ According to Letter no. 5682/4-2 of the Committee of Human Rights Protection and Civic Integration, the Parliament of Georgia did not accept the Public Defender's proposal based on the position expressed by the then Ministry of Corrections and Probation. According to the ministry, this would give rise to a risk of abusing the right to unlimited use of the Public Defender's hotline by prisoners, as the establishment's administration would not be able to monitor the recipients of prisoners' telephone calls. The ministry further pointed out the need to find additional human and financial resources for implementing the initiative.

¹²² Complaint no. 1441, lodged by the Public Defender of Georgia was registered on 15 August 2018; available at: <<http://bit.ly/2TJDTja>> [accessed 21.01.2020].

in penitentiary establishments. For instance, one of the officers of the administration of establishment no. 15 used degrading terminology when referring to a certain category of prisoners in the conversation with the Special Preventive Group.

Under the conditions of the informal rule rooted in penitentiary establishments, prisoners are divided into categories and stigmatised. Prisoners responsible for household chores and doing cleaning jobs are especially vulnerable.¹²³

It is noteworthy that in the 2018 Parliamentary Report, the Public Defender recommended the Ministry of Justice to ensure assessment of needs of LGBT prisoners, prisoners doing household and cleaning jobs and development of plans based on identified needs. Despite having requested information from the Ministry of Justice, there is no response from the ministry about the progress of the fulfilment of the recommendation.

Proposals

To the Parliament of Georgia:

- To amend the Imprisonment Code of Georgia to the effect of allowing prisoners to call the Public Defender of Georgia and other inspection bodies without impediment;
- In 2020, to determine by the Imprisonment Code the duty of providing the minimum personal space of 4² metres per accused person;
- To amend the Imprisonment Code to the effect of determining the mandatory criteria for holding an oral hearing by a local council; at the same time, to maintain the council's authority to hold oral hearings as an additional measure, if needed; and
- To make legislative amendments in the light of the problems identified in the 2019 Special Report of the Public Defender of Georgia on Disciplinary Proceedings against Prisoners in Georgia.

Recommendations

To the Government of Georgia:

- To elaborate a plan ensuring the practical implementation of the guiding principles under the Istanbul Protocol during forensic medical examinations and their implementation on time; and
- To ensure the preparation and submission in 2020 of a report in accordance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹²³ They are called degrading names, placed separately (separated by an iron door); they have a separate room for visits and separate showers; their food is cooked separately. If there is any contact with such a prisoner, a prisoner has to harm himself or assault the prisoner responsible for cleaning. Each prisoner knows this informal rule).

To the Prosecutor General of Georgia:

- To initiate and conduct an effective investigation into the crime under Article 352 of the Criminal Code of Georgia regarding the disclosure of confidential information about the visit of the Public Defender on 23 January 2020.

To the Minister of Justice of Georgia:

- To ensure the fulfilment of duties under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to eliminate all those restrictions and obstacles preventing the National Preventive Mechanism from accessing prisoners' special category personal data. Furthermore, to ensure officers of penitentiary establishments are given brief instructions on the mandate and authorities of the National Preventive Mechanism;
- In 2020, to ensure gradual retraining of security officers and legal regime officers in all penitentiary establishments in issues such as conflict prevention, mediation, principles of professional ethics of the officers of the penitentiary service;
- To take all necessary measures to protect victims of violence, who are placed in penitentiary establishments, among others, by transferring them to other establishments, or avoiding their contact with prisoners who follow the criminal underworld;
- To ensure determining the maximum term of 24 hours of placing a prisoner in a de-escalation room; to ensure joint multidisciplinary work of a psychologist, a psychiatrist, a social worker, a doctor and staff members of other units of the establishment towards risk reduction/elimination; to ensure a safe environment in de-escalation rooms, including lining the walls and floors with soft material;
- In 2020, to amend Order no. 131 of the Minister of Corrections and Probation of Georgia of 26 October 2016 to the effect of determining the duty of a doctor employed in a penitentiary establishment to report to the independent investigative agency – the State Inspector's Service of Georgia – alleged incidents of ill-treatment;
- In 2020, to amend Order no. 131 of the Minister of Corrections and Probation of Georgia of 26 October 2016 to the effect of determining medical professionals' duty to describe, photograph and report injuries to independent investigative authorities, irrespective of the prisoner's informed consent, whenever he/she suspects that the prisoner could have been subjected to torture or other inhuman treatment;
- In 2020, to ensure training sessions in documenting and photographing injuries for all medical professionals that document injuries in accordance with Order no. 131 of the Minister of Corrections and Probation of Georgia of 26 October 2016 on Approving the Procedure for Documenting Injuries of Accused and Convicted Persons Sustained as a Result of Alleged Torture and Other Cruel, Inhuman and Degrading Treatment;
- To determine in the action plan for overcoming the problem of overcrowding in penitentiary establishments the duty of increasing the number of regime officers working in the prisoners'

accommodation blocks so that there is at least one officer responsible for order and security per 15 prisoners;

- To the end of overcoming the criminal underworld and its informal rule in penitentiary establishments, to ensure elaboration of strategy and its submission to the Public Defender's Office to present comments on it;
- To add a mandatory entry in the relevant official form on a decision about the use of a disciplinary measure which will contain information whether a prisoner concerned was given the document; to determine the form of a report on disciplinary charges which will contain information about who instituted disciplinary charges, regarding what incident and based on what evidence, against a particular prisoner;
- For providing each prisoner with 4² metres of living space, to ensure equal distribution of prisoners to cells in establishments nos. 2, 8, 14 and 15, and their transfer to other establishments of the same type with due consideration to prisoners' place of residence;
- to abolish the so-called barrack type dormitories in penitentiary establishment no. 17;
- In 2020, to ensure adequate inspection of and follow up to shortcomings in terms of physical environment identified in the Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15¹²⁴ and the Report of the National Preventive Mechanism on a Monitoring Visit to Establishment no. 3;
- In 2020, to allow prisoners in closed-type and special-risk prison facilities to spend more than one hour in the open air;
- To take all measures to ensure that prisoners in establishments nos. 2 and 8 have a stroll during the time determined by the daily schedule;
- In 2020, to ensure increasing the number of psychologists and social workers in establishments nos. 2, 8, 14 and 15 and balancing the number of psychologists and social workers;
- In 2020, to ensure the retraining of those social workers who do not have a bachelor's degree, a master's/equal to a master's or a doctorate in the field of social work;
- To ensure the implementation of new and diverse rehabilitation activities in establishments nos. 2, 8, 14 and 15; to increase the possibilities of involvement of convicted persons in rehabilitation activities; to ensure the introduction of rehabilitation activities in establishment no. 3 and involvement of convicted persons in these activities;
- In 2020, for creating incentives for prisoners to be involved in various rehabilitation activities to start working on introducing such a mechanism that will directly reflect on the reduction of unserved sentence or its commutation with a lesser sentence;
- To amend Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 to the effect of adding such elements that are related to convicted persons' plans, perspectives, opportunities and other matters;

¹²⁴ The Report of the National Preventive Mechanism on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, pp. 34-35, available at: <<http://bit.ly/2PP1UEs>> [accessed 18.02.2020].

- To enhance the role of social workers so that, within a few days from the admission of a new prisoner, a social worker explains to a prisoner his/her rights in detail and gives information about the procedure for filing a request/complaint and the procedure for the examination of these requests/complaints; to explain social workers' functions and supply all necessary key documents to work individually or in groups in reasonable periods with prisoners regarding their rights and duties, filing and examination of requests/complaints; to ensure this information is posted at places easily accessible for prisoners;
- To ensure confidential dispatch of complaints from establishments to place confidential complaint envelopes so that they do not depend on a prison officer to receive them, thus leading to the identification of a prisoner. Furthermore, to ensure that logistical means are freely accessible to all prisoners (paper, pens and envelopes) and to allow prisoners to keep a certain number of envelopes in cells;
- The Inspection General of the Ministry of Justice, through systemic inspection and appropriate responses, should identify and examine the breach of confidentiality of complaints in establishments nos. 2, 8, 14 and 15, incidents of reprisals against prisoners for filing complaints and ensure appropriate punishment of perpetrators;
- To ensure the implementation of rehabilitation activities in establishments nos. 2 and 8, tailored to the individual needs of juveniles;
- To eradicate the practice of placing juveniles in a de-escalation room and to ensure prompt involvement of a multidisciplinary group (a psychologist, a social worker, a doctor and a psychiatrist as needed) in critical situations for averting threats through verbal de-escalation;
- To amend Article 4.I of joint order no. 388–no.01-18/N of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 6 March 2019 to the effect of providing juveniles with four healthy meals a day, one meal being a three-course dinner; Before providing juveniles with four healthy meals a day, to ensure that serving them meals takes place at the times determined by the daily schedule in establishment no. 2;
- In 2020, to ensure isolation of accused persons from convicted persons in establishments nos. 2 and 8, at least in cells separated from each other;
- In 2020, at least, to double the number of mid-level health providers, nurses, including nurses on duty in penitentiary establishments and to ensure that dental nurses are added to dentist's rooms in the establishments;
- To ensure to a maximum extent possible direct contact between prisoners and doctors, without the involvement of non-medical personnel, among others, by installing a call-button in establishments nos. 2, 3, and 8 and to have a member of medical personnel to do daily rounds in cells;
- To provide a daily meal for the medical personnel in an establishment;
- To ensure professional training sessions and courses for establishments' medical personnel in terms of continuous medical education;

- In establishments nos. 8 and 15, considering the number of patients on the waiting list for consultations, to ensure the adequate frequency of visits of the specialised doctors so that the waiting period of patients does not exceed two weeks;
- To eradicate supply problems in establishment no. 8, to analyse the data regarding the demand and expenditure of medicines in the past and take it into account when purchasing medicines;
- For redeeming shortcomings related to maintaining patients' medical cards:
 - To record the summary/annual medical summaries at the end of each year, describing the dynamics of the health condition of a prisoner during the past year; provided consultations; referrals made, evaluations, diagnosis, provided treatment and its outcomes; and
 - To introduce an electronic information system for the personnel and the entire penitentiary system for eradicating shortcomings related to the maintenance of medical documentation;
- To take all measures to ensure that planned outpatient referral time-frames do not exceed one month; planned in-patient referral – four months and emergency delayed referral – five days;
- To elaborate strategy to recruit mental health-related service providers;
- To introduce periodic mental health screening in penitentiary establishments
- To ensure that, through increasing the number of regular psychiatrists and/or the number of visits of contracted psychiatrists, the number of daily consulted patients does not exceed 15;
- Considering the number of patients on the waiting list in establishment no. 15, to ensure the appropriate frequency of a psychiatrist's visits so that the waiting period does not exceed two weeks;
- Taking into account the specifics of penitentiary establishments, to determine by secondary legislation the composition of a psychiatric multi-group, duties of each member of the multi-group and the procedure for organising and providing psychiatric care;
- To develop a guideline on crisis prevention and crisis management and to ensure that the medical personnel of penitentiary establishments are retrained in crisis prevention and crisis management;
- A multidisciplinary group should assess the needs of those psychiatric patients that do not need in-patient treatment; based on identified needs, to develop individual biopsychosocial intervention plans and provide appropriate assistance;
- To ensure that a multidisciplinary group assesses the needs of those psychiatric patients that do not need in-patient treatment; based on identified needs, to develop individual biopsychosocial intervention plans and provide appropriate assistance;
- For managing side-effects of medicines, to ensure clinical and laboratory dynamic evaluation and control of agranulocytosis,¹²⁵ metabolism and, particularly, the risk of developing

¹²⁵ Reduction of the number of leukocytes (colourless cells) in the blood, available at: < <http://bit.ly/3awvQ04> >[accessed 25.12.2019].

hyperglycaemia;¹²⁶ and

- To ensure that the Division of Quality Management of Medical Services of the Inspection General examines the practice of issuing psychotropic medicines so that psychotropic medicines are not administered for other purposes.

3.3. System of the Ministry of Internal Affairs

In the 2018 Parliamentary Report, the 17 recommendations made for preventing torture and other cruel, inhuman or degrading treatment or punishment and conditions of detention in the system of the Ministry of Internal Affairs. Out of these 17 recommendations, nine recommendations were incorporated in the resolution of the Parliament of Georgia. One proposal made to the Parliament of Georgia was fulfilled. Out of the recommendations made to the Ministry of Internal Affairs of Georgia, two recommendations were fulfilled; six recommendations were fulfilled partially, and eight recommendations were not fulfilled. Detailed information about the progress of fulfilment of the recommendations is available in the Special Report of the National Preventive Mechanism.¹²⁷

Like in the previous years, in 2019, systemic recommendations that are issued over the years and are crucial for preventing torture and other ill-treatment remain unfulfilled in most cases. Citizens in police custody are still not provided with sufficient safeguards against ill-treatment.

Despite recommendations made by the Public Defender, video surveillance cameras are still not installed in police departments, divisions and stations, where an arrested person, a witness or a person volunteering for an interview stay; officers of territorial agencies are not provided with body cameras with improved specifications; the duty of police officers to record communication with citizens is still not determined by legislation; the pilot mode of the practice of taking an arrested person straight to a temporary detention isolator immediately after arrest has not been introduced; the Administrative Offences Code of Georgia has not been amended to the effect of allowing a judge to apply to a competent investigative authority at any stage of administrative proceedings where he/she suspects that a person under administrative responsibility could have been subjected to ill-treatment; the recommendation about conducting audio and video recording of an arrested person's questioning is unfulfilled; etc.

The Public Defender of Georgia welcomes the full and partial fulfilment of her recommendations in 2019 such as determining 14 days as the minimum term for storing video recording obtained through surveillance systems installed in police departments, divisions and units; elaboration of the draft document on Standard Operational Procedures of Arrest which lays down instructions of communicating rights to an arrested person; opening medical rooms in four temporary detention

¹²⁶ High sugar level in blood, see at: < <http://bit.ly/39r2uQI> > [accessed 17.02.2020].

¹²⁷ The 2019 Special Report of the National Preventive Mechanism.

isolators (TDIs) in Marneuli, Samtredia, Kobuleti, and Tsalka; development of a guideline with detailed instructions for medical professions employed in TDIs which, according to the ministry, will be approved in close future.

III-Treatment by Police Officers

In 2019, the Special Preventive Group received information from 38 interviewed persons about alleged incidents involving the use of disproportionate, clearly excessive force during arrests, torture and other ill-treatment after arrests by police in 13 cases.

In the TDIs, where members of the Special Preventive Group conduct monitoring, they study the case-files of all arrested persons brought to the respective TDI before the visit day and select those cases which raise suspicions about ill-treatment due to the circumstances surrounding the arrest, place, number and nature of injuries sustained.¹²⁸ Based on this principle, in 2019, the Special Preventive Group identified 449 suspicious cases.¹²⁹ Similar to the previous years, there are situations, where such cases are not notified to the prosecutor's office/the State Inspector. In 2019, out of the 449 cases examined by the Special Preventive Group, notifications have not been sent in 98 cases (21.8%). Among them, there are cases where injuries are inflicted in the facial area and near eye-sockets. For comparison, out of 508 cases examined in 2018, notifications were not sent in 110 cases (21.6%).

In this regard, it is also noteworthy that the Office of the Public Defender of Georgia made a recommendation to the Ministry of Internal Affairs of Georgia concerning instituting disciplinary proceedings against a doctor in one of the TDIs as the doctor had failed to notify investigative authorities about possible ill-treatment and injuries on an arrested person's body. The Ministry of Internal Affairs fulfilled this recommendation.

The above 229 suspicious cases identified by the Special Preventive Group covers arrests both in criminal and administrative proceedings. The data processed by the Special Preventive Group shows that in 143 cases (31.8%) out of the total number of 449 cases, persons arrested in administrative proceedings sustained injuries during the arrest and/or after the arrest.

As regards the trends over the years, in 2016, individuals arrested in administrative proceedings sustained injuries during the arrest and/or after arrest in 12.8% of suspicious cases studied by the Special Preventive Group; in 2017, the same indicator was 26.4% and 26.8% in 2018. These numbers did not increase significantly in 2019 (31.8%). Unfortunately, since 2017, there is a negative trend in treating persons arrested in administrative proceedings. It is noteworthy that the 2019 official statistics of the Ministry of

¹²⁸ Thus, those are suspicious cases, where members of the Special Preventive Group have reasonable grounds to suspect that an arrested person was subjected to possible ill-treatment given the circumstances of the arrest, place, number and nature of injuries sustained.

¹²⁹ Inspections were carried out in police territorial agencies and TDIs in Kakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Guria and Ajara regions.

Internal Affairs about bodily injuries found on persons placed in TDIs have not changed significantly compared to 2018.¹³⁰

Similar to the previous years, according to the data processed by the Special Preventive Group, the following trend is maintained in approximately one-third of the examined cases (in 2019 – 30.7%; in 2018 – 27.6 %; in 2017 – 30.1%; in 2016 – 31.3 %), the detention report does not indicate the injury described in medical records created in the TDIs. In 138 cases out of 449 cases examined in 2019, injuries described in medical records created in the TDIs are not entered in detention reports.

It should be pointed out that, out of the above 138 cases (the detention report not indicating injuries described in medical records made in TDIs), 125 reports were made in administrative proceedings and 13 in criminal proceedings.

It is noteworthy that the arrest report form does not contain a column where a police officer should indicate the physical condition of an accused person (injuries found on the body of an arrested person) during the arrest. Even though injuries were found on a person in the said 13 cases upon admission to a TDI, according to their arrest reports, there were no injuries to be found. It is less likely that the officer filling out the report missed the visible injuries in the eye-socket area. In such cases, there is a strong presumption that an arrested person was possibly subjected to physical violence after the arrest, before admission to a TDI.

Stemming from all the above-mentioned, the Public Defender believes that the situation in 2019 in terms of treatment of arrested persons by police has not significantly changed compared to 2018. However, it is noteworthy that, similar to 2017 and 2018, the trend of worsening the treatment by police of persons arrested in administrative proceedings is maintained in 2019.

The data processed by the Special Preventive Group and results of questioning of arrested persons show that use of excessive force by police during arrests, physical and psychological violence after arrests as well as incomprehensive documentation of bodily injuries and use of force remain to be problematic. Furthermore, it should be noted that there are cases, especially juvenile cases that are currently examined by the Public Defender's Office that concern alleged torture and other cruel, inhuman and degrading treatment of arrested persons by police in 2019.

In 2019, the Public Defender's Office started the examination of cases involving alleged ill-treatment of three juveniles. It is alarming that one juvenile committed suicide after being questioned by an investigator in a police station. The child became a victim of psychological violence from police officers. The State Inspector's Service arrested M.Ch and charged her with coercion to give a statement under Article 335 of the Criminal Code of Georgia. Another juvenile was subjected to physical violence by a police officer. According to the juvenile, the injuries sustained included a fracture of an upper limb. According to the Office of the Prosecutor General of Georgia, one person – an officer of Bolnisi District Police of the Ministry of Internal Affairs, K.Q. was charged with inhuman and degrading treatment. In

¹³⁰ Information is available at: < <http://bit.ly/38w8dDz>, >[accessed 05.02.2020].

another case, police officers threatened a juvenile with deprivation of liberty and requested admission of killing a third person who later turned out to be alive. The representative of the Public Defender's Office, when visiting the juvenile, observed numerous injuries on the child's body. At this stage, an investigation is being conducted into exceeding official powers and not a single police officer has been charged so far. The juvenile is not recognised as a victim.

Safeguards Against Torture and Ill-Treatment

This chapter discusses the trends of using statutory safeguards by arrested persons against torture and ill-treatment by law enforcement officers.

Informing about rights– under the Criminal Procedure Code of Georgia, an arresting officer must notify an arrested person about his/her rights and the ground for arrest. However, similar to the previous years, in 2019, the communication of rights by police to an arrested person remained problematic. The interviews conducted by the Special Preventive Group showed that arrested persons are usually not notified about their rights either in the process of arrest or before questioning or they are informed partially.

The Special Preventive Group's visits revealed that in the majority of police departments and units, information posters posted in the common working areas are only about domestic violence issues and contain no information about procedural rights of arrested persons. Conversely, in TDIs, arrested persons have access to the list of procedural rights in writing and translated in various languages and, upon request, an arrested person can have a copy of the document in the cell too.

Before admission to a TDI, arrested persons have to stay in police custody for four hours. During this period, numerous investigative actions can be conducted. Therefore, it is imperative to notify arrested persons about their rights during the arrest verbally and upon the very first opportunity in writing.¹³¹ In recent years, the CPT in its recommendations made to various countries requires more procedural safeguards from governments to ensure that arrested persons are informed about their rights to a maximum extent.¹³²

Access to a lawyer and informing family – arrested persons are most vulnerable in the very first hours in terms of pressure and ill-treatment on the part of police. Therefore, it is imperative to ensure their access to a lawyer immediately. This is a crucial safeguard for an arrested person against police ill-treatment.

¹³¹ The 28th General Report of the CPT, 2018, para. 66, available in English at: < <http://bit.ly/2TDblrL> >[accessed 30.01.2020].

¹³² The Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 September 2016, CPT/Inf (2018)2, 01.02.2018, para. 23, available in English at: < <http://bit.ly/2VNWyNG> < >[accessed 30.01.2020].; The Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2019 CPT/Inf (2019)35, 28.11.2019, available in English at: < <http://bit.ly/38sqscR> >[accessed 30.01.20, 20].

It is commendable that according to the data processed by the Special Preventive Group using statistical analysis programme, the rate of involvement of a lawyer within the first 24 hours considerably improved in 2019.

In particular, in 24.6% of criminal cases, a lawyer was accessible within the first 24 hours; in 14% of cases, a lawyer was accessible within the first 48 hours; and in 33% of cases, a lawyer was accessible within the first 72 hours.¹³³ According to alternative sources, in most cases, a lawyer meets an accused person in a TDI for the first time.¹³⁴

In the reporting period, when talking to the Special Preventive Group, many lawyers stated that arrested persons are advised by police officers not to call a lawyer as they do not need legal assistance and it will cost them a lot. Police officers tell arrested persons that if they cooperate, confess and opt for plea bargain procedure they will be assigned a public lawyer within the mandatory legal aid scheme. According to lawyers, there are cases when a lawyer is in a police building and his/her meeting with an arrested person is hindered under some pretext as if they do not know if the person concerned is actually in the building or if he/she actually wants to talk to a lawyer.¹³⁵ It is also noteworthy that it is still not documented when an arrested person requests a lawyer's assistance and within what time after the request the lawyer gets involved in the case.

As regards informing the family, according to the data processed by the Special Preventive Group, notifications were given within the statutory three-hour term¹³⁶ in 94.4% of cases. It is commendable that the positive trend in this regard is maintained.¹³⁷ At the same time, it is imperative to ensure that the progress is not interrupted as the exercise of the right to inform one's family is closely linked to the right to access to a lawyer. The relevance of this issue is demonstrated by those cases where arrested persons face obstacles in connecting with their families.

Similar to the previous years, the Public Defender deems it necessary that the Ministry of Internal Affairs should study to what degree the right of an arrested person to contact his/her family and lawyer is

¹³³ Statistics of involving a lawyer within the first 24 hours according to years: 15% of cases in 2017, and 11.9% of cases in 2018.

¹³⁴ Out of 38 interviewed arrested persons, in three cases, the first meeting with a lawyer was in a police unit/station; in 17 cases, the first meeting with a lawyer was in a TDI; in six cases, the first meeting with a lawyer was in a penitentiary establishment; and in four cases, the first meeting with a lawyer was during court proceedings. There is no information available about the place of the first meeting with a lawyer in three cases; and five arrested persons had no lawyer at all. This information is confirmed by 52% of lawyers interviewed online and lawyers who attended a group interview with the Special Preventive Group.

¹³⁵ According to 52.8 % of lawyers interviewed online, in 2019, they had cases where they learned that while arrested persons had requested a lawyer they were not contacted. According to 55.9% of lawyers, in those cases, where the first meeting with a lawyer was delayed, arrested persons had already been questioned, they had been threatened, or they showed visible traces of suspicious injurious.

¹³⁶ The Criminal Procedure Code, Article 177.1

¹³⁷ The trend according to years: 71% in 2017, and 86.8% in 2018.

respected by the agencies under its authority and whether this right is duly communicated to arrested persons.¹³⁸

Access to a doctor and medical examination -- according to the monitoring outcomes, persons in police custody have access to timely medical services, except in a few cases. It is commendable that, in 2019, the number of medical units in TDIs increased from 15 to 19.

It is noteworthy that, when talking with the Special Preventive Group, half of the interviewed arrested persons state that medical examination in a TDI was conducted with respect for confidentiality. According to the other half, TDI officers were either present at their medical examination or standing by the door eavesdropping. Conducting medical examination in such a non-confidential environment compels an arrested person to hide an actual origin of injury out of fear.

To identify an incident of ill-treatment, it is most important for a medical professional to establish consistency between the injuries found on an arrested person's body and the origin of those injuries based on the person's report of ill-treatment.¹³⁹ Similar to the previous years, the practice of documenting injuries by doctors is punctuated with shortcomings. Based on the analysis of the processed information, it can be said that, in most cases, circumstances about sustaining injuries (the situation and the method) is described in an incomprehensive manner or not described at all.¹⁴⁰ It is noteworthy that a doctor sometimes establishes consistency between the actual injury and the circumstance in which it was inflicted so that the circumstances are not fully described or not described at all.¹⁴¹

As regards photographing injuries, out of 351 cases of documenting injuries in accordance with the Istanbul Protocol that were examined by the Special Preventive Group, photographs are taken in 56 cases. The Special Preventive Group examined 40 cases; photographs were of unsatisfactory quality in 36 cases. It is also noteworthy that the TDIs visited by the Special Preventive Group did not have a uniform procedure for storing photographs.

Audio and video recordings – the CPT's recommendation to the Member States is to conduct uninterrupted electronic (audio and/or video) recording of interrogation in police stations, which is an additional significant safeguard against torture and other ill-treatment.¹⁴² Electronic recordings should be kept securely for a reasonable period, made available to the detained persons concerned and/or their lawyers, and be accessible to representatives of international and national monitoring bodies (including

¹³⁸ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 61.

¹³⁹ The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, para. 104.

¹⁴⁰ In 275 cases (78%) out of 351 cases; only in 76 cases, circumstances were comprehensively described.

¹⁴¹ In 177 cases out of 275 cases, while circumstances about injuries were not described comprehensively or at all, a doctor established consistency. In six cases, circumstances were described comprehensively; however, a doctor did not establish consistency.

¹⁴² The Concluding observations on the sixth periodic report of the Russian Federation, the United Nations, the Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018.

National Preventive Mechanisms), as well as investigative authorities.¹⁴³ In contrast, under the legislation of Georgia, audio and/or video recording of questioning/interrogating arrested persons in police agencies is not mandatory and remains within police officers' discretion.

According to the information supplied by the Ministry of Internal Affairs, in 2019, all territorial agencies, except for three police agencies are equipped with an internal and external CCTV system.¹⁴⁴ According to the ministry, the CCTV cameras installed in buildings cover only the entrances and common areas. It is also noteworthy that police agencies have various infrastructure and a citizen or an arrested person might happen to be in any part of the building. However, not all the areas where an arrested person or a citizen might be kept are covered by the surveillance system.¹⁴⁵

It is also noteworthy that offices of a Chief of Police or a Deputy Chief of Police are actively used for interviewing an arrested person or a person being in a police building with a different status.¹⁴⁶ However, none out of the 30 police divisions visited by the Special Preventive Group is equipped with an audio-video surveillance system, which poses a risk for ill-treatment.¹⁴⁷ Therefore, at this stage, considering the fact that, because of police agencies' infrastructure, conducting interviews with above persons in the offices of a Chief of Police/Deputy Chief of Police seems inevitable, they must be equipped with a CCTV system.

The Public Defender of Georgia believes that any area in police agencies where an arrested person or a citizen might be kept should be fully covered by a CCTV system. CCTV systems should be installed on all internal and external premises of police agencies, where an arrested person might be kept except those cases where this can interfere with an arrested person's right to respect for private life or confidentiality of a meeting with a lawyer or a doctor.¹⁴⁸

Apart from the above-mentioned, like in the previous years, the practice of using body cameras by police officers remains problematic. Under the legislation in force, a patrol officer is obliged to place the recordings obtained through body camera attached to the uniform on the special server where the

¹⁴³ *Inter alia*, the 28th General Report of the CPT, 2018 para. 81; available in English at, available at: < <http://bit.ly/2TDblrL> > [accessed 01.02.2020].

¹⁴⁴ CCTV systems are not installed in the following police agencies: Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; Akhagori District Division of Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; and Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; and Zhakhunderi Police Station of Lentekhi District Police Division.

¹⁴⁵ There is a relatively better situation in terms of the CCTV coverage area in the district police divisions of Kobuleti, Chokhatauri, Ozuergeti, Ambrolauri, and Kvareli as well as police departments of Imereti, Racha-Lechkhumi and Kvemo Svaneti.

¹⁴⁶ According to police officers, an arrested person was kept in the office of a Chief of Police or a Deputy Chief of Police in 17 cases and a person visiting the agency under another status in 25 cases.

¹⁴⁷ Arrested persons and lawyers told the Special Preventive Group that these areas fall within the risk-groups. According to them, sometimes there are incidents of ill-treatment in these areas.

¹⁴⁸ The concluding observations on the sixth periodic report of the Russian Federation, the United Nations, the Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018, available at: < <http://bit.ly/2TEhpiM> > [accessed 04.02.2020].

recordings will be stored for 30 days.¹⁴⁹ As regards the obligation to make audio and video recording of patrol officers' communications with citizens, there is no such statutory duty and making audio and video recording in such cases depends on a patrolling police officer's discretion. It should be noted that, apart from patrol officers, officers of the Central Criminal Police Department and territorial agencies also have communication with citizens as a part of their official duties. However, they do not have the duty to record their communication with citizens (this falls within the discretion of an officer). Besides, there are no provisions governing the procedure and terms of storing recordings in this case either.

Against the background of such legislative regulation, body cameras are seldom used in practice.¹⁵⁰ Even when they are used, there are few cases when a short video is recorded by a body camera and depicting communication of police officers with citizens (not showing the full picture but only being in favour of police officers) are admitted as evidence.¹⁵¹ Besides, according to police officers, poor technical specifications of body cameras are also problematic.¹⁵² Therefore, it is imperative to gradually replace body cameras of poor quality with new cameras of better specifications.

Duration of being under police control– there is a high risk of physical violence and psychological pressure exerted by police officers in cases of extended police custody. Considering this fact, the Public Defender of Georgia has been recommending for years the amendment of the Criminal Procedure Code to the effect of determining the obligation of the arresting authority to immediately take an arrested person to a TDI. Under Article 174.2 of the Criminal Procedure Code of Georgia, Georgian legislation, an arresting official shall immediately take an arrested person to the nearest police station or another law enforcement agency. There is no statutory term determined for those cases where an arrested person is taken to a police station so that the arrestee can stay in that station before they take him/her to a TDI. The monitoring revealed that, in rare cases, arrested persons are kept in police stations before taking them to a TDI from 13 to 20 hours. Usually, the average period for which arrestees are kept in police stations is four hours.

The Public Defender's Office believes that there are strong arguments in favour of bringing arrested persons to a TDI right after the arrest. When an arrested person is taken to a TDI, he/she immediately undergoes medical examination in accordance with the Istanbul Protocol. It is more likely that an arrested person admitted to a TDI will report an incident of alleged ill-treatment by police. The TDIs register

¹⁴⁹ Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 on Approving Instructions on the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 12¹.

¹⁵⁰ Out of 38 arrested persons interviewed by the Special Preventive Group, only two stated that body cameras had been used during the arrests.

¹⁵¹ According to the results of interviews with lawyers practising in the regions, 65.4% of lawyers interviewed online stated that body camera recordings would have had a great impact on proceedings as evidence had they been available.

¹⁵² During the monitoring carried out by the Special Preventive Group in regions, officers of police divisions and departments stated that they had been equipped with malfunctioning cameras and those with low capacity, which creates obstacles for them.

rigorously in their logbooks the timestamp of bringing in an arrested person and there are better material conditions in the TDIs.¹⁵³

Under Article 21 of the Organic Law on Police, the police may invite a person by notification to interview him/her at a police station. This person does not have any legal status and his/her appearance before police authorities and leaving police premises are formally voluntary.¹⁵⁴ In the cases of abuse of power by police, pressure or physical violence against individuals invited by this procedure, citizens are not protected by procedural safeguards from ill-treatment. To this end, it is important to develop a mechanism, which will enable the monitoring bodies to receive credible information about a person's status, his/her entering and leaving a police station.

Maintaining documents in police agencies – the United Nations Subcommittee against Torture (SPT) calls upon the Member States to ensure that all information about arrested persons is maintained in a standard format of filed documents and entries. Documentation should be regularly verified by the supervisory police authority and made accessible for the National Preventive Mechanism.

Similar to the previous years, the practice of deficient maintenance of documentation about arrested persons in territorial police agencies remains problematic. Shortcomings related to maintaining logbooks were identified in 17 police agencies out of 30 agencies visited by the Special Preventive Group.¹⁵⁵ Similarly, in 31.3% of cases examined in 2019, arrest reports fail to indicate injuries described in medical records made in TDIs.¹⁵⁶ Out of 328 administrative cases, arrest and TDI reports contradict each other in 123 cases (37.5%); documentation about the disobedience/resistance and use of force is similarly deficient.¹⁵⁷

The Ministry of Internal Affairs should introduce systematised databases in police agencies about arrested persons at least in pilot mode. This would create additional safeguards against torture and other ill-treatment.

Judge's role – A judge can play an important role in terms of avoiding incidents of ill-treatment from the police.¹⁵⁸ The Public Defender's Office welcomes the amendment to Article 191¹ of the Criminal Procedure

¹⁵³ For more information, see the 2018 Special Report of the National Preventive Mechanism of the Public Defender of Georgia, available at: < <http://bit.ly/3awdc8x>, > [accessed 03.02.2020].

¹⁵⁴ Several arrested persons told the Special Preventive Group that they had gone to the police agency voluntarily. Interviews with lawyers revealed cases where, although their clients did not have a status of an arrested person, their movements were restricted. Thus, it can be said these persons were in *de facto* police custody.

¹⁵⁵ In some cases, the date and time of a person's arrest cannot be established; the date and time of removing a person from a police agency is not clear; sometimes, the time of taking a person to a TDI precedes the time of arrest; or the time of bringing a person to a police agency precedes the time of arrest. In a number of cases, no date or time is indicated for bringing an arrested person to a prison/TDI; sometimes it is not clear what happened to him/her at all.

¹⁵⁶ In 2018, similar to 2017, in approximately one third of the examined cases, (in 2018 – 27.6%; in 2017 – 30.1%; in 2016 – 31.3 %), an arrest report does not indicate injuries described in TDI medical records.

¹⁵⁷ In 2019, use of force is indicated in 64 arrest reports (14%). Out of 64 arrest reports, use of force is described in 12 cases (one report describes use of force fully and eleven arrest reports describe use of force only partially).

¹⁵⁸ Article 2.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Code of Georgia that came into force on 1 July 2019. Under the amendment, at any stage of criminal proceedings, a judge applies to a competent investigative authority in case of suspicion concerning torture, inhuman or degrading ill-treatment an accused/convicted person could be subjected to or when an accused/convicted person him/herself states about it before the court. However, according to lawyers specialised in criminal law,¹⁵⁹ there are cases where a judge does not examine incidents of alleged ill-treatment by police officers. Some accused persons interviewed by the Special Preventive Group stated that they had visible multiple injuries (including in the facial area) and a judge had failed to pay attention to this issue.

It is noteworthy that according to the information supplied by the Supreme Court of Georgia, in 2019, judges of district (city) courts of Georgia applied to investigative authorities based on Article 191¹ of the Criminal Procedure Code of Georgia in 25 cases (this included the stages of examination of merits as well as the first appearance of an accused person before the court).¹⁶⁰

Conditions in TDIs

The Public Defender of Georgia welcomes renovation works conducted to improve infrastructure and living conditions in TDIs in 2019.¹⁶¹ However, despite the aforementioned, conditions existing in many TDIs still need to be improved and brought closer to international standards.

As a result of visits carried out in 2019,¹⁶² it was revealed that some TDIs are not adequately equipped with natural¹⁶³ and artificial ventilation¹⁶⁴ or light; some of them need basic renovation.¹⁶⁵ Besides, none of the TDIs inspected by the Special Preventive Group in 2019 offered reasonable accommodation for persons with disabilities.

Apart from the abovementioned, toilets in many TDIs are semi-isolated. This is particularly problematic in multiple-occupancy cells where an arrested person attends to nature call in the presence of another person/s. There are problems related to standards of hygiene.

¹⁵⁹ According to 45.2% of interviewed lawyers, a judge did not adequately examine the incident of an alleged ill-treatment by police officers. For instance, according to two lawyers from Ajara, even in those cases where alleged use of violence against a person is evident, the court does not refer the case for instituting investigation into ill-treatment.

¹⁶⁰ Letter no. P-96-20 of the Supreme Court of Georgia, dated 19 February 2020.

¹⁶¹ TDIs in Baghdati, Samtredia, Senaki, Poti, Sighnaghi, Lanchkhuti, Ozuergeti, and Kobuleti have been renovated.

¹⁶² In TDIs located in the following regions: Kakheti, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti, Ajara and Guria.

¹⁶³ There is a problem of natural light and ventilation, due to small windows in the cells of Ajara and Guria Regional TDI, Tchiatura, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti Regional TDIs, Samtredia, Zestaponi, Baghdati, Sagarejo, Kakheti Regional TDIs, Kvareli and Lanchkhuti TDIs.

¹⁶⁴ Artificial ventilation in cells is not adequate in Ajara and Guria Regional TDI and in Baghdati TDI.

¹⁶⁵ There are patches of removed paint and traces of dampness and dirt on the walls of the cells in Ajara and Guria Regional TDI, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti Regional TDIs and Sagarejo TDI.

Proposals

To the Parliament of Georgia:

- To amend the Code of Administrative Offences Code of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, a judge applies to the competent investigative authorities.

Recommendations

To the Ministry of Internal Affairs of Georgia:

- To ensure in a pilot mode, in several police agencies recording with technical means (audio and video recording) the process of notification of rights by police officers to arrested persons;
- To install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person willing to give a statement has to stay;
- In 2020, to gradually equip officers of territorial agencies with body cameras with improved technical capacities and to determine by secondary legislation their duty to record their communication with citizens as well as the procedure and terms of storing recordings;
- To determine by secondary legislation the duty of patrol officers to record their communication with citizens;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add a column to the sample of a protocol approved by Annex 9 for entering the following information: the time of drawing the report; the decision on the injuries on an arrested person's body; the circumstances of the arrest; was there resistance to police; was any force used and in which manner;
- In 2020, to increase the number of those TDIs where a medical centre is functioning; to ensure that in those TDIs, where due to small number of arrested persons, it is not planned to open a medical centre, physicians are contracted;
- To ensure uninterrupted audio and video recording of questioning an arrested in several police agencies in pilot mode;
- To ensure in pilot mode the practice of taking an arrested person straight to a temporary detention isolator immediately after arrest;
- To ensure conducting training sessions for medical professions employed in TDIs about instructions on photo-recording injuries on detained persons and storing the respective photographic material;
- Through maintaining a register, to ensure documenting all persons brought to police departments, divisions and stations indicating their status, the time of entering and leaving administrative buildings;
- In 2020, to ensure the elimination of shortcoming in terms of living conditions in TDIs; and

- To introduce systematised, standardised and unified databases replacing logbooks maintained in police agencies.

3.4. Psychiatric Establishments

The National Preventive Mechanism made 19 recommendations in the 2018 Parliamentary Report of the Public Defender of Georgia for improving the conditions of preventing torture, inhuman or degrading treatment or punishment in psychiatric institutions. Among them, seven recommendations were reflected in the resolution of the Parliament of Georgia. None of the five proposals made to the Parliament of Georgia was fulfilled. Out of three recommendations made to the Government of Georgia, one recommendation was fulfilled, and two recommendations were not. Out of the 11 recommendations made to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereinafter the “ministry”) two were fulfilled, eight were not and it was not possible to assess the fulfilment of one recommendation. Detailed information about the situation of the fulfilment of the recommendations is available in the Special Report of the National Preventive Mechanism.

Similar to the previous years, in 2019, those systemic recommendations that have particular significance for preventing torture and other ill-treatment remain unfulfilled. Similar to the previous years, in 2019, the situation in large institutions remains to be a serious problem. There are ten large psychiatric institutions in Georgia. The Public Defender believes that conditions and therapeutic environment existing in these institutions cannot ensure patients’ dignified life or protection of their rights. Treatment with antipsychotic medicines needs to be reviewed, updated and changed.

For years, the Public Defender of Georgia has been addressing the Parliament of Georgia with proposals to amend the Law of Georgia on Psychiatric Care to the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook); issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of his/her right to appeal.¹⁶⁶ It is noteworthy that the CPT discussed the importance of the need to amend the regulations on physical restraint in the report to the Georgian Government published in 2019.¹⁶⁷ Unfortunately, these proposals remain unfulfilled to this day.

¹⁶⁶ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 71.

¹⁶⁷ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 134, available in English at: < <http://bit.ly/38p44kK> >[accessed 15.01.20].

III-Treatment

During the visit to the psychiatric in-patient facility of the Batumi Medical Centre,¹⁶⁸ the monitoring team learned that, similar to the previous years, the personnel treat patients rudely.¹⁶⁹ The incidents of rude treatment of patients by the personnel were also confirmed by the establishment's director and observed by the monitoring team. As regards the National Centre for Mental Health, during its visit,¹⁷⁰ the Special Preventive Group did not receive any information about verbal or physical abuse of patients by personnel.

Apart from the above-mentioned, the Special Preventive Group revealed incidents of labour exploitation of patients.¹⁷¹ In exchange for cigarettes or additional food portion, the personnel at the National Centre for Mental Health uses free labour of patients/beneficiaries. Some patients/beneficiaries clean toilets, the yard, help personnel in caring for another patient or restraining an agitated patient and bring food from the kitchen. In the Special Preventive Group's opinion, such practice amounts to patients' labour exploitation¹⁷² as, on the one hand, there is no opportunity for patients to follow other meaningful and therapeutic occupation as an alternative in the clinic and, on the other hand, patients/beneficiaries have to do these chores to get food and cigarettes.

Monitoring carried out in 2019 revealed that, similar to the previous years, against the background of insufficient supervision on the part of the personnel, there are incidents of inter-patient violence in the psychiatric in-patient facility of the Batumi Medical Centre and the National Centre for Mental Health. This frequently leads to serious physical injuries. The group established that inter-patient conflicts are mostly related to taking away by force/extorting personal items by one patient from another. Furthermore, in the Special Preventive Group's opinion, placing acute and long-term inpatients as well as patients with mental development impairment together with other patients in units nos. 2 and 7 is one of the significant risk factors for violence in the National Centre for Mental Health.

The Public Defender of Georgia believes that, for the fulfilment of the duty of personnel of psychiatric institutions to care for patients and among others, protect them from dangers emanating from other patients, it is necessary to staff psychiatric institutions adequately.¹⁷³

Safeguards against III-Treatment of Patients

During 2019, the following remained problematic in psychiatric institutions: the system of assessment and reduction of risks emanating from patients; the existing practice of documenting incidents of violence

¹⁶⁸ 18-19 September 2019.

¹⁶⁹ Manifested by verbal and physical abuse.

¹⁷⁰ 22-25 April 2019.

¹⁷¹ The Concept of 'Exploitation' in the Trafficking in Persons Protocol, the United Nations Office on Drugs and Crime (UNODC), p. 21, available at: <<https://bit.ly/3118bRo>> [accessed 20.01.2020].

¹⁷² The Concept of 'Exploitation' in the Trafficking in Persons Protocol, the United Nations Office on Drugs and Crime (UNODC), p. 21, available at: <<https://bit.ly/3118bRo>> [accessed 20.01.2020].

¹⁷³ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 108, available in English at: <<http://bit.ly/38p44kK>> [accessed 29.12.2019].

and response to them; the existing system of assessment of personnel performance and complaint examination mechanism and informing patients about legal remedies and their accessibility.

It should be positively mentioned that since March 2019, the patient assessment system been implemented in all units of the National Centre for Mental Health. Despite this, during patients' psycho-diagnostic examination, risk assessment triggers¹⁷⁴ are not identified in patients prone to violence. This would have enabled personnel to know in advance about the factors provoking patients and prevent possible violence from them. Examination of documentation maintained in the establishment shows that no psychotherapeutic work is done with patients posing a high risk of violence to manage their behaviours and the treatment is limited to pharmacotherapy; in particular, the dosage of medicines is increased.

Maintaining documentation regarding incidents of violence against patients and response to such incidents is problematic. There is a special logbook in the Batumi Medical Centre, where more or less accurate information is entered. However, there is a completely different situation in this regard at the National Centre for Mental Health. Similarly, the response to violent incidents is problematic. There are no legal documents in the establishments informing who and under what circumstances notifies investigative authorities about incidents of violence and no documentation is maintained on the notification statistics.

Furthermore, to ensure the protection of patients' rights and provision of adequate services for them, there are internal complaint mechanisms within the National Centre for Mental Health and Batumi Medical Centre, which is undoubtedly commendable. However, in the Special Preventive Group's opinion, this internal mechanism of protecting patients' rights is inadequate and cannot ensure adequate protection of the rights. It is also problematic that the establishments do not inform patients adequately about their rights or external complaint mechanisms. The duty to inform is not regulated by any normative act.

Physical and Chemical Restraint

The Public Defender shares the spirit of the United Nations Convention on the Rights of Persons with Disabilities¹⁷⁵ and the approach of the World Health Organisation in terms of mental healthcare based on recovery-oriented services that respect and promote human rights.¹⁷⁶ The Public Defender believes that

¹⁷⁴ Situations or stimuli that cause a person's suffering, frustration, anger, and agitation, which in turn can lead to a potentially tense and challenging situation.

¹⁷⁵ The Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities.

¹⁷⁶ Quality Rights is WHO's global initiative to improve the quality of care provided by mental health services and promote the human rights of people with psychosocial, intellectual and cognitive disabilities, 2017, available at: < <http://bit.ly/2vG0BAP>,> [accessed 25.12.2019].

the state should facilitate the reduction of the use of means of physical¹⁷⁷ and chemical¹⁷⁸ restraint against patients in in-patient facilities and their complete eradication. In the opinion of the Public Defender of Georgia, the approaches taken by the state and the mental health institutions are not oriented towards these objectives. The Law of Georgia on Psychiatric Care does not state expressly an establishment's duty to prevent crises, identify and manage potential triggers and warning signs. It is imperative for the ministry, based on the requirements of this law, to introduce a uniform standard and impose an obligation on psychiatric establishments to elaborate binding internal guidelines on crisis prevention and management to minimise risks of escalating situations into crises.

The Public Defender and the Special Preventive group welcome the approval of methods of verbal de-escalation in the Batumi Medical Centre and the National Centre for Mental Health. However, the methods of de-escalation are not applied in practice in these establishments and the existing inappropriate practice of crisis management by personnel using these methods is problematic.¹⁷⁹

Apart from the above-mentioned, justification of the use of physical constraint (comprehensive description of reasons and circumstances in the documentation)¹⁸⁰ is problematic in the National Centre for Mental Health. This violates the Instructions on the Rules and Procedures for the use of Means of Physical Restraint approved by the minister's order.¹⁸¹ The use of seclusion is not documented; entries about the use of chemical restraint are not maintained properly; incidents involving forced injections and the use of physical restraint against formally voluntary patients in the facility are also problematic.¹⁸²

Psychiatric Care

Treatment with Antipsychotic Medicines

Psychiatric care provided in the Batumi Medical Centre and the National Centre for Mental Health is not biopsychosocial and mostly limited to pharmacotherapy. The practice of administering several antipsychotic medicines at once is problematic in these clinics. The examination of medical cards show

¹⁷⁷ Under Article 16.2 of the Law of Georgia on Psychiatric Care, seclusion of a patient in a specialised ward and/or his/her physical immobilisation constitute methods of physical restraint.

¹⁷⁸ According to the CPT, chemical restraint implies forcible administration of medication for the purpose of controlling a patient's behaviour. See Means of Restraint in Psychiatric Establishments for Adults, (Revised CPT Standards), Introduction, p. 2, available at: < <http://bit.ly/333ycBb> > [accessed 03.01.2020].

¹⁷⁹ For instance, there are the so-called supervision/isolation wards in the psychiatric in-patient facility of the Batumi Medical Centre, where patients needing enhanced supervision due to their mental state are placed. Wards are overcrowded and uncomfortable and there is a high risk of self-harm when patients are placed there.

¹⁸⁰ Under the standards offered by the CPT, every resort to means of restraint should always be expressly ordered by a doctor after an individual assessment, or immediately brought to the attention of a doctor with a view to seeking his/her approval. To this end, the doctor should examine the patient concerned as soon as possible. It is necessary to document this decision in writing and to provide reasons for adopting it (no blanket authorisation should be accepted).

¹⁸¹ Order no. 92/N of the Minister of Labour, Health and Social Affairs of Georgia approving the Instruction on the Rules and Procedures for the use of Means of Physical Restraint against Patients with Mental Disorders, para. 6.

¹⁸² Examination of the documentation showed that, in 2019, in the Batumi Medical Centre, in particular, means of physical and chemical restraint were used against four patients, in total. All four patients were receiving formally voluntary treatment. From 2018 to 24 April 2019, in the National Centre for Mental Health, in most of the cases involving the use of means of physical and chemical restraint in the common unit of the establishment, patients had the formally voluntary status.

that, in several cases, patients were prescribed two, three or more antipsychotic medicines at once; sometimes in combination with Zopin (Clozapine).

Furthermore, there is a problem of administering overdoses of medicines in the National Centre for Mental Health¹⁸³ upon admission of a patient to the establishment for prompt tranquillisation and sedation (non-therapeutic reasons) and later during medicinal treatment. Detailed information in this regard is available in the Special Report of the National Preventive Mechanism.

Psychosocial Rehabilitation

Despite international standards and statutory requirements, biopsychosocial rehabilitation measures in the in-patient facilities of the National Centre for Mental Health and Batumi Medical Centre are extremely rare.¹⁸⁴ There is no practice of multidisciplinary approach or recovery-oriented treatment and rehabilitation based on the study of patients' needs or the practice of drafting individual plans and their implementation. The clinics lack qualified human resources¹⁸⁵ and material resources. Due to the absence of personnel working on psychosocial rehabilitation in the National Centre for Mental Health, there was practically no rehabilitation process conducted in the clinic.¹⁸⁶

Somatic (Physical) Health

In 2019, management of somatic (physical) health problems and accessibility of medical services in psychiatric establishments remained problematic.

In the reporting period, access to a general physician (GP) was also problematic. This service is associated with additional costs for patients.¹⁸⁷ Furthermore, referral of patients covered by the Universal Healthcare Programme by ambulance/emergency services is also problematic. Such referrals are usually arranged when health conditions are aggravated, which is mostly preconditioned by the absence of timely

¹⁸³ In the assessment of the Special Preventive Group, it may amount to overdosing when one medicine is prescribed with the maximum dose in combination with either average or even minimum dose of another antipsychotic medicine. Such combination of medicines is dangerous and might have a lethal outcome.

¹⁸⁴ For instance, there is an area allocated for occupational therapy only in the women's unit in the Batumi Medical Centre. It was established in interviews that patients placed in women's "acute" units and male patients in general had never been offered to participate in such activities. Furthermore, the logbooks maintained by instructors of occupational therapy proves that mostly the same patients, up to 15 individuals, take part in various activities.

¹⁸⁵ Due to the absence of personnel working on psychosocial rehabilitation in the National Centre for Mental Health, there was practically no rehabilitation process conducted in the clinic. As regards the Batumi Medical Centre, there were eight persons employed in the clinic to provide psychosocial rehabilitation: (two psychologists; two social workers; and two instructors of occupational therapy). However, their work cannot ensure patients' psychosocial rehabilitation.

¹⁸⁶ There were vacancies for three psychologists and other specialists of a psychosocial rehabilitation team in the National Centre for Mental Health when the Special Preventive Group visited the clinic. According to the establishment's administration, despite their attempts, they are unable to staff the clinic with necessary human resources. Thus, there is only one psychologist and one social worker working with 116 patients of the clinic.

¹⁸⁷ The clinic has its general physician (GP); however, the consultation is not free of charge. As regards the National Centre for Mental Health, they do not have a GP. There are physicians with various specialisations and their services are associated with additional costs for patients, who often cannot afford these services.

diagnosis and scheduled treatment. It is problematic¹⁸⁸ that medical care needs to be co-funded by the patient, which they cannot afford in most cases. Furthermore, irrespective of a place of registration, patients experience problems in terms of having access to services covered by the Universal Healthcare Programme.¹⁸⁹

The frequent use of Zopin (active ingredient Clozapine) is also noteworthy because, while using this medicine, international and national standards on managing the side-effects of Clozapine¹⁹⁰ are not taken into account.

Material Conditions

In 2019, compared to the previous year, certain steps¹⁹¹ were taken in psychiatric establishments towards improving the physical environment and sanitation and hygiene situation in the clinics. However, the conditions existing in the psychiatric establishments still need considerable improvement to meet international standards.¹⁹² The difficult situation in establishments during the visits was assessed as inhuman and degrading in some cases.¹⁹³ However, it must be pointed out that again, in 2019, material conditions were improved in parallel to renovation works conducted in the same establishments. In this regard, detailed information is given in the Special Report of the National Preventive Mechanism.¹⁹⁴

State Supervision and Control

There is a problem of state supervision and monitoring of providing adequate psychiatric care and protecting patients' rights in psychiatric establishments. Under the regulations in force, the LEPL Regulatory Agency for Medical and Pharmaceutical Activities controls the quality of medical care and

¹⁸⁸ The CPT observes in its report on the visit to Georgia carried out on 20-21 September 2018 that the fact that indigent mentally disordered inpatients are expected to fund their own somatic health care is unacceptable. See 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 128, available in English at: < <http://bit.ly/38p44kK> >[accessed 28.12.2019].

¹⁸⁹ For instance, if a patient placed in the Batumi Medical Centre is registered in Batumi, a social worker takes the patient for receiving medical care.

¹⁹⁰ During Clozapine monotherapy or its combination with other psychotropic medicines, a patient may develop orthostatic hypotension, bradycardia, syncope and cardiac arrest as well as fatal myocarditis and cardiomyopathy. See Stephen M. Stahl, A Pocket Guide to a Typical Antipsychotics Dosing, Switching, and other Practical Information, available in English at: < <https://bit.ly/2UuyOqr> >[accessed 18.02.202].

¹⁹¹ A new block became operational in the National Centre for Mental Health and in 2017; large-scale repairs began in the Batumi Medical Centre that were also ongoing during the visit of members of the Special Preventive Group to the establishment.

¹⁹² The CPT standards, p. 39, available at: < <https://bit.ly/2WiFPBP>>[accessed 05.03.2020].

¹⁹³ In its report of 10 May 2019, the CPT again assessed the living conditions in in-patient facilities as inhuman and degrading. The report is available at: < <http://bit.ly/38p44kK>>[accessed 14.02.2020].

¹⁹⁴ The 2019 Report of the National Preventive Mechanism.

examines applications and complaints within its statutory mandate.¹⁹⁵ The Regulatory Agency for Medical and Pharmaceutical Activities carries out control and revision of psychiatric establishments through scheduled and random inspections.¹⁹⁶ The LEPL Social Service Agency¹⁹⁷ is an implementing agency of the mental health programme that carries out inspection through its control department.¹⁹⁸ It is noteworthy that the Law of Georgia on Psychiatric Care does not contain any provisions adequately governing complaint the examination procedure and monitoring.

As regards control and supervision by the above agencies, according to the information supplied to the Public Defender, the Social Service Agency has not inspected psychiatric establishments from 1 January 2019 to 16 December 2019. On the other hand, the LEPL Regulatory Agency for Medical and Pharmaceutical Activities conducted inspection/revision in ten psychiatric establishments from 1 January 2019 to 3 December 2019.

The existing external control mechanisms are based on patients' complaints. They do not ensure the required degree of state control considering the shortcomings of psychiatric care and absence of adequate and accessible procedure allowing patients to complain about human rights violations. In particular, the work of control mechanisms is not comprehensive or coordinated and it tends to fail to follow up rigorously on the identified violations.

The Public Defender observes that monitoring carried out by competent agency/agencies should meet the following three criteria:¹⁹⁹

1. Systemic: monitoring should be comprehensive and system-oriented. The report developed as a result of monitoring should assess to what extent patients receive quality psychiatric care based on the biopsychosocial model with due respect for human rights. The report should contain concrete recommendations;
2. Proactive: monitoring should be carried out *ex officio*. Monitoring should be carried out within reasonable intervals; and
3. Transparent: reports developed by control mechanisms should be made public.

The Public Defender is informed that, in June-July 2018, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia with the technical assistance of the

¹⁹⁵ Article 2.3.b)-c) of the Regulations of the LEPL Regulatory Agency for Medical and Pharmaceutical Activities (until 1 November 2019, the State Regulation Agency of Medical Activities), approved by Order no. 01-64/N of the Minister of Labour, Health and Social Security of Georgia of 28 December 2011.

¹⁹⁶ Articles 17 and 18.

¹⁹⁷ Article 7 of Annex no. 11 (Mental Health, programme code – 27 03 03 01) of resolution no. 674 of the Government of Georgia of 31 December 2019 on Approving the State Programmes on Healthcare for 2020.

¹⁹⁸ Order no. 01-14/N of the Minister of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia of 3 October 2018 on Approving the Regulations of the LEPL Social Service Agency, Article 9.

¹⁹⁹ In 2018, the Public Defender made a recommendation for ensuring regular, systemic and proactive monitoring of psychiatric establishments, which was incorporated in the resolution of the Parliament of Georgia of 20 September 2019.

Council of Europe developed a survey questionnaire for the assessment of psychiatric service providers.²⁰⁰ In March-May 2019, based on this questionnaire, eleven psychiatric clinics were surveyed in terms of protection of human rights. The ministry plans to introduce this type of monitoring in the state monitoring programme.²⁰¹ The Public Defender welcomes this initiative, however, observes that steps made in this regard are sporadic and the state control mechanism needs systemic enhancement.

Need for Developing Community Services

Similar to the previous years, there are also problems concerning lengthy hospitalisation of patients. Even though patients do not often need active treatment, they cannot leave the hospital as they have nowhere to go or their family avoids taking them back. The Public Defender observed also in the 2018 Parliamentary Report that this is caused by the lack of support services in the community.²⁰² In this regard, the Public Defender's recommendation regarding needs-assessment of patients placed in psychiatric establishments for more than 6 months for discharging and referring them to community-based services remains unfulfilled.²⁰³

It should also be pointed out that it was established during the visits to the National Centre for Mental Health and Batumi Medical Centre that, similar to the previous years, formally voluntary patients placed in the inpatient facility²⁰⁴ are unable to leave the establishment by their own will. Patients simply sign the written consent form on medical services but do not have adequate information about those services.²⁰⁵ There were also cases identified where psychological pressure had been exerted to force a patient to sign the form.²⁰⁶ It is imperative to obtain a patient's written consent at each stage of starting, continuing and changing a course of treatment.

Proposals

To the Parliament of Georgia:

- To amend Article 16 of the Law of Georgia on Psychiatric Care to the effect of determining that means of restraint should not be applied *vis-à-vis* formally voluntary patients unless there is an

²⁰⁰ Letter no. 01/20057 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 27 November 2019.

²⁰¹ Response of the Georgian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Georgia from 10 to 21 September 2018, available in English at: <<http://bit.ly/38s93RE>> [accessed 10.01.2020].

²⁰² The 2018 Parliamentary Report of the Public Defender of Georgia, p. 75.

²⁰³ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 75.

²⁰⁴ It should be pointed out that during the visits of the Special Preventive Group to the establishments, there was only one involuntarily placed patient and only three patients in the four units of the National Centre for Mental Health.

²⁰⁵ For instance, one of the patients placed in the National Centre for Mental Health, who cannot read or write, says that their informed consent form is signed. The patient was never willing to be admitted or stay in the in-patient facility.

²⁰⁶ For instance, one of the patients at the National Centre for Mental Health confirmed, in an interview, signing the informed consent form, but stated that it was done out of fear of doctors, as according to them, unless the form was signed, they would apply to the court and the patient would be forced to stay in the facility for six months.

extreme urgency of resorting to physical restraint; if it is deemed necessary to restrain a voluntary patient, the procedure for the re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately.

Recommendations

To the Government of Georgia:

- To set up a monitoring mechanism for external state supervision of providing psychiatric care and the quality of psychiatric care and human rights protection that would be in charge of receiving confidential/open complaints from beneficiaries of psychiatric services, their representatives and other stakeholders regarding violations identified in terms of the quality of psychiatric services and human rights and regular, systemic and proactive mechanism of psychiatric service provides.

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

- For preventing violence among patients and maintaining safety, create a normative framework governing the following issues: implementation of an appropriate system of preliminary assessment of risks posed by an individual patient by personnel; multidisciplinary work, preventive measures to be taken for protecting patients from violence and ensuring security; appropriate supervision/observation of patients by personnel; adequate training of personnel; elaboration of standard operational procedures and de-escalation strategy; timely and adequate intervention immediately after a threat arises; documentation of incidents of violence and responses; and, accountability and responsibility of personnel;
- To determine the procedure in a respective legal document for documenting incidents involving conflict and violence and measures taken in response to them, and the duty of in-patient psychiatric clinics to use the procedure. To determine the duty to notify the Ministry of Internal Affairs about each incident of violence against a patient; the duty to draw a report where an incident is reported by telephone; and the duty to maintain a logbook about notifications;
- To instruct the Regulatory Agency for Medical and Pharmaceutical Activities to examine incidents of actual involuntary hospitalisation of formally voluntary psychiatric inpatients and take all the necessary measures to ensure immediate discharge of those inpatients concerning whom there is no legal basis for the use of involuntary psychiatric care;
- In 2020, to amend the Instructions for the Rules and Procedures of the Use of the Methods of Physical Restraint against Patients with Mental Disorders:
 - To determine the duty to use, during crisis intervention, alternative methods (de-escalation technique) to physical and chemical restraint and the duty to document their

use and substantiate why these methods proved to be ineffective and it was necessary to resort to the means of physical or chemical restraint; and

- To determine a detailed instruction on the use of physical restraint, specifying the duty to register bodily injuries sustained by a patient and/or personnel in the process of physical restraint; specifications of special means to be used during physical restraint; the place where physical restraint should be used and who can be present during the process; requirements for a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of his/her right to appeal; in addition, to develop the layout of a special register (a special logbook) and to determine the duty to register all the above data.
- To determine by a normative act the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments that would be compatible with human rights, accessible, simple, fair and transparent;
- To ensure needs assessment of patients, placed in psychiatric clinics for more than 6 months, for discharging and referring them to community-based services; to elaborate a plan of setting up shelters based on an estimated number of potential beneficiaries;
- To amend the minister's order²⁰⁷ to the effect of rendering it obligatory – at each stage of starting, continuing and changing a patient's course of treatment – to fill out the questionnaire (no. IV-300-12/A) approved by annexe 13 of Order no. 108/N of the Minister of Labour, Health and Social Security of Georgia of 19 March 2009;
- To instruct the Regulatory Agency for Medical and Pharmaceutical Activities to examine the practice of administering antipsychotic medicines and managing their underlying side effects in psychiatric clinics;
- To ensure training of psychiatric personnel in the management of psychiatric emergencies based on the WHO study materials and national recommendations (guidelines) on clinical practice;
- Through determining internal regulations, to ensure in all mental health institutions that each case of administration of tranquilising is justified, documenting a patient's consent on tranquilising in writing; implementation of the physical monitoring of the clinical practice in accordance with national recommendations (guidelines) reflecting the monitoring outcomes in medical documentation;
- In 2020, to deinstitutionalise mental health establishments, ensure the assessment of patients that do not need treatment in an in-patient clinic and their referral to community-based, family-type services;
- In 2020, to ensure preparing individual plans for psychosocial rehabilitation, updating and measuring the obtained results by a multidisciplinary group;
- In 2020, to ensure retraining of those social workers who do not have a bachelor's degree, master's degree /equivalent to a master's degree or doctorate in the field of social work;

²⁰⁷ Order no. 87/N of the Minister of Labour, Health and Social Security of Georgia of 20 March 2007 on Approving the Procedure for Admission to Psychiatric In-patient Facility.

- In 2020, inspect the conditions in the units for men and women in the National Centre for Mental Health and those in the in-patient facility of Batumi Medical Centre and follow up accordingly to ensure the compliance of psychiatric clinics with licencing terms for in-patient facilities; and
- In 2020, to ensure regular, systemic and proactive monitoring of psychiatric facilities and to ensure the compliance of the conditions in psychiatric facilities with the standards approved by the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for In-patient Facilities.

3.5 Investigation of Ill-Treatment Allegedly Committed by Law Enforcement or Prison Officers

In recent years, torture, inhuman or degrading treatment (hereinafter “ill-treatment”) by law enforcement officers do not constitute a systemic problem in Georgia anymore; however, an effective investigation of such crimes remains a systemic problem. This is demonstrated by annual reports of the Public Defender²⁰⁸ as well as reports of local²⁰⁹ or international organisations.²¹⁰

Inadequate response of the state to the investigation of ill-treatment gave rise to the need of setting up an independent investigative mechanism. Thus, the State Inspector’s Service was created to eliminate the problem of impunity of law enforcement officers for the crimes of ill-treatment. The service became operational on 1 November 2019.

In those circumstances where the Public Defender and civil society have been discussing the need for creating an independent investigative mechanism since 2015,²¹¹ the Public Defender of Georgia criticised the delay in enforcing the investigative function of the State Inspector’s Service in 2019. The Public Defender criticised the delay in enforcing the Law of Georgia on the State Inspector’s Service in the

²⁰⁸ The 2015 Parliamentary Report of the Public Defender, pp. 402–426; the 2016 Parliamentary Report of the Public Defender, pp. 364– 376; the 2017 Parliamentary Report of the Public Defender, pp. 81–90; the 2018 Parliamentary Report of the Public Defender, pp. 82-85.

²⁰⁹ Preventing Ill-Treatment and Responding to Actual Incidents, the Georgian Young Lawyers’ Association (GYLA), 2019; Preventing Ill-Treatment in Policing, Human Rights and Monitoring Centre (EMC), 2019; Shortcomings of Investigating Ill-Treatment by Law Enforcement Officers and Legal Status of Victims in Georgia, the Georgian Democracy Initiative (GDI), 2018.

²¹⁰ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), paras. 13-15, available at: < <http://bit.ly/38p44kK> >[accessed 08.04.2019]; the 2019 Report on Georgia by the Human Rights Watch, available at: < <http://bit.ly/2Q4VOA7> >[accessed 04.03.2020].; the 2017-2018 Report on Georgia by the Amnesty International, available at: < <http://bit.ly/2lnd9A0> >[accessed 04.03.2020].

²¹¹ The assessment by the Coalition and the Public Defender about an independent investigative body, available at: < <https://bit.ly/2rhPyuW> >[accessed 05.03.2020].

parliamentary report of the previous year as well.²¹² The date of making the service operation was originally set at 1 January 2019. However, under the amendment of 27 December 2018, the enforcement was delayed until 1 July 2019. The Public Defender recommended the Government of Georgia in the 2018 Parliamentary Report to ensure timely allocation of the financial resources required for making the State Inspector's Service operational and for its subsequent effective functioning.²¹³ In addition, the Public Defender addressed the Prime Minister of Georgia with the same recommendation on 10 May 2019 and made a public statement on the issue on 26 June 2019.²¹⁴ Unfortunately, the enforcement of the investigative function of the State Inspector's Service was delayed again and the service became operational on 1 November 2019 instead of 1 July 2019.

From 7 July 2013 to 1 November 2019 when the State Inspector's Service was finally launched, the prosecutor's office was the only agency in charge of the investigation and criminal prosecution of crimes of ill-treatment committed by law enforcement officers.

The Office of the Prosecutor General of Georgia has a significant function in terms of ensuring respect for human rights. With the view of improving the institutional organisation and accountability of the prosecutor's office, the Public Defender addressed the Parliament of Georgia with a proposal.²¹⁵ However, the parliament has not fulfilled this recommendation in the reporting period. In the Public Defender's opinion, the need for reforming the Office of the Prosecutor General remains relevant.

The Public Defender applied to the parliament concerning the activities of the Office of the Prosecutor General and requested the authority to study case-files in ongoing investigations of special category criminal cases.²¹⁶ The need for extending the mandate was also preconditioned by superfluous and formulaic responses the Public Defender receives from the prosecutor's office. Despite the duties laid down by the parliament, the prosecutor's office has not changed the established practice. Based on the resolution of 20 September 2019,²¹⁷ the parliament ordered the prosecution authorities, upon request and within the statutory terms, to supply requested information to the Public Defender's Office about those investigative and procedural acts, indicating respective dates, that had been carried out in response to alleged ill-treatment. However, this task was not implemented.²¹⁸

²¹² The 2018 Parliamentary Report of the Public Defender, p. 79.

²¹³ The 2018 Parliamentary Report of the Public Defender, p. 85.

²¹⁴ The Public Defender Responds to the Draft Law on Delaying Enforcement of the Investigative Function of the State Inspector's Service, available at: <<http://bit.ly/2PQYeCd>> [accessed 2020 05.03.2020].

²¹⁵ The 2018 Parliamentary Report of the Public Defender, p. 84.

²¹⁶ Under the legislative framework currently in force, the Public Defender of Georgia does not have access to case-files in ongoing investigation. On 28 November 2018, the Public Defender requested the Parliament of Georgia to extend the mandate under Article 18.e) of the Organic Law of Georgia on the Public Defender of Georgia. Unfortunately, the Parliament did not share the Public Defender's position on this matter.

²¹⁷ Article 3.f) of the resolution.

²¹⁸ For instance, in response to Letter no. 15-3/12181 and Letter no. 15-3/12177 of the Office of the Public Defender of Georgia, dated 11 November 2019, the Office of the Prosecutor General refused to supply the Public Defender's Office with

Similar to 2018, in 2019, the trend of a decrease in the number of the Public Defender's proposals concerning instituting an investigation into ill-treatment allegedly committed by law enforcement officers is maintained. In 2019, the Public Defender addressed one proposal to the Office of the Prosecutor General of Georgia concerning the alleged use of disproportionate force against citizens by police; there were five such proposals in 2018. The Public Defender has not addressed any proposals concerning ill-treatment allegedly committed by prison officers, whereas there were two such proposals submitted in 2018.²¹⁹

A decrease in the number of the Public Defender's proposals on instituting investigation is explained by the established practice of investigative bodies to initiate investigation proactively, based on reported incidents. In recent years, the number of starting investigations is increasing and there is no problem of the failure to institute proceedings. On the other hand, the effectiveness of investigation is a systemic problem, as a result of which not a single person has been held responsible in criminal cases instituted based on the Public Defender's 107 proposals submitted to the prosecutor's office in 2013-2019.

The Public Defender of Georgia pointed out also in the 2018 Parliamentary Report that investigations initiated by investigative authorities are usually protracted without an outcome for years.²²⁰ In this regard, it is noteworthy that the Committee of Ministers of the Council of Europe that supervises the execution of the European Court's judgments pointed out in its interim resolution adopted on *Tsintsabadze group v. Georgia*²²¹ about the persistence of ineffective investigation into crimes allegedly committed by law enforcement officers.²²²

In 2019, the European Court of Human Rights found the violation by Georgia of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in four cases. All four cases concern torture, inhuman or degrading treatment committed by law enforcement officers and an ineffective investigation of these crimes.²²³ In these cases, the crimes were committed back in 2008-2011; however, nobody has been held responsible by investigative bodies to this day.

comprehensive information in its Letter no. 13/81836 and Letter no. 13/81943, dated 21 November 2019. The practice was similar in the previous years.

²¹⁹ In this regard, it is noteworthy that, in 2019, 128 applications were lodged with the Public Defender's Office, where citizens alleged ill-treatment by law enforcement authorities.

²²⁰ The 2018 Parliamentary Report of the Public Defender, pp. 78 and 83.

²²¹ The cases in this group concern violations by representatives of the state's law enforcement authorities of both substantive and procedural aspects of Article 2 (right to life) and Article 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

²²² *Tsintsabadze group v. Georgia*, application no. 35403/06, 1324th meeting, 18-20 September 2018, (DH), available at: <<http://bit.ly/3cypstei>> [accessed 05.03.2020].

²²³ *Gogaladze v. Georgia*, application no. 8971/10, judgment of the European Court of Human Rights of 18 July 2019; *Gogvadze v. Georgia*, application no. 4009/12, judgment of the European Court of Human Rights of 27 June 2019; *Gablishvili and Others v. Georgia*, application no. 7088/11, judgment of the European Court of Human Rights of 21 February 2019; *Kekelidze v. Georgia*, application no. 2316/09, judgment of the European Court of Human Rights of 17 January 2019.

The Public Defender’s Office requested general statistical data from the Office of the Prosecutor General of Georgia and the State Inspector’s Service about cases of ill-treatment. Indicators of instituting investigation and criminal prosecution against representatives of law enforcement authorities in 2018-2019 are given in the tables below:

Indicator of Instituting Investigation and Criminal Prosecution Against Police Officers in 2018-2019

Article	2018 The Prosecutor’s Office		Until 1 November 2019 The Prosecutor’s Office		1 November - 31 December 2019 The State Inspector’s Service	
	Investigation	Accused Persons	Investigation	Accused Persons	Investigation	Accused Persons
Against Police Officers	367	13	298	4	62	1 (Article 335 of the Criminal Code)
Exceeding Official Powers (Article 333 of the Criminal Code)	332	12	288		58	
Abuse of Official Powers (Article 332 of the Criminal Code)	0	1	0		0	
Torture (Article 144 ¹ of the Criminal Code)	14	0	1		0	
Ill-Treatment (Article 144 ³ of the Criminal Code)	21	0	9		3	

Indicator of Instituting Investigation and Criminal Prosecution Against the Officers of Penitentiary Establishments in 2018-2019

Article	2018 The Prosecutor’s Office		Until 1 November 2019 The Prosecutor’s Office		1 November - 31 December 2019 The State Inspector’s Service	
	Investigation	Accused Persons	Investigation	Accused Persons	Investigation	Accused Persons

Against Prison Officers	28	3	18	0	1	0
Exceeding Official Powers (Article 333 of the Criminal Code)	14		16		1	
Abuse of Official Powers (Article 332 of the Criminal Code)	0		0		0	
Torture (Article 144 ¹ of the Criminal Code)	0		0		0	
Ill-Treatment (Article 144 ³ of the Criminal Code)	14	3	2		0	

As regards the activities of the Office of the Public Defender of Georgia, below are the data on following up on applications alleging ill-treatment by law enforcement officials.

In 2019, 128 applications were filed with the Public Defender’s Office where citizens alleged incidents of ill-treatment by law enforcement officials. Among them, 54 applications reported prison officers as possible perpetrators of alleged ill-treatment and 50 applications informed about ill-treatment allegedly committed by police officers.²²⁴ 14 applications concerned degrading conditions in penitentiary establishments and ten applications complained about the delay in investigating incidents of ill-treatment.

As stated above, in 2019, the Public Defender of Georgia addressed the Office of the Prosecutor General of Georgia with one proposal and requested initiating an investigation into the alleged use of disproportionate force by police officers against citizens.

It should be pointed out that the Public Defender of Georgia addresses relevant investigative authorities with proposals and requests instituting investigation and/or criminal prosecution in those cases where the Public Defender, based on outcomes of the examination of case-files, is satisfied that there are clear elements of a crime present.²²⁵ In other cases, where the Public Defender believes that a crime might

²²⁴ Apart from the mentioned applications, the Public Defender’s Office received information about incidents of ill-treatment from public sources (media, social networks) as well and started examination of cases proactively. Furthermore, there were cases, where the Public Defender’s Office received information about prisoners’ hunger strike from certain penitentiary establishments and after visiting prisoners, the Public Defender’s representatives learned about incidents of an alleged ill-treatment. There were also cases where applicants denied subsequently their own information about ill-treatment or refused to pursue further the applications. Examination of all these cases received through the above-mentioned channels led to identification of 76 incidents of an alleged ill-treatment and the Office redirected all of them to investigative authorities.

²²⁵ The Organic Law of Georgia on the Public Defender of Georgia, Article 21.c).

have been committed against a concrete person, however, sufficient incriminating evidence indicating the commission of ill-treatment could not be gathered, for instance, if a person does not show signs of injury if a lot of time has elapsed since the alleged crime was committed, and in other similar cases, the Public Defender informs competent investigative authorities in writing about possible crimes.

In accordance with the above-mentioned proceedings, in 2019, the Public Defender's Office, based on applications lodged by citizens or proactively – based on information disseminated in public space contacted competent state agencies on 76 occasions regarding incidents of ill-treatment. In particular, the Office of the Prosecutor General was addressed in 67 cases and the State Inspector's Service in nine cases. Out of these 76 cases, persons implicated in alleged ill-treatment were prison officers (twelve cases) officers of the Ministry of Internal Affairs of Georgia (62 cases), and employees of the National Centre of Mental Health (two cases).

Out of the above 76 cases, in 46 cases, the Public Defender's Office was the primary source of information for investigative authorities about alleged crimes and the agency had already had information about alleged ill-treatment in 30 cases. In the latter cases, the involvement of the Office of the Public Defender of Georgia was limited to assisting applicants in obtaining information about the progress of the investigation.

In seven cases out of the 76 cases mentioned above, the investigation has not been initiated. All seven cases concerned alleged ill-treatment by a police officer. Out of these seven cases, in four cases, the prosecutor's office was informed about alleged ill-treatment and it was this agency, which believed the information was not sufficient for initiating an investigation. In three cases, the State Inspector's Service refused to institute proceedings. It is also noteworthy that, in two cases (among them the case submitted to the State Inspector's Service), the investigative body communicated to the Public Defender's Office that applicants had denied ill-treatment and it served as the ground for the refusal to initiate an investigation. In another two cases, the State Inspector's Service informed the Public Defender's Office that it had been impossible to contact alleged victims and verify information with them. Therefore, an investigation was not initiated in these cases either.

The Public Defender hopes that in the future the fact that an alleged victim of ill-treatment denies being subjected to ill-treatment when interviewed by an investigator of the State Inspector's Service (but such treatment was confirmed to the Office of the Public Defender before the interview with an investigator) will not serve as the ground of refusal to initiate an investigation and, hopefully, the refusal to institute criminal proceedings based on this argument only will not become a trend. This issue is particularly noteworthy in terms of victims of ill-treatment as they fall within the group of vulnerable persons, who due to sustained psychological trauma are frightened and hopeless and for a certain period not ready to complain about the treatment committed against them.²²⁶

²²⁶ Istanbul Protocol, Psychological Consequences of Torture, p. 46, available at: <<http://bit.ly/3cyChS5>> [accessed 05.03.2020].

Systemic Analysis of Investigation of Ill-Treatment

Because investigation of ill-treatment cases has been a systemic problem for years in Georgia. In 2019, we set a task to study closed criminal cases and make a systemic analysis of those challenges that were identified in this regard as of 2019. It is important for the State Inspector's Service and the public to identify those initial problems with which the newly established agency will deal in years to come.

The Public Defender's Office examined 38 closed criminal cases and assessed them based on the criteria of an effective investigation. According to this standard, the following constitute the elements of an effective investigation: independence and impartiality; investigating on time; thoroughness/comprehensiveness; authority; a victim's involvement in the investigation. As a result, in June 2019, the Public Defender published the Special Report describing in detail the challenges existing in terms of each element.²²⁷

Independence and impartiality: persons involved in an investigation and taking decisions cannot be representatives of the same state body whose actions are investigated.²²⁸ For instance, the Public Defender's Office identified a case, the investigation of which had been initiated by the prosecutor's office. On the same day, the case was transferred to the General Inspection of the Ministry of Internal Affairs of Georgia whereas officials of the same ministry were investigated for alleged ill-treatment.²²⁹ The Office of the Public Defender also identified such cases where the investigation was started by the agency whose officials were implicated in the commission of ill-treatment and were only later transferred to the prosecutor's office to continue the investigation.²³⁰

In its 2019 report on the visit to Georgia, the CPT also pointed out shortcomings of investigations, including the fact that initial investigatory steps are still as a rule performed by the staff of investigative departments of the respective ministries (i.e. by colleagues of incriminated/suspected officials, working for the same ministry with the prosecutor's office only becoming directly involved at a later stage (mostly in higher-profile cases, as from the moment the case had caused 'enough' stir in public opinion, the media and civil society)).²³¹

Timely investigation: the component of investigating in a timely manner implies the need for instituting investigation immediately. As a result of the examination of cases, the Public Defender's Office revealed the problem of delaying investigative actions for months and, in some cases, years.²³² Similarly, it was

²²⁷ The Special Report of the Public Defender of Georgia on the Effectiveness of Investigation of Criminal Cases of Ill-Treatment, 2019, available at: <<https://bit.ly/2W3K4BJ>> [accessed 08.04.2019].

²²⁸ *Ibid.* p. 9.

²²⁹ *Ibid.* p. 14.

²³⁰ *Idem.*

²³¹ 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) from 10 to 21 September 2018, (CPT/Inf (2019) 16), paras. 13-15, available at: <<http://bit.ly/38p44kK>> [accessed 08.04.2019].

²³² The Special Report of the Public Defender of Georgia on the Effectiveness of Investigation of Criminal Cases of Ill-Treatment, 2019, pp. 17-22.

established that there were cases where, due to delaying institution of investigation, it was impossible to identify individuals responsible for criminal acts because of the failure to obtain crucial evidence. The delay of investigation leading to the failure to identify individuals responsible for the crime is the systemic problem discussed apart from the Public Defender also by Georgian NGOs²³³ and international organisations.²³⁴

Thorough/comprehensive investigation: During the examination of cases, the Public Defender's Office concluded that not all possible investigative actions are carried out during investigations. There is a problem of superfluous and incomprehensive questioning. In some cases, crucial questions are not asked and not all the relevant persons are questioned. Information supplied by police officers or penitentiary officers is usually not verified by other pieces of neutral evidence and investigative authorities do not even attempt to corroborate it by relying on other more objective sources.²³⁵

Authority: It is impossible to establish in any case examined by the Public Defender's Office under whose initiative and responsibility concrete investigative actions have been conducted, whether an investigator determined the line of investigation independently or with a prosecutor's active involvement and instructions. Furthermore, there are dozens of cases where an act is categorised under a general rather than the article *lex specialis*.²³⁶

Apart from the above-mentioned, it is also problematic that no special measures have been applied to protect victims in any cases;²³⁷ the practice of applying security measures is scarce.²³⁸ The Public Defender assesses it as problematic that in the course of an investigation, in some cases, prisoners that are victims of alleged ill-treatment remain under the supervision and control of the same penitentiary officers that are implicated in the ill-treatment.²³⁹

A victim's involvement in an investigation: Participation of a victim in proceedings is one of the main challenges in terms of investigating ill-treatment. Under the Georgian legislation, only a victim has the right to be informed about the progress of the criminal investigation and to study case-files. Only in two cases, which have been initiated based on the Public Defender's 107 proposals submitted to the

²³³ Shortcomings of Investigating Ill-Treatment by Law Enforcement Officers and Legal Status of Victims in Georgia, the Georgian Democracy Initiative (GDI), 2018, p. 24.

²³⁴ *Tsintsabadze group v. Georgia*, application no. 35403/06, 1324th meeting, 18-20 September 2018, (DH), available at: <<http://bit.ly/3cyppte>> [accessed 05.03.2020].

²³⁵ The Special Report of the Public Defender of Georgia on the Effectiveness of Investigation of Criminal Cases of Ill-Treatment, 2019, pp. 9, 20—27.

²³⁶ *Ibid.* p. 27.

²³⁷ There are no documents in the case-file proving that the prosecutor at least offered or enquired about a victim's opinion about the use of a special measure of protection; the Special Report of the Public Defender of Georgia on the Effectiveness of Investigation of Criminal Cases of Ill-Treatment, 2019, p. 28.

²³⁸ *Idem.*

²³⁹ *Idem.*

prosecutor's office in 2012-2019, a person was given a victim's status.²⁴⁰ NGOs' experience also shows that recognising a person as a victim is a rare practice.²⁴¹

The cases examined by the Public Defender's Office demonstrate a non-uniform practice of recognising a person as an indirect victim. The Public Defender calls upon investigative authorities to make the grounds of granting the status of an indirect victim uniform and foreseeable.

Furthermore, the categorisation practice should also be noted in terms of an ineffective investigation that remained problematic in 2019. It is an established practice to categorise violence allegedly committed by law enforcement officers under a general article of the Criminal Code rather than the article *lex specialis*. In particular, torture or other ill-treatment is wrongly categorised under a general article as exceeding official powers or abuse of official powers. In the process of supervising the execution of the European Court's judgments, in its interim resolution adopted in the course of deliberation of cases in the *Tsintsabadze group*, in December 2019, the Committee of Ministers of the Council of Europe called upon the Georgian authorities to eradicate this practice.²⁴²

Proposals

To the Parliament of Georgia:

To start the reform of the Office of the Prosecutor General of Georgia, to involve the Prosecutorial Council in the process of determination of jurisdiction and separation of competences among structural units; approving guidelines and adopting normative acts stemming from criminal law policy that regulate systemic aspects of the prosecutor's office.

3.6. Investigation of the Events of 20-21 June

In the reporting period, the events unfolded in front of the Parliament of Georgia on the night of 20-21 June 2019, when special means were used against people gathered on Rustaveli Avenue, became an important part of the recent history. Representatives of the Public Defender observed directly the events unfolded in the course of the demonstration and later visited injured citizens in hospitals. They met and talked with doctors, managers of clinics and citizens injured during the demonstration. The Office of the Public Defender established that there were 217 patients registered in clinics who had had been injured during the demonstration, including 80 police officers. According to the information obtained during

²⁴⁰ The 2017 Parliamentary Report of the Public Defender of Georgia, p. 82.

²⁴¹ Shortcomings of Investigating Ill-Treatment by Law Enforcement Officers and Legal Status of Victims in Georgia, the Georgian Democracy Initiative (GDI), 2018, p. 28; Preventing Ill-Treatment and Responding to Actual Incidents, the Georgian Young Lawyers' Association (GYLA), 2019, p. 32.

²⁴² *Tsintsabadze group v. Georgia*, application no. 35403/06, 1362nd meeting, 3-5 December 2019, (DH), available at: <<http://bit.ly/2lvZ96P>> [accessed 09.03.2020].

these visits, the main injuries were inflicted in the head area and the area of upper limbs.²⁴³ Representatives of the Public Defender also visited 116 persons arrested in administrative proceedings. The Public Defender's Office requested the prosecutor's office to follow up on the cases of seven arrested persons regarding their alleged ill-treatment.²⁴⁴

On 22 June 2019, the Investigative Unit of the Office of the Prosecutor General of Georgia initiated an investigation into abuse of official powers by certain officers of the Ministry of Internal Affairs of Georgia when dispersing the demonstration on 20-21 June. The prosecutor's office invited the Public Defender to be involved in the course of investigation for supervision and allowed the study of case-files by way of exception. Representatives of the Public Defender have been studying the case-files since 2 July and among them, case-files in three other proceedings severed from the main case.²⁴⁵

The investigation is still pending in the prosecutor's office. In parallel, representatives of the Public Defender's Office study case-files periodically. The chapter below discusses briefly the investigation conducted as of February 2020 and relevant interim findings adopted. The details about the investigative acts carried out and involvement of the Public Defender in the investigation can be found in the Special Report of the Public Defender.²⁴⁶

As a result of the study of the case-files, in parallel to the investigation, the Public Defender of Georgia submitted five proposals to the prosecutor's office regarding the necessity of taking concrete investigative steps and one proposal about instituting criminal proceedings. The Public Defender requested the prosecutor's office to carry out 21 concrete acts out of which eleven acts were carried out; three were carried out deficiently and/or partially; and seven requests were not complied with altogether, including the request on instituting criminal proceedings.

In her proposal, the Public Defender requested the institution of criminal proceedings against the former director of the Special Task Department of the Ministry of Internal Affairs of Georgia. It was his statutory duty to prevent illegal actions (disproportionate use of special means) of officers directly subordinated to him and, according to the case-files; he had the possibility to do so. Furthermore, according to the case-files existing at this stage, he has received a direct order sever times not to use rubber bullets.²⁴⁷

²⁴³ The information is available at: <<https://bit.ly/3aCsetw>> [accessed 06.03.2020].

²⁴⁴ More individuals informed the Public Defender's representatives about their alleged ill-treatment. However, since they refused to follow up on the cases, the Public Defender's Office was not authorised to apply to investigative authorities.

²⁴⁵ In these cases, criminal proceedings were instituted against three police officers for the arbitrary use of force and use of non-lethal weapon against citizens.

²⁴⁶ The Special Report of the Public Defender of Georgia: An Interim Report on the Investigation of the 20-21 June Events, 2020.

²⁴⁷ This conclusion is based on the recoding of a portable radio examined by the Public Defender's Office. It is noteworthy that the recording is intermittent. The Public Defender requested the prosecutor's office to order forensic examination of the recording to identify the reason of this intermittence or to find out if the recording had been tampered with. As of February 2020, no such investigative act has been carried out.

Unfortunately, those investigative acts requested by the Public Defender that would lead to the legal assessment of acts or omissions of the officials in charge of the dispersal have not been carried out. In particular, there has been no repeated or detailed questioning of the former Minister of Internal Affairs or his deputies (the need for such questioning was caused by the fact that the initial questioning of the minister and the deputies was not comprehensive). It cannot be established as to what measures had been taken by them as the officials in charge of the operation of 20-21 June to prevent abuse of official power by police officers during the dispersal of the demonstration. No forensic examination has been conducted to establish the reason of intermittence of the voice in portable radio recordings in the period when the use of special means was being decided. Recordings of subordinate police officers' portable radios have not been gathered and their mobile phones have not been seized.

According to international standards, to meet the standards of an effective investigation, it is important to establish not only isolated alleged incidents of exceeding official powers on the part of certain police officers by use of violence or weapons; it is important to conduct a legal analysis of the necessity of interfering with freedom of assembly and proportionality of the use of force by police. Contrary to the aforementioned standard, investigation currently conducted by the prosecutor's office is focused on identifying criminal actions of individual law enforcement officers and assessing their individual roles. The investigation is not aimed at establishing the responsibility of superior officials in charge and does not even attempt to establish or exclude the possibility that a crime was committed by inaction/omission.

At this stage of the investigation (February 2020), there are shortcomings in terms of timeliness and thoroughness which makes it difficult to assess investigation as effective. In particular, some video footage has not been examined yet; recordings of portable radios of middle-level officials of the Ministry of Internal Affairs have not been obtained; no forensic examination of recordings of the ministry's top-level officials' portable radios has been ordered or conducted, etc. Thus, important and necessary investigative actions have been delayed and investigative authorities failed to demonstrate due expedition when conducting concrete investigative actions.

According to video footage in the case-files, there was no imminent or large-scale attack, when the police used weapons, from demonstrators towards police or other persons that would allow police officers to resort to non-lethal cannons without superior officers' order to protect their own life and health (the situation of self-defence). To the contrary, based on the relevant regulatory framework, an order about the use of non-lethal weapons (including, non-lethal cannons) during an assembly or a demonstration, with due respect for the principles of legality and proportionality and considering actual risks, must be issued by the head of the unit participating in the operation, with the permission of the official in charge of the operation. Furthermore, whenever the delay of the use of non-lethal weapon might create a real danger for a person's life and/or health, it is sufficient for the head of the unit participating in the operation to issue an order.²⁴⁸ According to the reports on questioning officers of the Ministry of Internal

²⁴⁸ The Guidelines on the Conduct of Officials of the Ministry of Internal Affairs of Georgia During Assemblies and Demonstrations (approved by Order no. 1002 of the Minister of Internal Affairs of Georgia on 30 December 2015), Article 8.1.d).

Affairs, they did not have a concrete order to use rubber bullets and decided to do so based on the perceived danger to them.

Under the case-law of the European Court of Human Rights, a violent act on the part of some demonstrators is not in itself a solid ground for restricting peaceful protesters' right to freedom of assembly, moreover, for using force against them.²⁴⁹ Thus, an analysis of the case-files available at this stage shows that the dispersal of the demonstration on 20-21 June 2020 cannot be assessed as a proportionate measure considering operators fired non-lethal water cannons without an order requested by law; the number of water cannons fired (several hundred) and water cannon operators (several dozen); the location (the area in front of the parliament building and other sections of Rustaveli Avenue), the duration of the measure (several hours); and the number of injured demonstrators and the degree of injuries sustained.

The Prosecutor General's Office failed to provide a complete and systemic legal analysis of the events of the night of 20-21 June by the time of publication of this report. Along with the poor emphasis on isolated crimes committed by ordinary police officers, the prosecutor's office was unable to assess the responsibility of superior officials in an objective and comprehensive manner. We hope that the prosecutor's office will ensure the investigation meets standards of an effective investigation at the following stages of the proceedings.

Persons Recognised as Victims

In the principal case, as of January 2020, four persons were recognised as victims. It is noteworthy that these persons have been recognised as victims only as a result of considerable public pressure and protest that was preceded by the court's refusal to give them a victim's status.²⁵⁰ On 9 December 2019 and 18 December 2019, the court similarly refused to grant a victim's status to twelve other persons. In these decisions, the court observed that there had been no findings of forensics examination obtained yet that would lead to determine the degree and method of injuries inflicted through a criminal act. The court pointed out that it was necessary to meet the standard of reasonable suspicion that a crime had been committed and to determine as a result of which crime directly an individual had sustained the said injuries.

Although the court's interpretation does not contradict statutory requirements, the prosecutor's office must examine videotapes, analyse particular parts of the footage and identify persons as victims of crime within a short term to ensure their involvement and participation in the investigation to a maxim degree possible. The Public Defender believes that the existing video footage is sufficient to establish specific

²⁴⁹ *Ribitsch v. Austria*, application no. 18896/91, judgment of the European Court of Human Rights of 4 December 1995, para. 38; *Ziliberberg v. Moldova*, application no. 61821/00, decision of the European Court of Human Rights of 4 May 2004, para. 2; *Ezelin v. France*, application no. 11800/85, report of the European Commission of Human Rights of 13 March 1989, para. 34.

²⁵⁰ The City Court explains as to why 16 Individuals, including Mako Gomuri, were not recognised as victims, available at: <<https://bit.ly/377intB>> [accessed 30.03.2020].

elements of criminal acts and identify affected citizens, including journalists (meeting the standard of reasonable suspicion). Therefore, even before establishing the degree of injuries accurately, it was possible to recognise particular persons as victims.

It is also noteworthy to mention that though Maia (Mako) Gomuri was recognised as a witness, she only studied two volumes of the criminal case-files. The Criminal Procedure Code allows not giving the victim access to criminal case-files if it would be against interests of the investigation.²⁵¹ However, Mako Gomuri has not been informed about the aforementioned ground. The Public Defender's Office also requested information about the issue concerned. However, the prosecutor's office has not informed the Public Defender's Office about the ground for refusal of granting Mako Gomuri full access to the case-files.²⁵²

Recommendation

To the Prosecutor General of Georgia:

- To conduct an effective investigation on criminal case no. 074220619801 and take steps towards the fulfilment of the Public Defender's proposal.

²⁵¹ The Criminal Procedure Code of Georgia, Article 57.2.

²⁵² Letters nos. 13/86194 and 13/88174 of the Prosecutor General of Georgia, dated 9 December 2019 and 17 December 2019, respectively.

4. Right to Liberty and Security

1.2. 4.1. Introduction

In 2019, during large-scale protests, the arrest of citizens by police officers violated right to liberty and security. The facts of the violation took the form of a trend. The Office of the Public Defender of Georgia, based on the examination of cases of individuals arrested during the dispersal of demonstrations on 20-21 June 2019 and 18 November 2019, identified numerous legislative shortcomings as well as violations of statutory requirements by police officers when exercising their official duties.

In particular, police officers drafted reports on administrative offences without describing individual circumstances, which made it impossible to assess whether there were legal grounds for administrative arrests. There were also violations of the 12-hour term of arrest. Moreover, arrest reports were signed by other law enforcement officers instead of the arresting officers. Inconsistencies in terms of the actual places of arrests and places indicated in the reports were also problematic.

The Public Defender believes that it is necessary to eliminate the practice of arbitrary arrests to secure the right to liberty and security. The same concerns legislative shortcomings that allow arbitrary interference with the right to liberty and security of a person, the practice of application of preventive measures and unjustified restriction of freedom of movement. Despite the recommendations made by the Public Defender to the Ministry of Internal Affairs in the 2018 Parliamentary Report, the duty to use body cameras by law enforcement officers involved in a special operation and the procedures of this use are not determined by legislation to this day. Similarly, law enforcement officers participating in special operations are still not equipped with body cameras.²⁵³

The present chapter discusses the above challenges and covers shortcomings identified as the result of the examination of investigative actions carried out within the resumed investigation into Ivane Merabishvili's case. The public is aware that the Grand Chamber of the European Court of Human Rights found a violation of Article 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms,²⁵⁴ jointly with the right to liberty guaranteed under Article 5.1 of the Convention.²⁵⁵ On 12 July

²⁵³ In the 2018 Parliamentary Report, apart from the Ministry of Internal Affairs, the Public Defender also issued two recommendations for the Office of the Prosecutor General of Georgia. The Office of the Prosecutor General has fulfilled the Public Defender's recommendation and supplied information about all investigative actions carried out regarding Ivane Merabishvili's removal from the cell as well as allowed the study of the case-files. The Public Defender's other recommendation concerning informing the public about the outcomes of investigation into alleged exceeding official powers by officers of the Ministry of Internal Affairs of Georgia when arresting Nika Melia and G.G. has not been fulfilled.

²⁵⁴ Under Article 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

²⁵⁵ *Merabishvili v. Georgia*, application no. 72508/13, judgment of the Grand Chamber of the European Court of Human Rights of 28 November 2017.

2018, the investigation of the removal of Ivane Merabishvili from his cell and exceeding official powers concerning him was resumed to ensure the execution of the said judgment.

1.3. 4.2. Arrests in Breach of Legal Requirements

Under the Constitution of Georgia, arrest or detention of a Member of Parliament shall be permitted only with the prior consent of the Parliament, except when a Member of Parliament is caught at the scene, in which case, Parliament shall be notified immediately and its consent is required.²⁵⁶

In violation of the above provisions, in 2018, police officers arrested Nika Melia in administrative proceedings when he was a Member of Parliament.²⁵⁷ Investigation instituted into this incident discontinued on 24 May 2019. The Public Defender's Office revealed various shortcomings in the process of the examination of the case-files. Examination had not established whether Nika Melia was arrested illegally on purpose. The investigation was limited to questioning the police officers to establish if the police officers were aware of his status. No information had been obtained about the fact of verifying the parliament's website by the arresting officer; no information is available about the telephone call between the ministry's structural unit head and the police officer and the time it was made, which was a crucial circumstance.

It is noteworthy that other Members of Parliament were illegally arrested in the reporting period as well. In particular, on 26 November 2019, police officers arrested and later released Members of Parliament Giorgi Bokeria and Tengiz Gunava;²⁵⁸ and, on 29 November 2019, they arrested MP Giorgi Kandelaki.²⁵⁹ The Ministry of Internal Affairs of Georgia has not supplied the requested information to the Public Defender's Office in this regard to this day.

1.4. 4.3. Legislative Shortcomings

The Public Defender believes that it is problematic to assess the legality of administrative arrests.²⁶⁰ Whenever a person challenges the legality of administrative arrest before a judge examining an administrative offence the judge does not examine the legality of the arrest and considers the issue in separate proceedings. The Public Defender of Georgia observes that the legality of administrative arrest should be assessed by a judge when examining an administrative offence, similar to criminal procedure.²⁶¹

²⁵⁶ The Constitution of Georgia, Article 39.2.

²⁵⁷ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 87.

²⁵⁸ Available at: <<http://bit.ly/2VLuSc1>> [accessed 01.02.2020].

²⁵⁹ Available at: <<http://bit.ly/2vL209s>> [accessed 01.02.2020].

²⁶⁰ This viewpoint is shared by the Coalition for an Independent and Transparent Judiciary; see the Coalition's address to the United Nations Special Rapporteur, available at: <<http://bit.ly/38p6aAU>> [accessed 04.03.2020].

²⁶¹ The Criminal Procedure Code of Georgia, Article 176.1.e) and Article 197.1.g); see the commentaries to the Criminal Procedure Code of Georgia, p. 505, available at: <<http://bit.ly/2TMCU2R>> [accessed 13.03.2020].

The administrative arrest terms under the Administrative Offences Code of Georgia also require to be amended. In particular, the respective provisions of the code determine different terms of arrest depending on whether a person is arrested in office hours or outside of office hours.²⁶² It should be pointed out that this wording of Article 247 of the Administrative Offences Code of Georgia is ambiguous – the code allows keeping a person arrested for 48 hours, when “the term of administrative arrest coincides with non-working hours”. It is unclear whether this provision applies to those cases where the starting moment of a person’s arrest coincided with non-working hours or it implies those situations when the expiry of a person’s arrest coincides with non-working hours.

Under the case-law of the European Court of Human Rights, the European Convention requires the Contracting States to organise their legal systems to enable the courts to comply with its various requirements. It is incumbent on the judicial authorities to make the necessary administrative arrangements, even during a vacation period, to ensure that urgent matters are dealt with speedily and this is particularly necessary when the individual’s personal liberty is at stake.²⁶³

Apart from the above-mentioned, it is also noteworthy that, in 2019, the Ministry of Internal Affairs of Georgia resorted actively to the so-called distancing mechanism, when a person is requested by police to vacate a particular area and is prevented from re-entering it.

The Public Defender of Georgia observes that given there are no legislative regulations about the so-called distancing mechanism,²⁶⁴ the police are given wide discretion for action. The Public Defender points out that it is imperative to have legislative regulations in place to govern the so-called distancing mechanism to interfere with a person’s right to liberty foreseeable.

1.5. 4.4. Shortcomings Identified in Police Actions

In the reporting period, numerous violations were identified in police officers’ actions when arresting demonstrators. In particular, when demonstrations were dispersed on 20-21 June 2019 and on 18 November 2019, representatives of the Office of the Public Defender visited the arrested persons. Based on these interviews and examination of the case-files, the following problems were identified in police

²⁶² Under Article 247.1 of the Administrative Offences Code of Georgia, “The period of administrative detention of a person committed an administrative offence must not exceed 12 hours.” Under Article 247.2 of the same code, “A person whose period of administrative detention coincides with the non-working time may be detained and placed in a temporary holding cell until an authorised body hears the case. In such a case, the total period of detention of a person must not exceed 48 hours.”

²⁶³ *E. v. Norway*, application no. 11701/85, judgment of the European Court of Human Rights of 29 August 1990, para. 66.

²⁶⁴ Under Article 25 of the Law of Georgia on Police, police officer shall have the right to demand a certain place be vacated for a specific period or to prohibit a person to enter a certain territory, if it is necessary to prevent a threat. This restriction may last until the threat is eliminated. Despite the fact that, according to information received through official channels, this article is not invoked, there can be grounds for applying this measure under certain circumstances, but even then, it would be necessary to have detailed regulations in place for this issue and express provisions about the grounds and the procedure.

officers' actions: police officers did not use body cameras when arresting demonstrators; police officers made administrative offence reports without describing specific acts constituting the administrative offence concerned; the timestamps of violations and arrests indicated in administrative offence reports did not coincide with actual times; administrative offence reports were often signed not by the arresting police officers but other law enforcement officers. This last issue is also problematic because if established that a person was arrested illegally, it will be difficult to identify the police officer responsible for the arrest. According to the majority of arrested persons, they did not know the ground for their arrest, had not seen either arrest or administrative offence reports and those who studied reports refused categorically the facts described therein.

4.5. Unjustified Restriction of Freedom of Movement

Similar to 2018,²⁶⁵ in 2019, applications filed with the Public Defender of Georgia alleged restrictions of certain citizens' freedom of movement, in terms of entering and leaving Georgia. The restrictions were imposed without any ground by employees of the Ministry of Internal Affairs of Georgia.

At the stage of a criminal investigation, it is impermissible to refuse border crossing when leaving the country (this is a prohibition applied in criminal proceedings) unless there is criminal prosecution pending against that person and there is a court order (or a prosecutor's resolution) on suspending an accused persons' passport/travel document of a citizen of Georgia that was issued in accordance with the legislation in force.

Despite the above-mentioned, there were several cases identified in the reporting period, where persons were stopped and prevented from crossing the border by border-checkpoint officers without indicating any reasons under legislation in force. For instance, Citizen of Georgia, T.Sh. was not allowed to cross the border even though the court had not suspended the citizen's passport and there was no order issued that prohibited crossing the border.²⁶⁶ Citizen L.D. was not allowed to cross the border although there was no criminal prosecution instituted against the citizen concerned and therefore there were no court proceedings pending either.²⁶⁷ Thus, given the absence of court orders, all the above citizens were illegally refused to cross the border.

Furthermore, in the case of citizen D.M., the Public Defender issued a proposal to the Prosecutor General²⁶⁸ and the Ministry of Internal Affairs²⁶⁹ as this citizen was also denied from crossing the state border.

²⁶⁵ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 88.

²⁶⁶ Letter no. MIA 6 19 03250290 of the Ministry of Internal Affairs of Georgia, dated 4 December 2019 and Letter no. 13/88157 of the Office of the Prosecutor General of Georgia, dated 17 December 2019.

²⁶⁷ Letter no. 13/71350 of the Office of the Prosecutor General of Georgia, dated 9 October 2019 and Letter no. MIA 5 19 02629272 of the Ministry of Internal Affairs of Georgia, dated 3 October 2019.

²⁶⁸ Proposal no. 15-2/3414 of the Public Defender of Georgia of 25 March 2019.

²⁶⁹ Proposal no. 15-2/3415 of the Public Defender of 25 March 2019.

According to the letters of the Office of the Prosecutor General of Georgia and the Ministry of Internal Affairs of Georgia sent to the Public Defender of Georgia, the official inquiry carried out by these agencies only established that the respective authorities had summoned the person for questioning and did not ban D.M from crossing the state border. D.M. voluntarily decided not to cross the border.²⁷⁰

4.6. Shortcomings Identified Regarding the Application of Preventive Measures

Similar to the previous years, the general picture of the application of preventive measures remains the same. Under the statistics published on the website of the Supreme Court of Georgia, the percentage of the types of preventive measures applied in 2019 is almost the same. In particular, bail and detention are the types of preventive measures that are mainly applied, and other measures are usually rarely used.

There has been an increase in the number of the use of detention as a preventive measure against accused persons compared to 2018. In particular, in 2019, preventive measures were used in 11,031 cases, in total; among them, detention was used in 5,205 cases (47.2%); whereas, in 2018, preventive measures were used in 9,997 cases, in total; among them, detention was used in 4308 cases (43.1%).²⁷¹

Domestic violence can be one of the reasons for the increase in the number of applying preventive measures. According to the information supplied to the Public Defender's Office by the Office of the Prosecutor General of Georgia, in 2019, the rate of criminal prosecution under Articles 11¹, 121¹ is increased by 624 cases. Detention is applied frequently in the cases of this category, due to the specific nature of the crime.

As regards non-custodial preventive measures, similar to 2018, the percentage of the use of bail remains the same in 2019. In particular, among non-custodial measures, bail was used in 96% of the cases.²⁷²

Nika Melia's case is noteworthy in terms of the use of preventive measures in the reporting period. In particular, as a preventive measure, additional duties were imposed on Nika Melia as an MP.²⁷³ He was banned from carrying out numerous activities falling within the powers of an MP. On 28 November 2019, the Public Defender of Georgia submitted an *amicus curiae* brief to Tbilisi City Court so that it assessed the proportionality of imposing additional duties on Nika Melia concerning an MP's mandate.²⁷⁴ In particular, apart from imposing bail on Nika Melia, additional measures were imposed on Nika Melia as preventive measures, such as the prohibition of leaving the place of residence without informing investigative authorities and their consent, any communication with witnesses and making statements at public places. Besides, he had to hand in his identification documentation. Tbilisi City Court could not

²⁷⁰ Letter no. 13/27357 of the Office of the Prosecutor General of Georgia, dated 16 April 2019 and Letter no. MIA 3 19 00931681 of the Ministry of Internal Affairs, dated 11 April 2019.

²⁷¹ Statistics published on the website of the Supreme Court of Georgia, available at: <<http://bit.ly/3aurgiH>> [accessed 02.03.2020].

²⁷² *Idem*.

²⁷³ Information is available at: <<https://bit.ly/2OyUSTK>> [accessed 01.02.2020].

²⁷⁴ Information is available at: <<https://bit.ly/2OyUSTK>> [accessed 01.02.2020].

discuss the issues indicated in the Public Defender's *amicus curiae* brief as Nika Melia's mandate was terminated due to his conviction in another criminal case.

4.7. Case of Ivane Merabishvili

In September-October 2019, the Office of the Public Defender studied case-files of the criminal investigation into exceeding official powers concerning Ivane Merabishvili's removal from his cell. The investigation was resumed based on the judgment of the European Court of Human Rights on 12 July 2018. The examination of the case-files revealed that the investigation had been punctuated with numerous substantial shortcomings. Thus, the Public Defender believes that the recommendation of the CoE Committee of Minister to the Government of Georgia to conduct an effective investigation in accordance with international standards cannot be deemed fulfilled.

In particular, not all persons indicated by one of the key witnesses have been questioned; among them, incumbent and the then high officials; no facial composition of alleged perpetrators described by Ivane Merabishvili has been conducted; the person who claimed in other court proceedings to have information about Ivane Merabishvili's removal from the cell has not been questioned. Pieces of neutral evidence obtained in the course of the renewed investigation contradict the testimony of one of the persons allegedly involved in Merabishvili's removal from the cell. Ivane Merabishvili was not allowed to participate in the investigation in accordance with the standard of an effective investigation. In particular, he was refused to participate in alleged perpetrators' identification parade, etc.²⁷⁵

Proposals

To the Parliament of Georgia:

- To amend the Administrative Offences Code of Georgia to the effect of determining the duty of a trial court to examine the legality of administrative arrest; and
- To amend the Administrative Offences Code of Georgia to the effect of prohibiting arrest in administrative proceedings for more than 12 hours, due to non-working hours, without bringing an arrested person before the court and without the court's decision.

Recommendations

To the Minister of Internal Affairs of Georgia:

- In 2020, to determine by a normative act the duty of law enforcement officers taking part in special operations to use body cameras as well as the rules of the use of body cameras during special operations; and
- In 2020, to equip law enforcement officers taking part in special operations with body cameras.

²⁷⁵ Communication of the Public Defender of Georgia of 24 January 2020 in the case of *Merabishvili v. Georgia* application no. 72508/13, available at: < <http://bit.ly/3aTVsUQ>, > [accessed 13.03.2020].

5. Right to a Fair Trial

5.1. Introduction

Similar to the previous years, in 2019, the Public Defender paid particular interest to the right to a fair trial. The relevant events significantly affected the quality of the realisation of the right to a fair trial in the country. In 2019, the selection of the Supreme Court's judges demonstrated the flaws, challenges and problems within the existing system. Despite these problems, the amendment of the Organic Law on Common Courts²⁷⁶ is welcomed as it improved and made the issues related to the disciplinary responsibility of judges more foreseeable. The amendment of the Civil Code²⁷⁷ according to which the court became accessible for children of any age, is commendable.

In the reporting period, the European Court of Human Rights adopted seven judgments regarding the right to a fair trial.²⁷⁸ Out of the seven, violations of the Convention were found in six cases (regarding the events of 2004-2009).

The present chapter reviews institutional problems within the court system, summarises issues regarding the election of judges to the Supreme Court of Georgia and the involvement of the Public Defender in the process. The chapter also analyses the legislative shortcomings that violate the privilege against self-incrimination on the one hand and restrict a person's right to access to court on the other hand. It scrutinises the cases heard in violation of the principle of legality.

Delay in the examination of cases remained problematic in the reporting period. The Public Defender's Office received 16 applications on this issue. The report also scrutinises the practice of examining evidence due to the breach of the principle of the permanence of the composition of the bench and the failure to respect the right to a fair trial during the examination of administrative violations.

During the process of developing the report, the Public Defender's Office paid particular attention to several important reports prepared by NGOs regarding the right to a fair trial.²⁷⁹

In the 2018 Parliamentary Report, the Public Defender of Georgia sent nine proposals to the Parliament of Georgia and made one recommendation to the Ministry of Justice. In the reporting period, despite

²⁷⁶ Amendment to the Law of Georgia on Common Courts, 13 December 2019.

²⁷⁷ The Civil Code of Georgia, Article 1198¹.

²⁷⁸ *Gelenidze v. Georgia*, application no. 72916/10, judgment of the European Court of Human Rights of 7 November 2019; *Batiashvili v. Georgia*, application no. 8284/07, judgment of the European Court of Human Rights of 10 October 2019; *Svanidze v. Georgia*, application no. 37809/08, judgment of the European Court of Human Rights of 25 July 2019; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, application no. 16812/17, judgment of the European Court of Human Rights of 18 July 2019; *Kereselidze v. Georgia*, application no. 39718/09, judgment of the European Court of Human Rights of 28 March 2019; *Kobiashvili v. Georgia*, application no. 36416/06, judgment of the European Court of Human Rights of 14 March 2019; *Kartsivadze v. Georgia*, application no. 30680/09, judgment of the European Court of Human Rights 12 December 2019.

²⁷⁹ „Beyond the Lost Eye“, the Georgian Young Lawyers' Association, 2019; „Determining a Judge's Role in Adversarial Criminal Proceedings in Georgia“, Ekaterine Tsimakuridze, Elene Sichinava, 2019; „Operative Activities of Law Enforcement Bodies“, Human Rights and Monitoring Centre (EMC), 2019.

numerous amendments made to the Organic Law of Georgia on Common Courts, only the amendment concerning the disciplinary responsibility of judges is commendable.²⁸⁰ Thus, the Parliament of Georgia fulfilled only one out of nine proposals made by the Public Defender of Georgia.

In the 2018 Parliamentary Report, the Minister of Justice was advised to lift the ban or increase the limit imposed on the number of sheets of official documents prisoners can keep as this restriction may have a negative effect on a prisoner's right to a fair trial. Unfortunately, the Ministry of Justice did not fulfil this recommendation even though it was obliged to do so following the parliamentary resolution.²⁸¹ Therefore, the Public Defender of Georgia applied to the Constitutional Court of Georgia, challenging the constitutionality of this provision and requesting its invalidation.²⁸²

5.2. Institutional Problems in the Court System

The formation of the judiciary and its optimal performance is one of the major preconditions of a state based on the rule of law. When the court is independent and institutionally well organised, the development of a democratic state bound by human rights and freedoms is irreversible. Under the jurisprudence of the Constitutional Court of Georgia, the constitutional right to a fair trial applies within the institutional scope established by the Constitution and not *in abstracto*;²⁸³ it is closely related to other human rights.²⁸⁴

Election of the Independent Inspector

The institution of an Independent Inspector was introduced within the judicial reform in 2017. The Independent Inspector examines the disciplinary misconduct of judges objectively and impartially. For this very significant function, it is critically important to ensure that a person enjoying the trust of the wider public is designated to this position.

On 13 December 2019, the HCoJ announced a vacancy for the position of an Independent Inspector.²⁸⁵ 26 December 2019 was set as the deadline for the submission of applications. On 23 January 2020, the council elected the Independent Inspector for a five-year term with the support of the majority of the full

²⁸⁰ Unfortunately, there are still challenges in terms of the Independent Inspector's election procedure in this regard as well as disciplinary proceedings.

²⁸¹ Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2018, para. 2.

²⁸² Constitutional Complaint: *The Public Defender of Georgia v. the Minister of Corrections and Probation of Georgia*, available at: <<https://bit.ly/2X02Z0v>> [accessed 09.03.2020].

²⁸³ Group of Members of Parliament (David Bakradze, Sergo Ratiani, Roland Akhalaia, Levan Bezhashvili and Others, 38 MPs in total) and Citizens of Georgia, Erasti Jakobia and Karine Shakhparonyani v. the Parliament of Georgia, judgment of the Constitutional Court of Georgia nos. 3/5/768,769,790,792, 29 December 2016, II, para. 68.

²⁸⁴ *Citizens of Georgia Avtandil Ungiadze and Giorgi Kipiani v. the Parliament of Georgia*, judgment of the Constitutional Court of Georgia nos. 1/3/421,422, 10 November 2009, II, 1.

²⁸⁵ Decision no. 1/346 of the HCoJ of 13 December 2019 about announcing a vacancy of an Independent Inspector of the High Council of Justice, available at: <<https://bit.ly/3aQV3T7>> [accessed 09.03.2020].

composition.²⁸⁶ In light of certain significant events surrounding the competition, it is appropriate for the present report to address these issues.

The procedure for conducting the competition for the position of the Independent Inspector is determined by the Rules of the High Council of Justice of Georgia.²⁸⁷ The Rules of the High Council of Justice of Georgia do not determine a detailed procedure for conducting interviews or the topics to be addressed during these interviews, which are needed to ensure the fairness and transparency of the procedure. Furthermore, the rules do not determine important principles such as objectivity, publicity, avoiding conflict of interests, etc.²⁸⁸

Considering the above normative regulation, the procedure for the selection the Independent Inspector was naturally punctuated with flaws. The High Council of Justice (hereinafter the "HCoJ") did not announce the exact time of the interview in advance; this information became public only on 23 January 2020, after the announcement of the results of the interview. The public was not informed about other persons participating in the competition and the circumstances based on which a particular candidate was preferred over others. Along with NGOs functioning in Georgia,²⁸⁹ the Public Defender also negatively assessed the events related to the election of the Independent Inspector.

Under the current regulations, the Independent Inspector is elected by the majority of the full composition of the HCoJ.²⁹⁰ It is sufficient for a candidate to win the competition by having the support of the judicial members of the council only. Considering that the HCoJ is formed from the three branches of the government, it is important to select a candidate based on an agreed decision enjoying higher quorum to ensure accountability.

Holding the Supreme Court Plenum's Session in Camera

The lack of transparency in the court system is manifested in various forms. The first plenum session of the Supreme Court of Georgia held, with the participation of the newly elected judges, on 16 December 2019 is noteworthy among them. The plenum was supposed to discuss the nomination of the newly elected judges to the chambers of the court of cassation and assigning cases to them by the electronic case management system. The election of presidents of the chambers of criminal cases and administrative cases of the court of cassation was also discussed at the plenum session. Considering the importance of the issues to be discussed, the Public Defender's representative attended the plenum session.

²⁸⁶ Statement of the High Council of Justice of Georgia, available at: <<https://bit.ly/39MY46I>> [accessed 09.03.2020].

²⁸⁷ The Organic Law of Georgia on Commons Courts, Article 51^{1.2}.

²⁸⁸ Decision no. 1/208-2007 of the HCoJ of 25 September 2007 on Approving the Rules of the HCoJ, Article 27², available at: <<https://bit.ly/39IQY31>> [accessed 09.03.2020].

²⁸⁹ Statement of the Coalition for an Independent and Transparent Judiciary, available at: <<https://bit.ly/2UrVP3x>> [accessed 10.03.2020].

²⁹⁰ The Organic Law of Georgia on Common Courts, Article 51^{1.2}.

The legislation emphasises the public nature of the plenum sessions – “the Supreme Court’s plenum session shall usually be public.”²⁹¹ However, the majority of judges decided to hold it in camera and the Public Defender’s representative was not allowed to attend it.²⁹² From the plenum members, only the Supreme Court judges attended the session.

No valid arguments in favour of closing the session were voiced during the session or in the minutes of the session.²⁹³ The majority of the Supreme Court judges²⁹⁴ based their decision about closing the session on the sole reason that the reference to the word “usually” in the law does not exclude the possibility of closing a session. According to the minutes of the session, “Shalva Tadumadze requested to put the attendance of the Public Defender’s representative to a vote and explained that, since the plenum is going to discuss organisational issues, it would be appropriate to close the session as the issues at stake do not fall within the interest of the Public Defender.”

Decisions of this kind heighten the distrust in the court system especially because the higher instance court and its judges are supposed to be committed to maintaining a high standard of transparency.

5.3. Election of the Supreme Court Judges

As a result of the amendment to the Constitution of Georgia, the minimum number of Supreme Court judges is increased from 16 to 28.²⁹⁵ In May 2019, 20 vacancies were created in the court of cassation. Within one week of the enforcement of the new version of the Constitution, without any nomination procedure or criteria in place, the HCoJ submitted to the parliament a list of ten candidates for the Supreme Court.²⁹⁶ This resulted in a valid protest in the public after which the Parliament of Georgia began to work on elaborating a procedure for selecting judges for the Supreme Court. The Public Defender became actively involved in this process.

Based on the request submitted by the Public Defender, the Organisation for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights (hereinafter referred to as the “OSCE/ODIHR”) presented the Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia.²⁹⁷ Experts involved in the preparation of the opinion scrutinised the key issues

²⁹¹ The Organic Law of Georgia on Common Courts, Article 18.7.

²⁹² Only the Public Defender’s representative was an outsider among those present at the plenum session.

²⁹³ Letter no. 6S/165-19 of the Supreme Court of Georgia, dated 23 December 2019.

²⁹⁴ The following judges voted for closing the session: Mzia Todua, Vasil Roinishvili, Merab Gabinashvili, Miranda Eremadze, Mamuka Vasadze, Tamar Zambakhidze, Shalva Tadumadze, Vladimer Kakabadze, Levan Miqaberidze, Giorgi Miqautadze, Giorgi Shavliashvili, Ketevan Tsintsadze and Alexander Tsuladze.

²⁹⁵ The Constitutional Amendments of 13 October 2017.

²⁹⁶ For more details, see the 2018 Parliamentary Report of the Public Defender of Georgia, pp. 92-97.

²⁹⁷ OSCE/ODIHR, the First Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June-September 2019, available at: < <https://bit.ly/2wPbCAf>> [accessed 11.03.2020].

of the draft amendment and incorporated the corresponding recommendations in the opinion. The Venice Commission also submitted its opinion in parallel.²⁹⁸

Documents prepared by the Venice Commission and the OSCE/ODIHR discuss essential issues such as express and adequate regulation of conflict of interests,²⁹⁹ and exemption of candidates from qualification examinations.³⁰⁰ The document also scrutinises risks related to secret ballot³⁰¹ and the absence of pre-determined criteria necessary for ranking candidates.³⁰² The possibility of the HCoJ to adopt a decision without a reasoned motivation was also criticised.³⁰³ Views about other important issues of judicial elections were expressed as well.³⁰⁴

Considering that the draft amendment prepared in the Parliament of Georgia did not meet the existing challenges, the Public Defender made a special statement regarding its shortcomings.³⁰⁵ Furthermore, for the first time in history, the Public Defender used the opportunity determined by the Rules of the procedures of the Parliament and requested to address the parliament regarding the draft amendment at the plenary session.³⁰⁶

Eventually, the Parliament of Georgia, on 1 May 2019, adopted the Organic Law of Georgia on Amending the Law of Georgia on Common Courts. While the Parliament of Georgia accepted several recommendations reflected in the opinion, the legislative act does not incorporate certain key issues.³⁰⁷

The Public Defender, during the deliberations of the draft amendment and, subsequently, in the process of election of Supreme Court judges, made 13 public statements and produced a Special Report assessing

²⁹⁸ European Commission for Democracy through Law (Venice Commission), Urgent Opinion on the Selection and Appointment of Supreme Court Judges, available at: <<https://bit.ly/2wPtOcC>> [accessed 11.03.2020].

²⁹⁹ OSCE/ODIHR, Opinion on Draft Amendments Relating to the Appointment of Supreme Court of Judges of Georgia, p. 5, para. 12.

³⁰⁰ *Ibid.* p. 6, para. 15.

³⁰¹ *Idem.*

³⁰² *Ibid.* p. 28, para. 57.

³⁰³ *Ibid.* p. 29, para. 61.

³⁰⁴ According to the opinion, the following recommendations were given to the Parliament of Georgia: 1) to enhance the openness and transparency of the appointment process; 2) candidates should have the possibility to challenge the HCoJ decision before a judicial body; 3) to specify the exact timeline of destroying information gathered about candidates; 4) to better define the procedure and criteria for the nomination of the candidate Chief Justice by the HCoJ; and 5) to introduce adequate safeguards for ensuring non-discrimination and achieving gender balance.

³⁰⁵ The Public Defender's public statement made on 20 March 2019, available at: < available at: <<https://bit.ly/2mDG4bx>> [accessed 09.03.2020].

³⁰⁶ The Rules of the procedures of the Parliament of Georgia, Article 154.

³⁰⁷ The parliament did not accept the following recommendations: 1) criteria necessary for the ranking of a candidate; 2) adopting a summary of majority justification for the ranking of candidates and their nomination in light of the clearly defined selection criteria; 3) ensuring prohibition of discrimination and achieving gender balance; 4) a candidate's possibility to challenge the HCoJ decision before a judicial body; and 5) secret ballot.

the shortcomings identified in the selection of the judges by the HCoJ. The Public Defender's representative participated in the deliberations in the HCoJ and the parliament.

Selection of Judges in the HCoJ

Observing the process of selecting candidates for the Supreme Court in the HCoJ revealed significant flaws. They were caused by the HCoJ members' decisions that are incompatible with the law, on the one hand and by the problematic wording of the law, on the other hand. The selection procedure was conducted in three stages in the HCoJ. In the beginning, the HCoJ members identified 50 candidates out of 137 applicants who moved to the next stage through a secret ballot. The analysis of the results shows that ten out of thirteen ballot papers were distinguished by a very high, unnatural degree of coincidence. The coincidence rate gave rise to questions about possible collusion among HCoJ members in voting for particular candidates.³⁰⁸ This procedure was facilitated by the statutory wording, under which HCoJ members are not obliged to give reasons for the rankings. Similarly, there was no concrete mechanism determined to evaluate the integrity and competence of candidates.

After this, the HCoJ held interviews with the candidates for judgeship from 17 July 2019 to 15 August 2019. It is noteworthy that the majority of the interviews were punctuated with controversy within the HCoJ. Judicial members of the HCoJ often made tactless comments about non-judicial members Ana Dolidze and Nazi Janezashvili.

On 4 September 2019, twelve members of the HCoJ³⁰⁹ held a meeting to shortlist the number of candidates for the Supreme Court from the long list. The analysis of the voting shows that ten members of the HCoJ used 164 votes out of the 200 votes³¹⁰ to support 20 candidates, which secured their transition to the next stage and used the rest of 36 votes so that it would not affect the process substantially.

Considering the fact that the ranking score given within the current system is not reasoned, it is difficult to make concrete conclusions. However, there are questions raised about the decisions reached by ten members of the HCoJ that blocked eventually several candidates with high scores from being nominated to the Parliament of Georgia.

Even though the law clearly stipulates that candidates for the Supreme Court should have higher legal education with at least a master's degree or its equivalent,³¹¹ the educational degree of three candidates³¹² submitted to the Parliament of Georgia did not meet the statutory requirement. The conflict of interests revealed in the selection process is particularly noteworthy. Irakli Shengelia, an HCoJ member, did not recuse himself although one of the candidates was his wife's brother. Furthermore, even though one of

³⁰⁸ *Ibid.* p. 29.

³⁰⁹ HCoJ member, Ana Dolidze did not attend the session.

³¹⁰ Each candidate received 20 votes.

³¹¹ The Organic Law of Georgia on Common Courts, Article 34.1.

³¹² Academic degrees of Shalva Tadumadze, Zaza Tavadze and Miranda Eremadze did not meet the statutory requirements.

the candidates, Giorgi Miqautadze, recused himself due to conflict of interests for being a member of the HCoJ, he continued his usual activities as the head of the administration.

Considering the insufficient procedural safeguards and the attitude of the council members, the process as followed by the HCoJ, unfortunately, could not convince an objective observer that the candidates nominated to the parliament were the most competent with the highest degree of integrity.

Apart from the above-mentioned circumstances, the process conducted in the council was punctuated with permanent criticism towards the Public Defender of Georgia and attempts at discrediting the Public Defender as the national human rights institution.

Considering the processes conducted in the HCoJ, the Public Defender prepared a Special Report and submitted it to the Parliament of Georgia to have those shortcomings redeemed that had been identified within the HCoJ. In parallel, the parliament was recommended to draft amendments that would exclude arbitrary decisions by the HCoJ, avoid conflict of interests, ensure transparency and full publicity of the process, including introducing open ballot in the council and the duty to reason its decisions, as well as an opportunity for candidates to challenge those decisions.³¹³

In parallel, the Public Defender of Georgia challenged various provisions of the Organic Law of Georgia on Common Courts before the Constitutional Court that unconstitutionally bar individuals from holding public office due to the council's unreasoned and secret decisions.

Electing the Supreme Court Judges in the Parliament

The election of the Supreme Court judges in the parliament lasted from 6 September 2019 to 12 December 2019. The Committee of Legal Affairs conducted the major part of the process. Initially, on 11 September, the committee set up a working group whose work was confined to ten days and was completed on 20 September 2019. The working group was supposed to examine formal compliance of the candidates for the Supreme Court with the statutory requirements. Such a deadline excluded from the very beginning any meaningful work on the part of the group. Within this period, only a part of the information could be requested from candidates and agencies. However, the group has not discussed in full the received information as comprehensive documentation was only received after the completion of its work and some information was requested even after the completion of its work.³¹⁴ Despite this, "in the opinion of the members of the committee's working group, the candidates for the Supreme Court nominated by the High Council of Justice of Georgia to the Parliament of Georgia complied with the formal requirements determined by the Constitution of Georgia and other normative acts."³¹⁵ Such an assessment by the

³¹³ The Special Report of the Public Defender on Monitoring the Selection by the HCoJ of Candidates for the Supreme Court of Georgia, available at: < <https://bit.ly/2UP6O5Y> > [accessed 09.09.2020].

³¹⁴ The Committee of Legal Affairs decided to request certain information on 23 September 2019. The group had completed its work three days before this date.

³¹⁵ Extracts from Conclusion no. 2-22113/19 of the Committee of Legal Affairs about candidates for the Supreme Court of Georgia submitted for election to the Parliament of Georgia on 6 September 2019, p. 4, available at: < <https://bit.ly/3cRmu11> > [accessed 06.03.20].

working group's members before the comprehensive examination of documentation is unconvincing and devoid of objectivity.

The Committee for Legal Affairs heard all 20 candidates from 23 September 2019 to 8 November 2019. About one day was dedicated to hearing each candidate. The hearings were broadcast live. Apart from MPs, representatives of the Public Defender, Legal Aid Service, Georgian Bar Association and the Coalition for an Independent and Transparent Judiciary could also pose questions to the candidates. The high degree of transparency ensured by the committee for hearing the candidates for the Supreme Court was significant. Unfortunately, this factor alone was not sufficient for adopting a convincing and adequate decision by the parliament.

On 12 December 2019, the Committee for Legal Affairs of the Parliament of Georgia cast a ballot for 19 candidates for the Supreme Court³¹⁶ and recommended the election of 14 of them. This procedure was conducted against the requirements of the Rules of the procedures of the Parliament. The Rules of the procedures of the Parliament clearly stipulate that, after hearing candidates for the Supreme Court, the Committee of Legal Affairs must elaborate a conclusion about their compliance with the requirements laid down by the Constitution and/or other legal acts.³¹⁷ Instead, on the committee session held on 12 December, the votes for candidates were cast so that it was not even announced which constitutional requirements had to be examined by the committee and what issues were to be deliberated. In those circumstances, where the HCoJ had nominated candidates for the Supreme Court based on unreasoned decisions, the failure to observe the minimum requirements of the Rules of the procedures of the Parliament had deepened the said problem.

The Parliament of Georgia did not pay attention to the shortcomings that had taken place at the HCoJ level as indicated in the Public Defender's Special Report. Among them, the parliament ignored the fact that out of the twenty candidates the council nominated to the parliament, five candidates did not have the best scores. The HCoJ nominated 15 candidates with the best scores and five other candidates having lower scores than other candidates. In those circumstances, where there is no reasoning on the part of the council and those giving scores stay anonymous, there are misgivings that scores were given arbitrarily. It is difficult to say that the candidates with the highest scores are better than other candidates in terms of integrity and competence but it is also evident that this fact was not assessed in any manner within the parliament and three candidates among the 14 elected judges do not have the best scores.

The Public Defender's Special Report also focused on the failure of the candidates for the Supreme Court in meeting the formal statutory requirements.³¹⁸ One of the candidates withdrew after the publication of

³¹⁶ One out of 20 candidates submitted by the HCoJ to the parliament withdrew candidacy before the voting.

³¹⁷ The Rules of the procedures of the Parliament, Article 205.2, Article 205.3¹, and Article 205.4.

³¹⁸ Under Article 34.1 of the Organic Law of Georgia on Common Courts, higher legal education with at least a master's degree is a precondition for judgeship. Furthermore, under Article 89.8 of the Law of Georgia on Higher Education, before the beginning of the academic year 2005-2006, a higher education diploma obtained as a result of the completion of a one-level, and at least five-year educational programme, is equivalent to a master's degree. Before the beginning of the

the report. There were also questions raised on whether Shalva Tadumadze has an LLM degree.³¹⁹ The candidate responded to this issue during deliberations in the Committee of Legal Affairs. The Public Defender verified received responses with relevant agencies and, on 6 November 2019, sent a letter to the Committee of Legal Affairs about the circumstances that were additionally identified. However, the committee had not discussed the circumstances pointed out in the Special Report or the letter. According to the additional materials obtained, despite Shalva Tadumadze's claims that he underwent five years of studies in the institute, there is a document in the archive, which certifies that the law programme only offered four years of studies in this establishment.³²⁰ There were no legal documents to be found in the respective administrative body on which Shalva Tadumadze based his arguments.³²¹ According to the LEPL National Centre for Educational Quality Enhancement,³²² the agency had confirmed the validity of three diplomas issued by this educational establishment indicating the same years of enrolment and completion of the studies in the university. It should be pointed out that all the three diploma holders, before getting enrolled in Tbilisi Institute of Humanities, had studied in other universities that obtained a licence in 1991 and therefore these diplomas were found to be equal to a master's degree due to their holders having followed five-year educational programmes.

It is evident that the circumstances in these three cases are different from those in Shalva Tadumadze's case. Shalva Tadumadze had not applied to the LEPL National Centre for Educational Quality Enhancement, requesting the confirmation of the validity of his diploma.

The Public Defender is interested in the above issue as it is directly related to human rights – the right to a fair trial and the right to hold public office. It is noteworthy that the OSCE/ODIHR, in the First Report on the Nomination and Appointment of Supreme Court Judges in Georgia,³²³ pointed out the violation of

academic year 2005–2006, a higher education diploma obtained as a result of the completion of a one-level, and less than five-year educational programme, is equivalent to a bachelor's degree.

³¹⁹ The following circumstances raised questions: 1) According to the diploma, Shalva Tadumadze was enrolled in Tbilisi Institute of Humanities named after N. Dumbadze in 1993; however, the institute was licenced on 25 August 1994; 2) in 1993, Shalva Tadumadze was only 15 years old; 3) according to the diploma, Institute of Humanities named after N. Dumbadze is the name of the educational establishment, however, this name was given to the institute based on a decision of Vake-Saburtalo Court on 5 December 2003, whereas the diploma was issued in 1998; the only 1997–1998 curriculum of the law faculty of Tbilisi Institute of Humanities that can be found in the archive consisted of four-year studies.

³²⁰ Letter no. MES 9 19 01399251 of the LEPL National Centre for Educational Quality Enhancement, dated 16 October 2019.

³²¹ According to Letter no. MES 9 19 01399251 of the LEPL National Centre for Educational Quality Enhancement, dated 16 October 2019, there is no information in the National Centre for Educational Quality Enhancement about the legal act that would determine the form of a diploma and/or the procedure of filling out/issuing a diploma as of June 1998. No such legal act can be found in the Legislative Herald of Georgia either, although the latter was invoked by the candidate. Furthermore, there was no legal act to be found in the LEPL National Centre for Educational Quality Enhancement that governs external learning in a higher educational establishment. The legislation in force at the material time did not stipulate that external learning implied the possibility of following two courses at the same time, which Shalva Tadumadze also mentioned at the committee hearing.

³²² Letter no. MES 1 19 01468355 of the LEPL National Centre for Educational Quality Enhancement, dated 28 October 2019.

³²³ OSCE/ODIHR, the First Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June–September 2019, pp. 11, 28.

Article 6 of the European Court of Human Rights in the context of the selection of the Supreme Court judges as this very provision provides basic guarantees for an independent and impartial tribunal. In its judgment of 12 March 2019, the European Court of Human Rights emphasised that the requirement that a tribunal is established by law is closely connected to the other general requirements of Article 6.1, on the independence and impartiality of the judiciary, both also being an integral part of the fundamental principle of the rule of law in a democratic society.³²⁴ What is at stake is the confidence the courts in a democratic society must inspire in the public.³²⁵ Furthermore, according to the Constitutional Court of Georgia, “the right to a fair trial guaranteed by Article 31.1 of the Constitution of Georgia also implies a person’s right to apply to a court for the protection of his/her rights, whose judges have been appointed in accordance with constitutional standards.”³²⁶

Despite the serious violations punctuating the selection of Supreme Court judges in the HCoJ, the Committee for Legal Affairs recommended the election of the majority, about $\frac{3}{4}$ of them, thus siding with the deficient procedure in the HCoJ and all the problematic decisions adopted by the council. Each candidate that was supported by the committee gained support at the plenary session as well within a few minutes. It should be emphasised that some candidates supported by the parliament could not meet even the minimum threshold of competence (considering the answers they gave to publicly asked questions). Therefore, the parliament’s decision further diminished the confidence in the court system that was rather low as it was and seriously damaged the justice system.

According to the OSCE/ODIHR, the decision to proceed with a plenary vote on the judicial appointments amidst a political crisis, opposition boycott, widespread calls for postponement and serious disruptions to the committee and plenary meetings bring into question the genuineness of the authorities’ aim to have an open and transparent process that garners wide political support and builds public confidence in the judiciary.³²⁷

5.4. Right to a Fair Trial within a Reasonable Time

Consideration of Criminal Cases

In the 2018 Parliamentary Report, the Public Defender pointed out that the consideration of criminal cases is often delayed, going unreasonably beyond the terms determined by the legislation.³²⁸ This trend was particularly alarming in the appellate courts and also in the administrative cases appealed by prisoners.

³²⁴ *Guðmundur Andri Ástráðsson v. Iceland*, application no. 26374/18, judgment of the European Court of Human Rights of 12 March 2019, para. 99.

³²⁵ *Morice v. France*, application no. 29369/10, judgment of the Grand Chamber of the European Court of Human Rights of 23 March 2015, para. 78.

³²⁶ Admissibility Decision no. 3/24/1459, of the Constitutional Court of Georgia of 17 December 2019 in the case of the Public Defender of Georgia v. the Parliament of Georgia, para. 32.

³²⁷ OSCE/ODIHR, the Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June-December 2019, p. 3, available at: < <https://bit.ly/39AqFeM> > [accessed 06.03.20].

³²⁸ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 98.

The Public Defender also pointed out that there was an unreasonable delay, sometimes five months, in handing a decision to parties.³²⁹

This trend did not change in the current year. According to the statistics obtained, only Gori District Court managed to finalise non-custodial cases within the statutory time.³³⁰ Batumi City Court should be particularly pointed out as it handed guilty judgments to six convicted persons after delays of three to five months.³³¹ Among those convicted persons was Z.B. whose case was examined by the Public Defender's Office separately and a delay of six months was found. It is also noteworthy that some courts³³² refused to supply this information to the Public Defender's Office as the data had not been processed.

Another example of delay is the failure to assess, to this day, an alleged crime – battery – committed by the former Chief Prosecutor, Otar Partskhaladze, against the then head of the State Audit Office of Georgia, Lasha Tordia, on 13 May 2017. Otar Partskhaladze and M.Ch. were charged with physical violence against Lasha Tordia. The court has not ruled on this case to this day even though the case reached Tbilisi City Court for the consideration of merits on 30 January 2019.³³³ The Public Defender assessed the investigation in this case in the 2017 Parliamentary Report as well and pointed out its ineffectiveness.³³⁴

Furthermore, it should be noted that there were problems identified in the courts of appeals and cassation in terms of the consideration of a case within a reasonable time. Out of 1,949 cases considered by Tbilisi Court of Appeals, the examination of 481 cases was delayed.³³⁵ Out of 952 complaints lodged with Kutaisi Court of Appeals, the examination of 152 complaints was delayed.³³⁶ Out of 502 complaints lodged with the Chamber of Criminal Cases of the Supreme Court of Georgia in 2019,³³⁷ the examination of 26 cases was finalised in breach of statutory terms.

Examination of Civil and Administrative Cases

In the reporting period, the examination of civil and administrative cases by appellate courts within the statutory time limit remains problematic.

The analysis of statistics supplied by Tbilisi Court of Appeals shows that the substantial part of cases is examined in violation of procedural time limits. Under the law, Tbilisi Court of Appeals has to examine

³²⁹ *Ibid.* pp. 98-99.

³³⁰ Letter no. 6 of Gori District Court, dated 3 January 2020.

³³¹ Letter no. 1046G/K of Batumi City Court, dated 2 October 2019.

³³² Letter no. 698 of Tbilisi District Court, dated 27 December 2019; and Letter no. 34167 of Tbilisi City Court, dated 1 January 2020.

³³³ Letter no. 1/295-19 of Tbilisi City Court, dated 26 December 2019.

³³⁴ The 2017 Parliamentary Report of the Public Defender of Georgia, p. 65.

³³⁵ Letter no. 1/10934 of Tbilisi Court of Appeals, dated 31 December 2019.

³³⁶ Letter no. 40-2/10 of Kutaisi Court of Appeals, dated 15 January 2020.

³³⁷ Letter no. P-1451-19 of the Supreme Court of Georgia, dated 30 December 2019.

civil and administrative cases within two months, which can be extended to five months only in exceptional circumstances.³³⁸

Considering the fact that the Public Defender's Office was supplied with data from 1 January 2019 to February 2020, the report analysed only the data of the first nine months of 2019 in terms of length of proceedings in Tbilisi Court of Appeals, as the term did not yet expire for the appeals registered in October.

According to the submitted information,³³⁹ out of the 1,847 appeals registered in the Chamber of Civil Cases of Tbilisi Court of Appeals in 2019, only 374 appeals (20%) were examined within two months and 541 appeals (29%) were examined within five months. Thus, the Chamber of Civil Cases of Tbilisi Court of Appeals has not finished the examination of approximately 51% of appeals registered in 2019 within the time limits established by the procedural legislation.

1,480 appeals were registered in the Chamber of Administrative Cases of Tbilisi Court of Appeals in 2019. Out of them, 315 appeals (21%) were examined within two months and 416 appeals (28%) were examined within five months. Thus, the Chamber of Administrative Cases of Tbilisi Court of Appeals has not finished the examination of approximately 51% of appeals registered in 2019 within the time limits established by procedural legislation.

Under the civil and administrative procedural legislation, the Chamber of Administrative Cases and the Chamber of Civil Cases have to examine the admissibility of cassation appeals within three months³⁴⁰ and reach a final decision within six months.³⁴¹

It was revealed as a result of the communication with the Supreme Court of Georgia that, in the reporting period, 1,429 cassation appeals were registered in the Chamber of Civil Cases of the Cassation Court.³⁴² Out of 430 cases, where inadmissibility decisions were adopted, the court examined 192 appeals (44.6%) in violation of the three-month time limit. Out of 999 cases, where admissibility decisions were adopted, the court finalised proceedings within the six-month time limit only in 14 cases (1.4 %).

In 2019, 1,218 appeals were lodged with the Chamber of Administrative Cases of the Court of Cassation. Out of 283 cases, where inadmissibility decisions were reached, 164 appeals (58%) were examined in violation of the three-month statutory term. Out of 935 cases, where admissibility decisions were reached, the Supreme Court examined only two cases within the six-month term.

After the staffing of the Supreme Court, the Public Defender of Georgia will observe the compliance of the duration of proceedings before the court of cassation with the procedural legislation.

³³⁸ The Civil Procedure Code of Georgia, Article 59. 3.

³³⁹ Letter no. 3/906 of Tbilisi Court of Appeals, dated 29 February 2020.

³⁴⁰ The Criminal Procedure Code of Georgia, Article 401.3; the Code of Administrative Procedure of Georgia, Article 41.3¹.

³⁴¹ The Civil Procedure Code of Georgia, Article 391.6; the Code of Administrative Procedure of Georgia, Article 34.4.

³⁴² Letter no. P-67-20 of the Supreme Court of Georgia, dated 14 February 2020.

5.5. Right of Access to a Court

In the reporting period, the Public Defender of Georgia revealed the cases of actual restriction of prisoners' right of access to a court.

Appealing an administrative body's decision before a court is related to the duty to pay state fees except in exceptional situations.³⁴³ Given the economic situation of prisoners in penitentiary establishments, a majority of them lack the means to challenge a disciplinary sanction imposed through disciplinary proceedings or request the judicial review of a refusal to grant an early conditional release. The Public Defender attempted to obtain detailed information as to how frequently the duty of paying the state fee is an obstacle for prisoners in terms of appealing a decision before the court. However, such statistics are not maintained in the court system.³⁴⁴

Out of the 56 cases examined by the Office, the court did not admit 16 cases of refusal of early conditional release for the consideration of the merits solely due to the failure to pay state fees.³⁴⁵ Convicted persons face such obstacles also in terms of challenging disciplinary sanctions imposed as a result of disciplinary proceedings.³⁴⁶

Stemming from the instrumental nature of the right to a fair trial, such a restriction of the right of access to a court for indigent offenders may result in the violation of an important right in future. Therefore, state authorities must take timely measures to remedy this problem.

5.6. Principle of Legality

In the reporting period, several cases were instituted that might have a significant impact on the principle of legality. For this reason, the Public Defender of Georgia submitted several *amicus curiae* briefs to common courts.³⁴⁷

In 2019, Nika Gvaramia was charged under Article 182.2.a)-d) and Article 182.3.b) of the Criminal Code of Georgia. According to the charges brought, in the material period, when Nika Gvaramia worked as a manager of a broadcasting company, the terms of contractual remuneration were changed and he negotiated the amount of remuneration with one of the subcontractors at the beginning of each month. According to the prosecution, this change led to a reduction in the profits received by the company within a calendar year and concluding different contracts was aimed at worsening the company's economic situation and embezzlement of its resources.

³⁴³ The Code of Administrative Procedure of Georgia, Article 9.

³⁴⁴ *Inter alia*, Letter no. 20918 of Tbilisi City Court, dated 31 July 2019.

³⁴⁵ The Special Report of the Public Defender of Georgia on Conditional Early Release and Commutation of Unserved Sentence with a Lesser Penalty, 2019, p. 20.

³⁴⁶ The Special Report of the Public Defender of Georgia on Administrative Proceedings against Prisoners, 2019, p. 23.

³⁴⁷ *Amicus Curiae* briefs are available at: < <https://bit.ly/2TCFzwc> > and < <https://bit.ly/3cGMfkt> > [accessed 10.03.2020].

Based on the analysis of Georgian and international legal sources, the Public Defender maintained in the *amicus curiae* brief that a decision which is adopted by a company director, even if it is against the company interests, can be subject to civil responsibility in exceptional circumstances only, let alone criminal responsibility.

On 24 July 2019, the Prosecutor's Office of Georgia charged Mamuka Khazaradze and Badri Japaridze with legalisation of illicit proceeds, i.e., money laundering.³⁴⁸ The Public Defender of Georgia analysed Georgian and international legal sources as well as case-law on money laundering in the *amicus curiae* brief submitted to Tbilisi City Court on 9 January 2020.³⁴⁹ Particular details of this case were assessed in the light of these standards. According to the Public Defender, based on the case-files, there are no statutory elements of a money-laundering scheme to be found in this case.

The above cases attracted considerable public interest since the accused persons are respectively the owner and a manager of a media company critical to the government and political actors. Therefore, it is imperative to ensure that court proceedings are conducted in accordance with human rights standards. Considering that, the above cases are at the initial stage of the trial, the Public Defender hopes that the court will accept the opinions expressed in the *amicus curiae* briefs.

5.7. Permanence of the Bench Composition

The Public Defender of Georgia has been reiterating for years the importance of the principle of the permanence of the bench composition and its impact on the exercise of the right to a fair trial.

Similar to the previous years,³⁵⁰ this problem remained relevant in the reporting period as well. Based on the information examined by the Office of the Public Defender of Georgia and supplied by courts, it can be concluded that consideration of the cases has not been conducted *ab novo* in 36 cases out of 110 cases where a judge had been replaced.³⁵¹

In accordance with the principle of immediacy under the case-law of the European Court of Human Rights, reaching a decision by a judge who did not take part personally in the examination of evidence is against the fair trial standard guaranteed by the Convention.³⁵²

The existing problem is further aggravated by the fact that a substantial part of common courts does not maintain statistics in this regard at all.³⁵³ This makes it difficult to perceive the full scale of the issue.

³⁴⁸ The Criminal Code of Georgia, Article 194.2.a) and Article 194.3.c).

³⁴⁹ *Amicus Curiae* brief of the Public Defender of Georgia of 9 January 2020, available at: < <https://bit.ly/3awGDn> > [accessed 19.03.2020].

³⁵⁰ The 2017-2018 Parliamentary Reports of the Public Defender of Georgia.

³⁵¹ Letter no. 973 of Zugdidi District Court, dated 30 December 2019; Letter no. 08-G/K of Batumi City Court, dated 6 January 2020.

³⁵² *Cerovšek and Božičnik v. Slovenia*, applications nos. 68939/12 and 68949/12, judgment of the European Court of Human Rights of 7 March 2017, paras. 38-47.

³⁵³ Letter no. 33912 of Tbilisi City Court, dated 30 December 2019; Letter no. 697 of Telavi District Court, dated 27 December 2019; and Letter no. 16-1 of Kutaisi City Court, dated 3 January 2020.

5.8. Provocation of Crime

Under the Law of Georgia on Operative and Investigative Activities, investigative authorities can conduct the following covert activities: a test purchase, a controlled delivery, infiltration of a secret collaborator or an operative into a criminal group, setting up an undercover organisation and participate in closed Internet relations.³⁵⁴ Such activities are tolerated and acceptable in the fight against corruption under several international instruments. However, it is imperative to exclude entrapment from such activities. The Criminal Code of Georgia also punishes entrapment, which is inciting another person to commit a crime so that he/she can be prosecuted.³⁵⁵

Despite the above risk, unfortunately, the legislation does not provide for any effective mechanism of judicial scrutiny over such activities. Due to this legislative shortcoming, in 2018, the European Court of Human Rights found the violation of Article 6 of the Convention. The European Court of Human Rights observed that there was no legislative standard to authorise the involvement of an undercover agent and the quality of judicial review did not meet the minimum standard required. The domestic courts also failed to examine the reasons for mounting a covert operation and an undercover agent's failure to remain strictly passive in her activity.³⁵⁶

International standards prohibit in express terms the admissibility of evidence obtained as a result of entrapment. The European Court of Human Rights maintains that a person cannot be held responsible for the commission of an offence that he/she would never have committed without the intervention of *agents provocateurs*. In this context, the European Court of Human Rights assesses the reasons for mounting operative activities, on the one hand, and the quality of judicial scrutiny of incitement, on the other hand.³⁵⁷ Several NGOs have identified the seriousness of the problem and the urgent need for relevant legislative changes.³⁵⁸

Considering the above arguments, it is important to elaborate a formal authorisation and supervision mechanism for undercover operations to ensure the legality of evidence and reduce the risk of entrapment in criminal proceedings.

³⁵⁴ The Law of Georgia on Operative and Investigative Activities, Article 7.2.

³⁵⁵ The Criminal Code of Georgia, Article 145.

³⁵⁶ *Tchokhonelidze v. Georgia*, application no. 31536/07, judgment of the European Court of Human Rights of 28 June 2018, paras. 51-52.

³⁵⁷ *Ramanauskas v. Lithuania*, application no. 74420/01, judgment of Grand Chamber of the European Court of Human Rights of 5 February 2008, para. 67.

³⁵⁸ Ekaterine Tsimakuridze and Elene Sichinava, Determining a Judge's Role in Adversarial Criminal Proceedings in Georgia, pp. 105-143, 2019; Operative Activities of Law Enforcement Bodies, Human Rights and Monitoring Centre (EMC), p. 63-80, 2019; Tinatin Tskhvediani, Entrapment in the ECtHR Case-Law, available at: < <https://bit.ly/3blGDVD> > [accessed 11.03.2020].

5.9. Defendant's Right to an Interpreter

The Office of the Public Defender of Georgia constantly observes various trials. The monitoring showed that interpreters could not provide adequate services for accused persons in Bolnisi District Court and Marneuli Magistrate Court. They use Turkish or Georgian words when interpreting and do not give comprehensive information voiced during court proceedings to foreign participants.

The monitoring of juvenile justice also revealed that translators interpret texts very briefly and/or quickly which gave rise to questions about their qualifications, empathy and integrity.³⁵⁹

5.10. Privilege against Self-incrimination

Under Article 31.11 of the Constitution of Georgia, no one shall be obliged to testify against himself/herself or his/her relatives, as determined by law. This right implies, on the one hand, a person's right not to incriminate himself/herself and a relative and, on the other hand, the prohibition of the use of information against the person that was obtained from him/her without notification of this right through manipulations by investigative authorities

Under Article 247.1 of the Criminal Procedure Code of Georgia, if an accused person objects, it shall be impermissible to publicly read the information provided by him/her during an interview before a hearing on the merits or to play (demonstrate) the audio or video recording of this information and use this information as evidence. Refusal of the accused to have the information provided by him/her publicly read or the audio or video recording of that information played (demonstrated) may not be considered as evidence proving his/her culpability.

Based on this provision, investigative authorities obtain incriminating information from persons without notifying them about their privilege against self-incrimination. Such wrong interpretation of Article 247 of the Criminal Procedure Code enabled investigative authorities to compel a person to give a statement during a so-called imitated interrogation that he/she would not give if aware of his/her rights.

The European Court of Human Rights considered that the use of a confession in court, obtained through the questioning of the person by police officers without due notification of the right not to incriminate himself, to be in violation of the Convention. The Court has found that obtaining confession without notifying about the right amounted to the breach of the privilege against self-incrimination.³⁶⁰

This problem was also noticeable in specific criminal cases investigated in the reporting period. In the criminal case of the so-called Khorava Street murder, one of the juveniles that were later charged was

³⁵⁹ The Special Report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, prepared in co-operation with the Rehabilitation Initiative for Vulnerable Groups, pp. 18-19, available at: <<https://bit.ly/2IR4ZjD>> [accessed 11.03.2020].

³⁶⁰ *Aleksandr Zaichenko v. Russia*, application no. 39660/02, judgment of the European Court of Human Rights of 18 February 2010.

summoned along with his legal representative to the police building.³⁶¹ Based on a court's decision, through covert investigative actions, his "personal interview" with an investigator was audio and video recorded covertly. It is noteworthy that such "personal interview" with the investigator had the elements of an operative-investigative activity as in the beginning the person to be interviewed was not notified about his rights not to incriminate himself and call a lawyer. This recording was later used as one of the grounds for criminal responsibility and served as important evidence in the case against him.

It should be pointed out that an interview with a person later charged with a murder committed in the Khada Valley was conducted in the same manner. In this case, too, the evidence obtained in the process was used against the person in court.

It is, therefore, imperative to eliminate the shortcoming of the legislative wording and define the provision so that it ensures procedural safeguards for accused persons and their relatives.

5.11. Shortcomings of the Code of Administrative offences

The Public Defender of Georgia observed on numerous occasions that the Code of Administrative offences adopted during the Soviet period needs to be replaced and, to this end, it is necessary to draft a new code³⁶² as the code fails to meet even the minimum standard of compliance with human rights and fundamental freedoms.

The provisions of the Code of Administrative offences often fail to comply with the Constitution of Georgia. For this reason, the Public Defender submitted an *amicus curiae* brief to the Constitutional Court of Georgia.³⁶³

This chapter analyses those shortcomings of the Code of Administrative offences of Georgia that led to the violation of the rights of persons arrested in the reporting period, especially on 20-21 June 2019 and 18 November 2019.

Joining Cases

Under the pretext of procedural economy and swift justice, judges join cases according to some unclear system so that the whereabouts of arrested persons and circumstances surrounding alleged violations are completely ignored.³⁶⁴

³⁶¹ This person was the juvenile's parent and not a lawyer.

³⁶² The 2012 Parliamentary Report of the Public Defender of Georgia, pp. 448-450; the 2013 Parliamentary Report of the Public Defender of Georgia, pp. 271-277; the 2014 Parliamentary Report of the Public Defender of Georgia, pp. 303-307; the 2015 Parliamentary Report of the Public Defender of Georgia, pp. 462-467; the 2017 Parliamentary Report of the Public Defender of Georgia, pp. 114; the 2018 Parliamentary Report of the Public Defender of Georgia, pp. 91-109.

³⁶³ *Amicus Curiae* brief of the Public Defender of Georgia of 30 October 2019, available at: <<https://bit.ly/2JqOcnx>> [accessed 11.03.2020].

³⁶⁴ Beyond the Lost Eye: Legal Assessment of the Events of 20-21 June, the Georgian Young Lawyers' Association, 2019, p. 84.

The paradoxical practice of joining cases in the court of appeals and judges' attempt to conclude proceedings quickly by joining cases had an opposite result.³⁶⁵ The cases to be considered jointly were also the cases of those persons who were placed in isolators located in different cities. The Ministry of Internal Affairs ensured that the persons in administrative detention appeared before Tbilisi Court of Appeals. Thus, due to the low number of police officers and the distance between the places of detention and the court, the start of proceedings in the court of appeals was delayed for hours.

It is also noteworthy that the cases of those arrested on 18 November 2019 were assigned to only one judge. It caused unreasonable delay in the proceedings.

Formalistic Nature of Proceedings

The majority of the proceedings against those arrested at the demonstrations were based on Article 166 and Article 173 of the Code of Administrative Offences. The contents of the violation and arrest reports were mostly identical and contained the following entries: *"was swearing with vulgar words, was a demonstrator and did not obey the legal requests of the police"*.³⁶⁶

These entries rarely specified the content, form or venue of a violation committed by a particular person; they were formulaic and the court's attitude was superficial which was manifested in the imposition of administrative penalties on the arrested persons based only on the arrest reports and statements given by police officers.

During court hearings, the video recordings of the body cameras adduced by police officers did not show those persons against whom proceedings were conducted. It was impossible to determine even after court proceedings whether particular persons, including police officers, were present at the scene.³⁶⁷

Absence of Neutral Evidence

The Public Defender pays particular attention to those categories of violations that can lead to the violation of the right to a fair trial in the light of the case-law of the European Court of Human Rights.

On 18 November 2019, when the court examined the video recordings adduced by police as neutral evidence, on certain occasions, it was impossible to identify accurately possible perpetrators and/or violations allegedly committed by them. This fact on its own, in principle, should have excluded the imposition of administrative detention.

Besides, in other cases, police officers have not presented recordings of body cameras and the defence's motion about obtaining body camera video recordings was rejected by the court for an unclear reason.

³⁶⁵ *Ibid.* p. 85.

³⁶⁶ Beyond the Lost Eye, the Georgian Young Lawyers' Association, 2019, p. 86.

³⁶⁷ Public Statement of the Public Defender of Georgia made on 22 November 2019, available at: <https://bit.ly/2vY3BIY> [accessed 11.03.3030].

Therefore, it was impossible to dispel the doubts about whether the police officers signing arrest reports had been actually at the scene and whether it was indeed they who had arrested the demonstrators. These suspicions were further consolidated by the fact that police officers' statements were often contradictory and they could not recall details of the arrests; they were finding it difficult to identify those persons whom they claimed to have arrested, could not remember the place of arrest and other circumstances.

Right to Defence

During the proceedings against the persons arrested on 18 November 2019, the defence did not have adequate time and facilities to exercise their rights. The judge did not allow the party to obtain evidence on their own.³⁶⁸

The practice of Imposition of Penalties

The formalistic nature of proceedings is also proved by the trend of the imposition of administrative penalties on the arrested persons. On 21 June, in Tbilisi City Court, along with the lapse of time, judges applied more lenient penalties. In particular, arrested persons whose cases were examined in the first half of the day were given administrative detention, whereas persons, whose cases were examined in the second half of the day, were mostly fined and released. At the end of the day, judges either gave a verbal reprimand to persons and freed them or adjourned the cases. Such a trend in the imposition of penalties describes the formalistic nature of the court's decisions well.

5.12. Judicial Safeguards of Juveniles

The Code of Juvenile Justice that came into force in 2015 aims at protecting the best interests of the child and ensuring humane justice tailored to these interests. While the fact itself that such an act was adopted is commendable, its practical application has demonstrated that the state must make more efforts to ensure the best interests of the child in the administration of criminal justice.

The Public Defender's Office prepared a Special Report to identify the challenges in this regard and offer the state the ways for addressing them.³⁶⁹

A juvenile defendant and offender as well as an acquitted juvenile and a juvenile victim, all of them are provided with free legal aid at any stage of criminal proceedings unless there is a lawyer contracted by the juvenile involved in the case.³⁷⁰ The legislation does not envisage providing a juvenile witness with free legal aid, which is, in essence, a negative reality as this process also poses risks of damaging the best interests of a child.

³⁶⁸ Idem.

³⁶⁹ The Special Report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, prepared in co-operation with the Rehabilitation Initiative for Vulnerable Groups.

³⁷⁰ The Code of Juvenile Justice, Article 15.1.

Furthermore, while the Code of Juvenile Justice stipulates in express terms the duty to retrain psychologists (procedural representatives) involved in criminal justice, no agency has been determined as responsible for specialisation to this day.³⁷¹

The environment in a courtroom is particularly important in juvenile justice. The European Court of Human Rights held that intimidating and child-inappropriate infrastructure amounted to the violation of the right to a fair trial.³⁷² The Public Defender's Special Report points out various shortcomings identified in this regard, which need to be remedied.

The Public Defender's research showed that the participation of a legal/procedural representative in a trial is nominal. Besides, persons involved in proceedings, despite having followed a specialised course, do not have the required skills or full competence on some occasions.

Proposals

To the Parliament of Georgia:

- To amend Article 51^{1.2} of the Organic Law of Georgia on Common Courts to the effect of determining that the support of at least 2/3 of the HCoJ is necessary for electing an Independent Inspector;
- To determine the obligation of a court to exempt a prisoner from paying state fees, provided the prisoner submits his/her bank statement on the financial details during his/her stay in the penitentiary system proving that his/her monthly income for the last six months was less than 100 GEL;
- To establish by the Criminal Procedure Code that conviction cannot be based on evidence that was examined by another judge, except for those cases where a substitute judge has been appointed in the proceedings;
- to elaborate a formal authorisation and supervision mechanism for undercover operations to ensure the legality of evidence in those cases where there is a risk of entrapment in criminal proceedings;
- To adopt the new Code of Administrative offences complying with international and constitutional standards on human rights; and
- To amend legislation to the effect of ensuring legal aid for child witnesses.

Recommendations

To the Government of Georgia:

- To determine an agency responsible for training/retraining psychologists [in juvenile justice] and the elaboration of the quality control system.

³⁷¹ The Special Report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, prepared in co-operation with the Rehabilitation Initiative for Vulnerable Groups, p. 21.

³⁷² *Ibid.* p. 39.

To the High Council of Justice of Georgia:

- In 2020, to amend the Rules of the High Council of Justice to the effect of determining a detailed procedure and criteria for the selection of an Independent Inspector to ensure that the council excludes any conflict of interests in the selection procedure; also to determine detailed criteria for the assessment of a candidate for an Independent Inspector, the list of interview topics and the duty to provide reasons for ranking candidates.

6. Right to Respect for Private Life

6.1. Introduction

Similar to the previous years, in 2019 also there were problems identified in terms of respect for private life.³⁷³ It is noteworthy that the year of 2019 was no different from the previous years in terms of the identified trends concerning the protection of this right. State authorities again failed in 2019 to prevent the dissemination of covert videotapes depicting private life, reduce the damages caused by the dissemination of video recordings and respond adequately to the crime. In the reporting period, there were incidents involving the violation of prisoners' right to respect for private life, among others, regarding placing prisoners without any reasons in penitentiary establishments located far from the place of residence, and other circumstances.

The Public Defender of Georgia made two recommendations in the 2018 Parliamentary Report regarding the right to respect for private life. One recommendation was given to the Prosecutor's Office of Georgia and the other to the Ministry of Internal Affairs of Georgia. The Prosecutor's Office of Georgia did not fulfil the recommendation regarding informing the public periodically about the progress made in the investigation into incidents involving the breach of the right to respect for private life. Unlike the Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia complied with the Public Defender's recommendation and conducted a campaign explaining to citizens about their rights and duties when receiving video footage of someone's private life through various communication channels.³⁷⁴

In the 2017 Parliamentary Report, the Public Defender maintained that the procedure for conducting covert investigative actions and the absence of the practice of maintaining statistics about such actions in the Prosecutor's Office were problematic. In this regard, it is commendable that, based on a recommendation of the Public Defender of Georgia³⁷⁵ and a resolution of the Parliament of Georgia,³⁷⁶ the Prosecutor's Office of Georgia started recording statistics since January 2019.³⁷⁷

The present chapter discusses the ongoing investigation into dissemination of recordings violating the right to respect for private life and the problems related to the procedure for imposing criminal responsibility for the disclosure of a private secret. The chapter also analyses shortcomings in terms of prisoners' contact with the outside world.

³⁷³ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 110.

³⁷⁴ Letter no. MIA 6 20 00031636 of the Ministry of Internal Affairs of Georgia.

³⁷⁵ The 2017 Parliamentary Report of the Public Defender of Georgia, p. 123.

³⁷⁶ Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018.

³⁷⁷ The Office of the Prosecutor General of Georgia processes statistics about covert investigative acts such as submitting information to a relevant subject, destruction of information in cases established by law, suspension or discontinuation of investigative acts, etc.

6.2. Investigations into the Dissemination of Covert Video Recordings Depicting Private Life

In the 2017 Parliamentary Report, the Public Defender of Georgia maintained that the majority of serious violations of privacy committed in 2015 and 2016 were not investigated.³⁷⁸ It should be pointed out that investigations into these cases are still pending. However, nobody is recognised as a victim or charged with a crime to this date (March 2020) in the majority of the cases.³⁷⁹ The prosecutor's office has not submitted any information whether a new investigative action was conducted in these cases.³⁸⁰

Unfortunately, in 2019, similar to the previous years, covert video recordings infringing private life were made public on several occasions. The most serious case took place on 26 March 2019, when such a video uploaded to youtube.com was accessible for about ten hours. This case clearly showed that the state has no effective mechanism in place to respond promptly to such incidents by preventing them and reducing damage. The Public Defender's recommendation related to reducing crime risks (the mechanism for reporting information promptly, means of blocking information promptly, etc.) and awareness-raising still stands.³⁸¹

Trials on crimes committed in 2019 are conducted against 21 persons.³⁸² It is noteworthy that the prosecutor's office has not informed the public about instituting a criminal prosecution against persons charged with initial recording, storing and disseminating of footages.³⁸³

6.3. Procedure for Imposing Criminal Responsibility for Disclosing a Private Secret

Disclosure of a private secret is a crime under Article 157¹ of the Criminal Code of Georgia. The disclosure of information about private life or the disclosure of personal detail is also a crime under Article 157 of the Criminal Code of Georgia. As early as in the 2016 Parliamentary Report, the Public Defender maintained that it was necessary to stipulate expressly what is implied under a private secret and information about private life.³⁸⁴ The criteria for distinguishing the scope of application of these provisions are not determined by the said provisions or the explanatory memorandum of the law. It is noteworthy that sanctions determined by these provisions differ substantially.³⁸⁵ The Public Defender maintains that it is necessary for the legislature to amend Articles 157 and 157¹ of the Criminal Code of Georgia to

³⁷⁸ The 2017 Parliamentary Report of the Public Defender of Georgia, p. 118.

³⁷⁹ Information about cases is available at: < https://bit.ly/2uraWjw_1 [accessed 01.02.2020].

³⁸⁰ Letter no. 13/2393 of the Office of the Prosecutor General of Georgia, dated 16 January 2020.

³⁸¹ Information is available at: < <https://bit.ly/2OBsVdR> > [accessed 01.02.2020].

³⁸² Letter no. 13/2393 of the Office of the Prosecutor General of Georgia, dated 16 January 2020.

³⁸³ Idem.

³⁸⁴ The 2016 Parliamentary Report of the Public Defender of Georgia, p. 408.

³⁸⁵ The Criminal Code of Georgia, Article 157 determines the maximum sentence for the disclosure of information about private life or the disclosure of personal data, committed in aggravated circumstances by deprivation of liberty for seven years. Article 157¹ determines the maximum sentence for the disclosure of a personal secret, committed in aggravated circumstances by deprivation of liberty for ten years.

separate the scope of application of these two provisions so that their extensive and arbitrary interpretation is eliminated.

6.4. Procedure for Conducting Covert Investigative Actions

As of 2019, the legislative amendments adopted by the Parliament of Georgia on 22 March 2017 regarding the procedure for covert investigative actions remain in force. These amendments were aimed at enforcing the judgment of the Constitutional Court of Georgia of 14 April 2016.³⁸⁶ The Public Defender of Georgia maintains that the legislative amendments adopted on 22 March 2017 contradict the spirit of the Constitutional Court's judgment of 14 April 2016 and it does not serve the purpose of its effective enforcement. Therefore, the Public Defender, along with civil society representatives, lodged a constitutional complaint with the Constitutional Court of Georgia. Detailed information regarding this issue is available in the parliamentary reports of the previous years.³⁸⁷ Sessions about the consideration of the merits of the complaint were already held in the Constitutional Court of Georgia. However, the Constitutional Court has not delivered the final judgment yet.

6.5. Contact with the Outside World in Penitentiary and Psychiatric Establishments

Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families.³⁸⁸ The Handbook on Dynamic Security and Prison Intelligence of the United Nations Office on Drugs and Crime points out that prisoners' outside contacts must be seen as entitlements rather than privileges. They should, therefore, not be used as either rewards or punishments.³⁸⁹ It is an essential part of a prisoner's right to respect for family life that the authorities enable and, if need be, assist in maintaining contact with his/her close family.³⁹⁰

Despite the reviewed standards, the problem of prisoners in penitentiary establishments maintaining contact with the outside world was identified by the Special Preventive Group in each establishment visited by the group.

³⁸⁶ Judgment no. 1/1/625,640 of the Constitutional Court of Georgia of 14 April 2016.

³⁸⁷ The 2017 Parliamentary Report of the Public Defender of Georgia, pp. 119-121; the 2018 Parliamentary Report of the Public Defender of Georgia, p. 112.

³⁸⁸ The European Prison Rules, Rule 24.1.

³⁸⁹ *Khoroshenko v. Russia*, application no. 30/06/2015, judgment of the Grand Chamber of the European Court of Human Rights of 30 June 2015, para. 106; *Messina v. Italy* (no.2), application no. 25498/94, judgment of the European Court of Human Rights of 28 September 2000, para. 64; *Kurkowski v. Poland*, application no. 36228/06, judgment of the European Court of Human Rights of 9 April 2013, para. 95.

³⁹⁰ The United Nations Office on Drugs and Crime (UNODC), Handbook on Dynamic Security and Prison Intelligence, New York, 2015, p. 22, available at: <<http://bit.ly/39L4SSr>> [accessed 02.11.19].

The shortcomings related to the breach of confidentiality of telephone conversations³⁹¹ and window shields in short visit rooms remain problematic.³⁹²

It is problematic for foreign citizens to maintain contacts with their family. Their family members mainly live abroad and therefore prisoners cannot exercise their right to short and long visits. They cannot use video visits either as the National Agency of Probation organises video calls outside penitentiary establishments.³⁹³ Thus it is an imperative practice to allow a remand/convicted prisoner to replace one short visit and one long visit with one telephone call based on a written request. The current procedure determined by the Imprisonment Code³⁹⁴ does not allow replacement of visits by a telephone call or a video visit.

It is problematic that prisoners in establishment no. 8 can only use telephone three times in a month and once in ten days they can make a call according to their prison cell number. Besides, only two days are allocated in a week for international calls and foreign prisoners are unable to make a call in those cases where these days do not coincide with the day a particular prison cell can use the telephone.

It should be also pointed out that, in 2019, prisoners' transfer to establishments far from their place of residence without justification was problematic. Distance made it difficult for prisoners to maintain contacts with family members that led to unjustified and lengthy restriction of the right to respect for private life. The Penitentiary Department commented about certain prisoners that it was impossible to transfer them to an establishment closer to their place of residence due to overcrowding.³⁹⁵ The Public Defender made several recommendations to the Minister of Justice about transfers. As a result of several recommendations made in various periods, V.A. and later another convicted person V.A. were transferred to penitentiary establishments closer to their place of residence. Unfortunately, the recommendation made regarding offender Z. J. was not fulfilled.³⁹⁶

Apart from the above-mentioned, Article 77.1 of the Imprisonment Code is also problematic. Under this provision, a remand prisoner's right to four short visits per month allowed by the law can be restricted based on an investigator's or a prosecutor's decision. This provision does not determine the procedure for challenging such decisions. The Public Defender maintains that to prevent arbitrary actions of an investigator or a prosecutor, it is necessary to allow an accused person to verify the legitimacy of such decisions before a court. This is important to ensure that persons placed in penitentiary establishments

³⁹¹ For instance, according to prisoners placed in penitentiary establishments nos. 2, 3 and 8, there are problems regarding confidentiality of telephone conversations. Telephones are installed in duty offices in penitentiary establishments nos. 2 and 8 and prisoners have to talk in the presence of an officer on duty.

³⁹² According to the letter sent by the Ministry of Justice of Georgia to the CPT, dated 21 November 2019, window shields have been removed from some rooms in penitentiary establishments nos. 5, 6, and 12 and arrangement of visit rooms without shields was supposed to be completed in penitentiary establishment no. 2 by the end of 2019.

³⁹³ The Imprisonment Code, Article 17¹.3.

³⁹⁴ The Imprisonment Code, Article 17.11 and Article 17.12.

³⁹⁵ Cases of convicted persons, V.A. and Z.J.

³⁹⁶ Letter of the Penitentiary Department, dated 27 November 2019.

have adequate opportunity to maintain communication with the outside world.³⁹⁷ It is also noteworthy that, under the Imprisonment Code, remand prisoners do not have the right to long visits.

The provisions of the Imprisonment Code are similarly problematic in terms of governing those prisoners' contact with the outside world who are placed in special risk prison facilities. They are not allowed to have video calls³⁹⁸ and are subjected to different and stricter restrictions than other prisoners placed in other penitentiary establishments.

As regards psychiatric establishments, under the legislation of Georgia,³⁹⁹ psychosocial rehabilitation is one of the components of psychiatric care that aims at maintaining a patient's social and labour contacts and developing those skills necessary for an independent lifestyle in the society. Contact with the outside world has particular significance in this process. Stemming from the above-mentioned, it is necessary to ensure unhindered access to telephone communication for patients of psychiatric establishments. Patients of the National Centre for Mental Health and Batumi Medical Centre can make telephone calls by using social workers' telephones. They have access to telephone only during social workers' office hours (10:00 – 18:00). There is no concrete regulation in this regard. Therefore, patients' access to telephone communication depends on how social workers manage to let all the patients use their personal phone.

Proposals

To the Parliament of Georgia:

- To amend Articles 157 and 157¹ of the Criminal Code of Georgia to separate the scope of application of these two provisions;
- To amend Article 77.1 of the Imprisonment Code of Georgia and allow an accused person to challenge before the court the restriction of having no more than four short visits in a month imposed by a prosecutor or an investigator;
- To amend Article 17.11 and Article 17.12 of the Imprisonment Code and allow replacing long visits with telephone conversations or video visits;
- To ensure amending the Imprisonment Code to the effect of allowing convicted persons placed in special risk prison facilities to more visits and telephone calls as well as video visits;
- To amend the Imprisonment Code to the effect of allowing those foreign offenders who cannot enjoy short and long visits due to their families living abroad to have video visits; and
- To ensure amending the Imprisonment Code to the effect of determining the right of remand prisoners to long visits with due account to the interests of the investigation.

³⁹⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, principle 19, available at: <<http://bit.ly/2xB4oA6>> [accessed 13.03.2020].

³⁹⁸ Article 17¹.1 of the Code of Imprisonment.

³⁹⁹ The Law of Georgia on Psychiatric Care, Article 21.

Recommendations

To the Prosecutor General of Georgia:

- To inform the public periodically about the progress made in the investigation instituted regarding incidents involving the breach of the right to respect for private life.

To the Minister of Internal Affairs of Georgia:

- Within the framework of implementing the preventive function of the police, to continue conducting a preventive information campaign in public regarding their rights and obligations in case of receiving video recordings depicting private lives through various means of communication.

To the Minister of Justice of Georgia:

- In 2020, to ensure short visits without window shields in all penitentiary establishments;
- When deciding about placing prisoners in penitentiary establishments, to take into account the place of residence of their family members to ensure the unhindered exercise of their right to visit;
- To have telephone booths arranged in penitentiary establishments nos. 2 and 8 to allow a confidential environment for telephone conversations; to ensure providing the areas for telephone conversations in establishment no. 3 with additional insulation means so that other persons could not overhear a convicted person's conversation; and
- The Monitoring Service should investigate the practice of hindering foreign nationals from making calls abroad in establishment no. 8 and take measures so that prisoners can exercise their statutory right to make telephone calls without obstruction.

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

- To ensure telephone communication for patients of psychiatric establishments.

7. Right to Equality

7.1. Introduction

The year 2019 saw improvements in anti-discrimination legislation. With the amendment adopted in May 2019, the Organic Law of Georgia on Public Defender of Georgia began to apply to subjects of private law on equal terms with public officials. In particular, the law defined an obligation of natural and legal persons of private law to provide the Public Defender with information necessary to conduct inquiry into an alleged discrimination. Furthermore, the Public Defender was granted the right to apply to a court against a legal person of private law or an association of persons, demanding that they fulfill Public Defender's recommendation. Before the abovementioned amendment, this right of Public Defender applied to public institutions alone.⁴⁰⁰

A notable step forward was the amendment to the Law on Elimination of All forms of Discrimination, adopted in February of the same year, defining *harassment* and *sexual harassment* as forms of discrimination. However, *denial of reasonable accommodation*⁴⁰¹ as a form of discrimination on the ground of disability is yet to be defined by the legislation.

Despite legislative guarantees that have been created and efforts undertaken by various stakeholders, no material improvement has been observed in the exercise of the right to equality in Georgia. Such a state of affairs is caused, on the one hand, by the failure of a substantial segment of population to understand and acknowledge the needs and interests of vulnerable groups. The situation is further aggravated by ultra-right groups who have stepped-up their activity in recent times. On the other hand, progress towards the achievement of equality is impeded by the absence of a common state vision. Concrete public institutions do not have a policy on the equality principle with regard to issues that fall within their competence. Therefore, instead of conducting a systemic fight against discriminatory practices, efforts often need to be undertaken to eliminate individual violations of the right.

Equality-related issues are not on the agenda of high officials either. Decisionmakers continue to refrain from making statements in support of equality, including at times when it is of critical importance to defend the right to equality of certain groups.

The most vulnerable groups were again represented by women, people with disabilities (PWD) and LGBT+ community in 2019. The right to equality of religious and ethnic minorities also remained a challenge.⁴⁰²

⁴⁰⁰ Detailed information is available in a special report of Public Defender on "Combating and Preventing Discrimination and the State of Equality," 2019.

⁴⁰¹ A form of discrimination on the ground of disability, which means a denial of those necessary and appropriate adjustments that do not impose a disproportionate or undue burden and ensure the equal exercise of human rights and freedoms by a person with disability.

⁴⁰² Detailed information is provided in the chapter on freedom of belief and religion.

7.2. Equality of Women

Regardless of numerous international or national legal guarantees, the environment in Georgia is not oriented on specific needs of women; this is an impediment in the achievement of gender equality.

Sexual harassment

Legislative amendments adopted in February and May 2019⁴⁰³ created a very safe environment for potential victims in terms of discerning an act of sexual harassment and determining legal mechanisms of protection.

A lively discussion on the phenomenon of sexual harassment has somewhat raised awareness of society about the type of behavior that may qualify as sexual harassment. Accordingly, applications to the Public Defender increased which enabled the Public Defender to develop legal standards and indicators of sexual harassment.

Furthermore, the legislators agreed to qualify sexual harassment in public places as an administrative offence under Article 166¹ of the Administrative Offences Code of Georgia, thereby providing a potential victim of sexual harassment with a new legal protection mechanism in the form of Ministry of Internal Affairs (MIA). A priority now is to properly provide the employees of MIA with relevant information and to effectively enforce Article 166¹ of the Administrative Offences Code.

Cases studied by the Public Defender during the reporting period made it clear that sexual harassment took on an especially serious forms in the workplace and with a harasser taking advantage of his official status. The behavior of harasser was manifested in verbal, non-verbal expressions and physical actions of sexual nature, in particular, through touching various parts of victim's body and making sexual comments;⁴⁰⁴ talking about sexual experience and preferences; offering sexual intercourse,⁴⁰⁵ etc.

Gender equality from the perspective of sexual and reproductive health

The issue of gender equality is directly linked to the right to sexual and reproductive health of women.⁴⁰⁶ Thus, human rights of women include their right to have control over matters related to their sexuality, including sexual and reproductive health, free from discrimination.⁴⁰⁷

⁴⁰³ Paragraph 3² of Article 2 of the Law of Georgia on the Elimination of All Forms of Discrimination.

⁴⁰⁴ Recommendation of Public Defender, available at: < <https://bit.ly/2OsRREo> >>[accessed 30.03.2020].

⁴⁰⁵ Amicus curiae brief of Public Defender, available at: < <https://bit.ly/399DIZY> >>[accessed 30.03.2020].

⁴⁰⁶ Dr. Carmel Shalev, Rights to Sexual and Reproductive Health – the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women, 1998, available at: < <https://bit.ly/3bFz1Dg> >>[accessed on 30.03.2020].

⁴⁰⁷ The Beijing Platform for Action, C. Women and Health, §96, available at: < <https://bit.ly/2QZNfXt> >>[accessed 30.03.2020].

In the reporting period, Public Defender emphasized several important issues in this area – the necessity to introduce a state program tailored to physiological and psychological needs of victims of sexual violence; the issue of blocking fallopian tubes of women (sterilization) and the practice of so-called virginity tests.

The right of women to terminate pregnancy resulting from sexual violence remains a problem. It is worth noting that a court decision establishing that the pregnancy is the result of rape remains a non-medical necessity for artificial termination of pregnancy of more than 12 gestational weeks.⁴⁰⁸ However, sometimes it takes a court to take a decision so long that it may even exceed the total length of pregnancy. It is important not to confine the decision-making on this issue to a rigid formal legal framework but take into account psycho-emotional state of a woman having got pregnant as a result of sexual assault, the stigma that segment of society attaches to such incidents, and hence, the need for an approach tailored to victim's needs.

It must be noted that a number of issues regulated by the legislation are implemented in a discriminatory way. For example, the standard of behavior that a society considers appropriate for men and women, also social and cultural roles attributed to women and men place women in an unfavorable condition and create barriers to their exercise of the right to sexual and reproductive health.

An example of such a barrier is a consent of a husband/partner, which is required to conduct a tubal ligation procedure (sterilization) on a woman.⁴⁰⁹ Although a consent of husband or partner is not a legal requirement, there is a tendency of voluntarily asking for such consent by medical institutions in Georgia. This is an interference in a woman's free choice and a mechanism to control reproductive health.⁴¹⁰

Another means of exercising control over women's sexuality is a so-called virginity test. Although this is not required by the law, a "forensics medical examination of the action having sexual nature" conducted by LEPL Levan Samkharauli National Forensics Bureau may, in separate cases, be abused by natural persons. It is extremely important that when such examination is requested by a natural person, the Forensics Bureau examines the genuineness of her will with extreme caution and if suspicion arises, to refuse performing the procedure and immediately report the case to law enforcement authorities.

Pregnancy, childbirth and parental leave

The use of pregnancy, childbirth and parental leave remains a problem for private sector employees. According to information provided to the Public Defender by member organizations of Coalition for

⁴⁰⁸ Annex №5 of Decree №01/74/n "On the approval of Rule of artificial termination of pregnancy" of the Minister of Labor, Health and Social Affairs, 7 October 2014.

⁴⁰⁹ General proposal of Public Defender, available at: <<https://bit.ly/3asMw9a>> [accessed 30.03.2020].

⁴¹⁰ General proposal of Public Defender, available at: <<https://bit.ly/3dlGtz0>> [accessed 30.03.2020].

Equality, women have continued to complain about this issue. There are instances when private companies cite reorganization or other reasons to avoid granting a pregnancy leave.

The Public Defender studied the duration and remuneration of pregnancy, childbirth and parental leaves in large private companies. Trends that were identified show the need for additional legislative regulation of the issue.

Yet another problem is that the Georgian legislation does envisage a leave for a surrogate mother and a parent of a baby born via surrogacy.

7.3. Disability

The situation regarding the exercise of the right to equality by persons with disabilities (PWD) has not improved in the reporting period either. Problems are encountered in the access to various services both by persons with physical disability and with impaired vision. The concept of *reasonable accommodation* remains unrecognized as a form of discrimination on the ground of disability in the national legislative framework. PWDs employed in public sector continue to experience inequality because in contrast to private sector employees, they cannot benefit from social package (with the exception of PWDs suffering from severe disabilities and significant disabilities related to vision impairment).⁴¹¹

Physical accesibility

The situation with regard to physical accessibility remains grave, impeding a comprehensive involvement of persons with physical disabilities in public life. The Notary Chamber of Georgia took heed of the Public Defender's recommendation issued in 2018, considered the issue of physical accessibility of notary bureaus from a geographic perspective⁴¹² and began to adjust bureaus in Tbilisi, Batumi, Mtskheta, Rustavi, Kutaisi, Gori, Zugdidi and Telavi in accordance with relevant standard. Furthermore, information about 19 accessible notary bureaus was published online. However, the absolute majority of buildings of private or public entities remain inaccessible for PWDs.

In 2018, Public Defender considered a new rule of parking for PWDs across Tbilisi discriminatory,⁴¹³ whereby only persons with severe disability can enjoy the parking lots. Tbilisi City Council has not changed its stance on this issue in the reporting period either, justifying it by the law that distinguishes between

⁴¹¹ Recommendation of Public Defender of 31 May 2017 to Prime Minister of Georgia, available at: <<https://bit.ly/39r5GL7>> [accessed 30.03.2020].

⁴¹² Recommendation of Public Defender of 4 April 2018 to the Notary Chamber of Georgia, available at: <<https://bit.ly/2wNtlbp>> [accessed 30.03.2020].

⁴¹³ Recommendation of Public Defender of 6 August 2018 to the Tbilisi City Council, available at: <<https://bit.ly/3bEXnwC>> [accessed 30.03.2020].

severe and significant disabilities and claiming that the new regulation grants a privilege to that group of persons who require a higher degree of support.

Problems of people with visual impairment

The issue of PWDs suffering from visual impairment is especially acute. No access is provided to information and communication in the majority of cases, which would ensure an independent life and comprehensive participation in all social spheres. For example, visually impaired people face obstacles in making various transactions in the Public Registry, banks and notary bureaus. It is a problem that visually impaired people have no possibility to independently read/sign a document and instead, have to certify their consent by a signature of another person. It should be noted that members of the Parliament of Georgia initiated legislative amendments⁴¹⁴ providing a possibility for visually impaired persons to independently enter into a written transaction. It is important to adopt this amendment and sign it into a law soon.

In terms of the use of Braille, sign language, magnifiers and alternative communication or/and other available means for the provision of information and services, the Administration of the Government of Georgia took heed of the Public Defender's recommendation⁴¹⁵ and persons with impaired vision are now able to submit an application to the government administration in Braille or in other alternative form. However, the fact that a declaration about a family's social and economic conditions is not available in Braille or other alternative technical means remains a problem as it prevents visually impaired people from acting as an authorized representative of the family.⁴¹⁶

7.4. Nationality

Banking sector continued to apply a blanket discriminatory approach in providing services to citizens of particular foreign countries. That the problem faced by foreigners in the banking service sphere is acute is also proved by the reality that despite the Public Defender's general proposal,⁴¹⁷ the situation has remained unchanged.⁴¹⁸ In previous years, citizens of Nigeria, Iran and Syria encountered obstacles when opening accounts, getting student's cards or bank statements.

⁴¹⁴ Available at: <<https://bit.ly/39uMo7u>> [accessed 30.03.2020].

⁴¹⁵ Recommendation of Public Defender of 6 August 2018 to the Government of Georgia, available at: <<https://bit.ly/2ULas0K>> [accessed 30.03.2020].

⁴¹⁶ Recommendation of Public Defender of 4 May 2018 to the Ministry of Labor, Health and Social Affairs of Georgia, available at: <<https://bit.ly/3axcd8h>> [accessed 30.03.2020].

⁴¹⁷ General proposal of Public Defender to the National Bank of Georgia, see full proposal at: <<https://bit.ly/3bHcNAu>> [accessed 30.03.2020].

⁴¹⁸ The letter №2-14/1389 of the National Bank of Georgia, dated 27 April 2018. According to the letter, the banking regulations are adopted by the Parliament of Georgia while relevant standards are adopted by the financial monitoring service and they are in line with the best international practice. The National Bank also noted that a number of restrictions may be imposed for the aim of discovering and minimizing risks of money laundering and financing of terrorism.

A problem identified in the reporting period was an increase in fee for servicing bank account. On one occasion, JSC Bank of Georgia increased an annual bank account service fee to the citizens of Iran. As explained by the Bank,⁴¹⁹ a service fee has been increased since November 2018 for residents/citizens of the countries with high-risk status due to enhanced identification/verification efforts or/and increased human or financial resources used by the Bank to provide banking services. According to information provided by member organizations of the Coalition for Equality, citizens of Ukraine and Tajikistan face similar problems in their interaction with banks.

7.5. Equality of LGBT+ persons

Discrimination on the grounds of sexual orientation and gender identity remains a very serious challenge in Georgia. Equality of LGBT+ community is violated in almost all spheres of public life. Phobias and stigmas existing among a segment of society nourish discriminatory attitudes towards representatives of the community.

Equality of LGBT+ community in the context of freedom of expression and assembly

In the reporting period, the situation was especially grave in terms of exercise of freedom of expression by LGBT+ community. In this regard, there has been no improvement observed over the years. While the rights are mainly restricted by private persons, the state remains largely inactive and fails to fulfill positive obligations.

One should recall the incident of 9 September 2018, in which LGBT+ community representatives and their supporters, who arrived at the stadium to express their gratitude to the captain of Georgian national football team, Guram Kashia, were banned from carrying items with LGBT+ symbols into the stadium. This incident, actually, marked the beginning of a chain of violations of the freedom of expression of the community in 2019. The mentioned incident was followed by a denial of the MIA to give safety guarantees to organizers of Tbilisi Pride week planned for 18-23 June 2019; on 14 June 2019, the Tbilisi Pride organizers were prevented from holding a rally in front of the government administration building because the spot was occupied by homophobic groups. During these two parallel rallies, homophobic groups provoked several incidents and clashes, including towards LGBT+ supporters and journalists.

In Public Defender's assessment, the MIA applies the same legal framework to the threat emanating from specific groups seeking to restrict the right to expression of LGBT+ community and their supporters, and the freedom of expression of people protecting their rights and supporting the idea of equality. Furthermore, the measures undertaken by the MIA are ambiguous - they do not show a systemic vision of the protection of rights and the analysis of potential consequences of facts.

⁴¹⁹ The letter №07/8154 of the JSC Bank of Georgia, dated 10 December 2018.

Step up in the activity of ultra-right groups took on alarming dimensions in the reporting period. One of main targets of their aggression was the LGBT+ community. In Public Defender's view, statements of leaders of these groups should have been instantly responded to by adequate legal means. Especially worth noting were the statements made by one of the leaders, Levan Vasadze.⁴²⁰ Public Defender notes the lack of adequate attention to causes of intensification of anti-democratic political movements and of analysis of political and social effects of homophobia.

Another manifestation of the attitude was seen on 8 November 2019, during the screening of a film on LGBT+ topic. To thwart the screening, homophobic groups staged a rally during which people who had arrived to watch the movie sustained physical injuries. The police failed to prevent illegal actions of participants of the rally or to adequately respond to their aggressive behavior. Aggressive groups succeeded in approaching the entrance of the movie theater, thereby creating a problem of sufficient safe space.

According to the information provided by the MIA on 19 December 2019 in response to Public Defender's address of 4 November 2019,⁴²¹ investigations were initiated into a number of offences committed against LGBT+ representatives and their supporters as well as journalists, Public Defender and Deputy Public Defender. On one occasion, *on 20 June 2019, a citizen N.Ch. was arrested as an accused person⁴²² because the investigation identified a motive of discrimination behind the offence. The court ruled that N.Ch. was guilty of committing the offence and sentenced him to one year in prison.*⁴²³

Problems in getting a venue for events by organizations working on LGBT+ issues

It is indicative that in parallel to infringement of the freedom of expression and assembly of LGBT+ community and inactivity of the state in this regard, several institutions refused to provide a venue to the community representatives for the conduct of public or/and closed events, according to applications of LGBT+ community to the Public Defender. As the applicants describe, owners of the institutions refuse to

⁴²⁰ On 14 June 2019, when staging a counter rally outside the government administration building, Levan Vasadze declared that he and his supporters would not allow LGBT+ community to conduct a rally anywhere, including indoors. Vasadze went on to say that if police did not prevent LGBT+ community from conducting a rally and would try to contain Vasadze and his supporters, the police would get a symmetric response. Available at: <<https://bit.ly/3bCDpTf>> [accessed 30.03.2020]. At a rally in Tbilisi on 16 June 2019, Levan Vasadze declared that he was creating "self-organized groups" – "popular regiments" that would "patrol" Tbilisi streets during one week. Available at <<https://bit.ly/3bylGMO>> [accessed 30.03.2020]. Levan Vasadze addressed not only LGBT+ representatives and their supporters, but also police too. He said that they were working on a strategy of breaking through cordons and if police resists, they "will be armed with bats." Available at: <<https://bit.ly/2o9s36p>> [accessed 30.03.2020].

⁴²¹ Available at: <<https://bit.ly/2QT8c6s>> [accessed 30.03.2020].

⁴²² On 20 June 2019, he was charged with a crime envisaged in Paragraph 1 of Article 239 of the Criminal Code of Georgia.

⁴²³ Note: based on Articles 63-64 of the Criminal Procedures Code of Georgia, the sentence of the accused person was regarded as a suspended sentence and one year of probation period was set.

give a venue based on various discriminatory reasons, formal arguments and without offering an alternative time or space; this may point to a systemic nature of the problem.⁴²⁴

7.6. Discrimination on the ground of age

The reporting period revealed problems in social safety of elderly people. For example, a travel insurance policy of an insurance company was discriminatory, because a possibility of insuring aged persons was so ambiguous that it actually ruled out travel insurance of persons older than 70.⁴²⁵

Furthermore, defining an age limit for dismissal of a person from the Ministry of Corrections and Probation is discriminatory; according to Paragraph 1 of Article 35 of the Law of Georgia on Special Penitentiary Service, *an employee having lower special rank may serve at the Service until the age of 60.*

7.7. Discrimination in labor relations

The reporting period saw applications about discriminatory treatment in labor relations submitted to Public Defender. They concerned restrictions of various labor rights as well as instances of harassment and victimization in the workplace. Much like in the previous reporting period, alleged discrimination in labor relations was most frequently experienced because of dissenting opinions.

It is important that as a result of legislative amendments of 19 February 2019, harassment was defined as a form of discrimination and it means *persecution or coercion of a person on any ground, or unwelcome behavior that is aimed at or results in demeaning a person and creating an intimidating, hostile, humiliating, demeaning or degrading environment.* According to the applicants, harassment was mainly expressed in the use of unethical and degrading forms of communication,⁴²⁶ the absence of communication between an employer and an employee for a long period of time, also, allocating an office in an isolated, uncomfortable space. In other cases,⁴²⁷ applicants noted that they asked their manager to develop transparent incentive criteria so that to exclude the use of incentive mechanism based on subjective attitudes; after that one of the applicants was dismissed on the ground of reorganization while another was dismissed on the ground of expiry of the contract term.

⁴²⁴ Recommendation of Public Defender, available at: <<https://bit.ly/2Ux7PkR>> [accessed 30.03.2020].

⁴²⁵ Decision of Public Defender, available at: <<https://bit.ly/3dHFRtw>> [accessed 30.03.2020].

⁴²⁶ Recommendation of Public Defender of 4 October 2019 to Black Sea Group, available at: <<https://bit.ly/3ayacfc>> [accessed 30.03.2020].

⁴²⁷ Amicus curiae brief to Tbilisi City Court on alleged discrimination on the ground of dissenting opinion, available at: <<https://bit.ly/2yevFIL>> [accessed 30.03.2020].

Amicus curiae brief to Tbilisi City Court on alleged discrimination on the ground of dissenting opinion, available at: <<https://bit.ly/2Jpql7O>> [accessed 30.03.2020].

It is worth noting that Public Defender established victimization⁴²⁸ in labor relationship for the first time ever: the employer indicated the employee's application to Public Defender as one of the grounds of dismissal.⁴²⁹ Firing a person for applying to Public Defender sets a dangerous precedent. It may have a chilling effect on other persons in future and become an intimidating circumstance against the use of it as a legal means for the protection of rights.

As regards other instances of labor rights violations on discriminatory grounds, an attempt to conceal a discriminatory treatment with a formal legal ground was observed in the media sector.⁴³⁰ A dissenting opinion posted by an applicant on a social network was assessed by a TV company as the violation of corporate interests and used as a ground to terminate labor relations. In the reporting period, journalists complained that they were fired because of dissenting opinion after the change in the management of Rustavi 2.

7.8. Discrimination in the sphere of social security

The use of social and healthcare programs by observing the equality principle was a challenge in this reporting period too. The problem, on the one hand, is that the majority of programs implemented on the level of central government does not extend to persons having a permanent residence permit in Georgia, while on the other hand, social assistance and healthcare programs on the level of local self-government contain discriminatory criteria for identifying target groups.

Problem in using social and healthcare programs by persons with permanent residence permit

The use of social and healthcare programs by persons who have permanent residence permit in Georgia remains a challenge. Social or healthcare programs implemented by the state, setting allowances for beneficiaries, are basically available only for citizens of Georgia and unfairly exclude persons with permanent residence permit, who contribute to the state budget for purposes of social and healthcare programs equally with citizens of Georgia.

Municipal social and healthcare programs

Social and healthcare programs offered by a number of municipalities contain discriminatory eligibility criteria. These programs exclude various groups from using them, for example, on the ground of disability,

⁴²⁸ According to Article 12 of the Law of Georgia on the Elimination of All Forms of Discrimination "No person may be subject to any negative treatment or influence for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination."

⁴²⁹ Recommendation of Public Defender of 5 March 2018 to Mayor of Tianeti Municipality, available at: <<https://bit.ly/3dKHxT2>>[accessed 30.03.2020].

⁴³⁰ Recommendation of Public Defender of 8 October 2019 to TV company Imedi, available at: <<https://bit.ly/2UwDBhu>>[accessed 30.03.2020].

citizenship or legal status (requesting a marriage certificate). When determining a target group, some programs contribute to further stigmatization of specific groups.

Furthermore, the analysis of municipal social programs showed that these programs are too detailed that, in certain cases, may result in leaving people with similar needs beyond social and healthcare programs.

7.9. Incitement to discrimination

Unfortunately, statements encouraging discrimination were heard in this reporting period too. Comments adversely affecting equality of various groups were mainly made for the aim to gain a political advantage. Discriminatory views were also spread via social networks. It is apparent that discrimination is encouraged against ethnic and religious minorities, LGBT+ community⁴³¹ and women.

Sexist attitude towards women engaged in public and political life, which is applied as a tool of political fight against female politicians in local or central government, was especially apparent in the reporting period.⁴³²

Public Defender's attention was also paid to xenophobic statements of separate MPs.⁴³³ For example, at a working meeting of the Parliamentary Committee on Human Rights and Civil Integration, MP Emzar Kvitsiani aggressively commented about a representative of Azerbaijani community that if he was a citizen of Georgia he would talk in Georgian.

7.10. Shortcomings in investigation into alleged hate crimes and discriminatory attitude of police officers

⁴³¹ Homophobic statement of the MP Aleksandre Erkvania: "the propaganda of pederasty and similar perversion shall be banned," available at: < <https://bit.ly/33k8WVC> >[accessed 30.03.2020].; homophobic statement of Kutaisi city council member Aleksandre Akhaladze, available at: < <https://bit.ly/33IfuTS> 1. >[accessed 30.03.2020].; homophobic and discriminatory statements of Kvareli city council member Nino Khutsishvili, available at: < <https://bit.ly/2XQiW7L> > >[accessed 30.03.2020].; homophobic comment of Samtredia city council's Melauri village representative Sofiko Kikacheishvili "[...] there they have gays, lesbians, pederasts and Nationals [...]," available at: < <https://bit.ly/2QUVtRp> >[accessed 30.03.2020].

⁴³² For example, Mamuka Khazaradze's sexist comment about Maia Tskitishvili: "[...] Maybe she is good at baking khachapuri, but I am not aware of what sort of experience she had gained before that now she is entrusted with the management of billions of lari [...]," available at: < <https://bit.ly/2qB2HQ5> >[accessed 30.03.2020].; sexist comment of deputy chairman of Zugdidi city council Tamaz Patsatsia about Tina Bokuchava: "Tina Bokuchava said that she is so educated that Misha brought her to parliament before she "finished" the university," available at: < <https://bit.ly/2R3O68Y> >[accessed 30.03.2020].

⁴³³ MP Aleksandre Erkvania's xenophobic attitude to Georgia's neighboring countries, available at: < <https://bit.ly/33k8WVC> > >[accessed 30.03.2020].; MP Emzar Kvitsiani's comment that if Mirtag Asadov was a citizen of Georgia he should talk in Georgian, recommendation of Public Defender of 16 August, available at: < <https://bit.ly/2R4Omo0> >[accessed 30.03.2020].

In the context of alleged hate crimes, the murder of Vitaly Saparov remained a symbolic incident in 2019 too, which, despite the efforts of prosecution, the court refused to find as the discriminatory crime committed on the ground of ethnicity. Naturally, Public Defender did not evaluate the righteousness of the use of facts and justice by the court, but submitted to the court, in the form of amicus curiae brief,⁴³⁴ standards and indicators established by international institutions, used to identify discriminatory motive.

As regards investigation into and prevention of crimes motivated by discrimination, this remains one of the challenges faced by law enforcement authorities. Among reasons of such state of affairs is a low acceptance of a specific vulnerable groups by society and negative stereotypes, also, the lack of readiness among law enforcement bodies to evaluate such incidents from the standpoint of infringement of equality in order to identify during investigation whether or not a crime was motivated by hate. Public Defender believes that identifying alleged motive of hate behind a crime is central not only for administering justice in a concrete criminal case, but for the prevention of such crimes in future. The majority of victims of such crimes in the reporting period were Jehovah's Witnesses and LGBT+ representatives.

Many of alleged offences committed against Jehovah's Witnesses involved both violent and other actions. According to the facts, studied by Public Defender, Jehovah's Witnesses are, as a rule, physically abused when preaching at their stalls in street or going house to house. Jehovah's Witnesses also complain about facts of their stalls been set on fire and literature ruined. Public Defender observes an improvement in that the investigation into alleged hate crimes, especially committed against Jehovah's Witnesses, is initiated, in contrast to the practice of previous years, under the article of Criminal Code that includes a motive of hate; however, a protraction of inquiry undermines a legal effectiveness of this process.

As regards alleged crimes against LGBT+ representatives, they are largely manifested in physical abuse; moreover, instances of verbal abuse by law enforcement officers are frequent too, for example, when they address transgender women with the name indicated in their IDs, or refuse to adequately respond to alleged violations against them.

Recommendations

To the Government of Georgia:

- Ensure that persons with significant and moderate disabilities employed in public service can receive a social package under Government's Decree No. 279 of 23 July 2012

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

- Make existing state social and healthcare programs available to persons with permanent residence permit in Georgia, on an equal footing with citizens of Georgia;

⁴³⁴ Available at: <<https://bit.ly/2wC7Fix.1>>[accessed 30.03.2020].

- Ensure that in case of pregnancy resulting from sexual violence, the initiation of criminal investigation into a sexual violence is suffice to finance and terminate the pregnancy;
- Make a declaration of social status of a family available in Braille or other alternative means to register socially vulnerable families in common database and accordingly amend the Decree №141/n of 20 May 2010 of the Minister of Labor, Health and Social Affairs of Georgia;
- Draft amendments to the Organic law of Georgia Labor Code and the Law of Georgia on Public Service, to provide for pregnancy, childbirth and parental leave for surrogate mother and parents of child born via surrogacy and initiate the draft law in the Parliament of Georgia;
- Impalement an effective monitoring on medical institutions to eliminate the practice of requesting a consent of husband/partner for conducting a tubal ligation procedure (sterilization) on a woman.

To General Prosecutor of Georgia:

- Include the information about investigations into hate crimes in a performance report submitted to the Parliament of Georgia pursuant to Paragraph 2 of Article 172 of the Rules of Procedure of Parliament of Georgia.

To National Bank of Georgia:

- Develop simple predictable regulations for the provision of commercial banking services to foreign citizens without discrimination, regardless of customers' citizenship

8. Gender Equality

8.1. Introduction

Gender equality remains a challenge in Georgia. Despite a number of steps taken in the past few years to enhance legislative and institutional mechanisms, it is still a problem to put gender equality issues on the political agenda. One of the serious challenges is a small number of projects, programs and initiatives designed to empower women both on central and local government levels.

Yet another challenge is a shortage of measures designed to prevent violence against women and to socially and economically empower victims of domestic violence. The analysis of cases of killings on the ground of gender (femicide) makes it apparent that the main challenge is the absence of mechanisms for the prevention of violence against women.

The year 2019 did not see improvement in the protection of rights of LGBT+ persons; the state did not take positive steps towards reducing homophobic and transphobic attitudes. Furthermore, the state has failed to effectively counter the intensification of anti-gender groups that is a direct cause of oppression, violence and discrimination against LGBT+ representatives.

8.2. Women's participation in the decision-making process

Women's political participation is an important indicator of the country's development. Unfortunately, the analysis of information obtained in the reporting period makes it clear that women's participation on a decision-making level remains a challenge.

According to the Global Gender Gap Index⁴³⁵ for 2019, Georgia is the 94th among 153 countries by women's political participation and women in parliament, while according to the data of the Inter-Parliamentary Union,⁴³⁶ it is the 140th with 22 women in parliament.⁴³⁷

The indicator of women in decision-making positions, including in executive, legislative and local self-government bodies, is critically low. This is largely results of the fact, that the recommendation of the Committee on the Elimination of Discrimination Against Women⁴³⁸ about the introduction of a mandatory quota mechanism has not been fulfilled yet.

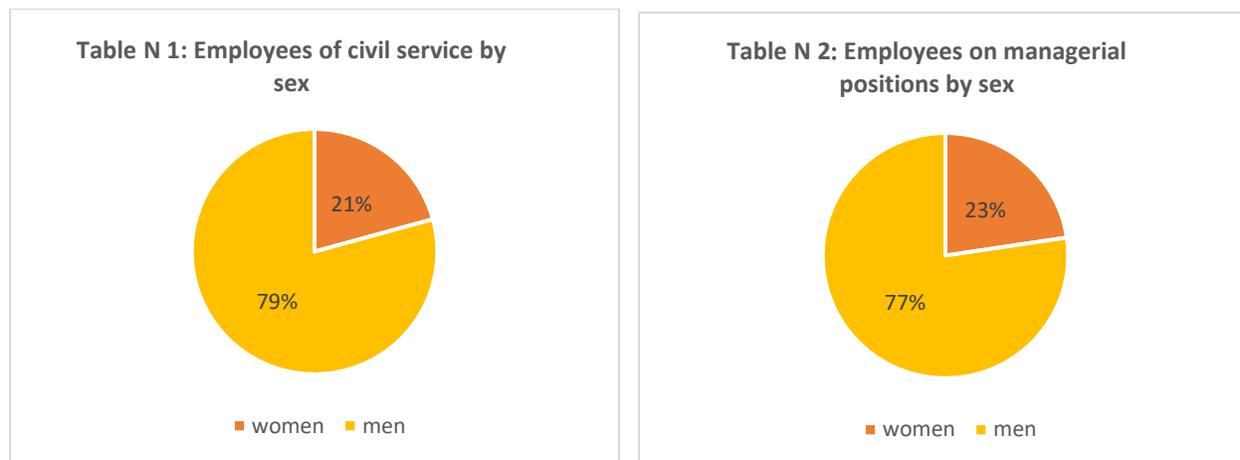
⁴³⁵ Available at <<http://tiny.cc/9afyiz>> [accessed 20 .01.2020].

⁴³⁶ Available at <<https://bit.ly/2PPlosC>> [accessed 20.01.2020].

⁴³⁷ Data of November 2019. As of 5 March 2020, there are 21 women in the parliament of Georgia. Available at <<https://bit.ly/2PMpf9l>> [accessed 05.03.2020].

⁴³⁸ ⁴³⁸ Available at <<http://tiny.cc/zbmtjz>> [accessed 10.02.2020].

The Office of Public Defender annually analyzes the data on women’s participation in the executive government bodies. According to the information provided by the Civil Service Bureau,⁴³⁹ 5,707 women and 21,804 men were employed in ministries in 2019. A gender distribution on managerial positions looks as following: 294 women and 1004 men.⁴⁴⁰ Among 11 ministers five are women including two are Vice Prime-Ministers.



Availability and strengthening of institutional mechanisms in self-governmental bodies play a special role in eliminating gender inequality and achieving equal participation of women. In 2019, the Office of Public Defender, within the scope of evaluating municipal gender policy,⁴⁴¹ assessed the situation regarding gender equality and women’s needs.⁴⁴² It is worth to note that out of 64 municipalities 57 have the self-government action plan of gender equality.⁴⁴³ The majority of these municipalities (53%) have adopted action plans for 2018 and 2019 years.⁴⁴⁴

As the results of the study made it clear, it remains a problem to reflect different needs of regions in the gender policy and to develop systematized, needs-based action plans and programs by local self-government units. An especially serious problem is to raise gender sensitivity of members of gender council and equip them with knowledge on basic gender topics.

⁴³⁹ Letter №g655 of Civil Service Bureau; 27.01.2020.

⁴⁴⁰ The distribution of employment in ministries by sex is basically equal; however, the employment practice of the Ministry of Internal Affairs (20705 men and 4171 women) sharply distorts the picture. According to the data of Civil Service Bureau, as of January 2020, men accounts for 83% of employees at the MIA. Besides, this data should be viewed from the standpoint that the MIA is the largest employer in civil service (the total of 27511 civil servants). The analysis of this data allows to say that the number of women on managerial positions is low.

⁴⁴¹ The study was conducted within the scope of UN Women’s project, A Joint Action for Women’s Economic Empowerment.

⁴⁴² Available at: < <https://bit.ly/2R0qYZA> >[accessed 31.03.2020].

⁴⁴³ Data as of May 2019. The municipalities that do not have a gender equality action plan are: Lentekhi, Mestia, Poti, Abasha, Tianeti, Terjola and Khoni.

⁴⁴⁴ Gender equality action plan for 2018-2019 is adopted by 15 municipalities; for 2019 by four municipalities, for 2018-2020 by six municipalities, while for 2018 and 2017-2019 by only one municipality.

Knowledge of gender budgeting issues and their practical application remain problematic for self-government bodies. . It is worth noting that 61% of operating gender equality councils do not have a relevant budget for the action plan.

Apart from political participation, accommodating women's needs in policy documents and target programs is a challenge. In this respect, the main problem is a negative experience of women in interacting with municipalities, namely, bureaucratic procedures and lack of interest, even when a local self-government is informed about a problem.

It deserves to note separately a problem of equal participation and involvement of women in decision-making processes in the regions populated by ethnic minorities⁴⁴⁵ where the language barrier is an additional obstacle.

8.3. Women's economic participation and labor rights

According to the Global Gender Gap Index,⁴⁴⁶ in 2019 Georgia made a headway by the indicator of economic participation and opportunities among East Europe and Central Asia⁴⁴⁷ and was 61st among 153 countries. However, the gender gap remains in the average earned income with the estimated annual earned income of man being twice as much as that of a woman, reaching GEL 13.2 (thousand) as compared to USD 6.5 (thousand) of that of a woman. According to the same source, wage equality for similar work deteriorated and Georgia moved down from 69th to 73rd place in this category.

The monitoring conducted by the Office of Public Defender ⁴⁴⁸ shows that the main source of income for women is public service, educational institutions, agriculture, tourism, retail and wholesale trade, animal husbandry, poultry farms, land cultivation, sewing and service sphere, seasonal jobs and pensions. A noteworthy fact is that the feminization of migration is very high in regions.

A problem faced by rural women is the shortage of vocational retraining programs.⁴⁴⁹ Yet another challenge is the absence of transportation, further complicating the access of rural women to education.

⁴⁴⁵ The study revealed a problem in Samtskhe-Javakheti and Kakheti. For example, at the meeting with Iormughanlo community in Sagarejo, women said that women did not attend the discussion of draft programs of the village and consequently, their needs were not reflected in budget priorities.

⁴⁴⁶ Available at <<http://tiny.cc/9afyiz>> [accessed 20.01.2020].

⁴⁴⁷ According to the same source, in 2018, Georgia was 85th among 149 countries by the indicator of economic participation and opportunities.

⁴⁴⁸ The assessment of municipal gender was carried out within the scope of UN Women's project, A Joint Action for Women's Economic Empowerment

⁴⁴⁹ Vocational education institutions operate in the following municipalities: Kobuleti, Chokhatauri, Kutaisi, Alvani, Kachreti, Dedoplistskaro, Ambrolauri, Akhaltsikhe.

One of the important persisting barriers for women is the burden of family responsibilities. Taking a leave for parenting by men remains a problem, which is associated with deeply rooted stereotypes about men's role and prejudices whereby men do not participate in the upbringing of children. Women employed in the private sector face problems in taking pregnancy, childbirth and parental leave because in contrast to the public sector, the legislative framework does not provide for mandatory remuneration of pregnancy, childbirth and parental leave in the private sector, leaving it up to a goodwill of an employer.⁴⁵⁰

There are numerous causes impeding women's economic empowerment in Georgia, but the most important factor of social and economic inequality is the indicator of property ownership, by which twice as many men are registered as owners of land than women. This indicator is a problem both on urban and rural levels.^{451 452}

Yet another important aspect of women's economic empowerment and exercise of labor rights is the situation regarding the rights of single and multi-children mothers. Although the ground for determining and terminating the status of a single mother has changed, assistance programs depend on the will of concrete municipalities and hence, cannot create relevant material guarantees countrywide. Also, social protection terms set as a result of determining the status of multi-children family do not cover the needs of multi-children families.

8.4. Women, peace and security

The implementation of the UN resolutions on Women, Peace and Security in the country is of utmost importance because the improvement of the rights of women and girls affected by the conflict remains a problem.

In 2019, the Public Defender, within the scope of the mandate granted to her, conducted a mid-term monitoring of the implementation of the 2018-2020 National Action Plan for Implementation of resolutions on Women, Peace and Security, which was approved by the government of Georgia in 2018.⁴⁵³

A special role in the implementation of the national action plan is assigned to the Ministry of Defense of Georgia (MOD) which has paid a great deal of attention to gender mainstreaming in the past few years; this has been manifested in the development of internal documents, active participation of women

⁴⁵⁰ See details about non homogeneous practice of reimbursing pregnancy, childbirth and parental leave in public and private sectors in the chapter on equality.

⁴⁵¹ Women and Men in Georgia: statistical publication. 2019. Available at: <<https://bit.ly/38q3Zgy>> [accessed 22.01.2020].

⁴⁵² The absence of land ownership, limited capacity to take decision concerning property and material costs were identified as one of barriers to participation in the Plan the Future program. Available at: <<https://bit.ly/38q3Zgy>> [accessed 25.03.2020].

⁴⁵³ Decree N173 of the Government of Georgia of 10 April 10 2018, on the Approval of the 2018-2020 National Action Plan of Georgia for Implementation of the UN Security Council Resolutions on Women, Peace and Security; available at: <<https://bit.ly/2Q2Jxfo>> [accessed 10.03.2020].

working in the defense and security sector, as well as implementation of various trainings and peacekeeping missions.

Past few years saw an increase in the share of women on decision-making positions at the MOD and the MIA, though this indicator in the MIA is extremely low.⁴⁵⁴ Moreover, collection of data by sex remains a problem.

One of the priorities of the National Action Plan is the process of localization which implies an active cooperation with target municipalities⁴⁵⁵ and aims to enhance the role and build the capacity of regional and local self-governments, facilitate participation and involvement of conflict-affected women in decision-making process at every level.

Results of the monitoring of the National Action Plan, conducted by the Public Defender of Georgia show that municipalities still find it difficult to understand an extraordinary role and the needs of women and girls. Representatives of municipalities mainly conducted informative meetings with displaced persons and people living in villages along the so-called dividing line, but did not carry out any specific activity that would meet their needs.

A positive development is the existence of projects and programs for women's economic empowerment. In 2019, 17% of the projects funded by the Office of the State Minister of Georgia focus on women's issues or are submitted by women's non-governmental organizations.⁴⁵⁶

The problem remaining in the reporting period was the improvement of the situation regarding the rights of women and girls living in the occupied territories. It is also important that alongside the entities specified in the National Action Plan, municipalities also see their role and define their resources and capacity for identifying needs and tackling problems of displaced persons and those living along the so-called dividing line.

8.5. Sexual and reproductive health and rights of women

Women's sexual and reproductive health and rights represent an important factor in assessing the situation regarding the gender equality in the country.

Although a progress has been made in the provision of services related to maternal health, challenges still remain in this area. In particular, the state have not developed a systemic vision of postnatal medical care. The state program does not envisage a service of psychological assistance in prenatal and postnatal

⁴⁵⁴ Baseline: Defense Ministry – 32%, as of 2019 – 35.1%; MIA = 3%, as of 2019 – 7%; letter from the Ministry of Defense MOD 8 20 00104098. 31.01.2020; letter from the Interior Ministry MIA 8 20 00380677 12.02.2020.

⁴⁵⁵ Municipalities selected in the localization process: Dusheti, Gori, Kareli, Kaspi, Khashuri, Sachkhere, Stepantsminda, Tsalenjikha, Tskaltubo, Zugdidi.

⁴⁵⁶ Letter №135 from the State Ministry for Reconciliation and Civic Equality. 22.01.2020.

periods. There is no state program tailored to physiological and psychological needs of victims of sexual violence. The practice of tubal ligation procedure (sterilization) and so-called “virginity test” is discriminatory.⁴⁵⁷

Informational meetings on sexual and reproductive health and rights of women conducted in regions of Georgia revealed a low level of awareness of available state programs. In particular, a segment of those women who were pregnant in the past two or three years said that during the pregnancy they were not informed properly about state-funded maternal health services. Another segment of women said that they had no information about eight free antenatal visits and often paid the consultation fee themselves.⁴⁵⁸

Informational meetings conducted by Public Defender have revealed that the territorial access to childbirth service continues to be a problem for women living in several cities of Georgia.⁴⁵⁹

Access to contraceptives, related services and information remains a problem, largely due to stigma attached to contraceptives and women’s sexuality, in general. This adversely affects ethical relationship between health service providers and beneficiaries and often expressed in the violation of professional confidentiality by a doctor.

Limited access to contraceptives, related services and information results in undesired pregnancies and abortions. It is worth noting that in 2019, the number of artificial abortions up to 12 weeks of gestation at women’s will, without a medical necessity, comprised 11,419.⁴⁶⁰

Access to safe abortion service, both in territorial and financial terms, remains a problem. The study conducted by the PDO revealed an extremely poor knowledge of national legislation concerning the service of artificial termination of pregnancy. In particular, a large segment of women thought that law prohibited abortion in Georgia.⁴⁶¹ Even more, the majority of those women who so thought said that they received a false information about the illegality of abortions from a medical service provider (mostly, a gynecologist). Such incorrect information may result in women seeking an illegal abortion, when need be, instead of going to a licensed medical institution, thereby endangering their health and life.

⁴⁵⁷ Detailed information is provided in the chapter on equality.

⁴⁵⁸ The meetings were conducted in October–December 2019 in the following regions of Georgia: Kakheti, Samtskhe-Javakheti, Autonomous Republic of Ajara (including in mountainous Ajara), Dusheti, Kvemo Kartli, Imereti and Samegrelo. The total of 19 meetings were held.

⁴⁵⁹ Assessment of gender policy of local self-government bodies with a special emphasis on women’s economic empowerment, Public defender’s Office, 2019, pg.27.

⁴⁶⁰ The number of artificial abortions up to 12 weeks of gestation at women’s will, without a medical necessity, comprised 12,404 in 2018 and 14,863 in 2017; the letter №01/1881 of 18 February from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

⁴⁶¹ In the summer of 2019, representatives of PDO’s gender department, with the financial support of UNFPA, conducted informational meetings on sexual and reproductive health and right with women living in regions of Georgia.

From among barriers to the access to safe abortion, one should single out a stigma attached to abortion by health care service providers, which, on the one hand, nudges them to not provide such service and, on the other hand, to use various unethical means to dissuade a pregnant women from abortion.

A low level of awareness among health service providers about the regulations on sexual and reproductive health services available to youth remains a challenge. In particular, health care specialists are unaware that a patient having reached 14 years of age may give informed consent independently; this jeopardizes the access of youngsters to confidential healthcare services.

The legislation in the occupied Abkhazia, that prohibits abortion for any reason whatsoever in this territorial units is a matter of concern.⁴⁶²

Yet another challenge is full integration of a comprehensive sexuality education into the formal education. According to PDO study, youngsters fully support the introduction of this educational component into schools and even more so, consider it to be their right.⁴⁶³ Nevertheless, school curricula contain only part of the comprehensive sexuality education, which mainly concerns early pregnancy, sexually transmitted diseases and sex-related physiological aspects. All this is just a tiny part of comprehensive sexuality education and must be extended to include issues such as gender and power equalities, social and economic factors, race, sexual orientation, gender identity, etc.⁴⁶⁴

8.6. Human trafficking

According to a report of the US State Department, in the past five years, victims of trafficking in Georgia are local as well as foreign citizens, and also Georgian citizens abroad. According to the report, traffickers recruit victims with false promises of well-paying jobs in tea processing plants, hospitals, salons, restaurants, and hotels.⁴⁶⁵

According to the report, Georgian citizens are subjected to forced labor within Georgia as well as in Cyprus, Egypt, Iraq, Turkey and United Arab Emirates. Women and girls from Georgia become victims of sex trafficking within the country, in Turkey, and, to a lesser extent, in China and the United Arab Emirates.

Georgia remains a transit country for women from Kyrgyzstan, Tajikistan, and Uzbekistan exploited in Turkey. Women from Azerbaijan and Central Asia are involved in sex trafficking in the tourist areas of the Adjara region and large cities such as Tbilisi and Batumi. In these cities they work in saunas, strip clubs, casinos, and hotels. Chinese and Southeast Asian women working in massage parlors are vulnerable to sex trafficking.

⁴⁶² For more information, see the chapter on the rights of conflict-affected people in this report.

⁴⁶³ Sexual and Reproductive Health and Rights: National Assessment, Public Defender, 2018, pg.2018.

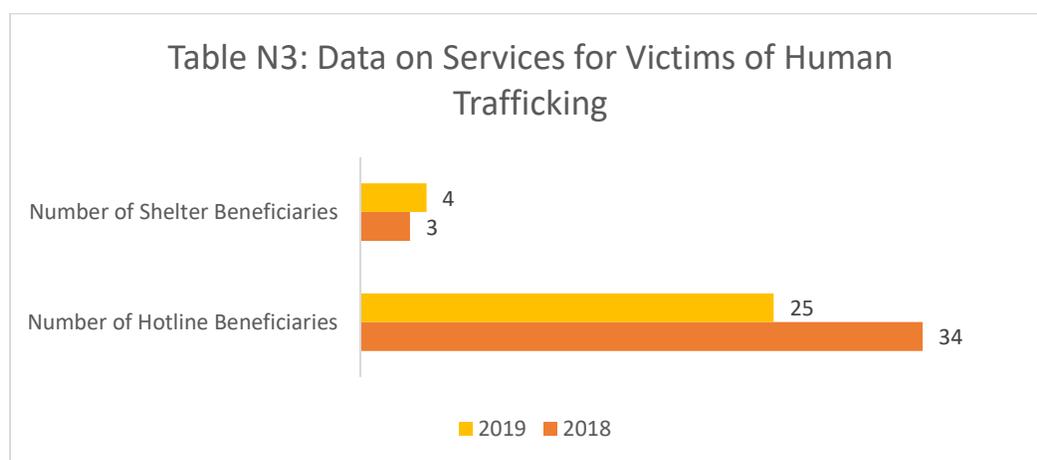
⁴⁶⁴ Ibid., pg. 49.

⁴⁶⁵ Available at: <<https://bit.ly/2GrV7LK>>[accessed 30.03.2020].

According to the report, the government of Georgia fully meets the minimum standards for the elimination of trafficking and the country remains on Tier 1. Nevertheless, a relatively low number of identified cases of trafficking is a problem and the activity should be intensified for proactive identification of such cases.

According to the Ministry of Justice of Georgia, in 2019, investigations were initiated into 21 alleged cases of human trafficking⁴⁶⁶ and criminal proceedings were instituted against 27 persons in five cases of alleged trafficking.⁴⁶⁷

Along with a low number of identified cases, the number of beneficiaries of services for victims of trafficking is low too:



It is important for the state to promote protection and assistance services available in the country and raise the awareness of population about trafficking. Furthermore, the service for victims of human trafficking in shelters needs to be improved and tailored to the needs of beneficiaries. As the monitoring conducted by the Public Defender reveals, shelters for victims of human trafficking are basically adjusted to the needs of victims of domestic violence and therefore, the services of psycho-social rehabilitation programs for victims of human trafficking remain a challenge.

8.7. Violence against women and domestic violence

It is commendable that the legislation on, and response mechanism to, violence against women and domestic violence have been improving year after year; however, it is important for the state to intensify

⁴⁶⁶ Of which 19 alleged cases are committed in Georgia while two are committed in Turkey.

⁴⁶⁷ Letter of the Ministry of Justice of Georgia №1179, 27/January/2020.

effective steps for ensuring a coordinated activity of state entities and a complex fight against the problem.

Concrete measures have not been implemented yet in the area of social work concerning the fight against violence towards women and domestic violence. As the cases studied by the PDO have shown, obligations assigned to the social service in the area of violence against women and domestic violence have virtually not been fulfilled. Response from social workers is largely of one-time, formal nature; their activity is not aimed at combatting domestic violence and analyzing incidents. Scrutinized cases revealed a need to retrain social workers and develop social service guidelines in order to achieve success in the prevention and management of incidents of domestic violence.

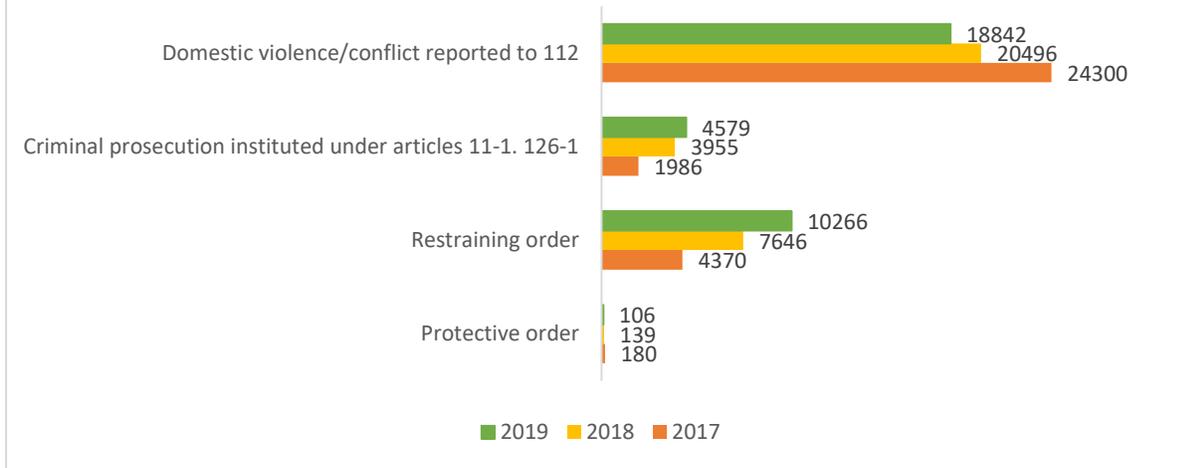
Despite repeated recommendations of the Public Defender, a common methodological standard for collecting and processing data has not been developed yet. A number of entities do not maintain a comprehensive data on incidents of violence against women and domestic violence.⁴⁶⁸ Also, it remains a problem to cause an abuser to undertake a mandatory training course designed to change a violent attitude and behavior.⁴⁶⁹

According to data of the MIA and Prosecutor's Office of Georgia, the number of identified cases of domestic violence as well as the indicator of response to them has continued to increase:

⁴⁶⁸ For example, the MIA does not maintain separate statistics on violence (crime) against women or on early marriage. The MIA does not record separately facts of deprivation of liberty with the aim of marriage; this data was processed by the Human Rights Protection and Monitoring Department at the MIA, after a repeated application to it. Nor does the MIA maintain a comprehensive record of statistics on domestic violence.

⁴⁶⁹ Undertaking rehabilitation is not mandatory; moreover, existing program on the management of violent behavior has not been assessed. Gender Department at the PDO asked the penitentiary department of the Justice Ministry of Georgia to provide the information on the number of convicts and probationers engaged in the rehabilitation program for the management of violent behavior, but the Ministry did not provide the answer [N 08-2/434, 15/01/2020; N 08-2/2384, 27/02/2020].

Table N4: Incidents of Domestic Violence



It is worth noting that in 2019, as many as 557 restraining orders⁴⁷⁰ and 102 protective orders⁴⁷¹ were issued on incidents of violence against women. Furthermore, in 2019, according to the data of Prosecutor’s Office, criminal prosecution was instituted against 85 persons⁴⁷² under Article 151¹ of the Criminal Code.

The cases studied by the PDO reveals that abusers tend to use the factor of children to punish victims, thereby seriously harming a victim of domestic violence and her child. This trend has not changed and domestic violence especially severely affects single women with low income, or no income at all, and low level of education; multiple-children women, conflict-affected women, female ethnic minorities and elderly people; also women whose partners/former partners work in law enforcement entities or hold influential positions.

Public Defender of Georgia considers especially problematic a selective approach applied by the state to instances of violence against women and domestic violence, involving influential persons as abusers. In such cases, the approach of the state changes and response is delayed, leaving an impression that in taking a decision on response, preference is given not to victim’s rights but to abuser’s interests. It is alarming that a victim often has to go public to protect herself since only after that are certain measures undertaken by relevant entities.^{473 474 475 476}

⁴⁷⁰ Letter from MIA №MIA 2 20 00570283, 04.03.2020.

⁴⁷¹ Supreme Court of Georgia, 02.03.2020, N P-151-20.

⁴⁷² Prosecutor’s Office of Georgia №13/7878, 07/February/2020.

⁴⁷³ Case №12502/19, 12521/19.

⁴⁷⁴ Case №15169/19

⁴⁷⁵ Case №10509/19, N 12921/19.

⁴⁷⁶ During the reporting period, the PDO studied several cases in which the response was undertaken after the fact of violence had been made public: the case of T.T. who was allegedly abused by a deputy I.J.; also, the case of N.Ch. in which

As regards other incidents of violence against women and domestic violence, which were also studied by the PDO, they reveal that proper identification⁴⁷⁷ and study of certain incidents of violence from a gender perspective remain problematic. Compared to the previous reporting period, an insignificant increase is observed in identifying gender as a motive of discrimination,⁴⁷⁸ however, identification of this motive in a number of cases still remains a problem.⁴⁷⁹ Furthermore, in separate cases, where a coordinator of witness and victim is not involved, representatives of law enforcement bodies fail to inform victims about services of shelters and crisis centers.

Judging from the cases studied by the PDO, insensitive attitude of law enforcement officers and the lack of special rules for interviewing victims of violence remain a problem.⁴⁸⁰ Often victims speak about offensive attitude from police officers. Such facts are investigated by the General Inspection of the MIA, but establishing misdemeanor becomes difficult in the majority of cases.^{481 482}

Cases studied by the PDO show that sometimes women do not arrive at the General Inspection of the MIA for interviews and explain this by mistrust towards the entity or problems in transportation. An additional problem for female representatives of ethnic minorities is the lack of interpretation service at the General Inspection of the MIA, which further discourages them to apply to and cooperate with the entity.

a cleric was charged with domestic violence only after this fact had been made public. In both cases, the prosecution asked for bail as a restriction measure, thereby raising questions about the fairness of case consideration. In yet another noteworthy case of violence against a woman, studied by the PDO, the prosecution, assumedly for the reason of abuser's influential position, did not apply an adequate measure against him and the victim felt herself insecure. The Public Defender applied to the Prosecutor's Office with a proposal to initiate a criminal prosecution on the facts of violence committed against the applicant on the ground of gender, but the prosecution disregarded the proposal.

⁴⁷⁷ Especially difficult is the identification of threats and economic violence. In one case the police issued the victim a restraining order, but the order was abolished by the court (case №13701/19).

⁴⁷⁸ According to information of the Prosecutor's Office, in 2019, a criminal prosecution was instituted against 119 persons for intolerance on the ground of gender/sex, and against one person for intolerance on the ground of gender and religion (13/7878, 07/February/2020).

⁴⁷⁹ For example, in a case studied by the PDO, the MIA failed to discern signs of gender violence and therefore, did not issue a restraining order, although the court regarded it as a gender violence and issues a protective order. It is worth noting that the investigation into this case is being conducted as into the fact of intimidation and a motive of discrimination is not identified (case №5518/19).

⁴⁸⁰ Victims often note that they have to give explanations on one and the same issue several times and consequently, to remain in the police department for a long period of time. Moreover, due to inappropriate infrastructure, the confidentiality is often violated in the police building.

⁴⁸¹ According to the General Inspection of MIA, in 2019, the General Inspection received 104 complaints in relation to domestic violence of which 42 concerned facts of domestic violence by police officers while 62 concerned inadequate response to domestic violence by police officers. The General Inspection of MIA imposed disciplinary sanctions on 42 employees for domestic violence and on 21 employees for inadequate response to incidents of domestic violence. It is also important to note that the General Inspection of MIA does not maintain statistics on complaints lodged about violence against women.

⁴⁸² General Inspection of MIA, MIA 0 20 00242429, 24/01/2020.

The PDO has not been still provided with the information about the geography of a harmful practice of genital mutilation. Although four years have passed since the identification of this problem, the state is still unaware of the scale of the problem. Moreover, in 2019, the state did not take any specific step to eliminate the harmful practice of female genital mutilation.⁴⁸³

Administering justice on crimes of sexual violence

The PDO's study into cases of sexual violence⁴⁸⁴ has revealed a number of serious legislative shortcomings in regulation of crimes involving sexual violence, as well as at investigation, criminal prosecution and court hearing of such crimes, which fall short of the standards of Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and international human rights.

The analysis of the cases showed that rape and other sexual violence, punishable under article 137, and articles 138-139 of the Criminal Code of Georgia, respectively, do not consider the absence of the consent of a victim as an integral part of the definition of crime. Furthermore, the legislation does not consider a broad spectrum of circumstances that may affect the victim's will and considers a disproportionately lenient punishment for a crime committed in certain forms.

It must be noted that the justice authorities set excessively strict requirements for evidence of sexual violence, which leads to various forms of sexual violence left unpunished; this is not in line with the standards set in the Istanbul Convention.

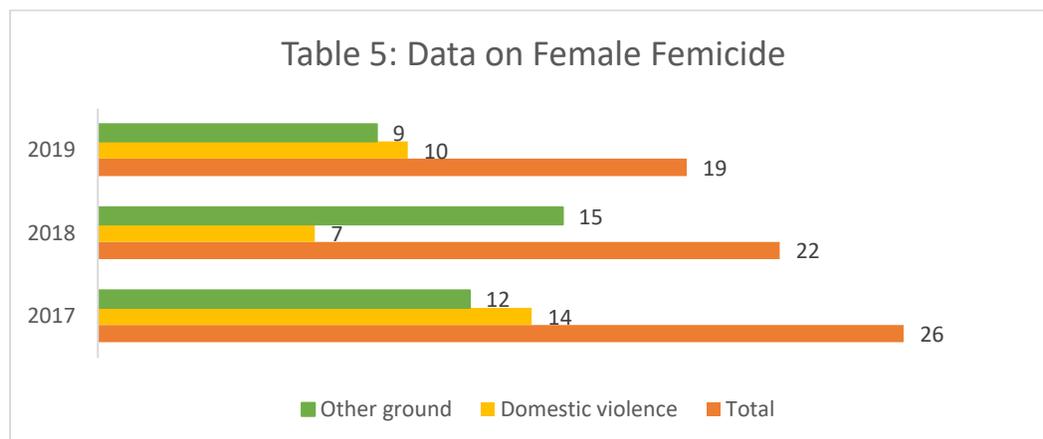
The cases analyzed made it clear that despite a gender-specific nature of sexual crimes, a gender perspective is not taken into consideration in administering the justice. In particular, in the majority of such crimes, one can see that approaches applied during investigation as well as court hearing are stereotypical or damaging for the victim.

⁴⁸³ The administration of the government of Georgia informed us that on 15-17 December 2019, within the format of field meeting of a group of interagency commission working on issues of gender equality, violence against women and domestic violence, nine priority areas were identified for the fulfillment of obligations assumed under the 2018-2020 National Action Plan for Human Rights Protection and that one of these priority areas is the elimination of early marriage and other harmful practices. Among activities defined for the working/coordination group working on this priority is the prevention of harmful practice of female genital mutilation. As the PDO was informed, the formation of working/coordination groups is underway which will be followed by an active working phase (GOV 8 20 00004736; 07/02/2020]. Moreover, according to the MIA, there is no data recorded about initiating the investigation into a fact of "female genital mutilation" under Article 133² of the Criminal Code in 2019 (MIA 3 20 00495675; 25/02/2020].

⁴⁸⁴ With the support from the Georgia Office of the Council of Europe, the Public Defender of Georgia conducted a study Administration of Justice on Crimes of Sexual Violence in Georgia." Within the framework of this study we scrutinized verdicts of common courts of Georgia (the total of 24 cases) and through interviews with persons working on issues of violence identified those obstacles which female victims of violence face in the process of administering justice.

Killing of women on the ground of sex (femicide)

According to the data of the Prosecutor's Office,⁴⁸⁵ there were 19 femicides recorded in 2019, including 10 because of domestic violence,⁴⁸⁶ and 22 attempts of femicide, of which 18 because of domestic violence.⁴⁸⁷



The analysis of cases of femicide and attempted femicide shows that despite a number of steps taken forward in tackling violence against women and domestic violence, numerous challenges remain in the fight against femicide and administering justice on cases of femicide.⁴⁸⁸

A positive development is that in contrast to previous years, investigation examines the history of violence before femicide and attempted femicide. The investigation often gives it an additional legal qualification under the Article 126¹ of the Criminal Code (Domestic violence). Furthermore, by examining the background of violence, the prosecution justifies the request for imprisonment of an offender as a restriction measure.

Prevention of femicide/attempted femicide and infliction of grave injury to health in a family remains a problem. 2019-2020 saw cases when police were approached prior to crimes but crimes were not prevented.⁴⁸⁹ Attention should be paid to those incidents of femicide where victims have not approached

⁴⁸⁵ Letter of the Prosecutor's Office №13/8998 of 12 February 2020.

⁴⁸⁶ Two of them was incitement to suicide by a family member.

⁴⁸⁷ Including six incitement to suicide by a family member.

⁴⁸⁸ Public Defender of Georgia, with the support from UN Women, studied the cases of femicides and attempted femicides. The study involved the evaluation of administration of justice and data dynamics, which enabled to assess the achieved progress and identify those remaining shortcomings that impede the fight against the problem. The study analyzed 84 criminal cases.

⁴⁸⁹ In one of such cases, a man inflicted a grave injury to his former wife on the day when he was issued a restraining order. Domestic violence in this family was reported earlier too, for example, before the crime was committed, the offender had been in the penitentiary institution due to domestic violence (N1797/19). In another case, an attempted murder of a former wife was committed by a probationer. The offender was found guilty of the crimes envisaged by Article 11¹ and Paragraph

the police for help. The analysis of the cases allows to say that reasons of this are mistrust in law enforcement authorities, fear of further violence and skepticism about the effectiveness of available mechanisms of protection and support.

It should be underlined that eight femicides⁴⁹⁰ committed on the ground of sex and four attempted femicides⁴⁹¹ recorded in 2020 indicate that the system of combatting violence against women, that is largely reactive and limited to response of law enforcement bodies to an already committed crime, is not effective and leads to tragic consequences.

The analysis of the mentioned cases suggests that femicide is a direct outcome of gender and social inequality existing in society. It is important for the state to direct complex efforts towards the establishment and enforcement of effective system for the prevention of femicide.

Assesment of services rendered at institutions for victims of violence against women and domestic violence

One of major roles in supporting victims of violence is assigned to the institutions (shelters and crisis centers) that provide services to victims of violence against women and domestic violence. Consequently, a proper rendering of legal, psychosocial, medical or housing services is of utmost importance to enable victims to escape violence and prepare for independent living.

The results of the monitoring conducted by the PDO in shelters and crisis centers in 2019 show that the environment in shelters is favorable for beneficiaries and their safety is protected there; however, a medical examination of victims before admitting them to a shelter is a persisting problem. Yet another serious challenge is the management of beneficiaries suffering from mental disorders. A limited number of programs of psychosocial rehabilitation, education and employment as well as recreational, sportive and cognitive activities represent a problem too.

As regards the physical environment, problems remain in regard to infrastructure, observance of sanitation and hygiene norms and access of shelters for PWDs. An especially serious problem is the

“q” of Article 381¹ of the Criminal Code and sentenced to one year in prison, however, it was considered a suspended sentence and one year of probation period was set. As an additional punishment he was imposed the fine of GEL 3000 (N 1979/20). In yet another case, a husband killed his wife during the validity of restraining order and investigation was underway into a domestic violence (N 3026/20).

⁴⁹⁰ Femicide in Samtredia on 18 February: <<https://bit.ly/2vtbWUZ>> Femicide in Karajala on 16 February: <<https://bit.ly/2x8JIPH>> Femicide in Surami on 18 January: <<https://netgazeti.ge/news/420657/>> Two femicides on 25 February: <<https://bit.ly/2wqyWYo>> Two femicides on 28 February: <<https://bit.ly/2TOrXgn>> Femicide on 2 March: <<https://bit.ly/38nrslu>> >>[accessed 30.03.2020].

⁴⁹¹ Attempted femicide on 9 February: <<https://bit.ly/2lebnRs>> Attempted femicide in Poti on 13 January: <<http://rustavi2.ge/ka/news/152468>> Attempted femicide in Gori on 9 January: <<https://bit.ly/2TH0pcC>> Attempted femicide in Khashrui on 5 March: <<https://bit.ly/39tTcmT>> >>[accessed 30.03.2020].

support and assistance of beneficiaries after they leave shelters due to shortage or total absence of relevant programs.

8.8. Child and early marriage

The practice of early marriage and engagement remains one of major challenges. Management and prevention of particular cases remains a problem.⁴⁹²

Judging by cases of early marriage/engagement, studied by the PDO, a coordinated activity of the MIA, educational institutions and the Social Service Agency as well as smooth operation of reference mechanism remains problematic.

Although the number of early marriages studied by the Social Service Agency has sharply increased⁴⁹³ compared to previous years, the monitoring revealed that schools often conceal instances of early marriage/engagement and do not report about them to relevant entities. Often pupils do not attend classes because of early marriage/engagement, but these instances are not recorded in a school attendance register. In a number of cases, the change in living address, not marriage, is cited as the reason of abandoning the school. However, girls change living address because of marriage and schools must conduct a thorough inquiry and undertake the measures specified in the law.⁴⁹⁴

Cooperation between the MIA and the Social Service Agency is problematic. When studying the cases, the PDO revealed instances when these institutions provided conflicting information. It should be noted that the Social Service Agency does not have guidelines for managing cases and often responds to such

⁴⁹² The Gender Department of PDO requested the Public Service Development Agency of the Justice Ministry to provide the data on applications from maternity homes for the record of birth of a child, where parents were minors; however, this information was not provided (N 08-2/449,16/01/2020; N 08-2/2386, 27/02/2020).

⁴⁹³ Last year, the Social Service Agency studied 115 cases, this year it studied 261 cases. The letter from LEPL State Agency for Protection and Assistance of Victims of Human Trafficking № 07/769, 24.02.2020.

⁴⁹⁴ According to the information of the Ministry of Education, Science, Culture and Sport of Georgia (MES 0 20 00036163, 16.01.2020), in 2018-19 (17.09.2018-15.09.2019) 11 girls and five boys dropped the primary-basic education and 68 girls and six boys dropped the secondary education. In the first semester of 2019-2020 (16.09.2019-31.12.2019), because of marriage, the primary-basic education was dropped by one girl and one boy and secondary education by 25 girls and one boy.

cases in a superficial and sporadic manner. Furthermore, a problem is the imposition of sanction on persons committing offences related to early marriage.^{495 496}

Especially problematic is the early marriage of representatives of ethnic minorities and adequate response to related offences. Immediate and adequate response to unlawful imprisonment and forced marriage remains a challenge, often due to preconceptions and stereotyped attitude to ethnic minorities. Inadequate response to such incidents encourages this type of crime, emboldening potential offenders that they will not be held responsible for committed actions.⁴⁹⁷

According to worrying reports, the fate of a girl in case of early marriage is decided by male elders (Aqsaqals) in the Kvemo Kartli region. It should be noted that the response of the state entities in such cases is belated and unproductive, which may be explained by reluctance to enter into conflict with influential locals.⁴⁹⁸

For the prevention of early marriage/engagement it is important to raise awareness of associated risks. In this regard, a positive development is a large-scale awareness campaign on the prevention of early marriage conducted by the MIA.⁴⁹⁹ Furthermore, to prevent early marriage, it is essential to integrate gender issues and life skills/complex sexual education in the education system.

⁴⁹⁵ According to the information provided by the MIA, among criminal cases instituted/underway in 2019, 130 were related to alleged crimes against minors, which were qualified under Article 143 of the Criminal Code (Unlawful imprisonment). Among them, marriage was an alleged ground of 56 crimes. From these 56 cases, 50 were terminated due to absence of signs of offense. In parallel to launching the investigation, one restricting order was issued. As regards the crime under Article 140, the investigation was initiated into 149 cases in 2019, including 105 on the ground of marriage with a child. After launching an investigation, one restricting order was issued. The investigation into 19 cases was terminated due to absence of action envisaged by the Criminal Code. Also, according to the provided information, the total of 14 instances of alleged forced marriages with minors were recorded. Nine restraining orders were issued in six cases (restraining orders were mainly issued against parents of children) while investigation of four cases was terminated due to absence of action envisaged by the Criminal Code (MIA 0 20 00718412, 19/03/2020).

⁴⁹⁶ According to the data of Prosecutor's Office (№13/6429, 03.02.2020), in 2019, a criminal prosecution was instituted against 77 persons under articles 140, 11¹ -140; against five persons under articles 150¹, 11¹, 150¹; one persons under subparagraph "d" of paragraph 3 of article 11¹ -143 when a victim was a minor; four persons under subparagraph "d" of paragraph 3 of article 143 when a victim was a minor; unlawful imprisonment for the aim of marriage was identified in two cases in which both victims were women.

⁴⁹⁷ Statement of Public Defender of Georgia on unlawful imprisonment of minor, available at: <<https://bit.ly/3cKAWHM>>> [accessed 10 March 2020].

⁴⁹⁸ This potential problem is proved by a video released in the reporting period against one teacher showing co-villagers publicly opposing this teacher because she condemned early marriage and forcing her to apologize; all this was filmed and posted on a social network to tarnish the reputation of the teacher; available at: <<https://bit.ly/36sz8iw>> [accessed 5 March 2020].

⁴⁹⁹ "Do not Deprive Children of Childhood" - the MIA conducted the awareness campaign against early marriage. Available at: <<https://bit.ly/2O2p1uu>>> [accessed 5 March 2020].

8.9. Situation regarding the rights of LGBT+ persons

The situation regarding the rights of LGBT+ representatives has not improved in 2019. With homophobic and anti-gender groups mushrooming and gaining force, LGBT+ persons continue to be oppressed, abused and discriminated against. Furthermore, as homophobic and transphobic attitudes are rife among a large segment of population, LGBT+ persons face problems in exercising the rights to labor, healthcare, social security and education.

In 2019, LGBT+ community, LGBT rights watchdogs, and LGBT supporters were not able to openly mark the International Day against Homophobia, Transphobia and Biphobia due to absence of safety guarantees. Unfortunately, attempts to mark this day in Georgia in recent years have been associated with violence, endangering the safety of people.⁵⁰⁰

A commending development seen in 2020 was the addition of a chapter to the Government Plan on the Protection of Human Rights (2018-2020), designed to establish the policy of equality and to fight discrimination on the ground of sexual orientation and gender identity.⁵⁰¹

Violence against LGBT+ representatives

Judging by cases studied by the PDO in 2019, violence against LGBT+ representatives on the ground of sexual orientation and gender identity remains high in the country. Homophobic attitudes have not changed and society often condones and encourages violence against LGBT+ representatives.

According to the data of Prosecutor's Office of Georgia, criminal prosecution was initiated against 32 persons, in total, for committing crimes on the ground of intolerance of gender identity, including against 19 persons on the ground of intolerance of sexual orientation; against 12 persons on the ground of gender identity; and against one person on the grounds of sexual orientation and gender identity.⁵⁰²

When applying to the PDO, LGBT+ representatives often complain that when reporting violence committed against them to the police, they become victims of humiliation, homophobia, verbal abuse or/and indifference.

⁵⁰⁰ The issue of equality of LGBT community from the perspective of the right to assemblies and manifestations is discussed in detail in the chapter on equality.

⁵⁰¹ Ordinance of the Government of Georgia №116 on the amendments to the to the Ordinance of the Government of Georgia №182 of 17 April 2018, on the Approval of the Government Plan on the Protection of Human Rights (2018-2020).

⁵⁰² Letter of Prosecutor's Office of Georgia №13/7883, 07/February/2020.

Such treatment often results from insensitivity of law enforcement bodies towards LGBT+ persons, also, absence of relevant infrastructure that is not adjusted to the needs of LGBT+ persons and does not ensure confidentiality during interviewing. Therefore, community members either do not report instances of violence against them to the police, or do not cooperate with police at a later stage; this leads to a situation when cases of violence are unregistered and left without response.

The cases studied in the reporting period reveal a problem of detecting abuse of official duties when dealing with LGBT+ persons and applying relevant sanctions against such abusers. The General Inspection of MIA does not keep record of complaints filed on cases related to LGBT+ community, thereby making it difficult to observe a trend in referrals and response.⁵⁰³ According to the General Inspection, the investigation has been initiated into four criminal cases on alleged mistreatment by MIA officers on the ground of gender identity and sexual orientation.⁵⁰⁴

Violence against and disregard of LGBT+ persons on the part of family members remains a serious problem. It should be noted that available mechanisms of protection and assistance that are applied in cases of domestic violence and violence against women are not sufficient to provide adequate service to LGBT+ victims of violence inside and outside the family. Yet another problem is that in case of violence from a sexual partner, gay/bisexual men cannot get adequate protection and assistance services.

Maintaining a record of incidents of violence between same-sex couples remains a challenge. This is because the legislation is heteronormative. Moreover, due to stigma inside the community itself, compelled coming out and mistrust towards law enforcement officers, LGBT+ representatives abstain from reporting violence from their sexual partners to law enforcement entities.

Sexual and reproductive health and rights of LGBT+ representatives

The situation regarding sexual and reproductive health and rights of LGBT+ representatives remained the same. The government does not have a national guideline of clinical practice for trans-specific medical procedures and a state standard for managing clinical condition (hereinafter, guideline and protocol), which would serve as a basis to compile a list of diagnosing and follow-up medical procedures needed to provide service to transgender persons.⁵⁰⁵ Consequently, the LEPL State Regulation Agency for Medical Activities does not have a possibility to conduct a quality control within its competence.⁵⁰⁶

⁵⁰³ Letter of General Inspection of MIA, MIA 0 20 00242429, 24/01/2020.

⁵⁰⁴ This data covers the period from 1 January to 1 November 2019. Letter of Prosecutor's Office of Georgia №13/7883, 07/February/2020.

⁵⁰⁵ letter №01/4940 of 21 March 2019 from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

⁵⁰⁶ Paragraph "b," of paragraph 3 of article 2 of the decree of 28 December 2011, on the Establishment of LEPL State Regulation Agency for Medical Activities and Approval of its Statute.

Absence of guidelines and protocols of trans-specific medical services must be viewed in the context of established practice whereby a sex reassignment surgery is a precondition for changing the entry about sex in a document certifying identity.⁵⁰⁷ With such practice, which in itself is a violation of human rights, instead of legal recognition of gender, the state forces trans people to subject themselves to medical procedures of sex change in conditions when the state has no standards determined and mechanisms to monitor the quality of these procedures.

Proposals

To Parliament of Georgia:

- Take into account recommendations of the Committee on the Elimination of Discrimination Against Women and Special Rapporteur on violence against women, its causes and consequences about the introduction of a mandatory quota mechanism.
- For the purpose of approximating to international standards, improve the legislation on crimes of sexual violence, in particular:
 - Make amendment to the definition of rape and act of other sexual nature (articles 13u, 138 and 139 of the Criminal Code of Georgia) in accordance with the Istanbul Convention;
 - Remove violence from the definition of rape (article 137 of the Criminal Code of Georgia) and define violence as an aggravating circumstance in the mentioned article;
 - Amend article 139 of the Criminal Code of Georgia to extend the list of circumstance of coercion of victim;
 - Remove a fine from article 139 of the Criminal Code of Georgia as an inadequately lenient punishment for sexual violence.
- In accordance with the international standards, eliminate barriers to the use of pregnancy, childbirth and parental care leaves and improve the shortcomings so that to enable parents of both sexes to exercise the right to equal, remunerated and non-transferrable parental leave both in private and public sectors.

Recommendations

To the Government of Georgia:

- Set up a working group to regulate a procedure for the change of entry on sex in civil acts, in accordance with international standards;
- Develop the rule of issuance of timely, adequate and effective compensation in accordance with the obligation provided in article 30 of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

⁵⁰⁷ Report of Public Defender of Georgia on Human Rights and Freedoms in Georgia, 2018, pg. 141. Available at: < <https://bit.ly/2QV7hST> >[accessed 30.03.2020].

On the link between coercion of sex reassignment procedures and absence of guidelines and standards, please see the study on needs of transgender persons conducted by Equality Movement, pg.21. Available at: < <https://bit.ly/2X2EiAN> >[accessed 30.03.2020].

To local self-government bodies:

- Ensure trainings of members of gender equality council on the gender policy implemented in the country and national action plans available in this area;
- Ensure the establishment of gender mainstreaming instruments such as gender strategy and gender budgeting; provide support in raising sensitivity of gender equality council on issues of violence against women and domestic violence, state services for protection and assistance of victims of violence, sexual harassment and economic empowerment of women;
- Conduct a comprehensive research and study into specific needs of women living in municipalities and reflect them in action plans, strategies and policy documents; also publish key findings of the study;
- Ensure the establishment of gender budgeting in practice and implementation of programs designed to improve the rights of women;
- Undertake all possible measures to ensure women's participation and involvement at all stages of planning, implementation and assessment of priority projects of local communities, pay special attention to accommodating needs of vulnerable groups;
- Ensure access of rural women to vocational education, in particular, by ensuring transportation and child care services;
- Plan and conduct awareness raising campaigns:
 - To eradicate gender stereotypes, including for the aim of equal distribution of gender labor;
 - About reproductive health services;
- Maintain record of single and multiple-children parents living in municipalities and collect data segregated by sex; ensure access to data on municipal webpages by observing the privacy of personal data.

To Minister of Economy and Sustainable Development:

- Support vocational education of rural women entrepreneurs and their economic empowerment through trainings on project management skills;
- Develop a methodology which will serve as a basis for considering peculiarities and needs of specific regions when financing programs in support of entrepreneurship.

To Minister of Education, Science, Culture and Sport

- Set up a working group for the full integration of comprehensive sexuality education into the school curricula;
- Ensure retraining of teachers to raise their awareness about legislative obligation of persons engaged in the education sphere with regard to issues of early marriage, and develop an evaluation document.

To Legal Aid Service:

- Ensure legal consultations on the rule of acquiring a status of single parent and on assistance services, prepare relevant documentation for and appoint a lawyer to not only socially vulnerable people.

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

- Conduct information meetings to raise awareness of conflict-affected population about issues of violence against women, violence on the ground of gender and availability of relevant protection and assistance services;
- Integrate consultations on family planning and contraceptives in a basic universal health care package;
- Ensure regular and continuous retraining of obstetricians, gynecologists and reproductive health specialists to improve knowledge about family planning, methods of contraception and principles of consulting, including about confidentiality and prohibition of discrimination, also youth-friendly services;
- Develop a systemic vision of postnatal care and integrate psychological assistance service in all stages of maternal health programs;
- Conduct awareness raising measures about state-funded projects on sexual and reproductive health;
- Conduct awareness raising measures for healthcare providers about a medical importance of artificial termination of pregnancy and related national regulations;
- Retrain social workers in issues of violence against women and domestic violence; develop a post-training evaluation document enabling to measure progress achieved by retrained employees;
- Develop special guidelines for social workers on dealing with instances of violence against women and domestic violence as well as early marriage;
- Develop a national recommendation (guideline) for clinical practice of trans-specific medical procedures and a state standard for managing clinical condition (protocol), which will specify medical and ethical aspects of trans-specific medical service as well as psychological/social aspects of support of a person before and after the procedures.

To Minister of Internal Affairs:

- Continue retraining of employees of MIA territorial departments on issues of violence against women and domestic violence, also, develop a post-training evaluation document enabling to measure progress achieved by retrained employees;
- To ensure effective protection of and assistance to victims of violence, determine the rule of specialization of investigators in cases of violence against women and domestic violence;
- Improve the analysis of data on violence against women and domestic violence, in particular, analyze the data on violence against women and domestic violence between sexual partners, including same-sex partners, in order to study specific features of violence;

- Undertake preventive measures to minimize/prevent forced marriage, unlawful imprisonment and sexual intercourse with minors; in particular, it is important to support awareness raising of population and to thoroughly analyze committed offences;
- Respond adequately to, and impose sanction on, subjects engaged in procedures of child protection referral, envisaged by the Georgia legislation, who fail to identify early marriage/engagement and inform relevant state entity about it.

To Chief Prosecutor of Georgia:

- When investigation into femicide and attempted femicide reveals that a woman, before been killed, reported violence against her to law enforcement authorities, investigate an alleged negligence of official duties on the part of police and prosecutor;
- Conduct a detailed analysis of crimes related to early marriage, in particular, forced marriage, unlawful imprisonment, sexual intercourse with a person under 16, and maintain relevant statistics segregated by sex and age.

To LEPL State Agency for Protection and Assistance of Victims of Human Trafficking:

- Examine health of beneficiaries of shelter for victims of violence against women and domestic violence so that not to endanger other beneficiaries of the shelter; in particular, ensure comprehensive and timely health examination;
- Ensure improvement of yards, inventory and child-oriented infrastructure of shelters;
- Ensure physical adjustment of shelter so that to maximally improve the delivery of services to PWDs;
- Schedule working hours of psychologists and nurses in such a way as to maximally adjust them to needs of beneficiaries;
- Ensure retraining of shelter personnel, including nurses and caregivers in issues of mental health;
- Plan and conduct information campaigns to promote protection and assistance services available for victims of trafficking in the country and to raise awareness of population;
- Revise/improve psychosocial rehabilitation services in shelters for victims of violence against women and domestic violence as well as victims of trafficking.

9. Freedom of belief and religion

9.1. Introduction

The situation regarding the protection of the freedom of religion has not improved in the reporting period. The only area that showed progress were the measures implemented by the MIA with regard to alleged hate crimes.

2019 saw intensive discussions launched by the Human Rights and Civil Integration Committee of the Parliament about a potential initiation of draft law on religious associations and additional regulations. This process is still underway, but it is important that the group includes a wide spectrum of state entities, religious associations and nongovernmental organizations, ensuring the inclusivity of the process. The Council of Religions at the PDO played an important role in it.

Tax and property issues related to religious organizations remain unsolved: the state did not take steps to establish a common system of various taxes for religious associations or to restitute buildings for worshipping seized during the Soviet period to their historic owners. It has been 30 years now that monuments of religious-ethnic diversity of Georgia have been crumbling due to the failure of the state to solve the issue of restitution. Change in owners of these monuments has been made at the state's will as it happened, years ago, with Catholic churches and the Armenian Tandoyants church;⁵⁰⁸ original appearance of buildings has been transformed and signs evidencing the origin of these monuments have been erased from the interiors and exteriors of the buildings.

Armenian, Catholic, Lutheran Churches, Jewish and Muslim communities, cannot regain the ownership of even those historical buildings in which they conduct religious services today; the state transferred these buildings to them in temporary ownership alone.

Another problem is related to obtaining a construction permit on the land owned by religious organizations; however, a decision taken by the Batumi City Court in 2019 regarding the construction of a new mosque on the land owned by the New Mosque Construction Fund in Batumi was an important development; this court decision established a discriminatory nature of the city hall's refusal on the construction of a mosque.⁵⁰⁹

The role of State Agency for Religious Issues in the area of protection of the freedom of religion is not clear. An ambiguous mandate and activity of the Agency have been criticized by international

⁵⁰⁸ See Public Defender's Parliamentary report of 2017, subchapter "problems related to property of religious associations," pg. 159.

⁵⁰⁹ Batumi city hall appealed this decision to Kutaisi Appeals Court. On 4 December 2019, the New Mosque Construction Fund in Batumi also lodged an appeal in which it demands that the city hall be ordered to issue a construction permit on the first stage. The case is under consideration.

organizations specializing in human rights⁵¹⁰ and experts, while a large segment of religious organizations are skeptical about it.

The government action plan on the protection of human rights (2018-2020) does not address root problems and major challenges, but contains only general obligations. According to the document, the State Agency for Religious Issues is an entity, alongside other entities, responsible for the implementation of the action plan. Unfortunately, the Agency has neither the will nor effective mechanisms to implement measures envisaged in the action plan. Furthermore, the Council of Religions at the PDO is not involved in the monitoring of implementation of the action plan.

9.2. Georgian legislation

Georgian legislation is yet to be formulated in such a way as to defend the equality of religious associations. To put discriminatory issues to rights, the Council of Religions at the PDO has issued recommendations to state entities during many years.⁵¹¹

In 2019, on the premise of discussing challenges faced by religious associations, a working group on religious issues was set up in the Parliament of Georgia at the initiative of the Parliamentary Committee on Human Rights and Civil Integration. However, from the very first day of commencing, the working group has been mainly discussing the issue of adoption of new legislative regulations on religion and religious associations.

In the process of discussion, the Council of Religions' twenty member religious associations expressed a common position about unsuitability of adopting a special law on religious associations or introducing additional regulations.⁵¹² Furthermore, the majority of religious organizations deems an initiative to allow the state to come up with the definition of a religious association and a religious servant unacceptable because entrusting this initiative to the state poses a threat of intervening in the autonomy of religious associations, categorizing and hierarchizing confessions and denominations, and establishing a discriminatory legal frameworks by the state. Moreover, the majority of members of the Council of Religions at the PDO gave a negative assessment to initiatives about regulating so-called offense of religious feelings and religious apparel that were put forward in the Parliament.⁵¹³

⁵¹⁰ The European Commission against Racism and Intolerance (ECRI) fifth monitoring cycle report; Third Report of the Framework Convention for the Protection of National Minorities (FCNM); Report on the implementation of the national strategy for the protection of human rights in Georgia, 2014-2020, prepared by the independent human rights expert Maggie Nicholson.

⁵¹¹ See 2017 recommendations of the Council of Religions at the PDO. Available at: < <https://bit.ly/2WNXKRr> >> [accessed 31.03.2020].

⁵¹² See the statement of Council of Religions at the PDO, concerning special law/additional regulations: < <https://bit.ly/2UpV1Ml> >> [accessed 31.03.2020].

⁵¹³ See the statement of Council of Religions at the PDO, about unacceptability of the law on offending religious feelings: < <https://bit.ly/2WVkuio> >> [accessed 31.03.2020].

9.3. Tax legislation

Tax Code of Georgia exempts only the Patriarchate of the Georgian Orthodox Church from a number of taxes (profit, property, VAT, import). Other religious associations do not enjoy similar tax breaks.

With its decision of 3 July 2018,⁵¹⁴ the Constitutional Court found that the provision in the Tax Code⁵¹⁵ whereby exemption from VAT applies to only the construction, restoration and painting of churches that are commissioned by the Patriarchate of Georgia, was inconsistent with the right of equality guaranteed under the constitution. The Court interpreted that a provision in the Constitution about an extraordinary historical role of the Orthodox Church does not imply the right to treat other religious associations unequally.

For the enforcement of the judgment, the Constitutional Court set a reasonable time of six months (until 31 December 2018) to the Parliament to amend the disputed provision of the Tax Code in accordance with the Court decision so that it applied to all religious associations. However, the Parliament did not make legislative changes and the unconstitutional provision was automatically invalidated on 31 December 2018.

On 7 May 2019, nine religious associations applied to the Constitutional Court to challenge the constitutionality of the provision of the Tax Code⁵¹⁶ which exempted only the Georgian Patriarchate from land tax in case of its use for non-economic activities.⁵¹⁷ The claim is under consideration.

9.4. Legislation on state property

It is noteworthy that with the 3 June 2018 decision,⁵¹⁸ the Constitutional Court also found a provision⁵¹⁹ of the Law on State Property discriminatory, whereby a state property is transferred for free to the Georgian Orthodox Church alone whereas other religious organizations cannot enjoy this privilege.

The Parliament did not make a legislative change in accordance with this decision of the Court either. Consequently, the disputed provision was automatically invalidated on 31 December 2018.

⁵¹⁴ Decision №1/2/671, of 3 July 2018, of the Constitutional Court of Georgia.

⁵¹⁵ Subparagraph "b" of Paragraph 2 of Article 168 of the Tax Code of Georgia.

⁵¹⁶ Subparagraph "a" of Paragraph 1 of Article 201 of the Tax Code of Georgia.

⁵¹⁷ Constitutional complaint №1422 registered on 7 May 2019.

⁵¹⁸ Decision №1/1/811, of 3 July 2018, of the Constitutional Court of Georgia.

⁵¹⁹ Article 6³ of the Law on State Property: "A decision on the transfer of title to state property free of charge shall be made by the Government of Georgia. By a decision of the Government of Georgia, the title to state property may be transferred free of charge to internally displaced persons from the occupied territories of Georgia, as well as to the Georgian Apostolic Autocephalous Orthodox Church."

A problem is that religious associations, except for the Georgian Orthodox Church, cannot have the title to historical buildings for worshipping which they hold.

Likewise, none of religious associations, except for the Georgian Orthodox Church, is allowed to privatize a state asset of religious purpose, which deprives them of a possibility to regain buildings for worshipping seized during the Soviet times.

On 12 August 2019, nine religious associations applied to the Constitutional Court⁵²⁰ to challenge the constitutionality of those provisions of the Law of Georgia on State Property that restrict a purchase or exchange of state property by any religious association, except for the Patriarchate of the Georgian Orthodox Church, registered as a legal person of public law.⁵²¹

9.5. Offences committed on the ground of intolerance

Alleged offences against Jehovah's Witnesses on the ground of religion were committed in 2019 too. According to the 2019 report of the religious organization of Jehovah's Witnesses, efforts undertaken by the Human Rights Protection and Monitoring Department at the MIA have led to the improvement of the quality of investigation into crimes committed on the ground of religion and of the attitude of police officers to victims. The same report overviews 19 offences, including 15 incidents involving physical abuse, threats and interference in religious rites and four incidents of vandalizing Jehovah's Witnesses' buildings for worshipping - Kingdom Halls.

From these offences, seven cases were qualified the MIA as the persecution because of faith (Article 156 of the Criminal Code of Georgia) and four as unlawful interference into the conduct of a religious rite. Thus, in terms of qualification, the MIA applies the Criminal Code provisions specifically prohibiting hate crimes more frequently than in previous years. There are, however, few offences to which the MIA applied the provisions that are not directly related to hate crime: three offences were investigated under Article 188 (Less serious intentional damage to health), Paragraph 1 of Article 187 (Damage or destruction of object) and Article 126 (Violence).

Nevertheless, problems remain in regard with timely and effective conduct of investigation, granting of a status of victim, charging of a person with an offence even when the victim names a concrete person or a video record of incident or other evidence is available.

⁵²⁰ Constitutional complaint №1440 registered on 12 August 2019.

⁵²¹ Paragraphs 2 and 5 of Article 3 of the Law of Georgia on State Property.

9.6. Problems related to property

Problems remains with the restitution of property seized during the Soviet times to Armenian Apostolic, Catholic, Lutheran churches, Muslim and Jewish communities, as well as obtaining the title to buildings for worshipping transferred to them into use.

Third Opinion on Georgia adopted on 7 March 2019 by the Advisory Committee on the Framework Convention for the Protection of National Minorities notes that restitution of places of worship confiscated during the Soviet period remains a serious problem for the state. The Committee also notes that a risk of further deterioration of these buildings increases; religious minorities suffer structural discrimination in access to funding possibilities and to places of worship; construction permit procedures are not sufficiently transparent as they are not based on clear and objective legal criteria. The Advisory Committee calls on the government to ensure that the process of restitution of property to religious associations is carried out in a non-discriminatory manner.

Developments around Tandoyants Armenian Church in Tbilisi and Batumi Mosque are clear manifestations of unequal policy pursued by the state.

Tandoyants Church

The issue of Tandoyants Church in Tbilisi was discussed in 2017-2018 reports of the Public Defender; however, the situations has not improved in 2019. According to historic sources, before the Soviet occupation, the building belonged to Armenian Apostolic Church. Nevertheless, the state transferred the church to the Georgian Patriarchate without relevant state entities establishing the legality of the transfer or studying the issue of its confessional ownership; the church was not protected against archeological, construction or other works.

As a result of the above said the freedom of religion and the right to property were violated and the appearance of the church as a monument of cultural heritage was modified. Conducted works went beyond the limits of research activity, which became apparent from materials published by the Patriarchate; however, relevant state entities did not undertake any response to damages made to the building.

In 2019, the Tbilisi City Court deemed the claim filed on the case of Tandoyants Surb Astvatsatsin Armenian Church was considered inadmissible. This decision further complicated the process of restitution of this historic building of worship to the Armenian Apostolic Church.

New Mosque in Batumi

2019 was marked with significant decisions on the construction of a new mosque in Batumi.

In 2017, the city hall of Batumi municipality denied a construction permit for the mosque to the New Mosque Construction Fund without providing reasoning of the denial. The Public Defender of Georgia found out that the city hall took a decision without studying important circumstances and failed to issue a substantiated response; Public Defender demanded, through a relevant recommendation, from the Batumi city hall that it review the case and provide a substantiated decision.

The New Mosque Construction Fund appealed the city hall's decision to a court. A court proceeding was scheduled for 20 February 2019, but it was postponed upon the request of the municipality on the ground of a prospective agreement with the Muslim community. However, agreement was not achieved.

On 30 September 2019, the Batumi City Court ruled that the action of Batumi Mayor was discriminatory and declared the Batumi city hall's decision regarding the construction permit nil and void. The court sent the case back to the Batumi city hall for a new review. The city hall appealed the decision to the Kutaisi Appeals Court. The case is under consideration.

9.7. Border crossing and import of religious literature

Representatives of non-dominant religious groups, especially Muslims, encounter two main problems when crossing the border. The first problem is faced when leaving the country: their exit is delayed without reason, baggage is checked, inquiries are made about their appearance, etc. The second problem is faced by representatives of religious organizations when importing religious literature: they are asked to provide a permit from the Georgian Orthodox Church, or LEPL Administration of All Muslims of Georgia (in case of Muslims).

When imported, non-Orthodox Christian literature is usually perceived as a threat and the content is examined. Furthermore, although the import of books is exempt from import duties, religious organizations, on certain occasions, are required to pay customs duties. Sometimes they are even asked to leave the religious literature. It is worth noting that in 2017, the Public Defender established a fact of discrimination on the border on the part of the LEPL Revenue Service subordinated to the MIA and Ministry of Finance of Georgia, and issued relevant recommendations to specific entities to observe religious neutrality;⁵²² nevertheless, problems during border crossing were seen in 2019 too.

9.8. Funding or religious organizations

Effective funding model of religious organizations whereby funding is issued as a compensation represents a challenge.⁵²³ This model excludes material or moral compensation to those religious

⁵²² Information available at: < <https://bit.ly/33UrptM> > > [accessed on 31.03.2020].

⁵²³ Compensations is issued to the following religious associations: Georgian Orthodox Church, Muslim, Jewish, Roman-Catholic and Armenian Apostolic religious organizations.

organizations that sustained similar moral and material damage during the Soviet period (for example, Evangelical-Lutheran Church, Evangelical-Baptist Church, Evangelical Faith Church, Yezidis, etc.).

It is also important to note that the government, through the State Agency for Religious Issues, actually imposes a financial control over spending of “compensated” amount by four religious associations and in the event of violation, reserves the right to stop funding. Such relationship between the state and religious associations runs counter to the motive and nature of this form of funding – compensation.

9.9. Freedom of religion in education system

At all three levels (early and preschool, general, higher) of the educational system, the freedom of religion and the issue of full religious neutrality continue to be a challenge.

In the early education system, the problem is the Law on Early and Preschool Education which does not contain a provision requiring a religious neutrality and equality. According to representatives of the religious associations, kindergarten students often have to participate in religious rituals. It is worth noting that the Early and Preschool Education Standard, adopted by the government of Georgia in 2017, which requires religious neutrality at this level of educational system, is not fulfilled, according to representatives of religious associations.

Nor are relevant prohibitions (of proselytism, indoctrination, display of religious symbols for non-academic purposes) in the Law on General Education observed in public schools, according to representatives of religious associations. There are instances when for fears of being bullied and marginalized, students have to participate in Orthodox Christian religious rituals. Moreover, there are places of religious purpose arranged in a number of public schools.

According to information provided by representatives of religious associations, instances of humiliating treatment on the ground of religion by a segment of students and administrative personnel are also observed at the higher educational level, although the Law on Higher Education contains a provision prohibiting discrimination.

A commendable step was taken in 2019 by the Ministry of Education, Science, Culture and Sport of Georgia: under Public Defender’s coordination, human rights experts were invited, alongside specialists of other field, to participate in the approval process of all 7th grade textbooks that were submitted for the contest. The human rights and anti-discrimination criterion envisaged the assessment of the textbooks from the standpoint of representation of tolerance and culture of diversity. It is planned to involve these experts in the assessment of textbooks for the 8th grade too.

Recommendations

To the government of Georgia:

- Amend the ordinance №117 of the Government of Georgia of 27 January 2014 on the Rule for the Implementation of Several Measures for Partial Compensation of Damages Caused by the Soviet Totalitarian Regime to Religious Associations in Georgia and along with four religious associations, give relevant compensation to other religious associations too;
- Take effective measures towards the restitution of religious buildings seized during the Soviet period to their historic owners, draft relevant legislation and return state-owned religious buildings to those religious associations that historically owned them;
- Intensify cooperation with the Council of Religions at the PDO. Use recommendations of and consultation with the Council of Religions as a basis for human rights strategies and action plans in the area of freedom and equality of religion;
- Amend the funding practice of religious associations. In consultation with the Public Defender, members of the Council of Religions and other religious organizations as well as organizations specializing in the protection of human rights, work out a funding and tax system for religious associations, that will meet the requirements of equality and the neutrality of the state.

To the Minister of Internal Affairs of Georgia and the Chief Prosecutor of Georgia:

- Ensure analysis and publication of statistics on hate crimes committed on the ground of religion.

To the Minister of Education, Science, Culture and Sport:

- Ensure the observance of the principles of freedom of religion, equality and religious neutrality at all levels of education. Monitor the implementation of abovementioned in practice.

To local self-governments:

- Observe religious neutrality and a constitutional principle of equality in the process of issuing permits for the construction of religious buildings;
- Ensure the protection of religious neutrality and equality at an early and preschool education level; monitor the implementation of abovementioned in practice.

10. Freedom of expression

Freedom of expression is a fundamental value of democratic society and a proper realization of this freedom is directly linked to comprehensive exercise of other rights and the degree of democracy of a country. Public Defender keeps a close eye on the realization of freedom of expression in Georgia and assesses it in its annual parliamentary reports.

The year 2019 saw intensive developments in the sphere of media. Attempts to change critical editorial policy of Ajara Television gave rise to very serious questions, as they endanger media pluralism in the country and adversely affect the freedom of expression. This is especially worrying considering numerous criminal proceedings initiated on cases directly or indirectly linked to owners of independent and critical media outlets.

A persisting problem⁵²⁴ is the absence of proper data on alleged offences committed against journalists because of their professional activity,⁵²⁵ this makes it difficult to obtain comprehensive information about such facts and to assess the quality of response to them.

Although Azerbaijani journalist Afghan Mukhtarli was released from a prison in Azerbaijan on March 17, 2020,⁵²⁶ the investigation into his disappearance from the central part of Tbilisi, which has been conducted in the Prosecutor's Office of Georgia since 2017,⁵²⁷ has shown no progress to date.⁵²⁸ It is noteworthy that after his release, Afghan Mukhtarli disclosed additional information concerning his case, saying that his kidnapping was a result of a deal struck between Azerbaijani and Georgian high officials.⁵²⁹ Public Defender stresses the need for the Prosecutor's Office of Georgia to conduct a timely interview with Afghan Mukhtarli, which was not conducted at the time of the journalist's incarceration, because the Prosecutor's Office did not receive a response to its motion on providing legal aid, which it sent to Azerbaijan.

It should be kept in mind that the Georgian legislation establishes a rather high standard of freedom of expression; however, much like in previous years, the reporting period saw a continuation of an unfavorable trend of legislative initiatives designed to restrict this right and endanger significant

⁵²⁴ Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2018; pg. 155.

⁵²⁵ The letter of MIA №133962 of 17 January 2020.

⁵²⁶ Information is available at: < <https://bit.ly/3dffz1F> >>[accessed 20.03.2020].

⁵²⁷ Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2018; pg. 156-7/

⁵²⁸ The letter of Prosecutor's Office of Georgia №13/2109 of 15 January 2020.

⁵²⁹ Information is available at: < <https://bit.ly/2xfrADU> >>[accessed 23.03.2020].

guarantees of freedom of expression in the country.⁵³⁰ In particular, a legislative proposal submitted to the Parliament was followed by a discussion on tightening the regulation of hate speech in media programs. Furthermore, imposition of a sanction on a broadcaster for airing political advertising that not related to election campaign, in the absence of clearly and explicitly formulated relevant regulation was seen as a problem.

10.1. Media environment

Keeping in mind a vital function of free and healthy media environment for democratic society, the PDO paid a special attention to new developments and challenges in this area during the year.

Traditionally, the media environment in the country during the reporting period was assessed based on relevant reports of respected international organizations. Human Rights Watch in its annual report on human rights emphasized a threat to media pluralism and pointed out the events that unfolded around Rustavi 2, as well as criminal cases directly or indirectly associated with the leaderships of several broadcasters.⁵³¹

According to the 2019 World Press Freedom Index of the Reporters Without Borders, Georgia advanced by one step and ranked 60th. In terms of challenges to media environment, this organization named the interference of media owners into editorial policy and the investigation into the case of Azerbaijani journalist Afgan Mukhtarli, which has not resulted in any convincing explanation.⁵³² In a statement released later, the organization emphasized the following challenges: an increased government control on critical or independent media, politically-motivated measures undertaken in response to financial liabilities of TV companies, criminal prosecutions against several TV leaders and a significant transformation of media landscape as a result of change in ownership of the most popular opposition TV in the past, Rustavi 2, including the change in its editorial policy.⁵³³

Events unfolding around Rustavi 2

After the judgment of the European Court of Human Rights on the case of Rustavi 2 on 18 July 2019,⁵³⁴ Rustavi 2 was reverted to its former owner who dismissed the general director of the channel, Nika Gvaramia, on the very same day.⁵³⁵ Later, on the premise of conflict of interests, the head of news service and journalists of talk shows were dismissed, while employees who were unhappy about such changes

⁵³⁰ Among others, see draft law on the restriction of creative freedom and Public Defender's statement about it, available at: <<https://bit.ly/2sX3IID>>, <<https://bit.ly/2tQnOzn>>> [accessed 26.01.2020].; also see a draft law on criminalizing offense of religious feelings, available at: <<https://bit.ly/36uexKB>>> [accessed on 26.01.2020].

⁵³¹ Human Rights Watch's 2019 report on Georgia; available at <https://bit.ly/38KCmPL> > [accessed 28.01.2020].

⁵³² Reporters Without Borders' 2019 World Press Freedom Index; available at: <<https://rsf.org/en/georgia>>> [accessed 28.01.2020].

⁵³³ Statement is available at: <<https://bit.ly/2vFcCGi>>> [accessed 17.02.2020].

⁵³⁴ See statement of Public Defender of Georgia: <<https://bit.ly/30Z9nFd>>> [accessed 26.01.2020].

⁵³⁵ Information is available at: <<https://bit.ly/3aKvVdD>>> [accessed 26.01.2020].

quit the broadcaster.⁵³⁶ As a result, the news broadcast on Rustavi 2 was suspended for a certain period⁵³⁷ and resumed on 25 September 2019.⁵³⁸ A segment of dismissed employees filed a complaint to the court on violation of labor rights on the ground of discrimination.

In September, a new TV channel, Mtavari Arkhi,⁵³⁹ started broadcasting, employing many former Rustavi 2 staff.⁵⁴⁰ A segment of former Rustavi 2 employees started to work for another new TV channel, Formula, which went on the air in October.⁵⁴¹

It should be taken into account that the issue of conceding shares in the company by the founders of Rustavi 2, Davit Dvali and Jarji Akimidze, has not been legally assessed, nor criminal prosecution instituted since 2012 to date and hence, the questions about the ownership of the company have not been fully answered yet.⁵⁴² Public Defender issued a statement regarding this case on 14 June 2019, pointing to the protraction of the investigation.⁵⁴³ It is worth noting that the founders of Rustavi 2 launched a civil dispute regarding the ownership of Rustavi 2 in the reporting period.

Development in Ajara TV

On 19 April 2019, the director of LEPL Public Broadcaster of Ajara TV and Radio, Natia Kapanadze, was impeached by the council of advisors of the broadcaster.⁵⁴⁴ This fact got an extremely negative assessment from the civil sector,⁵⁴⁵ because under her leadership the broadcaster was distinguished for free and impartial editorial policy.⁵⁴⁶

⁵³⁶ Information is available at: <<https://bit.ly/37uW9T1>>, <<https://bit.ly/30VZgRE>>, <<https://bit.ly/30TaSoB>>, <<https://bit.ly/2O13Ngn>> >>[accessed 26.01.2020].

⁵³⁷ Information is available at: <<https://bit.ly/2TlzyE1>>, <<https://bit.ly/2wnASNz>> >>[accessed 02.03.2020].

⁵³⁸ Information is available at: <<https://bit.ly/2PJB4h5>> >>[accessed 02.03.2020].

⁵³⁹ Information is available at: <<https://bit.ly/3aLj3rm>> >>[accessed 02.03.2020].

⁵⁴⁰ Information is available at: <<https://bit.ly/2tQze6d>> >>[accessed 02.03.2020].

⁵⁴¹ Information is available at: <<https://bit.ly/2VEBMQt>>, <<https://bit.ly/2liUhlG>>, <<https://bit.ly/2VFqTxL>> >>[accessed 02.03.2020].

⁵⁴² The letter of Prosecutor's Office of Georgia №13/4107 of 23 January 2020.

⁵⁴³ Statement is available at: <<https://bit.ly/36oNYXj>>[accessed 26.01.2020].

⁵⁴⁴ Information is available at: <<https://bit.ly/2tle76c>> >>[accessed 26.01.2020].

⁵⁴⁵ Statement is available at: << <https://bit.ly/2RPJNyy> >>[accessed 26.01.2020].

⁵⁴⁶ The final report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the 28 October and 28 November 2018 presidential election in Georgia, pg. 36, available at: <<https://bit.ly/39vraXT>> >>[accessed on 11.02.2020]. The final report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the 21 October and 12 November 2017 local election in Georgia, pg. 33, available at: << <https://bit.ly/2HdskLy> >>[accessed on 11.02.2020]. The final report of the Charter of Journalistic Ethics on the election media monitoring (2016-2018), pp. 14-15, available at: <<https://bit.ly/2vCl6y6>> >>[accessed 17.02.2020].

On 22 November 2019, on the prime-time news program of Ajara TV, the newly elected director of the broadcaster⁵⁴⁷ reprimanded the channel for its critical tone.⁵⁴⁸ Later, TV employees released a statement saying that the newly elected director accused them of bias.⁵⁴⁹ Furthermore, at a meeting with the Public Defender, journalists spoke about certain facts which they perceived as a threat to critical broadcasting and editorial independence.⁵⁵⁰

A unilateral modification of the labor contract terms of the first deputy director of Ajara TV, Natia Zoidze, was also attributed to the desire to change the editorial policy,⁵⁵¹ this modification sidelined Natia Zoidze from the editorial policy on digital platforms of the broadcaster⁵⁵² and eventually, she resigned.⁵⁵³ In parallel to blistering criticism from Ajara TV employees,⁵⁵⁴ the Public Defender⁵⁵⁵ and the civil society,⁵⁵⁶ a decision was taken to carry out the changes to the payroll staff of the broadcaster.

The resignation of Natia Zoidze was assessed by the international organization Reporters Without Borders as an increase⁵⁵⁷ of political pressure on the state-owned media.

The Public Defender of Georgia emphasizes that free media is a critical prerequisite for the protection of human rights and good governance in the country and expresses the hope that the above described circumstances will not have an adverse effect on the independent editorial policy of the Ajara TV and that journalists of the channel will be again given a possibility to conduct their professional activity in an environment that is free from external influences. In this regard, it is especially noteworthy that the Ajara TV is funded from the budget and the goal of its establishment is to produce free, impartial, diverse programs that meet public interest. To ensure the fulfillment of such a function, the legislation imposes a number of obligations on the broadcaster⁵⁵⁸ and the implementation of these requirements is of critical importance in the polarized media environment existing in the country.

Criminal prosecutions related to heads of critical broadcasters

It should be noted that the judgment of the European Court of Human Rights on the case of Rustavi 2 led to a significant transformation of the media landscape in the country. Two new broadcasters (Mtavari Arkhi and Formula) pursuing a critical editorial policy were launched and Euronews Georgia has been

⁵⁴⁷ Information is available at: <<https://bit.ly/2GrBEL7>>>[accessed on 26.01.2020].

⁵⁴⁸ Information is available at: <<https://bit.ly/37vpAV7>>, <<https://bit.ly/2vjrYjv>>>[accessed on 26.01.2020].

⁵⁴⁹ Statement is available at: <<https://ajaratv.ge/article/52428>>>[accessed 26.01.2020].

⁵⁵⁰ Information is available at: <<https://bit.ly/36px9LH>>>[accessed 26.01.2020].

⁵⁵¹ Information is available at: <<https://ajaratv.ge/article/53285>>, <<https://bit.ly/2SQKQOX>>>[accessed 17.02.2020].

⁵⁵² The letter from the director of LEPL Public Broadcaster of Ajara TV and Radio №02-22/612 of 30 December 2019.

⁵⁵³ Information is available at: <<https://bit.ly/36Zkcsn>>>[accessed 05.02.2020].

⁵⁵⁴ Information is available at: <<https://bit.ly/2SNIWQt>>>[accessed 21.02.2020].

⁵⁵⁵ Information is available at: <<https://bit.ly/3c5j5LA>>>[accessed 21.02.2020].

⁵⁵⁶ Information is available at: <<https://bit.ly/3bPIGYN>>>[accessed 21.02.2020].

⁵⁵⁷ Statement is available at: <<https://bit.ly/2SAjimb>>>[accessed 21.02.2020].

⁵⁵⁸ Article 16 of the Law of Georgia on Broadcasting.

established which is to start broadcasting in 2020.⁵⁵⁹ In parallel to this process, however, the reporting period saw the launch of many criminal prosecutions directly or indirectly relating to owners of TV channels that are free from government influence; this gave rise to doubts about attempts to persecute critical media in the country.

After the judgment of the European Court of Human Rights on the case of Rustavi 2, in particular on 20 July 2020, the Prosecutor's Office of Georgia launched an investigation into an abuse of power against the legitimate interests of Rustavi 2, misappropriation of a large amount of the company's funds and concealment of property by means of fraudulent or/and sham transaction. During the investigation, Nika Gvaramia, the former General Director of Rustavi 2 and the founder of new TV channel Mtavari Arkhi, was indicted.⁵⁶⁰ The indictment rests on unprofitability of business decisions taken by him during his term as general director of Rustavi 2.

Having studied the case, Public Defender established that one of charges levelled against Nika Gvaramia, which imply illegal embezzlement of a property in aggravating circumstances,⁵⁶¹ did not contain sufficiently clear signs for imposing criminal liability and on 4 November 2019, applied to the relevant court with the friend-of-the-court opinion.⁵⁶²

It is worth to note that on 2-3 October 2019, within the scope of abovementioned case, the general director of newly established independent TV company Formula, Zurab Gumbaridze, and the head of news service of the same company, Giorgi Laperashvili, were interviewed by the prosecution. This interviewing by the prosecution was linked by the interviewed persons to the launch of Formula's broadcasting.⁵⁶³

Yet another indicative fact is the arrest of a shareholder of Mtavari Arkhi, Giorgi Rurua, on 18 November 2019, on charges of illegal purchase, storage and carrying of firearms, the crime envisaged under Paragraphs 2 and 3 of Article 236 of the Criminal Code of Georgia.⁵⁶⁴ Giorgi Rurua sees his political

⁵⁵⁹ Information is available at: <<https://bit.ly/2OJTvkW>> [accessed 11.02.2020].

⁵⁶⁰ The statement of the Prosecutor of Georgia is available at: <<https://bit.ly/38Dthlw>> [accessed 26.01.2020]. During the course of the investigation, within the scope of the criminal case, Nika Gvaramia was charged with illegal embezzlement of a large amount of property owned by the Rustavi 2 Broadcasting Company, commercial bribery and production of fake official document for use and facts of their use that caused significant damage, using the official position, upon prior agreement by the group, as well as, on the fact of legalization of illicit income, which was followed by a particularly large amount of income. Nika Gvaramia is additionally charged with abuse of managerial power in an enterprise, against the lawful interests of this organization for acquiring benefits or advantage for himself, which has resulted in considerable damage.

⁵⁶¹ A crime under subparagraphs "a," "d" of paragraph 2 and subparagraph "b" of paragraph 3 of article 182 of the Criminal Code of Georgia.

⁵⁶² Public Defender's statement and friend-of-the-court opinion available at: <<https://bit.ly/2RMBMdw>> [accessed 21.02.2020]. See detailed information in the chapter on the right to fair trial of this report.

⁵⁶³ Information is available at: <<https://bit.ly/36rzVjH>>, <<https://bit.ly/2sYwx1X>> [accessed 26.01.2020].

⁵⁶⁴ Information is available at: <<https://bit.ly/30Uwil7>> [accessed 26.01.2020].

positioning as a ground of criminal prosecution against him. Public Defender will study this case within the competence granted to her under the law.

On 22 August 2019, the father of Vato Tsereteli, the founder of yet another independent TV channel, TV Pirveli, was indicted. Businessman Avtandil Tsereteli was charged with assisting TBC Bank leadership in legalizing illicit gains.⁵⁶⁵ In relation to this case, Vato Tsereteli, who linked the ongoing processes to the TV channel, was also questioned in the court.⁵⁶⁶ It should also be noted that this fact was preceded by the prosecutor's office disclosing a document submitted by the founder of TBC Bank, Mamuka Khazaradze, as evidence, in which the author of the document demanded from Khazaradze that editorial policy of TV Pirveli change.⁵⁶⁷ The information about a past attempt to interfere in the editorial policy of the TV company was also reported.⁵⁶⁸ The PDO studied the charge of legalization of illegal gains, levelled against leadership of TBC Bank, Mamuka Khazaradze and Badri Japaridze, and established that the materials of the case do not show elements that are necessary to consider an action a money laundering. As a result, Public Defender submitted a friend-of-court opinion to a relevant court.⁵⁶⁹

Within the mandate granted to it, Public Defender of Georgia continues to monitor the above discussed cases and considering a heightened public interest, to inform society in addition to above assessment. Furthermore, Public Defender emphasizes the need to effectively investigate these cases and fully and regularly inform society about progress in the investigation to help dispel suspicions about attempts to restrict healthy media environment in the country.

10.2. Planned amendments to the Law of Georgia on Broadcasting

Statements⁵⁷⁰ made in the reporting period repeatedly brought to the forefront a legislative proposal on amending the Law on Broadcasting initiated by the Georgian National Communications Commission (GNCC) in the legislature in December 2018.⁵⁷¹ According to proposed changes, a number of self-

⁵⁶⁵ Information is available at: <<https://bit.ly/2U4jN5f>> >>[accessed 26.01.2020].

⁵⁶⁶ Information is available at: <<https://bit.ly/2uAZOjC>> >>[accessed 26.01.2020].

⁵⁶⁷ Information is available at: <<https://bit.ly/2U1bjLY>> >>[accessed 26.01.2020].

⁵⁶⁸ Information is available at: <<https://bit.ly/30VcDRU>>, <<https://bit.ly/2RwITZX>> >>[accessed on 26.01.2020].

⁵⁶⁹ The friend-of-the-court opinion available at: <<https://bit.ly/2GUgZQd>> >>[accessed on 05.02.2020].

⁵⁷⁰ GNCC statement is available at: <<https://bit.ly/36uxZXJ>>[accessed 02.03.2020].; statements of former Parliament Speaker, Irakli Kobakhidze, are available at: <<https://bit.ly/2GrPwVH>>, <<https://bit.ly/315WBoJ>> >>[accessed 02.03.2020].

⁵⁷¹ Information is available at: < <https://bit.ly/2NZBb7i> >>[accessed 26.01.2020].

regulated issues⁵⁷² will fall within the remit of the GNCC or court.⁵⁷³ It is noteworthy that these issues include the prohibition of hate speech. On 12 February 2020, the Sector Economy and Economic Policy Committee of the Parliament of Georgia endorsed the abovementioned legislative proposal.⁵⁷⁴

In Public Defender's assessment, the proposed legislative amendments create a possibility of interfering in the content of media programs, which will adversely affect the country's high standard of freedom of expression.

It should be taken into consideration that in GNCC's explanation, the package of amendments is designed to approximate Georgian legislation to the 2010/13/EU Audiovisual Media Services Directive. According to this Directive, Member States shall ensure that audiovisual media services do not contain any incitement to hatred based on race, sex, religion or nationality.⁵⁷⁵ However, the Directive does not provide specific measures to be undertaken by a state to fulfill this obligation. Consequently, a government is left with a room to decide, based on the assessment of challenges and needs, which mechanism (regulation or self-regulation mechanism) is suitable for the fulfillment of the requirement of the Directive.

Public Defender shares the opinion of the civil sector about strengthening the mechanism of self-regulation instead of adopting proposed changes⁵⁷⁶ and points to the necessity to conduct consultations with all stakeholders.

10.3. Sanctions for the airing political advertising not related to elections

Similar to the previous year,⁵⁷⁷ the GNCC found, at the end of the reporting period, that one of the broadcasters violated requirements of the Georgian legislation because of airing political advertising not related to election campaign.⁵⁷⁸ In contrast to the previous year, the video clips were produced and aired by the TV company itself and this was not based on an agreement signed with a political association.

⁵⁷² This implies program restrictions envisaged in Article 56 of the Law of Georgia on Broadcasting: war propaganda; Broadcasting of programs containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group; Broadcasting of programs intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, except when this is necessary due to the content of a program and when it is targeted to illustrate existing hatred; Broadcasting of programs having harmful influence on the physical, intellectual and moral development of children and adolescents at times when they are most likely to be viewed or listened to, are prohibited.

⁵⁷³ Draft Law on amendments to the Law of Georgia on Broadcasting, part 25, available at: <<https://bit.ly/2RQuVzL>> >> [accessed 26.01.2020].

⁵⁷⁴ Information is available at: <<https://bit.ly/2Tt8W2O>> >> [accessed 02.03.2020].

⁵⁷⁵ Article 6 of Directive 2010/13/EU of the European Parliament and of the Council, Audiovisual Media Services.

⁵⁷⁶ Statement of Media Advocacy Coalition is available at: <<https://bit.ly/2O2lxll>> >> [accessed 26.01.2020].

⁵⁷⁷ See, GNCC decisions at: <<https://bit.ly/2O0ps8z>>, <<https://bit.ly/2O3tNaT>>, <<https://bit.ly/2RrWEaW>> [accessed 27.01.2020].

⁵⁷⁸ GNCC decisions is available at: <<https://bit.ly/36q7TVz>> >> [accessed 27.01.2020].

It is worth noting that the Georgian legislation does not contain provisions regulating non-election advertising and hence, does not directly prohibit the placement of political advertising in non-election period.

Nevertheless, according to the instruction of GNCC, broadcast shall not be carried out in a way that is not considered in the legislation. Thus, the GNCC pointed out that aired video clips were, by their content, election advertising⁵⁷⁹ and deemed them to be political advertising that cannot be aired unless an election campaign is underway. On this ground, the GNCC ruled that the broadcaster placed and distributed an improper advertising.⁵⁸⁰ It should be noted that “improper advertising” is defined in the Law of Georgia on Advertising and it does not apply to political advertising.⁵⁸¹

According to both national and international standards, to ensure that interference into the freedom of expression is lawful, it is necessary that the regulation applied to this end meets the requirements of accessibility and foreseeability.⁵⁸² On the one hand, a stakeholder must be able to identify a law that will be applied to him/her in a concrete situation while on the other hand, the restrictive norm must be formulated clearly enough to enable a person to foresee, within reasonable limits, expected consequences of a concrete action. In Public Defender’s view, the prohibition applied in the discussed case and the justification of this prohibition did not meet the mentioned requirements.

When it becomes necessary to restrict non-election advertising and through this form interfere into the protected sphere of freedom of expression by pointing to relevant circumstances and providing relevant justification, the legitimate aim of such interference must be determined and a proper legislative regulation created.

Proposals

To the Parliament of Georgia:

- Do not introduce such amendments to the Law of Georgia on Broadcasting, which will move issues belonging now to the area of self-regulation to the remit of GNCC or courts.

Recommendations

To the Minister of Internal Affairs of Georgia:

⁵⁷⁹ Article 2 of the Law of Georgia on Broadcasting; Article 2 of the Election Code of Georgia.

⁵⁸⁰ Paragraph 2 of Article 3 of the Law of Georgia on Advertising.

⁵⁸¹ Paragraph 2 of Article 5 of the Law of Georgia on Advertising.

⁵⁸² Decision №1/3/421,422 of the Constitutional Court of Georgia of 10 November 2009 on the case *Georgian Citizens Giorgi Kipiani and Avtandil Ungiadze vs Parliament of Georgia*, II. Par. 7; ECHR ruling of 26 April 1979 on the case *the Sunday Times v. The United Kingdom*, par. 49

- Taking into consideration the experience of the Prosecutor's Office of Georgia, draw up a relevant methodology and based on it, maintain special statistics to reflect not only offences involving interference in the professional activity of journalists, but also all offences committed against journalists, that are related to their professional activity.

To the Chief Prosecutor of Georgia:

- Semiannually provide regular information to public about the progress in the case on the disappearance of Azerbaijani journalist Afghan Mukhtarli.

11. Freedom of Assembly

Issues of protection of one of fundamental human rights – freedom of assembly, were especially acute in the reporting period in Georgia. A number of manifestations, protests, counteraction and picketing were organized during the year across the country to express civic and political opinions or voice protests against social and economic conditions. In Public Defender’s assessment, the state failed to properly fulfill its positive and negative obligations during the realization of this right.

Failure was observed in undertaking relevant measures to avoid clashes between the groups with opposing views, to prevent unlawful actions from assembled persons as well as avoid the use of disproportionate and unjustified force, and unjustified interference in the exercise of the right. In addition to legislative and practical shortcomings, the monitoring of assemblies during the year revealed a different response of the state to planned assemblies of aggressive, abusive and homophobic groups.

Considering the problems in the exercise of freedom of assembly, which were especially apparent against the backdrop of events of 20-21 June 2019, the Public Defender prepared a special report assessing the legal system regulating the exercise of this right and its enforcement mechanism. The special report highlighted a number of shortcomings on legislative or practical levels in relation to the freedom of assembly.

11.1. Use of force against participants of assemblies

After 26 May 2011, a violent break up of a rally took place in the reporting period, which was condemned by the Public Defender of Georgia,⁵⁸³ local⁵⁸⁴ and international⁵⁸⁵ watchdogs.

In particular, a peaceful assembly that began outside the Parliament building on 20 June 2019 was broken up with the use of force that had rather dire consequences.⁵⁸⁶ In several hours after the start of the rally, actions of a segment of protesters overstepped the limits of peaceful gathering and degraded into a violent clash with special police forces that were mobilized there. In the end, the police dispersed the rally

⁵⁸³ See Public Defender’s statement on the developments on 20-21 June 2019, available at: <<https://bit.ly/2M2bpir>> [accessed 24.01.2020].

⁵⁸⁴ See, among others, statement of NGOs on the development on 20 June, available at: <<https://bit.ly/2GIxqzZ>> [accessed 30.03.2020].; reports of Human Rights and Monitoring Center (EMC), available at: <<https://bit.ly/2sV9ODW>> [accessed 30.03.2020].; <https://bit.ly/2TXZfLs> > [accessed 30.03.2020].; report of Georgian Young Lawyers Association “Beyond the Lost Eye,” available at: <<https://bit.ly/30Q1zpo>> [accessed 30.03.2020].; a report of Human Rights Center, available at: <<https://bit.ly/2O0Er29>> [accessed 24.01.2020].

⁵⁸⁵ See a statement of Amnesty International, available at: <<https://bit.ly/30QaXcA>> [accessed 30.03.2020].; report of Human Rights Watch, available at: <<https://bit.ly/2t0tV3M>> [accessed 30.03.2020].; statement of Council of Europe’s Human Rights Commissioner, available at: <<https://bit.ly/36ogSqw>> [accessed 24.01.2020].

⁵⁸⁶ See Public Defender’s statement on the developments on 20-21 June 2019, available at: <<https://bit.ly/2M2bpir>> [accessed 29.03.2020].

with the use of force which resulted in injuring more than 200 people. Law enforcement officers used tear gas, rubber bullets and water cannons against participants in the rally.

According to Public Defender, the force used for the dispersal of the rally on 20-21 June, especially the use of non-lethal bullets, absence of decree in accordance with the legislation, the number of bullets (several hundreds) and shooters (several dozens), the size of locations (outside the parliament as well as other sections of Rustaveli Avenue), duration (a span of several hours), the number of injured protesters and the degree of injury, cannot be considered proportionate.

Furthermore, the monitoring showed that before the dispersal, police did not fulfill a legal requirement about a prior warning of protesters of expected use of physical force and special means; nor did police give reasonable time to the protesters for the fulfillment of a lawful requirement.⁵⁸⁷ It should be noted that the standard for the fulfillment of the prior warning obligation is described in OSCE/ODIRH Human Rights Handbook on Policing Assemblies, according to which a prior warning must be given using an appropriate amplification device and on more than one occasion, should be clear and audible and not limited by other sounds. It may be necessary to give the warning from more than one location so that all participants can hear it.⁵⁸⁸ The only exception is when any delay may lead to immediate loss of life or serious injury.⁵⁸⁹

Public Defender did not share the explanation of the MIA, whereby given the developments on 20 June 2019, intensity and scale of violence, it was impossible and senseless to warn protesters prior to the use of tear gas and rubber bullets.⁵⁹⁰ The MIA also pointed to a real threat of loss of life and injury and storming the Parliament. In the PDO's assessment, the MIA had a possibility to warn protesters about the use of force if the situation escalated during the period between the statement about storming the Parliament and first escalation of the situation as well as after that.⁵⁹¹

As regards the warning of protesters prior to dispersal of the rally by a special statement released by the MIA,⁵⁹² also, calls made via media by the Interior Minister and the Tbilisi Mayor,⁵⁹³ such measures cannot ensure comprehensive informing of protesters and fall short of the above-mentioned warning standard.

⁵⁸⁷ Law of Georgia on Police, Paragraph 3 of Article 31.

⁵⁸⁸ OSCE/ODIRH Human Rights Handbook on Policing Assemblies, 2016, pp. 133-134, available at: < <https://bit.ly/2Jt2fc9> >[accessed 24.01.2020].

⁵⁸⁹ OSCE/ODIRH Human Rights Handbook on Policing Assemblies, 2016, p. 133.

⁵⁹⁰ Letter of the MIA №59687 of 9 January 2020.

⁵⁹¹ A statement about a possible storming of the Parliament was made at 21:08 while the situation on the site exacerbated from 21:50, when a segment of protesters made attempts to break through police cordon and enter the yard of the Parliament; however, the force was used two hours later after this incident. Furthermore, during the period between the first escalation of the situation and the use of force, for around 40 minutes, protesters were not carrying out any violent act. Information is available at: < <https://bit.ly/2RufAWN> >[accessed 30.03.2020]; <https://bit.ly/30RhhAF> >[accessed 04.02.2020].

⁵⁹² See a special statement of the MIA, available at <https://bit.ly/3asxyzY> >[accessed 29.03.2020].

⁵⁹³ See live broadcast of Public Broadcaster (from 22:39 and from 22:590, available at: < <https://bit.ly/2Uq3bEu> >[accessed 29.03.2020].

A matter of separate concern was the interference into professional activity of journalists covering the development, as well as detention and injury of journalists. Representatives of media have a special role in terms of independent, impartial and unbiased reporting about assemblies, while records made by them are important in terms of accountability of organizers and law enforcement officers.⁵⁹⁴ Giving journalists unimpeded access to assemblies and allowing them to cover it without hindrance are closely associated with the right to peaceful assembly as well as freedom of expression.⁵⁹⁵ All this requires that media representatives, including civil journalists,⁵⁹⁶ are protected when monitoring assemblies.⁵⁹⁷

In contrast to that, according to the information of Journalistic Charter of Ethics, the dispersal of rally with tear gas and rubber bullets on 20-21 June resulted in injuring of up to 40 media representatives.⁵⁹⁸ Some of them claimed that police intentionally shoot rubber bullets at them even after they told police that they were media representatives.⁵⁹⁹ Nevertheless, none of media representatives has been granted a status of victim within the scope of investigation initiated by the Prosecutor's Office of Georgia into abuse of official duties by MIA officers when dispersing the rally.⁶⁰⁰

It should be noted that the Georgian legislation is imperfect in terms of protection of media representatives, which requires from organizers of assembly and law enforcement authorities to not impede the professional activity of journalists with identifying sign, who cover the assembly;⁶⁰¹ however, it does not explain what this sign implies. Such ambiguous regulation is rather problematic for police in telling an ordinary rally participant from a journalist when managing a rally by forceful measures as well

⁵⁹⁴ OSCE/ODIHR and the European Commission for Democracy (Venice Commission), Guidelines on Freedom of Peaceful Assembly, 2nd edition, 2010, par. 206-208; OSCE/ODIHR, Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), 19 September 2019, par. 334, available at: < <https://bit.ly/2ucM3lh> >[accessed 19.02.2020].; in its ruling of 2 October 2012 on the case *Najafli v. Azerbaijan*, the European Court of Human Rights said that the role of media implies the release of information falling under the public interest while the public, for its part, has the right to receive such data and, inter alia, information about assembly (par. 66).

⁵⁹⁵ OSCE/ODIHR, Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), 19 September 2019, par. 335; special report of 21 June 2007 of the OSCE representative on media, Handling of the media during political demonstrations, pg. 1, available at: < <https://bit.ly/3bJMQ1E> >[accessed 19.02.2020].

⁵⁹⁶ According to OSCE/ODIHR, Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), civil journalism implies the activity of those citizens who although not working for traditional media, gather, report, analyze and release news and information.

⁵⁹⁷ The UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, A/HRC/20/27, para 48.

⁵⁹⁸ Information is available at: < <https://bit.ly/2THI7tm> >[accessed 24.01.2020].

⁵⁹⁹ Information is available at: < <https://bit.ly/2THI7tm> >[accessed 24.01.2020]. It is noteworthy that in its ruling of 2 October 2012 on the case *Najafli v. Azerbaijan*, the European Court of Human Rights did not share the government's reasoning that when using force against journalists during the rally, it was impossible for police officers to identify him as a journalist. The court made such a conclusion in the conditions where the journalist did not wear a special vest but he wore a relevant badge and moreover, specifically told the police that he was a journalist (par. 67).

⁶⁰⁰ Letter of the Prosecutor's Office of Georgia №13/10468 of 18 February 2020.

⁶⁰¹ Law of Georgia on Assemblies and Manifestations, Paragraph 2 of Article 4.

as in deciding on an issue of relevant liability in case of offence involving the interference into a professional activity.

As a result of developments on 20-21 June, the MIA initiated investigation into alleged offences committed by citizens,⁶⁰² while the Prosecutor's Office of Georgia launched investigation into alleged abuse of official powers by law enforcement officers.⁶⁰³ The PDO, since 2 July 2019, has been studying the criminal cases⁶⁰⁴ investigated by the Prosecutor's Office of Georgia and has reflected the findings in a progress report on investigation into events of 20-21 July.⁶⁰⁵

Public Defender emphasizes that in order to avoid tensions and offences during assemblies and to deal peacefully with existing challenges, the preference is given to negotiations.⁶⁰⁶ However, the opposite happened on a number of occasions during the reporting period, for example, a rally organized in the Pankisi gorge to voice protest against the construction of hydro power plant was broken up by use of force on 21 April 2019.⁶⁰⁷ On this occasions neither sufficient communication was established with the local population nor all relevant resources were used to avoid escalation of the situation.

In addition to above described incidents, one should also note the peaceful assemblies to voice protest against the failing of adoption of draft law on election system and to picket the Parliament on 18 and 26 November 2019, when protesters were dispersed by water cannons after several hours of picketing the building. Although this behavior of protesters was against the Law of Georgia on Assemblies and Manifestations,⁶⁰⁸ it does not exclude a peaceful nature of the rally,⁶⁰⁹ especially when participants in the rally did not undertake any violent action. In Public Defender's assessment, in such cases it is important for the state to show a certain degree of tolerance even towards unlawful but peaceful assemblies.⁶¹⁰ Therefore, question arises about the proportionality of the use of water cannons in both cases.

Also, in Public Defender's opinion, the use of water cannons at 5 a.m. on 26 November 2019,⁶¹¹ to clear the entries to the Parliament cannot be considered "necessary in the democratic society that meets a requirements of "urgent public need" because in the indicated period (nonworking hours) there was no need to clear the entries to the legislature.

⁶⁰² See statement of MIA, available at: < <https://bit.ly/2UrvaDS> >[accessed 29.03.2020].

⁶⁰³ See statement of Prosecutor's Office of Georgia, available at: < <https://bit.ly/2JpLBu2> >[accessed 29.03.2020].

⁶⁰⁴ See statement of Public Defender of Georgia, available at: < <https://bit.ly/2UtwsOW> >[accessed 29.03.2020].

⁶⁰⁵ See Public Defender's a progress report on investigation into events of 20-21 July, 2020.

⁶⁰⁶ Ordinance №1002 of 30 December 2015 of the MIA on the approval of guidelines for the behavior of MIA officers during assemblies and manifestations, article 6; OSCE/ODIHR and the European Commission for Democracy (Venice Commission), Guidelines on Freedom of Peaceful Assembly, 2nd edition, 2010, par. 5.4.

⁶⁰⁷ Information is available at: < <https://bit.ly/2uyDmaO> >[accessed 24.01.2020].

⁶⁰⁸ Law of Georgia on Assemblies and Manifestations, Paragraph 3 of Article 9.

⁶⁰⁹ OSCE/ODIHR and the European Commission for Democracy (Venice Commission), Guidelines on Freedom of Peaceful Assembly, 2nd edition, 2010, par. 13; OSCE/ODIRH Human Rights Handbook on Policing Assemblies, 2016, pp. 17-18.

⁶¹⁰ Ruling of ECHR of 5 December 2006 on the case *Oya Ataman vs Turkey*, par. 39-42.

⁶¹¹ Information is available at: < <https://bit.ly/2GX6gUY> >[accessed 24.01.2020].

According to the MIA, communication/negotiation was established with the participants of the rally to avert forceful interference and to peacefully defuse the situation; however, the MIA, despite request, did not provide the information on what type of communication was established in each case, thereby making it impossible to assess the degree of effectiveness of that communication.⁶¹²

Moreover, the MIA did not substantiate any oral decision in writing, which is a necessary instrument for assessing the legality of undertaken measures. A relevant substantiation of a decision, on the one hand, restricts the entity with the law while, on the other hand, enables an interested person to submit a complaint and counter a disputed decision with a proper reasoning.

11.2. Response to violent and unlawful actions of participants in an assembly

The reporting period saw a number of instances when ultra-right groups interfered in the exercise of the right to assembly and expression by LGBT+ community representatives and their supporters. On such occasions, difference in state's response to violent groups, who under the guise of exercising the right to assembly tried to grossly and violently infringe the rights of others, was obvious.

Indicative in this regard were the events that unfolded during a peaceful rally organized by LGBT+ community and their supporters outside the government administration building on 14 June 2019.⁶¹³ Public Defender made a public statement regarding those events.⁶¹⁴ In particular, participants in a counter rally held by homophobic groups threatened with violence and physically abused participants of rally organized by Tbilisi Pride, assaulted journalists and interfered in their professional activity,⁶¹⁵ tried to assault Deputy Public Defender and threatened him with violence.⁶¹⁶ Law enforcement officers arrested 28 persons on administrative charges⁶¹⁷ and initiated criminal investigation into four facts⁶¹⁸ but no one has been recognized as a victim or an accused person in those criminal cases and the investigation has not brought about any particular result so far.⁶¹⁹

Incidents took place during attempts to thwart the screening of a film "And We Danced" in Tbilisi and Batumi. Persons rallying outside the movie theater Amirani in Tbilisi on 8 November 2019, tried to violently

⁶¹² Letter of the MIA №59687 of 9 January 2020.

⁶¹³ Information is available at: < <https://bit.ly/39nfRSd> >[accessed 30.03.2020]., <https://bit.ly/2ZAehlb> >[accessed 22.01.2020].

⁶¹⁴ Public defender's statement is available at: < <https://bit.ly/37idZbr> >[accessed 22.01.2020].

⁶¹⁵ Full information about facts of interference in journalists' activity is available at: < <https://bit.ly/351DY5u> >[accessed 30.03.2020]., see also: <https://bit.ly/356wqOX> >[accessed 30.03.2020]., <https://bit.ly/2ZD9h5l> >[accessed 30.03.2020].

⁶¹⁶ Information is available at: < <https://bit.ly/2u2X4LN> >[accessed 22.01.2020].

⁶¹⁷ Information is available at: < <https://bit.ly/2SpPIA6> >[accessed 05.02.2020].

⁶¹⁸ Fact of alleged violence against Nata Peradze, unlawful interference in a professional activity of Netgazeti journalist, unlawful interference in a professional activity of TV Pirveli journalist and threatening of Deputy Public Defender outside the building of government administration.

⁶¹⁹ Letter of Chief Prosecutor of Georgia №13/3927 of 23 January 2020.

break through police cordon and enter the building. They also assaulted citizens,⁶²⁰ used pyrotechnic devices, bottles and other objects outside the movie theater Amirani⁶²¹ and outside the movie theater Apollo in Batumi.⁶²² Aggressive people interfered in professional activity of journalists and verbally abused them.⁶²³

Although the violent groups announced about their plan to thwart the screening of the film days earlier,⁶²⁴ the government did not undertake necessary preventive measures and did not prosecute organizers of violent actions. Nor did they ensure a safe distance between homophobic groups and people who arrived there to watch the film.

As regards response to particular incidents on the site, according to the MIA, 27 persons were arrested for administrative misdemeanor and disobedience to police in Tbilisi and Batumi (24 persons in Tbilisi and three in Batumi) on 8 November 2019.⁶²⁵ On the following day, one person was arrested for misdemeanor in Batumi.⁶²⁶ Also, investigation was launched into eight criminal cases⁶²⁷ and in some of them offenders were identified and criminal prosecution instituted against them.⁶²⁸

In Public Defender's assessment, the main problem lied in the government viewing ultra-right groups as persons with different opinion exercising the right to assembly⁶²⁹ and applying that legal framework to

⁶²⁰ Video footage featuring assaults on a co-founder of the Republican Party, Davit Berdzenishvili, and a civic activist, Ana Subeliani, is available at: < <https://bit.ly/2QCZSbN> >[accessed 30.03.2020], <https://bit.ly/35nmjFQ> >[accessed 30.03.2020], sea fragment of video from 2:14:50 to 2:16:00 >[accessed 23.01.2020].

⁶²¹ Information is available at: < <https://bit.ly/349qV27> >[accessed 30.03.2020], <https://bit.ly/2XAXQtX> >[accessed 30.03.2020], <https://bit.ly/2O80UuP> >[accessed 23.01.2020].

⁶²² Information is available at: < <https://bit.ly/2rX9i7w> >[accessed 23.01.2020].

⁶²³ According to media reports, similar incidents took place against representatives of TV company Mtavari Arkhi, TV company Palitra News, Post TV; Information is available at: < <https://bit.ly/35IDSWP> >[accessed 30.03.2020], see fragment of video from 2:04:35 to 2:09:26, <https://bit.ly/349bqag> >[accessed 30.03.2020], on 9 November information about physical abuse of Tabula journalist was reported, information is available at: < <https://bit.ly/2D1hxld> >[accessed 24.01.2020].

⁶²⁴ Information is available at: < <https://bit.ly/2rbV6aB> >[accessed 30.03.2020], <https://bit.ly/2pGU7ie> >[accessed 30.03.2020], <https://bit.ly/33cRnqE> >[accessed 30.03.2020], <https://bit.ly/35kT6eF> >[accessed 30.03.2020], <https://bit.ly/2pEblHB> >[accessed 30.03.2020], <https://bit.ly/2QBSUUo> >[accessed 30.03.2020], <https://bit.ly/2XyPy5R> >[accessed 24.01.2020].

⁶²⁵ Information is available at: < <https://bit.ly/3aDtugM> >[accessed 24.01.2020].

⁶²⁶ Letter of the MIA №133937 of 17 January 2020.

⁶²⁷ Investigation into assault of police officers, assault of Davit Berdzenishvili, injury to health of Ana Subeliani, damage of banner at the entrance of Amirani movie theater, preparation to set Amirani movie theater on fire, damage to camera of a cameraman of TV company Imedia near Amirani movie theater and violence against a journalist of Tabula and damage of her phone.

⁶²⁸ In particular, according to letters of Prosecutor's Office of Georgia №13/3640 of 21 January 2020 and №13/6456 of 3 February 2020, charges were levelled against one person for assaulting police, one person for disobeying a police officer, one person for interfering into a professional activity of and assaulting Tabula journalist, one person for damaging a banner of Amirani movie theater and one person for intentional less grave bodily injury to Ana Subeliani.

⁶²⁹ Information is available at: < <https://bit.ly/3ayjvcp> >[accessed 24.01.2020].

threats emanating from them against LGBT+ representatives and their supporters, which guarantees the right to peaceful assembly and expression of people protecting their rights and the right to equality. This approach runs counter to national and international standards of the right to assembly because the conduct of counter rally by homophobic groups for such aim is the abuse of the right⁶³⁰ while violence committed by them is not protected by the freedom of assembly.⁶³¹

Apart from discussed incidents, a problematic issue was the protection of peaceful protesters and representatives of opposition from violent actions of participants in rallies or counterrallies organized by supporters of government in Tbilisi, Mtskheta, Kutaisi, Zugdidi and Khulo at the end of the reporting period (1-4 December 2019).⁶³² On these occasions, law enforcement officers often did not undertake necessary measures to prevent clashes between groups with opposing opinions and to ensure a safe distance between them; nor did they undertake an immediate response to violent actions of participants in the gatherings.⁶³³ There were also instances of police officers arriving at the site with 30 – 40 minutes delay despite a rather tense situation.⁶³⁴ From these incidents, only three are being investigated⁶³⁵ though no criminal prosecution has been instituted against offenders so far.

In addition to these incidents, one should also note an announcement about organizing civilian regiments and brigades by Levan Vasadze at a rally held with his supporters on 16 June 2019, which was intended to violently thwart a March of Dignity.⁶³⁶ The MIA launched investigation into the fact of organizing and

⁶³⁰ The Convention for the Protection of Human Rights and Fundamental Freedoms, article 17.

⁶³¹ Decision of the Constitutional Court of Georgia №2/482,483,487,502 of 18 April 2011, II, par. 90.

⁶³² Information is available at: < <http://rustavi2.ge/ka/news/148837>, <https://bit.ly/35VBrdT> >[accessed 30.03.2020], <https://bit.ly/2sFvVhi> >[accessed 30.03.2020], <https://bit.ly/33K6sjm> >[accessed 30.03.2020], <https://bit.ly/2OHasNr> >[accessed 30.03.2020], <https://bit.ly/2P6u0tl> >[accessed 30.03.2020], <https://bit.ly/34Mb0aj> >[accessed 30.03.2020], <https://bit.ly/2YfU0XQ> >[accessed 30.03.2020], <https://bit.ly/2rpY63B> >[accessed 30.03.2020], <https://bit.ly/39beG8b> >[accessed 30.03.2020], <http://rustavi2.ge/ka/news/149123> >[accessed 25.01.2020].

⁶³³ According to the letters of MIA №3405737 of 19 December 2019, №3454937 24 December 2019 and №254152 of 31 January 2020, also letter of Kutaisi City Hall №01/3346 of 6 February 2020, a concrete criminal offense was not identified and relevant response was not undertaken to incidents that took place in gatherings held by government supporters outside the offices of the united opposition and the National Movement in Kutaisi on 1 December; no response was undertaken also to incidents that took place during a gathering outside the office of Georgian Dream in Tbilisi on 2 December 2019, organized by activists of Shame, Dare and Change and a counter gathering organized by representatives of a youth wing of the ruling party (aggressive participants of the counter gathering used expletives, made calls for violence and physically assaulted activists and used pyrotechnic devices).

⁶³⁴ Information is available at: < <https://bit.ly/35Rb4GA> >[accessed 30.03.2020], <https://bit.ly/30QYOEn> >[accessed 30.03.2020], <http://rustavi2.ge/ka/news/149123> >[accessed 24.01.2020].

⁶³⁵ According to the letter of Prosecutor's Office №13/10468 of 18 February 2020, investigation is underway into assault on activists of the movement Dare outside the Mayor's Office in Mtskheta, group violence committed against two persons in Tbilisi, and intentional damage of an object outside the office of United National Movement in Zugdidi.

⁶³⁶ Information is available at: < <https://bit.ly/3ayPRnn> >[accessed 30.03.2020], <https://bit.ly/2TUa3dx> >[accessed 23.01.2020].

leading illegal formations.⁶³⁷ However, no one has been recognized as an accused person in this criminal case.⁶³⁸

Thus, the timely assessment of possible risks of spontaneous or planned gatherings of separate groups and undertaking of all relevant measures (including through mobilizing relevant police resources) by the MIA to prevent violent and criminal actions remained a problem throughout the year.⁶³⁹ Public Defender has repeatedly emphasized that it is of utmost importance to conduct a timely and effective investigation into all the above mentioned incidents and punish all offenders in order to prevent voluntary restriction of others' rights by violent groups and emergence of a climate of impunity.

11.3. March of Dignity

In Public Defender's view, the right to assembly was unfairly restricted in the process of organizing the March of Dignity planned by the movement, Tbilisi Pride, on 18-23 June. Although organizers of the March of Dignity started negotiations on safety issues with the government several months earlier, they were not able to hold the march in a planned format.⁶⁴⁰ Representatives of the MIA told organizers of Tbilisi Pride that considering safety risks to participants of the event it would be impossible to hold the event in the form as planned by the organizers⁶⁴¹ and offered them to conduct March of Dignity indoors.⁶⁴² In this particular case a properly substantiated decision on restricting the right to assembly was not taken, which cannot be replaced by a general explanation of the MIA.⁶⁴³

The above-mentioned case deserves a special attention because it has been years now that LGBT+ community and defenders of their rights cannot assemble in a free environment due to threats emanating from aggressive groups. For its part, the state is not only responsible to mobilize necessary police resources for the protection of participants in a peaceful rally, but also is obligated to contribute to reducing homophobic attitudes in society. This is precisely what the ECHR decision of 2015 on the case *Identoba and other v Georgia* points to, noting that bearing in mind the attitude of a segment of Georgian society towards sexual minorities, the domestic authorities, before the conduct of a peaceful march on 17 May 2012, "were under an obligation to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance as well as to warn potential law-breakers of the nature of possible sanctions." Furthermore, the ECHR ruling suggests that when there is a high likelihood of street clashes during a procession it is prudent on the

⁶³⁷ Information is available at: < <https://bit.ly/38A9slr> > [accessed 23.01.2020].

⁶³⁸ Letter of Prosecutor's Office №13/3927 of 23 January 2020.

⁶³⁹ Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2018; pg. 160-161.

⁶⁴⁰ In the absence of proper guarantees, the March of Dignity was postponed several times and finally, on 8 July, activists held a small dan short spontaneous procession outside the building of MIA. Information is available at: < <https://bit.ly/2JE4oCh> > [accessed 23.01.2020].

⁶⁴¹ Statement of MIA is available at: < <https://bit.ly/399Zffp> > [accessed 05.02.2020].

⁶⁴² Information is available at: < <https://bit.ly/3dlfkCd> > [accessed 05.02.2020].

⁶⁴³ Public Defender's statement is available at: < <https://bit.ly/2AGd1ri> > [accessed 05.02.2020].

part of authorities to ensure more police manpower by mobilizing, for instance, a squad of anti-riot police.⁶⁴⁴

11.4. Restrictions imposed on the location of an assembly

At the end of the reporting period, the government failed to fulfill the obligation of facilitating the conduct of a peaceful assembly on a desired location.

In this regard a noteworthy development was the removal, on 31 December 2019, by the cleaning service of Tbilisi Mayor's office, of tents and other protest paraphernalia that had been assembled on a broad pavement outside the Parliament building for months and installment of children's merry-go-rounds instead. According to Tbilisi Mayor's Office, this served the aim of creating a festive mood to mark New Year and Christmas. Furthermore, the Mayor's Office said that given that the First Republic Square was fully loaded with the New Year celebration details, there was a need to assemble additional children's merry-go-rounds in a nearby location.⁶⁴⁵

Public Defender explains that the state has the obligation to ensure necessary conditions for the exercise of freedom of assembly (including for the conduct of a long-term of "occupy"-style manifestations)⁶⁴⁶ and facilitate its conduct in such a manner that allows for informing target groups⁶⁴⁷ unless there is compelling evidence for imposing a particular restriction. In Public Defender's view, the reasoning provided by the Tbilisi Mayor's Office cannot be regarded as a proof of such heightened interest that would outweigh a counter-interest of exercising the freedom of assembly outside the building of Parliament, especially given that the mentioned location has been the central place for conducting political assemblies for years while a number of locations with festive details were in a short distance from it that would ensure the creation of a corresponding mood.

It should also be noted that according to Tbilisi Mayor's Office, before implementing the above-mentioned measure, they contacted persons in the tents and repeatedly asked/offered them to temporarily vacate the location until the end of New Year events.⁶⁴⁸ However, after the merry-go-rounds were removed, the location outside the Parliament was enclosed with a fence and large scale

⁶⁴⁴ Judgment of ECHR of 12 May 2015 on the case of *Identoba and Others v. Georgia*, par. 99. In this case the court established the breach of Article 3 (Prohibition of torture) and Article 11 (Freedom of assembly and association) in conjunction with Article 14 (Prohibition of discrimination) of the Convention.

⁶⁴⁵ Letter of Tbilisi Mayor's Office № 04-0120027142 of 27 January 2020.

⁶⁴⁶ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, par. 10 and par.14.

⁶⁴⁷ OSCE/ODIHR and the European Commission for Democracy (Venice Commission), *Guidelines on Freedom of Peaceful Assembly*, 2nd edition, 2010, par. 3.5 and 2.2.

⁶⁴⁸ Letter of Tbilisi Mayor's Office № 04-0120027142 of 27 January 2020.

rehabilitation works⁶⁴⁹ were launched. As the Tbilisi Mayor's Office explained, during precipitations water used to drip from the location outside the Parliament, which endangered and damaged an underground pumping station; to fix it, on 18 March 2019, a tender was announced on the procurement of works to develop an engineering design documentation,⁶⁵⁰ while on 13 December 2019,⁶⁵¹ a tender was announced⁶⁵² on the procurement of works for the rehabilitation of damaged infrastructural objects. The PDO requested the information detailing measures undertaken to study threats coming from the existing damage, but the information was not provided which makes it impossible to evaluate as to how necessary was to instantly start rehabilitation works after the removal of merry-go-rounds.

Recommendations

To the Minister of Internal Affairs:

- Conduct confidence-based dialogue and problem solution-oriented negotiations with organizers/participants of a rally to facilitate peaceful assemblies and to maximally avoid forced interference in the right and defuse tense situation;
- Timely and properly assess expected risks and undertake all relevant measures to avoid violent actions to ensure a peaceful conduct of spontaneous or preplanned rallies and counter-rallies in future;
- Develop a relevant draft legal regulatory framework, with the involvement of stakeholders, to avoid interference in professional activity of journalists during assemblies;
- When restricting the right to participants of ongoing assembly in any form, including in case of restricting the possession of particular objects and assemblage of temporary constructions, take a substantiated decision and identify factual and legal grounds evidencing legality of interference in the exercise of the right.

To Chief Prosecutor of Georgia:

- Semiannually inform society on the progress in the criminal cases mentioned in this chapter.

⁶⁴⁹ The project envisages the removal of existing tiles on the location, arrangement of hydro-insulation layer, fixing communication wells, conduct of tiling works along the entire perimeter and planting. The April 9 memorial will also be rehabilitated.

⁶⁵⁰ NAT190005559. The stage of engineering design was completed and the Mayor's Office accepted the project estimate documentation in June 2019.

⁶⁵¹ NAT190024520.

⁶⁵² Letter of Tbilisi Mayor's Office № 04-01200363691 of 5 February 2020.

12. Human Rights Defenders

The role of human rights defenders⁶⁵³ is recognized as pivotal for the advancement of human rights, democracy, rule of law and accountability of the authorities.⁶⁵⁴ The work of human rights defenders significantly contributes to the attainment of Sustainable Development Goals agreed upon by the UN member states⁶⁵⁵ which aim to address pressing challenges related to social, economic, environmental conditions, peace and justice.

In spite of the presence of international safeguards for the protection of human rights defenders,⁶⁵⁶ NGOs and their leadership working on issues critical for Georgia's democratic development, prevention of corruption, advancement of human rights, state institutions and monitoring of elections often fall victims to attacks including from the authorities.⁶⁵⁷ Similar to the previous reporting period, in 2019, NGOs and activists working in Georgia continued to face numerous challenges including discreditation attempts, verbal and physical assaults, and intimidation. These challenges particularly affected defenders of women's and LGBT+ rights since the line of work that they pursue aim to deconstruct stereotypes deeply rooted in the society.⁶⁵⁸

Sadly, the reporting period saw statements made by representatives of the ruling political party against local and international NGOs with the intention to discredit their work.⁶⁵⁹ The Public Defender stresses

⁶⁵³ According to the UN Declaration on Human Rights Defenders of 1998, human rights defenders is a term to describe people who, individually or with others, act to promote or protect human rights at a national and international level.

⁶⁵⁴ See information provided by the Office of United Nations High Commissioner of Human Rights, Council of Europe, Organization for Security and Co-Operation in Europe (OSCE) available at: <<https://bit.ly/36GAaY4>>, <<https://bit.ly/37CVhvW>>; <<https://bit.ly/2GzVbsT>> [Accessed: 03.02.2020].

⁶⁵⁵ Transforming Our World: the 2030 Agenda for Sustainable Development adopted by the United Nations General Assembly on 25 September 2015 (Resolution A/RES/70/1). Available at: < <<https://undocs.org/A/RES/70/1>> [Accessed: 03.02.2020].

⁶⁵⁶ Including the UN Declaration on Human Rights Defenders of 1998, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), Guidelines on the Protection of Human Rights Defenders (2014) and Guidelines on Freedom of Association (2015) of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Resolution 2225 (2018) on Protecting Human Rights Defenders in Council of Europe Member States adopted by the Parliamentary Assembly of the Council of Europe.

⁶⁵⁷ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, pp. 141-144

⁶⁵⁸ Resolution /RES/68/181 adopted by the United Nations General Assembly in 2013 on the protection on women human rights defenders. Available at: <<https://bit.ly/2udG0D5>> [Accessed: 03.02.2020].

⁶⁵⁹ One of these statements were made by one of the leaders of the parliamentary majority on 9 January 2019 accusing NGOs of pursuing their political agenda. The statement is available in Georgian at: <<https://bit.ly/37MFNp3>>, <<https://bit.ly/2S9GBxN>> [Accessed: 03.02.2020].; On 22 March 2019, Speaker of the Parliament of Georgia labelled NGOs "GONGOS" of the National Movement" and slammed them for being "biased". On the same day the Minister of Justice criticized the work of the NGOs for lacking impartiality and professionalism. These statements are available in Georgian at: <<https://bit.ly/2UdDQOH>>, <<https://bit.ly/2UdEawT>>, <<https://bit.ly/2Scs30u>> [Accessed: 03.02.2020].; On 27 November

that this pattern contradicts the obligation of public officials to refrain from running a campaign against human rights defenders and their work, publicly acknowledge the urgency of their protection and highlight the importance of their work even when the former do not approve the work of the incumbent authorities.⁶⁶⁰ Upholding this standard will be particularly pivotal during the 2020 parliamentary elections since monitoring of the electoral processes by human rights defenders is critical for uncovering and responding to possible violations.

Case of Ana Subeliani, one of many concerning the rights of women and LGBT+ activists, deserves close attention as charges are still pending in relation to threats targeting Subeliani in May 2018.⁶⁶¹ However, charges were made and a criminal prosecution launched only following an incident on 8 November 2019 involving physical assault against Subeliani as she was about to attend a screening of the movie *And we Danced* in Amirani movie theater. The case went to the court.⁶⁶²

In addition, the Public Defender of Georgia studied a case of cyber threats against organizers of Tbilisi Pride who had received threatening messages in social networks and other spaces after conducting Tbilisi Pride Events. As a result of an investigation into the case three persons were given a status of victim, however, no charges have been filed, nor a final decision has been made in relation to the case.⁶⁶³

Similarly, investigation is still pending in the cases of cyber threats against Eka Gigauri, the Executive Director of Transparency International Georgia, made in 2018 and Baia Pataraiia, a human rights defender, made in 2017.⁶⁶⁴ Neither woman has been granted a status of victim.

These cases confirm that law enforcement agencies have failed to adequately assess the risks of violence against women and LGBT+ rights defenders and only those cases which involve physical injuries against victims yield tangible outcomes. Since defenders of women and LGBT+ rights are susceptible to high risks of violence, it is paramount that threats be assessed in an adequate manner and respective agencies undertake timely and effective investigations.

At the same time, it is important to note that the Ministry of Internal Affairs of Georgia runs no statistics of investigations in the crimes targeting specifically human rights defenders,⁶⁶⁵ which makes it difficult to obtain the full information on these cases and hampers attempts to assess the effectiveness of

2019, the chair of the ruling party made a statement discrediting reputable international organizations as lapdogs of the National Movement. Available in Georgian at: <<https://bit.ly/2S3Om8k>> [Accessed: 03.02.2020].

⁶⁶⁰ Guidelines on the Protection of Human Rights Defenders of the OSCE office for Democratic Institutions and Human Rights (ODIHR), 2014. PP. 7-8. Available at: <<https://bit.ly/2ukC5EQ>> [Accessed: 20.02.2020].; Resolution 2225 (2018) on Protecting Human Rights Defenders in Council of Europe Member States adopted by the Parliamentary Assembly of the Council of Europe Para 5.6. Available at: <<https://bit.ly/2vSXzc0>> [Accessed: 20.02.2020].

⁶⁶¹ Case N7532/18, Ana subeliani reported receiving numerous threatening letters after the Our Freedom rally held on 12-13 May 2018. She also reported that she perceived these threats as serious and felt herself unsafe.

⁶⁶² Prosecutor's Office of Georgia, letter N13/3640, 21 January 2020.

⁶⁶³ Prosecutor's Office of Georgia, letter N13/7867, 7 February 2020.

⁶⁶⁴ Prosecutor's Office of Georgia, letter N13/18934, 23 March 2020.

⁶⁶⁵ Ministry of Internal Affairs of Georgia, letter N46621, 8 January 2020.

responses.⁶⁶⁶ Importantly, number of verified crimes committed against human rights defenders⁶⁶⁷ is one of the indicators for the implementation of Goal 16 of Sustainable Development agreed upon by the UN member states.^{668 669}

Recommendations

To the Government of Georgia:

- Integrate specific activities in national action plans and strategies for gender equality to ensure the prevention, detection and response to violations of women and LGBT+ rights. These action plans should, inter alia, incorporate and ensure the implementation of requirements prescribed by resolution N^oA/RES/68/181 of the UN General Assembly.

To the Ministry of Internal Affairs of Georgia:

- Define the concept of the human rights defender as per the UN Declaration on Human Rights Defenders of 1998 and the Guidelines on the Protection of Human Rights Defenders of the OSCE Office for Democratic Institutions and Human Rights in order to run and update statistical database to include all crimes related to the work of human rights defenders.

To the Minister of Internal Affairs of Georgia and the Prosecutor General of Georgia:

- Develop a special risk assessment instrument to prevent, identify and document acts of violence, including cyber threats and harassment against women and LGBT+ rights defenders.

To public officials:

- Adhere to internationally recognized democratic standards to ensure maximum support to the work of human rights defenders, and inter alia, refrain from contributing to the campaigns aimed to discredit human rights defenders.

⁶⁶⁶ As for criminal prosecutions for crimes committed against human rights defenders, according to the Prosecutor's Office of Georgia, in 2019 criminal prosecutions were launched against two individuals for intimidation and infliction of premeditated grave or less grave bodily injuries

⁶⁶⁷ Verified cases refer to reported cases that contain a minimum set of relevant information on particular persons and circumstances, which have been reviewed by mandated bodies, mechanisms, and institutions, and provided them with reasonable grounds to believe those persons were victims of the above-mentioned human rights violations or abuses. Available at: <<https://bit.ly/31k5WJG>> [Accessed: 03.02.2020].

⁶⁶⁸ Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.

⁶⁶⁹ Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, Goal 16, Objective 16.10, Indicator 16.10.1 confirmed by the resolution A/RES/71/313 adopted by the United Nations General Assembly on 6 July 2017. Available at: <<https://undocs.org/A/RES/71/313>> [Accessed: 03.02.2020].

13. Right to a Healthy Environment

The fulfilment of the right to a healthy environment has become one of the top priorities of the Public Defender's work due to strong links between environmental protection, sustainable ecological development and human rights. Challenges existing in this field require planning and implementation of timely, effective and complex measures by the State.

Important observations made in the reporting period include ineffectiveness of measures taken for the improvement of air quality and advancement of the right to clean air, urgency for legislative amendments to ensure safe consumption of natural gas, flaws within construction regulations, consideration of human rights while implementing wide-scale infrastructural projects, a persisting problem related to the absence of policy documents regarding the construction of hydro powerplants, and an erroneous process of environmental impact assessment.

In addition, the Public Defender of Georgia restates the urgency of the measures that need to be taken for the prevention of damage to the environment as a result of the violation of legal norms and the timely introduction of complex and effective legal safeguards in order to mitigate sustained damage.⁶⁷⁰

Unfortunately, the reporting period saw no effective steps taken in order to establish causal relationships between health problems of the local communities and the environmental damage as a result of industrial activities implemented by RMG Gold and RMG Copper in Bolnisi and Dmanisi municipalities. Therefore, numerous questions that the public have raised with regard to these challenges are yet to be addressed.

It should also be noted that investigations have not been finalized in several criminal cases involving environmental damage.⁶⁷¹

13.1. Right to clean air

Air pollution is one of the country's most pressing problems which has had grave effects on the health of living organisms, ecosystem and the climate, as well as the entire society and the country's economy. In

⁶⁷⁰ For more information see the 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, from p. 147.

⁶⁷¹ No charges have been made in criminal case N062231013801 on Georgia Manganese Ltd for crimes stipulated by Article 298 of the Criminal Code of Georgia. The investigation is ongoing. An investigation is pending in criminal case N007220713008 concerning unauthorized felling of green cover by BD Property, a felony stipulated by Article 303(1) of the Criminal Code of Georgia.

spite of a series of recent measures for the improvement of the air quality, the full enjoyment of the right to clean air remains a challenge.

More specifically, the domestic legal framework relating to the protection of ambient air has not been fully updated to meet the requirements embedded in the Association Agreement⁶⁷² including the one concerning the industry caused pollution. It should be noted that a draft law on industry emissions designed to decrease the level of emission and introduce European standards for the control of such emissions expected to be initiated in the Parliament as early as the previous year,⁶⁷³ is still pending.⁶⁷⁴ According to the Ministry of Environmental Protection and Agriculture, the draft law is planned to be initiated in the Parliament during the 2020 fall session.

Introduction of an important measure for decreasing the level of dust particles, a powerful pollutant, in the air in the territory of Tbilisi, by penalizing the violation of rules for placement, transportation and processing of particulate matter, has been seen as a step forward.⁶⁷⁵ However, since the air pollution with solid dust particles is a problem shared by other municipalities as well,⁶⁷⁶ it needs to be addressed on the entire territory of the country.

As for the air pollution caused by transport, one of the main pollutants,⁶⁷⁷ even though the Ministry of Internal Affairs in cooperation with the Ministry of Economy and Sustainable Development, and the Ministry of Environmental Protection and Agriculture reportedly plans to upgrade material and technical base and improve the respective legal framework,⁶⁷⁸ it is important that these measures, including the oversight of operation of motor vehicles the emissions of which contain pollutants exceeding established limits, be taken in a timely manner.⁶⁷⁹

Notably, the reporting period saw the improvement of the fuel quality control system. More specifically, 150 samples of petroleum diesel fuel had been taken from 100 gas stations⁶⁸⁰ while in 2018 only seven

⁶⁷² Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. Chapter 3, Article 302, Annex XXVI, quality of air.

⁶⁷³ A short term plan for the 2019 spring session of the Parliament of Georgia, para 12. Available in Georgian at: <<https://bit.ly/2SNljB3>> [Accessed: 02.03.2020].

⁶⁷⁴ The Ministry of Environmental Protection and Agriculture of Georgia, letter N1462/01, 6 February 2020.

⁶⁷⁵ Law of Georgia on Amending the Administrative Offences Code of Georgia of 30 May 2019. Available in Georgian at: <<https://bit.ly/2RTVRzQ>> [Accessed: 03.02.2020]. On 2 April 2019 the Public Defender of Georgia submitted a proposal (N04-2/3776) to the Parliament of Georgia on applying the planned legal arrangements to not only the territory of Tbilisi municipality but to the entire country of the country.

⁶⁷⁶ A 2019 special report of the Public Defender of Georgia on the right to clean air (quality of ambient air in Georgia), pp. 21-25 [available in Georgian]

⁶⁷⁷ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, pp. 146-147

⁶⁷⁸ According to letter N^o466857 of 21 February 2020, a working process on a draft amendment to the Administrative Offences Code has been underway in order to ensure the detection of harmful content in engine exhaust and concentration exceeding the existing norm, as well as to improve response mechanisms regarding these violations.

⁶⁷⁹ Administrative Offences Code of Georgia, Article 81

⁶⁸⁰ Environmental Supervision Department, letter N3987, 21 January 2020

gas stations were inspected for the content of pollutants in diesel fuel,⁶⁸¹ however, gasoline fuel was not inspected in 2019. Analysis of samples of petroleum diesel fuel taken from 64 gas stations within the reporting period found that the sulphur content and density in these samples was not consistent with the existing norms. For this reason, the samples were submitted to the Prosecutor's Office of Georgia for further actions.⁶⁸² Currently, the investigation unit at the Ministry of Finance is looking at the case for alleged falsification of petroleum diesel fuel.⁶⁸³

As for the air quality monitoring system, it has not been improved to the effect to provide a full picture of the situation in the entire country as the lack of monitoring stations remains a challenge.⁶⁸⁴ In addition, air quality modelling and forecast systems are yet to be integrated.⁶⁸⁵

The initiation of a draft law on amending the Law of Georgia on the Protection of Ambient Air has undoubtedly been a positive development contributing to the improved monitoring of the ambient air. The proposed changes to the law aim to introduce an European standard of ambient air management, division of the territory into zones and agglomerations, classification based on the level of pollution and respective measures for maintaining and improving the quality of air.⁶⁸⁶

It should be taken into account that, due to the existing level of pollution, the state program for the reduction of air pollution remains focused solely on Tbilisi and has not been implemented in other municipalities, . However, the state program represents a powerful instrument for making public agencies more effective and responsive to pollutants specific to locations. According to the Georgian Ministry of Environmental Protection and Agriculture, by 2020 an air quality management plan will be developed for at least one other city.⁶⁸⁷ It should be noted that in the event of excess pollution, the development of similar plans is stipulated by the above mentioned draft law.

In addition, based on the information that the Public Defender received from various municipalities⁶⁸⁸ it appears that the calculation of green space per capita in municipalities and the introduction of assessment standards remain a problem.⁶⁸⁹ Importantly, the assessment standard is seen as a prerequisite of the construction of urban green spaces to mitigate risks related to pollution sources found in cities. As for

⁶⁸¹ Environmental Supervision Department, letter N6437, 17 September 2018; A 2019 special report of the Public Defender of Georgia on the right to clean air (quality of ambient air in Georgia), p 32 [available in Georgian]

⁶⁸² Environmental Supervision Department, letter N3987, 21 January 2020

⁶⁸³ Prosecutor's Office of Georgia, letter N13/8140, 10 February 2020. An investigation into alleged falsification of petroleum diesel has been launched pursuant to Article 197(3) of the Criminal Code of Georgia. No charges have been filed so far.

⁶⁸⁴ The quality of air throughout the country is monitored by means of eight automatic stations located in Tbilisi (Tsereteli Avenue, Kazbegi Avenue, Varketili 3, Marshal Gelovani Avenue, Agmashenebeli Avenue), Rustavi (Batumi street), Kutaisi (I. Asatiani street) and Batumi (Abuseridze street). In Zestaponi the monitoring is carried out through a non-automatic observation point.

⁶⁸⁵ Ministry of Environmental Protection and Agriculture, letter N1462/01, 6 February.

⁶⁸⁶ The bill is available in Georgian at: <<https://bit.ly/2tqOkHA>> [Accessed: 03.02.2020].

⁶⁸⁷ Ministry of Environmental Protection and Agriculture, letter N1462/01, 6 February.

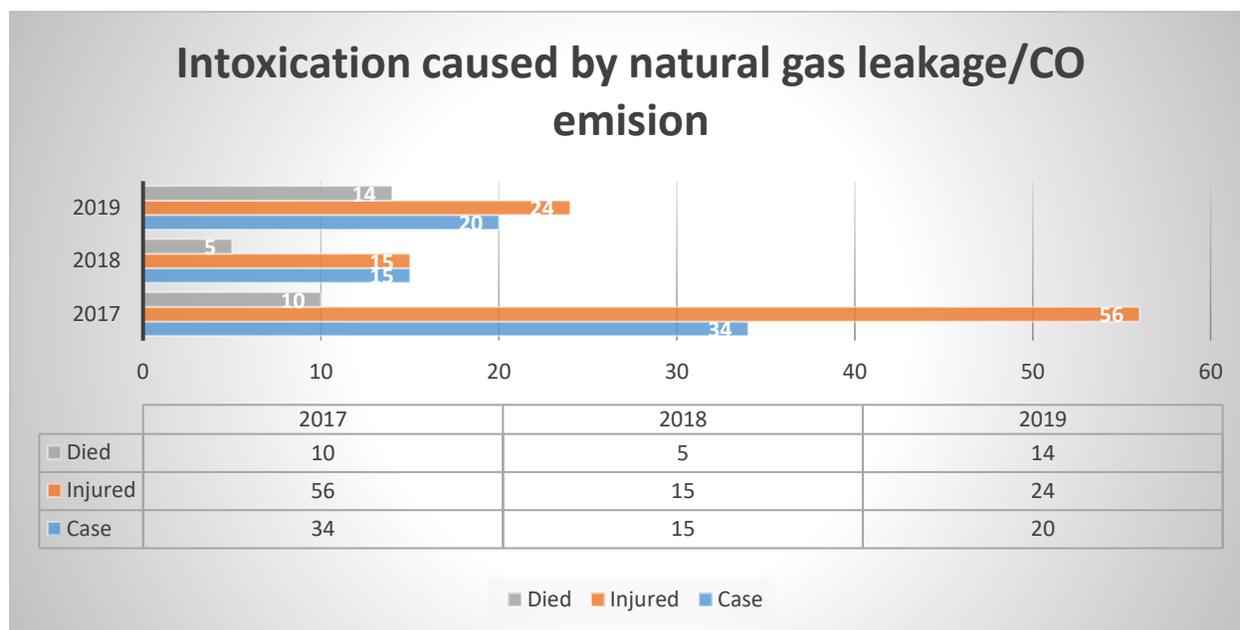
⁶⁸⁸ The Office of the Public Defender of Georgia requested information from 64 municipalities. In 41 out of 47 municipalities responding to the request there is no precise or estimated calculation of green space per capita.

⁶⁸⁹ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, pp. 146-147

an estimate of green space per capita, the information provided by several municipalities suggests that it is 10 square meters maximum,⁶⁹⁰ while the same coefficient in European countries is more than 25 m² and in certain instances even stands above 50 m².⁶⁹¹

13.2. Safety of natural gas consumption

In 2019, 15 explosions resulting from the leakage of natural gas claimed 5 lives and left 32 more injured.⁶⁹² In addition, in the same period there were 20 reported cases of gas leakage/CO poisoning resulting in 14 fatalities and 24 cases of intoxication.⁶⁹³ The number of deaths resulting from both incidents exceeds those from two previous years while the number of individuals sustaining injuries as a result of explosions has doubled. The graphs below provide information about intoxication and explosion cases due to natural gas leakage/CO emission in 2017-2019.⁶⁹⁴



⁶⁹⁰ Per capita green space is 1.34 m² in Gori, 4.37 m² in Lanchkhuti, 5 m² in Baghdadi, 8.94 m² in Mtskheta, and 9.8 m² in Tsageri.

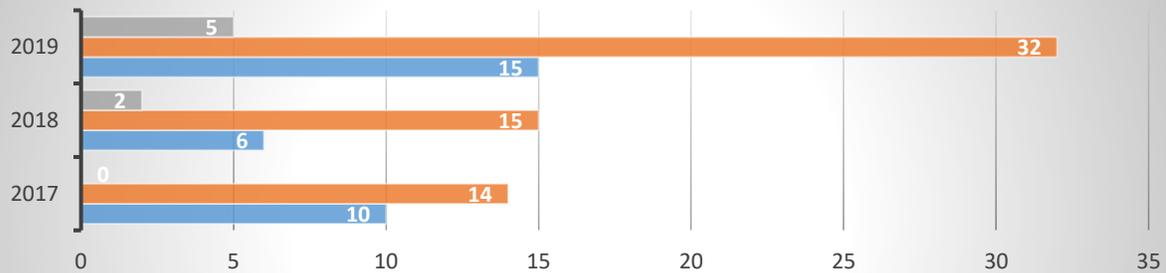
⁶⁹¹ A 2019 special report of the Public Defender of Georgia on the right to clean air (quality of ambient air in Georgia), pp. 35-36 [available in Georgian]

⁶⁹² Emergency Management Agency, letter MIA 5 20 00094898, 14 January 2020.

⁶⁹³ Ibid

⁶⁹⁴ Ibid, the 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 151

Explosion caused by natural gas leakage



	2017	2018	2019
Died	0	2	5
Injured	14	15	32
Case	10	6	15

■ Died ■ Injured ■ Case

The data clearly indicates that the existing legal framework fails to ensure the safety of natural gas consumption. Clearly, powers granted to license holders for technical inspection and oversight of the gas equipment in the homes of consumers⁶⁹⁵ are not enough to prevent neither violation of safety rules, nor unauthorized restoration of natural gas supply.⁶⁹⁶

On a positive side, in December 2019, pursuant to the Law of Georgia on Energy and Water, Georgian National Energy and Water Supply Regulatory Commission was tasked to develop recommendations on the use of natural gas and/or carbon monoxide detectors and place them on their website within 6 months.⁶⁹⁷ Respective agencies report that, as of today, a number of draft legislative acts have been prepared and submitted to the Parliament's review, which aim to harshen the oversight of the safety of internal networks for gas consumption. These draft laws introducing effective mechanisms of supervision and impose administrative sanctions for the gas consumption that breaches security norms.⁶⁹⁸

⁶⁹⁵ Allowing reasonable deadlines for eradicating violations, uninstalling an appliance from the network, terminating natural gas supply (Resolution №12 of the Georgian National Energy and Water Supply Regulatory Commission on Rules for Supply and Consumption of Natural Gas of 9 July 2009, Article 9(22)).

⁶⁹⁶ During eight months in 2019 in Tbilisi only 28.883 unauthorized gas appliances were dismantled (information available in Georgian at: <<https://bit.ly/2QUP3B4>>); just in a month's time 3.867 open chamber prohibited gas appliance were disconnected (information available in Georgian at: <<https://bit.ly/2QYUeQx>>); while 4.146 more poorly serviced and dangerous appliances were re-disconnected from the network in December. (information available in Georgian at: <<https://bit.ly/2QYUeQx>>).

⁶⁹⁷ Law of Georgia on Energy and Water Supply, Article 167(4).

⁶⁹⁸ Ministry of Economy and Sustainable Development of Georgia, letter N23/10377, 31 December 2019; Chair of the Georgian National Energy and Water Supply Regulatory Commission, letter N1/12-18-159, 13 January 2020

Considering the existing alarming situation, it is paramount that these mechanisms be put in motion as soon as possible.

Ensuring security of those living in adjacent apartments remains a challenge. A recommendation of the Public Defender regarding the urgency to develop rules and establish a body for exercising supervision over installing ventilators on shared ventilation channels remains unanswered.⁶⁹⁹ At the same time, the analysis of one of the cases reviewed by the Public Defender's Office⁷⁰⁰ revealed that the legislation allows for the installation of a boiler ventilation pipe in such a manner which may result in channeling toxic air directly to a neighboring apartment. It was found that matters of this nature are still regulated by so called СНиПs, a set of soviet construction norms and rules valid until 1992.⁷⁰¹ The Public Defender stresses that for the full realization of the right to a healthy environment it is paramount that modern and overarching regulations be introduced with regard to natural gas networks in residential buildings.

13.3. Flaws in the legal framework relating to construction

Legislation for the construction industry must be designed in such a way that contributes to the maintenance and advancement of adequate and effective mechanisms supporting the realization of the right to a safe and healthy environment. Therefore, considering the presence of numerous challenges in the construction industry, this is the goal to be attained by planned and implemented legislative changes.

During the reporting period, changes were made to the Code of Spatial Planning, Architectural and Construction Activities,⁷⁰² some of which are not welcome by the Public Defender due to their possible negative effects on the realization of human rights. More specifically, as a result of these changes some sanctions with regard to a series of administrative offences have become less harsh.⁷⁰³ These offences include unauthorized constructions,⁷⁰⁴ abandonment of the construction with the violation of conservation rules, failure to adhere to a decision on the termination of construction works, violation of construction safety rules. In addition, the amount of the fine to be paid will be cut back if the grounds for

⁶⁹⁹ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 152, p. 156. Ministry of Economy and Sustainable Development, letter N06/196, 11 February 2020

⁷⁰⁰ Case N13402/19.

⁷⁰¹ The Office of the Georgian National Energy and Water Supply Regulatory Commission, letter N6/04-18-10150, 19 December 2019; Technical and Construction Supervision Agency, letter N06/196, 11 February 2020

⁷⁰² Law of Georgia on Amending the Code of Spatial Planning, Architectural and Construction Activities, 20.12.2019. It should be noted that the original version of the bill stipulated rather broad and predominantly problematic changes concerning many directions. Finally, the finalized changes did not reflect the majority of vastly important problematic issues.

⁷⁰³ Articles 130(2), 131(4), 132(2), 134(2), 135(2), 136(2), 138(2) of the Code, the responsibility to pay the doubled amount of fine for repeated offences was revoked.

⁷⁰⁴ Including territories protected by the Law of Georgia on the Management of Forest Fund and Law of Georgia on Water, in the territories or zones subject to special regulations, or the cultural heritage zone.

the fine will not be eradicated.⁷⁰⁵ while the failure to complete construction work or stages of construction indicated in a construction permit is no longer subject to a fine.⁷⁰⁶

The Public Defender believes that imposing sanctions for administrative offences is one of the measures for the prevention of offences. While even harsh sanctions had failed to fully attain a legitimate goal, lighter and/or revoked sanctions are highly unlikely to do so. Therefore, it is expected that the implemented changes will have negative effects on the prevention of offences, timely fulfilment of the obligations by the responsible bodies and, as a result, realization of human rights. Pressing challenges in the construction industry require urgent and effective measures to be undertaken by state authorities. In this light, the delay in the adoption of numerous important resolutions by the government, another outcome of the aforementioned changes, should be viewed as a negative development.⁷⁰⁷

Problems related to the negligence of lawful interests of owners of property adjacent to the construction site continued to stand out in the reporting period. Examination of several cases by the Public Defender's Office⁷⁰⁸ revealed that recommendations provided in reports on the assessment of impact of the construction on adjacent buildings were ignored during the supervision process while these recommendations defined specific measures the implementation of which were critical to ensure sustainability of adjacent buildings during the construction work.

In the above mentioned period, a client was not obliged to conduct an assessment prior to obtaining a construction permit. However, they were responsible for conducting the assessment prior to the commencement of the construction work.⁷⁰⁹ As a result of the June 2019 changes, in some cases, assessment of the impact of planned construction on adjacent buildings and identification of measures for the maintenance of the existing conditions became one of the preconditions for obtaining a construction permit, which is certainly a positive step forward.⁷¹⁰

⁷⁰⁵ Pursuant to the new version, unless grounds for imposing the fine are eradicated, offenders of construction regulations shall be fined after every three months from the imposition of the fine. The sum payable shall be triple of the original sum. The fine may be imposed maximum three times. In the previous version, however, the offender would be obliged to pay the triple amount of the last imposed fine, Article 126(2) of the Code.

⁷⁰⁶ Article 133 of the previous version of the Code.

⁷⁰⁷ Enactment of the obligatory certification for the implementation of architectural and construction works has been postponed from 1 October 2020 to 1 October 2022; the establishment of minimum insulation requirements will be postponed to 30 December 2021 instead of previously announced 30 December 2019; the establishment of rules for certification of experts to exercise technical supervision over architects, engineer-constructors and construction work will start on 1 March 2022 instead of 1 March 2020; the rule for inspection of a construction site by accredited inspection body and a certified experts, as well as the introduction of their liability insurance will not be introduced until 1 March 2022 as opposed to previously planned 1 March 2020. The introduction of a requirement to consider the possibility of using renewable energy during planning and building phases has been put on hold till the end of 2024.

⁷⁰⁸ Case N4018/19; Case N95426/19.

⁷⁰⁹ Resolution No 57 of the Government of Georgia of 24 March 2009 on the Rule for the Issuance of Construction Permit, and the Terms and Conditions of the Permit, Article 33(4)B.

⁷¹⁰ If a building is to be constructed with a developed built-up under restricted conditions (new construction and reconstruction of support structures), within 10 m radius of the construction site for buildings of the III class and within 20 m radius for IV class buildings, as well as in the presence of other legitimate grounds in order to prevent any potential damage and deformation of buildings adjacent to the planned construction site (Resolution No 255 of the Government of

However, explanatory notes provided by administrations of self-governing cities upon a request of the Public Defender reveal that supervision bodies in Tbilisi and Kutaisi have ignored the obligation to ascertain whether special measures stipulated by the assessment are undertaken even though the new legal framework obliges them to do so.⁷¹¹ In other municipalities, the process of issuing construction permits based on a newly introduced requirement to conduct impact assessment on adjacent buildings has taken off recently, therefore, supervision has not yet been carried out.⁷¹²

The Public Defender calls on local self-governing organs to oversee the implementation of special measures indicated in expert reports after construction permits are issued and construction work commenced based on impact assessment reports. Otherwise, expert reports will be devoid of legal significance and principles for ensuring a healthy and safe environment, protection of the right to property and safety of construction work will be compromised.

A resolution of the Government of Georgia on the minimum set of building insulation requirements was expected to be adopted in the reporting period. The resolution was considered an instrument for ensuring the access to natural light and air for owners/users of property adjacent to a construction site.⁷¹³ Regrettably, the timeframe for the adoption of the aforementioned resolution was postponed to 30 December 2021.⁷¹⁴ In addition, a recommendation of the Public Defender to consider a door, window or any opening in the wall of the building facing the border of the neighboring plot an obstacle to construct a new building on this plot, was not upheld.⁷¹⁵ Therefore, the existing legal framework allows construction requirements to be met at the expense of the interest of individuals living adjacent to the construction site.

For the past year the Public Defender has been stressing the urgency for compiling a list of materials (combustible, toxic and containing other harmful substances) to be banned from the construction industry.⁷¹⁶ Consumption of materials containing asbestos (e.g. in construction materials, brake pads etc) has been seen as particularly hazardous because of their grave impact on human health.⁷¹⁷ According to the latest estimates, asbestos related cancers are responsible for 107.000 deaths worldwide every year. For this reason, the World Health Organization calls for the termination of the use of all types of asbestos

Georgia of 31 May 2019 on the *rules and terms for the issuance of the construction permit and occupancy certificate*, Article 6, para 4(E), para 9).

⁷¹¹ Municipal Inspection of the Tbilisi Municipality City Hall, letter №17-01200643894, 4 March 2020; Mayor of Kutaisi municipality, letter №01/6346, 11 March 2020.

⁷¹² Poti Municipality City Hall, letter №02/1531, 26 February 2020, Urban Development and Urban Policy Service of Batumi Municipality City Hall, letter №1508-25, 2 March 2020, Rustavi Municipality City Hall, letter №02/2983 6 March 2020.

⁷¹³ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, pp. 153-154

⁷¹⁴ Code of Spatial Planning, Architectural and Construction Activities of Georgia, Article 143(3).

⁷¹⁵ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 158.

⁷¹⁶ Ibid, p. 145; The 2017 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia. P. 129.

⁷¹⁷ Information available in Georgian at the website of the National Center of the Disease Control and Public Health: <<https://bit.ly/3dGtmyx>> [Accessed: 10.03.2020].

as the most effective measure to end asbestos-related diseases and conditions.⁷¹⁸ As of today, Georgia bans the import of five asbestos fibers,⁷¹⁹ however, there is no regulation concerning chrysotile (white asbestos)⁷²⁰ which, according to the National Center of the Disease Control and Public Health is the most widespread type of asbestos and one of major contributors to cancer cases.⁷²¹ According to the information provided by the Ministry of Environmental Protection and Agriculture, currently recommendations are being developed to replace asbestos containing materials with alternative materials.⁷²² This process needs to be finalized soon and effective measures must be undertaken to identify and ban other dangerous materials.

13.4. Wide-scale infrastructural projects and human rights

For the past few years the Office of the Public Defender has been approached by a great many citizens raising red flags with regard to various large-scale infrastructure projects and this reporting period has been no exception.⁷²³ Concerns are mainly raised over the negligence of the applicants' social needs in the decision making, safety of the planned works, impact on the environment and compensation. Often the expediency of projects rather than procedural issues is put under a question mark.

As a rule, implementation of large-scale projects interferes with legal interests of individuals and/or certain groups. When it comes to the implementation of infrastructural projects⁷²⁴ oftentimes the right of the adjacent property owner to fully exercise their right to a healthy environment is either restricted or compromised.⁷²⁵

Most problems indicate that regardless of a sophisticated legal framework regulating this sphere, lack of communication with the population at an early stage and the latter's poor awareness remain a challenge. Legitimate questions raised by citizens require reliable and exhaustive answers which, in their turn, will help a decision-making administrative body thoroughly investigate and assess circumstances that are believed to be important to a case. With regard to each of the cases, respective bodies must, inter alia,

⁷¹⁸ Information available at the website of the World Health Information: <<https://bit.ly/2UNEPnh> > [Accessed: 10.03.2020].

⁷¹⁹ Resolution No 263 of the Government of Georgia of 13 June 2016 on the Rules of Export and Import of Certain Hazardous Chemicals and Pesticides, and on the Prior Informed Consent Procedure.

⁷²⁰ Ministry of Environmental Protection and Agriculture of Georgia, letter 2617/01, 10 March 2020.

⁷²¹ Information available in Georgian at the website of the National Center of the Disease Control and Public Health: <<https://bit.ly/3bFAA3M> > [Accessed: 10.03.2020].

⁷²² Ministry of Environmental Protection and Agriculture of Georgia, letter 2617/01, 10 March 2020.

⁷²³ These wide-scale projects include hydro power plants, electric power transmission lines, motorways, landfills, residential or public complexes.

⁷²⁴ Analysis of one of the cases has revealed that there is no legally required minimum distance to the nearest settlement to be observed during the construction of electric power transmission lines. On the other hand, the legislation establishes a buffer zone for the protection of electric power transmission lines. Individuals whose property is located in the buffer zones, are banned from executing a range of activities, while the owner of an electric network is allowed to carry out various activities in the buffer zone to ensure the service and protection of electric power transmission lines. Therefore, owners of plots of lands located in the buffer zone are negatively affected but the existing arrangements.

⁷²⁵ Public Defender of Georgia, proposals №04-11/6476, 12/06/2019 regarding masts №238, №239 and №240 of "Energotrans" Ltd located in the village Sno.

carry out in-depth and full research into possible alternatives and where possible, select locations which will allow for the equal protection of the environment and interests of a local community insofar as possible. While making decisions state bodies should take into consideration the tourism potential of a municipality in question and aspirations of local communities to develop their property and improve their devastating social standing. This approach will have a positive impact on the development of villages/municipalities and contribute to the reducing of migratory flows, one of the national priorities.

In addition, the Public Defender pays close attention to challenges relating to urban development processes in some of the country's big cities. The Public Defender holds that when planned development activities are very likely to affect landmarks of the city and forms of local public life, decisions must be made only through a wider public consolidation. Batumi Riviera is a project that raised numerous questions among the wider public and hit headlines during the reporting period. Many of these questions, especially those related to potential risks and threats, are yet to be answered. The Public Defender stresses that while making decisions with regard to urban development especially in Tbilisi and Batumi cities, decision-makers must draw upon serious challenges and grave consequences on spatial arrangements resulting from rapid, chaotic and spontaneous development processes. Decision making bodies must consider the legitimate goal of the legislation with regard to each of the cases⁷²⁶ and make decisions that are guided by the intention to alleviate the grave situation in highly developed urban areas rather than adding to already severe problems.

Unfortunately, no effective steps have been made towards introducing long-term energy policies and developing respective strategy documents. Nor has there been any assessment or analysis of the implemented work and investments, cost-benefit analysis, lessons learnt and planned activities. Therefore, challenges concerning the consideration of citizens' interests while implementing energy projects continue to persist.⁷²⁷ The Public Defender has repeatedly called for the urgency for complex and consistent state policies and approaches. In order to strike a balance between economic, environmental and social interests, a process of developing policy documents must be based on a body of reliable and professional research, international best practices, public discussions to ensure the inclusiveness of expert and professional communities. At the same time, these policy documents must be in full compliance with the legislative requirements.⁷²⁸

13.5. Legislative issues

⁷²⁶ The legitimate purpose of the legal framework in the area of construction and spatial planning is to identify, mitigate and correct identified discrepancies.

⁷²⁷ These problems, in particular, the absence of energy-economic efficiency assessment of the hydro power plants constructed/planned for the past 10 years, were highlighted in the 2018 parliamentary report of the Public Defender of Georgia.

⁷²⁸ Resolution No 629 of the Government of Georgia of 20 December 2019 on Approval of the rule for the development, monitoring and evaluation of policy document; Resolution of the Government of Georgia No 629 of 30 December 2016 on Approval of the policy planning document: policy planning manual.

The analysis of the cases also revealed the need for the revision of a list of activities subject to environmental impact assessment. The Public Defender has welcomed efforts to bring an environmental impact assessment system, including activities subject to impact assessment, to the international standards by adopting an impact assessment code. However, considering specific circumstances characterizing the Georgian context, threshold criteria set for activities require revision and further improvement. For instance, pursuant to Annex II of the Environmental Impact Assessment Code,⁷²⁹ an urban development project with more than 10 ha of built-up is subject to a screening decision.⁷³⁰ However, as a result of this provision Batumi Riviera, one of the biggest projects, area of which is slightly less than 10 ha, did not go through an environmental impact assessment⁷³¹ - a gap that has left behind a great many unanswered questions.

The Public Defender of Georgia holds that threshold indicators should be determined with the consideration of the country's area and other important characteristics in order to ensure that all important matters that may have grave effects on human rights are not left beyond regulations.

Yet another important issue⁷³² concerns the distance between a residential area and a landfill site. Pursuant to the legislation⁷³³ a distance from a residential area to a landfill site must be at least 500 m. Even though the law provides a definition of a "landfill sight",⁷³⁴ what are the boundaries of the landfill site remains unclear. As the practice suggests, operators calculate a distance not from the borders of the landfill site, but from the spot where waste is collected. The Public Defender believes that since these matters have direct effects on the fulfillment of the right to property and a healthy environment of local communities, the legislation must clarify a rule for the calculation of a 500 m distance. Citizens' right to compensation and safe environment should not be subject to arbitrary and unequal treatment and decisions based on landfill operators' interpretations.

Proposals

To the Parliament of Georgia:

⁷²⁹ There are two annexes to the Code. The first one outlines activities which are subject to unconditional environmental impact assessment, while activities outlined in the second annex are subject to the environmental impact assessment only upon a screening report.

⁷³⁰ A procedure which is prescribed to identify the need for environmental impact assessment/strategic environmental assessment, Environmental Assessment Code, Article 3(U)

⁷³¹ The total area of the land amounts to 90.700 m². The project under review stipulates the construction of a yacht club and artificial laguna, multi-apartment residential buildings, hotels, multi-functional complex integrated in nautical navigation, restaurants, a convention centre, a casino, residential and public spaces. Therefore it is paramount to carry out a thorough environmental impact assessment.

⁷³² Problems identified as a result of the assessment of Tetskhauri landfill case

⁷³³ Resolution of the Government of Georgia No 421 of 11 August 2015 on Approval of technical regulation on the construction, operation, closure and after-care of landfills, Article 9(2)

⁷³⁴ Article 2(1) of the resolution

- Develop unified regulations for the effective prevention of damage to the environment and safeguarding mechanisms for effective mitigation of the sustained impact. These regulations, inter alia, should specify responsible agencies and their powers.
- Reduce the threshold indicators as stipulated by the Annexes I and II of the Environmental Impact Assessment Code and tailor them to the area of the country and other specific characteristics. Indicators to be revised and reduced include a 10 ha threshold indicated in Article 9.2 of Annex II.
- Amend the Administrative Offences Code of Georgia to penalize the violation of rules for placement, transportation and processing of materials with dust particle content on the territory of all municipalities.

Recommendations

To the Government of Georgia:

- Review and pass draft normative acts to ensure stricter supervision of the protection of safety of the internal networks of natural gas in a timely manner
- Update existing standing orders to ensure adequate regulations of the practice of installing ventilators on shared channels and heater boilers in a manner that is responsive to existing challenges, in line with the technological progress, considerate of safety needs of immediate neighbors
- Develop a policy document to ensure rational use of energy resources and sustainable development as per Resolution №629 of the Government of Georgia of 20 December 2019 on Approval of the rule for the development, monitoring and evaluation of policy document; Resolution of the Government of Georgia №629 of 30 December 2016 on Approval of the policy planning document: policy planning manual
- Before making any decision with regard to a planned wide-scale project, ensure that there is a cost and benefit analysis, as well as socio-economic impact analysis and that they are available to the wider public
- Amend resolution of the Government of Georgia №421 of 11 August 2015 on Approval of technical regulation on the construction, operation, closure and after-care of landfills and specify criteria for calculating a 500 m distance
- Develop a clear methodology for calculating the area of green space per capita in the territory of a municipality and a precise assessment standard
- Improve the air monitoring system (with an increase in the number of monitoring stations as one of the measures) by allocating adequate financial resources from the state budget.

To the Ministry of Internal Affairs of Georgia, Ministry of Economy and Sustainable Development, and the Minister of Environmental Protection and Agriculture:

- Allocate adequate material and technical resources for timely implementation of legislative changes for the detection of excess amount of harmful substances in engine exhaust and the establishment of an effective response mechanism on such offences

To the Minister of Environmental Protection and Agriculture:

- Ensure that a draft law is prepared for the prevention and reduction of air pollution related to agriculture
- Initiate a draft law on industrial emissions in the Parliament of Georgia within a year

To the Department of Environmental Supervision of the Ministry of Environmental Protection and Agriculture:

- While monitoring fuel of poor quality, take samples from both diesel and gasoline and assess content shares of all substances specified at a national level

14. Right to work

Lack of progress and improvement in occupational security and safety remains the main challenge of 2019. An amendment to the Law of Georgia on Occupational Safety as a result of which the Law now covers all spheres of economic activity and allows labor inspectors to access workplaces without undue restrictions, has clearly been a step forward. However, a recommendation of the Public Defender of Georgia to grant labor inspectors effective oversight on the implementation of other requirements prescribed by the labor legislation, has not yet been considered.⁷³⁵ A working process on further reforming the labor legislation aiming to authorize the labor inspectors to fully examine effective implementation of norms pertaining to labor rights and conditions and grant the right to impose administrative penalties for violations including those stipulated by the Labor Code and Law of Georgia on Public Service, has been put on hold for uncertain period of time.

The analysis of the work carried out by labor inspectors during the reporting period suggests that in spite of discernable progress towards improving occupational safety legislation, due to its mandate and resources the Department falls short of fully executing its important functions.

14.1. The situation on occupational safety

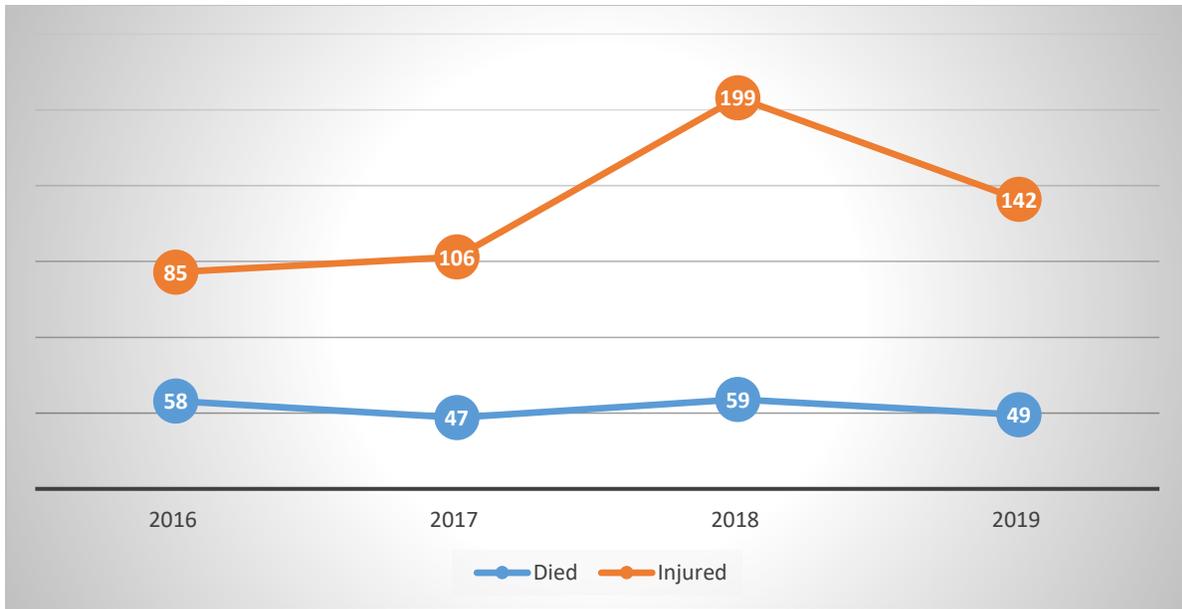
According to the Georgian Ministry of Internal Affairs, there has been a slight decline in workplace accidents in 2019 as compared only to the previous reporting year. The situation remains grave with 49 fatalities and 142 sustaining bodily injuries as a result of workplace accidents occurring in 2019.⁷³⁶

The table below provides data on workplace casualties from 2016 to 2019:⁷³⁷

⁷³⁵ The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 161.

⁷³⁶ However, statistical information provided by the Labor Conditions Inspections Department is somewhat different. According to the Department 2019 was marked by the lowest number of casualties in four years with 38 workplace deaths (25 of the deceased worked in construction) and 168 persons sustaining injuries. (letter №01/371 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of 14 January 2020). In 2019 the Inspection explained that this difference was attributed to different statistical methodologies used by the MIA's respective bodies and the Inspection. More specifically, the Inspection defines verified accident at the place of work as per the Law of Georgia on Occupational Safety, while the MIA registers any work related accidents which may not be within the coverage of the Organic Law of Georgia on Occupational Safety (letter №01/3216 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of 13 March 2020).

⁷³⁷ The 2016 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 320; The 2017 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 124; The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p. 159; №MIA 1 20 00590910 of the Ministry of Internal Affairs of Georgia of 5 March 2020; letter №01/371 of the Ministry of Internally Displaced Persons, Labour, Health and Social Affairs of 14 January 2020.



Findings of the inspection have revealed that the failure to comply with risk assessment requirements, remains the biggest challenge in safeguarding occupational security.⁷³⁸ In addition, it has also been revealed that employees often work without protective gears.⁷³⁹ Notably, up to 92 businesses had to put their operation on hold because of grave violations of security norms which posed threats to human life and/or health and required an immediate response.⁷⁴⁰

In 2018 the Labor Inspection Department was authorized to look into the compliance of requirements stipulated by the labor legislation.⁷⁴¹ However, unlike the mandate to inspect the implementation of occupational safety norms, the Inspection is authorized to inspect the compliance to the requirement of labor legislation only upon a prior consent of the entity in question.⁷⁴² In 2019 only 19 employers consented to being inspected.⁷⁴³ Inspection uncovered such grave violations as unpaid overtime work or work carried out on public holidays, mismatch between contractual obligations and actual work, violation of terms and conditions of a work contract termination etc. As a response, the Labor Inspection Department could only issue non-binding instructions since it has no authority to issue binding directives or impose sanctions while exercising oversight on the implementation of labor rights.

⁷³⁸ Ministry of Internally Displaced Persons, Labour, Health and Social Affairs, letter №01/371, 14 January 2020.

⁷³⁹ Ibid

⁷⁴⁰ Ibid; Georgian Organic Law on Labour Safety, Article 3(R).

⁷⁴¹ Resolution №603 of the Government of Georgia of 29 December 2017 on Approval of the 2018 State Program for the Inspection of Labour Conditions.

⁷⁴² Resolution №682 of the Government of Georgia of 31 December 2018 on Approval of the 2019 State Program for the Inspection of Labour Conditions; Resolution №668 of the Government of Georgia of 31 December 2019 on Approval of the 2020 State Program for the Inspection of Labour Conditions.

⁷⁴³ Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, letter №01/371, 14 January 2020.

In order to ensure the protection of labor rights, the International Labour Organization requires the member states to establish a system of labor inspection which shall secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work (such as provisions relating to hours, wages, safety etc).⁷⁴⁴ Pursuant to the Association Agreement with the EU, Georgia is responsible for incorporating international standards in the legal framework and practice in a manner which is provided in conventions of the International Labour Organization.⁷⁴⁵ However, Georgia has not yet ratified conventions providing these standards. According to Human Rights Watch, these legislative and supervision gaps nurtures the practice which continues to pose threats to employees.⁷⁴⁶ Therefore, Human Rights Watch appeals to the Government of Georgia and the Parliament to set up an effective labor inspection equipped with qualified and trained personnel with access to adequate resources and a mandate to examine all aspects relating to workplace safety and conditions.⁷⁴⁷

The Public Defender of Georgia considers it paramount to timely finalize the working process on the implementation of labor legislation reform including the advancement of the labor inspection system through establishing a state supervision mechanism equipped with a broad mandate and effective instruments.

14.2. The work of the Labor Inspection Department

In 2019 the Labor Inspection Department inspected 859 businesses to ascertain the situation in occupational safety including 107 entities of the above mentioned 19 companies which granted a prior consent to be examined against the protection of labor rights. As a result of the inspection the Department issued non-binding recommendations for 301 entities as authorized by the respective legal framework.⁷⁴⁸ With regard to 558 entities, the Department carried out 1264 inspections as per the organic law of Georgia on Occupational safety.⁷⁴⁹ Even though since September labor inspectors have been authorized to have unhampered access to every workplace, the number of entities inspected in the period from 1 September to 31 December has dwindled significantly from that in the first half of the year (483).⁷⁵⁰ At the same time, only 3 businesses fell under the category of industry which is not qualified as heavy,

⁷⁴⁴ Convention N^o81 of the International Labour Organization Concerning Labour Inspection in Industry and Commerce, C081, 1947, Article. 3, Para. 1; Labour Inspection (Agriculture) Convention N^o129 of the International Labour Organization, C129, 1969, Article. 6, Para. 1.

⁷⁴⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Article. 229, Para. 2.

⁷⁴⁶ *No Year without Deaths*, Human Rights Watch, 2019, P .2, Available at: < <https://bit.ly/39rxclj> [Accessed: 30.03.2020].

⁷⁴⁷ *Ibid*, P. 3.

⁷⁴⁸ 150 entities were inspected in accordance to the 2019 state program for labor conditions (Resolution of the Government of Georgia N^o582 of 31 December 2018), while 151 entities were inspected as part of the joint inspection by the Ministry of Economy and Sustainable Development, Tbilisi Municipality City Hall and the Department of Labor Conditions (letter N^o01/371 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of 14 January 2020).

⁷⁴⁹ Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, letter N^o01/371, 14 January 2020

⁷⁵⁰ *Ibid*.

harmful or dangerous,⁷⁵¹ which indicates that legal changes affecting the labor inspection undertaken during the reporting period in the area of occupational safety have not yet been effectively enforced.

Inspection uncovered 4806 instances of violation. At the first stage inspected 558 entities were given a warning as an administrative penalty. The second round of inspection revealed that 127 entities had eradicated violations, while 202 entities were fined to pay from 200 to 14.000 GEL. Therefore, the rate of addressing violations was estimated 39% which is higher than that of the previous year and points to the effectiveness of a sanction mechanism as opposed to non-binding directives.⁷⁵²

It should be noted that the Labor Inspection Department, in addition to above mentioned competences, is responsible for developing respective legal standards and exercising oversight to detect cases of forced labor and labor exploitation.⁷⁵³ To this end, in 2019 the Department inspected 127 companies,⁷⁵⁴ prepared drafts of four normative acts and started working on one additional act.⁷⁵⁵ However, pursuant to the Association Agreement, three additional normative acts on work conditions and occupational safety should have been adopted by 1 September 2019,⁷⁵⁶ which were not finalized during the reporting period.

In light of increased responsibilities and rights, a drastic decline in the number of inspected entities and the failure to adhere to respective international obligations, suggest that resources available to the Department are not enough for effective execution of its functions. Even though the budget of the State Program for the Inspection of Workplace has been doubled since the previous year, the Labor Inspection Department currently has only 40 staff members⁷⁵⁷ which means one inspector per approximately 42.000 workers⁷⁵⁸ while, according to the ILO, the number of labor inspectors in relation to workers in transition

⁷⁵¹ Businesses providing accommodation, administrative and support activities, arts, entertainment and leisure.

⁷⁵² In 2018 the same indicator was 31% and 6% in 2017 when inspection was carried out solely based on the state program (The 2018 annual report of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia, p.160)

⁷⁵³ Resolution №682 of the Government of Georgia of 31 December 2018 on Approval of the 2019 State Program for the Inspection of Labour Conditions; Resolution №112 of the Government of Georgia of 7 March 2016 on Approval of rules for State oversight of the prevention of and response to forced labour and labour exploitation.

⁷⁵⁴ The inspection yielded no potential signs of forced labor or labor exploitation.

⁷⁵⁵ Draft normative acts include: Approval of the methodology and the rules of risk assesment for the identification of priority sectors economic activity; approval of the rules and conditions for entering an enterprise/organization with the purpose of inspection; approval of the list of occupations that are hazardous and/or involving an increased level of danger for pregnant, postpartum and breastfeeding women; on rules and procedures for the introduction of obligatory insurance (minimum coverage) against occupational illnesses and workplace accidents occurring in the territory of Georgia. Changes have been made to the accredited program for occupational safety specialists.

⁷⁵⁶ The above mentioned normative acts were developed to ensure the implementation of the following directives in the domestic legal framework: Directive 89/654/EEC directive minimum safety and health requirements for the workplace; Directive 2009/104/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work; Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment (Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Annex XXX).

⁷⁵⁷ Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, letter №01/371, 14 January 2020.

⁷⁵⁸ According to the latest data provided by the National Statistical Office of Georgia, number of the employed in 2018 totaled 1694.2 thousand

economies should approach 1/20.000.⁷⁵⁹ Therefore, it is important that the planned increase in the number of labor inspectors up to 100 in the first quarter of the year be implemented in a timely manner.⁷⁶⁰ In order to ensure the effectiveness of the work of labor inspectors, the standard of the ILO also requires the provision of local offices.⁷⁶¹

Based on the above said, successful operation of the Labor Inspection Department requires organizational and structural capacity building.

Proposals

To the Parliament of Georgia:

- Speed up the implementation of legal amendments so that labor inspectors have respective authority (free access to workplaces) and effective mechanisms (allowing imposition of sanctions) for the inspection of the implementation of requirements stipulated by the labor legislation as they do in relation to occupational safety norms.

Recommendations

To the Government of Georgia:

- Adopt normative acts to ensure the the implementation of 89/654/EEC directive on minimum safety and health requirements for the workplace of the European council of 30 November 1989, Directive 2009/104/EC of the European Parliament and the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work and Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment;
- Take measures to launch a process for the ratification of the convention N°81 of the International Labour Organization Concerning Labour Inspection in Industry and Commerce, Labour Inspection (Agriculture) Convention N°129 of the International Labour Organization, and Occupational Safety and Health Convention N°155.

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

⁷⁵⁹ "Strategies and Practice for Labour Inspection", International Labour Organization, 2006, P.4. Available at: <<https://bit.ly/2RT1r5z>> [Accessed: 30.03.2020].

⁷⁶⁰ Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, letter N°01/371, 14 January 2020.

⁷⁶¹ Convention N°81 of the International Labour Organization Concerning Labour Inspection in Industry and Commerce, C081, 1947, Article. 11. For instance, the labour inspection system in Latvia, a country with the population almost half the size of Georgia's, consists of a head office and five regional centers, which are further divided into several sub regional offices (The 2018 annual report of Latvia's Labour Inspectorate, P. 7. Available at: <http://www.vdi.gov.lv/files/sdo_2018_en_gala.pdf>.

- Speed up the implementation of organizational and structural capacity building measures, including the provision of regional offices, of the Labor Inspection Department.

15. The Right to Health Care

In 2019 Georgia launched a new wave of the healthcare sector reform. According to a policy statement, the new wave aims at developing a people-centric policy, transitioning to a new funding model (DRG)⁷⁶² and equalizing service rates. Despite initiatives voiced by the state, changes to the existing system of financing caused harsh criticism among health care providers. In addition to that, effective implementation of universal, primary and cancer programs which are to increase accessibility to relevant healthcare programs and decrease financial burden for the country's population remain a challenge.

Pressing problems include accessibility of primary healthcare in rural areas, improvement of working conditions for rural doctors and nurses, adjustment of respective infrastructure and introduction of a continuous compulsory vocational education system.

Additionally, affordability of medicines and effective and consistent implementation of quality assurance policies continue to be a severe issue. At the same time, a report of the State Audit Office released to the public has raised legitimate questions regarding the effective implementation of the Hepatitis C elimination program.

Access to social and healthcare programs for persons with permanent residence permits still remains a challenge in Georgia.

15.1. Challenges of the primary health care system

In early 2019 the World Health Organization identified 10 most important threats to the global health, among which is a weak primary health care. This chain is usually the first point of contact people have with their health care system, and ideally it should provide comprehensive, affordable and wide-ranging care throughout the lifespan.⁷⁶³

The Non-Governmental Organizations whose work is focused on identifying problems, barriers and needs of Georgia's primary health care system perceive the lack of political will as the major challenge of the sector. These organizations argue that strengthening of the primary health care system has not been given a high priority on the list of critically important objectives concerning the development of country's health care system.⁷⁶⁴

⁷⁶² The new reimbursement system foresees a transition to a new diagnosis-related group model (DRG), which calculates an amount of funding based on a patient's diagnosis, age, duration of hospitalization and other criteria.

⁷⁶³ Available at: < <https://bit.ly/33Voilt> > [Accessed 30.03.2020].

⁷⁶⁴ "Weak Primary Healthcare - the Major Barrier to Universal Access to Healthcare", Welfare Foundation, 2019. Available in Georgian at: < <https://bit.ly/2vYuX1x> > [Accessed 30.03.2020].

The Public Defender believes that model of organizational arrangement and regulatory framework, insufficient feedback between primary health care institutions and in-patient treatment facilities, fragmented services and lack of an emphasis on prevention, early detection and management of diseases remain a challenge of the primary health care sector. This is coupled with lack of opportunities for medical personnel working in the primary health care system to benefit from the continuous professional medical training.

Recommendations prepared by the World Health Organization for Georgia indicate that the primary health care is in need of radical reform. The WHO recommends the government to develop performance indicators and targets for the delivery of the primary health care, as well as to introduce new services, in particular, to respond to problems relating to the prevention and treatment of non-communicable diseases.⁷⁶⁵

The amendments introduced by the end of 2019 with the intention to improve the quality of medical care, foresees the introduction of new performance criteria by the government (selective contracting) for medical facilities involved in the “State Universal Healthcare Program”.⁷⁶⁶ It is important that these changes also resolve a wide range of problems mentioned earlier in the report.

The “Rural Doctors” State Program

The institute of rural doctors is one of the critical components of the health care system. According to the WHO it is essential and crucial part of health care which must be accessible for all members of the society and families and provide full support as they take care of their health.⁷⁶⁷

The Public Defender believes that the Government of Georgia, in response to specific needs of the population, must take measures to facilitate further development of health care infrastructure by financial allocations as well as promoting and attracting investments. In 2019 the Public Defender’s Office monitored more than 70 rural out-patient facilities in 17 different Georgian municipalities. The monitoring revealed a series of dire problems relating to the infrastructure (dilapidated buildings, poor conditions of communication and sanitary-hygienic systems) as well as to the lack of qualified support staff (nurses). Underpaid medical personnel (both doctors and nurses) is viewed as one of the reasons leading to the underdeveloped “Rural Doctors” State Program. Current remuneration does not correspond to the work that medical personnel perform and deprives the latter of the motivation to deliver quality medical care. The rural doctor’s cost of the service is set at 650 GEL per month, while a nurse’s remuneration amounts to 455 GEL per month. In both instances, the payment also includes utility and transportation costs as

⁷⁶⁵ Quality of primary health care in Georgia - WHO European Centre for Primary Health Care Health Services Delivery Programme Division of Health Systems and Public Health, 2018. Available at: <<https://bit.ly/2Uss16l>> [Accessed 30.03.2020].

⁷⁶⁶ Resolution №15 of the Government of Georgia of 9 January 2020 on amending Resolution №36 of the Government of Georgia of 21 February 2013 on Certain Measures for Transitioning to Universal Healthcare.

⁷⁶⁷ Universal health coverage 2019, available at: <<https://goo-gl.su/oAFV>>.

well as those for purchasing basic medicines and medical items. The development of professional skills of medical staff (doctors/nurses) and continuous professional training also represent a serious challenge.

15.2. Highly Qualified Support Medical Personnel

Health of patients is directly linked to the working conditions of medical personnel.⁷⁶⁸ The institute of the nurse helps patients to plan their care during sickness or while going through rehabilitation considering physical, mental and social aspects. According to a database run by the World Health Organization Georgia ranks second last among 53 countries of the European region for the number of nurses per 100.000 population.⁷⁶⁹ According to a study conducted in 2019, 95% of respondents work longer than legally defined 40 hours, 84.6% reported that their monthly remuneration is less than 500GEL; while 100% of the respondents said that they never receive payments for overtime neither for work performed on working days nor on weekends and holidays. There is no framework regulating the severity and workload of employees in medical facilities at private or public levels.⁷⁷⁰

It has been years since the Government declared that they started working on a human resources development policy and a long-term action plan in the health care sector to respond to the need for human resources by distributing priority/deficit specialties and specialists based on regional specifics.⁷⁷¹ To this end, the “National Nursing Development Council” has been set up and the Nursing Development Strategy was adopted.⁷⁷² However, the lack of a professional regulatory mechanisms and the absence of a continuous vocational education system continue to affect the reputation of the profession, a level of qualification of nurses as well as the health status of each of us on a daily basis.

The Public Defender considers it critical to develop standards and protocols for nursing and introduce a sustainable continuous vocational education system with a respective regulatory framework.

15.3. Rights of Cancer Patients

Experts predict that cancer induced mortality rate in the world which, at the present is around 8.2 million a year will soar up and exceed 13 million by 2030.⁷⁷³ The World Health Organization aims to strengthen

⁷⁶⁸ Modeling and Managing the patients’ need for clinical care ENHANCING EVIDENCE-BASED PRACTICE AND MANAGEMENT. Available at: <<https://bit.ly/3ayewrk>> [Accessed 30.03.2020].

⁷⁶⁹ European Health for All family of Databases. Available at: <<https://bit.ly/2JrTYW8>> [Accessed 30.03.2020].

⁷⁷⁰ Report on working conditions of nurses in Georgia, Solidarity Network, 2019. Available at: <<https://goo-gl.su/YvMtn9>> [Accessed 30.03.2020].

⁷⁷¹ Resolution №724 of the Government of Georgia on Approval of the 2014-2020 State Concept of Healthcare.

⁷⁷² Resolution №334 of the Government of Georgia on Approval of the Nursing Development Strategy.

⁷⁷³ Available at < <https://bit.ly/2WTVhVN> > [Accessed 30.03.2020].

its efforts in order to ensure early diagnosis, screening, treatment of cancer, as well as palliative care and post treatment support including childhood cancer.⁷⁷⁴

The Georgian state's declared policy is to implement modern and highly effective cancer treatment methods.⁷⁷⁵ However, specific and various state programs⁷⁷⁶ whether as part of universal health care program, cancer prevention program, palliative care or provided by local municipalities to cover lab tests and costs incurred as a result of an operation with the consideration of health insurance policy limits and co-funding arrangements,⁷⁷⁷ contribute to unequal and differentiated treatment based on beneficiaries' financial standing.⁷⁷⁸ Due to insufficient funding, patients suffering from this severe disease, have to pay out of their pocket or seek co-funding from municipal or central authorities to make up to a tariff established by a medical facility. Unfortunately, the government does not agree with the recommendation of the Public Defender and to date, refrains from introducing a unified state program for cancer diseases the existence and effective management of which will greatly improve treatment and affordability of medicines for cancer patients, while at the same time, leading to the opportunity to work on the prevention of cancer.

15.4. Affordability and Quality of Medicines

Affordability of medicines, which is a staple component of maintaining health or overcoming diseases, is one of the critical components of the right to health. Rising prices on out-patient care and medicines⁷⁷⁹ come as a heavy burden for the country's population. Problem related to the affordability of medicines in Georgia is highlighted as a challenge in a WHO report on health care financing titled „Can people afford to pay for health care?“⁷⁸⁰ According to the report around 14% of the population experience catastrophic health care spending.⁷⁸¹ Money spent on medicines accounts for the biggest share - 60%, of the total spending.

⁷⁷⁴ [Cancer prevention and control in the context of an integrated approach](https://bit.ly/2WTVhVN). Available at: <<https://bit.ly/2WTVhVN>> [Accessed 30.03.2020].

⁷⁷⁵ Basic Data and Directions Document for 2019-2022. Available in Georgian at: <<https://bit.ly/3dFKGUj>> [Accessed 30.03.2020].

⁷⁷⁶ State Program for Universal Healthcare, Early Detection and National Screening Program.

⁷⁷⁷ 2018 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia, p. 167.

⁷⁷⁸ Differentiated packages introduced on 1 May 2017 are based on an individual's insurance status and information about his/her income. Citizens of Georgia whose income exceeds annual 40.000 GEL are exempt from state funded services, while those whose monthly income is less/greater than 1000 GEL, may benefit from differentiated services with co-funding. However, the state's share with regard to both categories is too small to ensure full affordability of services.

⁷⁷⁹ According to the National Statistics Office of Georgia, in 2018 prices of medicines increased by 4%, while by September 2019 there was a 6.6% increase in the prices on pharmaceuticals. Available at: <<https://bit.ly/2Uvgzrd>> _> [accessed 30.03.2020].

⁷⁸⁰ Available at: <<https://bit.ly/3dEjKEo>> [accessed 30.03.2020].

⁷⁸¹ The World Health Organization views health expenditure as catastrophic whenever it is greater than or equal to 40% of a household's non-subsistence income, i.e. income available after basic needs (accommodation, food, utilities etc) have been met. Available at: <<https://bit.ly/2UvzZMk>> [Accessed 30.03.2020].

The World Health Organization considers unregulated medicine and pharmaceutical market in developing countries as one of the biggest challenges and calls on countries for effective regulation of the field by identifying and responding to gaps and shortcomings.⁷⁸²

Affordability of medicines is a problem in addition to financing. According to findings of The Welfare Monitoring Survey 2017, money spent on medicines accounts for 69% of a household's health care spending. Some of the surveyed families describe out-of-pocket expenditure on medical services and medicines as catastrophic while 27% said purchasing medicines was the major problem for them.⁷⁸³ 72.6% of respondents surveyed under the 12th wave of "Healthcare Barometer" (a report published in 2019 concerns an alarming dynamics of a rise of prices on medicines in Georgia) believe that prices on medicines skyrocketed between 2015 and 2019.⁷⁸⁴

The Public Defender has repeatedly highlighted in the reports of previous years the urgency for ensuring affordability of generic drugs by state authorities.⁷⁸⁵ The Public Defender also urges for routine monitoring of accessibility of medicines. In order to ensure quality of medicines and establish safe and protected conditions, it is important that the Ministry of Health takes measures aiming at improving pharmaceutical activities (develop conditions for the production, post-production research, distribution, storage-placement, and realization of pharmaceutical products).⁷⁸⁶

Considering the urgency and critical public interest of the issue, it is pivotal that the state assesses, amends/updates the respective regulatory framework and gradually introduce European standards as well as expand affordability of basic medicines. In addition, it is important to further improve the existing quality control mechanisms and introduce innovations, as well as to undertake effective and timely measures for the regulation of prices on medicines.

⁷⁸² REGULATION OF PHARMACEUTICALS IN DEVELOPING COUNTRIES, Available at: <<https://bit.ly/2vYvWPh>> [accessed 30.03.2020].

⁷⁸³ Available at: <<https://uni.cf/2yfVQPf>> [accessed 30.03.2020].

⁷⁸⁴ A project of Curation International Foundation which monitors and assess processes within Georgia's healthcare sector. *Healthcare Barometer - 12th Wave*. available at: <<https://bit.ly/2JrUW4I>> [accessed 30.03.2020].

⁷⁸⁵ Pharmaceutical drug - active pharmaceutical ingredient. It contains the same chemical substance as a drug that was originally protected by chemical patents. Generic drugs are allowed for sale after the patents on original drugs expire and therefore, such drugs may be cheaper.

⁷⁸⁶ 2017 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia, p. 138. Available at: <<https://bit.ly/2JpNAhZ>> [accessed 30.03.2020].

15.5. Drug Policy

In the course of recent years, the Public Defender of Georgia has voiced a strong support for the replacement of a harsh and vindictive drug policy with that focused on care and treatment.⁷⁸⁷

In 2015-2016, the Public Defender lodged claims to the Constitutional Court of Georgia questioning the constitutionality of so called street drug testing, using the test results as grounds for charging individuals for administrative offences and as evidence in criminal proceedings. Even though five years have passed since the constitutional claim was submitted to the court and it was considered on merit more than two years ago, as of March 2020 the court had not yet made a decision.

It should be noted that in a ruling of 2 August 2019 (№1/6/770), the Constitutional Court of Georgia upheld a constitutional claim lodged by the Public Defender of Georgia and declared normative content of the contested norms unconstitutional. In particular, the Court deemed unconstitutional those norms which allowed for prescribing administrative imprisonment and custodial sentences for the use of narcotic drugs, their analogues and precursors as well as making, acquiring and storing of the amount of narcotic drugs for a single use, unless the substance in question does not develop addiction in a short period of time and cause violent behavior.

In addition, the Public Defender strongly supports a draft law authored by the “National Drug Policy Platform of Georgia” and initiated by the MPs (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) on 22 June 2017 since it is very much in line with objectives laid down in the country’s anti-drug strategy. The Public Defender proposed to the Parliament of Georgia in the previous parliamentary report timely review and adoption of the draft law. However, legal amendments have not been adopted yet while the review of the package of draft laws has been on hold since the second half of 2018.

At the same time, practice pursued by Common Courts with regard to drug related crimes is also seen as problematic. The standard of proof deemed admissible by courts for guilty verdicts is rather low. The lack of impartial evidence and a practice of drawing guilty verdicts based on testimonies of police officers and chemical testing⁷⁸⁸ are still common which fails to meet the standard of proving guilt beyond reasonable doubt based on consistent, clear and credible combination of evidence. Such an approach employed by courts further encourages law enforcement authorities to keep a low quality of investigation, which they have chosen in the fight against drug related crime. In addition, limited access to case materials, and information pertaining to investigations and sources by defense and courts continue to create a series of problems. In particular, as a rule, the person is detained and searched after the law enforcement have received operative information. However, there is no mechanism to double-check the credibility of

⁷⁸⁷ See, for example, 2017 Public Defender’s Report on the Situation of Human Rights and Freedoms in Georgia, pp. 199-201.

⁷⁸⁸ Chemical testing establishes the content of seized substances, amount and types of drugs.

information provided by a confidential informant. In this regard, the absence of prosecutorial oversight further diminishes the sense of accountability among police officers and increases the risks of possible malpractices of investigators.⁷⁸⁹

Proposals

To the Parliament of Georgia:

- Resume a review and adopt a package of legislative amendments №8700/2-1 authored by the “National Drug Policy Platform of Georgia” and initiated by the MPs (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) on 22 June 2017.

Recommendations

To the Government of Georgia:

- Develop a unified state program to ensure timely detection of new cancer cases, prevention of the spread of cancer and affordability of treatment for cancer patients.

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

- Develop a clear and time-bound plan to ensure effective delivery of high-quality primary health care services oriented on the needs of patients (prevention, screening, treatment and management);
- Implement the process of pricing for medical services covered by the State Universal Healthcare Program according to a predetermined methodology and in a transparent manner with the engagement of health care experts and the wider public;
- Introduce an effective system on quality management of health care service with respective indicators and proactive monitoring of its implementation;
- Develop a rapid and effective plan of measures to ensure the development of the workforce of nurses, as well as the introduction of a regulatory framework for nurse’s professional work, standards of working conditions, and continuous professional development.

⁷⁸⁹ Drug Policy in Georgia: Cancelled Reform and New Tendencies. The Human Rights Education and Monitoring Center (EMC). 2019.

16. Right to Social Protection

Throughout 2019 the Public Defender's Office continued to closely monitor the realization of the right to social protection.⁷⁹⁰ The present chapter considers effectiveness of the country's social protection system and challenges of the "Targeted Social Assistance" program. In spite of some positive developments reflected during the reporting period in the methodology of studying the socio-economic situation,⁷⁹¹ the term of administration for granting subsistence allowance still remains a challenge. Besides, in recent years the exercise of the right to adequate food for those in need residing in the regions and the capital of Georgia has been a problem.

16.1. Assessment of the Effectiveness of the Targeted Social Assistance Program

By the time the present report was being compiled, the National Statistics Office of Georgia had not yet calculated a ratio of the segment living below the absolute poverty line to the entire population of the country. The ratio helps to determine how many people do not have access to minimum living conditions. According to the data from 2018, 20.1% of Georgia's population lived below the absolute poverty line among which 23.1% residing in rural areas and 18% in urban settlements.

The main mechanism through which the Georgian government provides support to the most destitute of the country's population is the "Targeted Social Assistance Program", which provides both cash transfer and in-kind benefits.⁷⁹² In 2019, 119,582 households (11.2% of the country's total population) received cash transfers under the "Targeted Social Assistance Program". However, the demand for social assistance is much higher. In particular, in 2019, 307,694 families (28.9% of the country's total population) registered in the database of targeted social programs. However, state managed to provide subsistence allowance to only some of the registered families. Therefore, many poor families are left without social assistance or other services related to a socially vulnerable status. This is the result of a high poverty rate persisting in the country.

⁷⁹⁰ In 2019 the Public Defender reviewed 80 applications.

⁷⁹¹ Since January 2019 the amount of subsistence allowance for children up to 16 years approved by resolution №145 of the Government of Georgia of 28 July 2006 on Targeted Social Assistance has increased by 40 GEL (from 10 GEL to 50 GEL). Since January 2019 starting a job by a member of the family with less than 100.000 of rating score is not considered a ground for the termination of subsistence allowance which will be paid to the family for the following 12 months after the expiration of which families will be able to maintain social support for children up to 16 and a rating score for another 12 months period.

⁷⁹² UNICEF. A Detailed Analysis of Targeted Social Assistance and Child Poverty and Simulations of Poverty-reducing Effects of Social Transfers. 2019. P. 5. Available at: <<https://uni.cf/2UwGyOS>> [accessed: 13.02.2020].

Poverty and social vulnerability have been among the most important and pressing issues in the country. In spite of certain social programs and a series of positive changes introduced in May of the previous year, there is no proper social protection system. Nor a relevant strategy which would ensure the delivery of fair, targeted and effective assistance to the population while maintaining a focus on empowering vulnerable groups and overcoming poverty.

For instance, according to a report of the United Nations Children’s Fund,⁷⁹³ along with a great number of families receiving Targeted Social Assistance, the number of poor households who choose not to apply for Targeted Social Assistance also remains high. Such households mainly reside in rural areas. According to the above-mentioned report, around 70% of the poor households refraining from applying to the assistance said they did so because they did not expect their application to be upheld, or because their application was turned down previously. The fact that a third of poor households do not apply for social assistance, considerably limits the efforts to reduce poverty through the administration of this program.⁷⁹⁴

“The Targeted Social Assistance Program” was introduced in the country in 2006 in conjunction with development of a methodology for the assessment of families’ socio-economic standing. Since then, the assessment methodology underwent major changes only in 2014.⁷⁹⁵ Despite the fact that the program and therefore, the methodology undergo certain changes on an annual basis (these changes include, for instance, the maintenance of registration for a certain period of time in case of employment), no assessment of the effectiveness of the program, as well as that of the calculation formula of the Consumer Price Index and needs of households has been carried out since 2014.

Over the past few years the Public Defender has been regularly highlighting the existing shortcomings in the methodology for the assessment of households’ socio-economic standing. This year it was ascertained that the Targeted Social Assistance Program does not encourage children to engage in intellectual work. In particular, prize/monetary award received as a result of the child’s participation in intellectual games, competitions or a similar type of intellectual work is reflected as a financial income of the specific member of the family in a respective section of a “household’s declaration” form. This approach undermines a motivation of children from socially unprotected families to either receive or demonstrate their knowledge since by doing so they may cause their families to lose social allowance. It also puts socially vulnerable children at disadvantage with their peers and suppresses the former’s motivation to receive education, demonstrate their capacities and aspire for a better future. Taking into consideration the state’s declared obligation to guarantee the child’s welfare and the importance of empowered and educated youth for ensuring the country’s economic development and overcoming

⁷⁹³ UNICEF. A Detailed Analysis of Targeted Social Assistance and Child Poverty and Simulations of Poverty-reducing Effects of Social Transfers, 2019. P. 12, Table 1.5. Available at: <<https://uni.cf/2UwGyQS>> [accessed: 13.02.2020].

⁷⁹⁴ *Ibid*, p. 13.

⁷⁹⁵ Resolution №758 of the Government of Georgia of 31 December 2014 on approval of the Methodology for the Assessment of Socio-Economic Conditions of Socially Vulnerable Families (households).

social challenges, it is vital that income received from intellectual games or similar types of intellectual labor, be qualified as a distinct type of income, with no effect on scoring.

The Public Defender holds that in order to ensure the delivery of fair, targeted and effective assistance to the population, the government must assess the effectiveness of Targeted Social Assistance Program⁷⁹⁶ and take respective measures based on findings of a household survey.

16.2. Term of Administration of Subsistence Allowance

The issue of delaying the administration of subsistence allowance which has been highlighted in many of the Public Defender's annual reports, remains a major challenge.⁷⁹⁷ According to the information obtained from the LEPL Social Service Agency (hereinafter referred to as the Agency)⁷⁹⁸ during the period from the completion of a "family declaration" to the granting of the subsistence allowance, the Agency verifies all data that are reflected by the family in a "family declaration" as far as possible. In addition, the information is checked against electronic databases run by various state agencies as well as legal entities under private law. In some instances this process may require paying additional visits to the applicant to verify the place of residence, cooperation with local self-government bodies with regard to applicants and other procedures which, in turn, may be time consuming due to the workload. However, it should be noted that after completing all these procedures the applicant is awarded with a rating score. The respective monetary assistance is allocated in the next second month of the month the score being granted. In the calculation of the month the starting point is the month following the determination of the rating score.⁷⁹⁹ Therefore, the first cash transfer is made after two months from the allocation of the rating score. Unlike the time frame necessary to verify information, this period of time is unreasonable and disproportionate to the needs of vulnerable families.

16.3. Right to adequate food/access to soup kitchens

The Public Defender has repeatedly underscored the presence of challenges relating to the right to access to adequate food in the country. As in previous years, maintaining the order of individuals wishing to be enlisted for a soup kitchen in the capital Tbilisi as well as the issue of correction of the enrolled persons' list remains a problem.⁸⁰⁰

⁷⁹⁶ The National Statistics Office of Georgia conducts this survey at certain intervals.

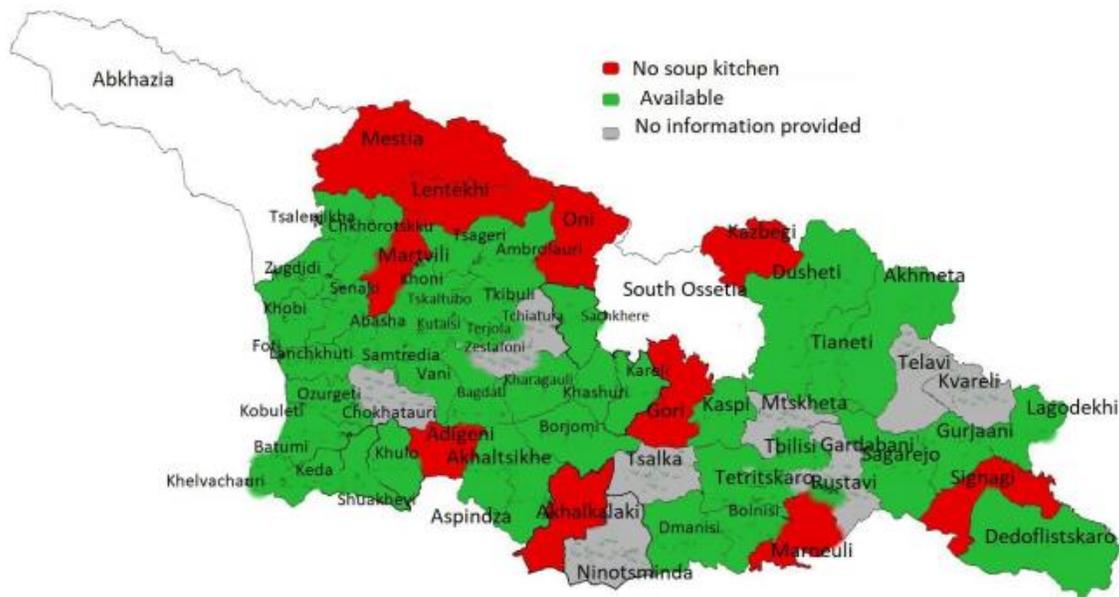
⁷⁹⁷ 2018 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia. P. 227, 2017 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia. P. 145.

⁷⁹⁸ Letter №04/4298, 10 February 2020.

⁷⁹⁹ Resolution №225 of the Minister of Labor, Health and Social Affairs on Approval of the Rule for Allocating and Administering Targeted Social Assistance, Article 4(2).

⁸⁰⁰ 2018 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia. P. 175. Available at: <<https://bit.ly/2VT56CL>> > [accessed 06.03.2020].

The Public Defender’s Office of Georgia requested information from all municipalities of the country regarding local soup kitchens and their accessibility. The map below shows the location of soup kitchens available in the municipalities of the country:



Even though there are soup kitchens in almost every municipality, they are nevertheless insufficient to accommodate beneficiaries residing in the entire territory of a municipality. More specifically, where the number of subsistence allowance recipients and/or administrative units are high, only a small segment of this vulnerable group has access to soup kitchens. In addition, it has been found that large municipalities tend to have only one soup kitchen which makes it inaccessible for the beneficiaries residing in rural areas of the municipality’s administrative units.⁸⁰¹

The above-mentioned indicates that most municipalities have not properly studied needs regarding access to food of individuals and families residing in their territory. Therefore, they have not allocated sufficient financial resources in their budgets to accommodate these needs at a local level which leaves most of vulnerable population without this service.

⁸⁰¹ For instance, there is only one soup kitchen in Zugdidi serving 280 beneficiaries. Number of subsistence allowance recipients in Zugdidi municipality totals 18.746. Similarly, the only soup kitchen in Ozurgeti serves 180 beneficiaries while 2473 recipients of subsistence allowance are registered in the municipality. Samtredia’s only soup kitchen can accommodate only 130 individuals out of 3.689 recipients of subsistence allowance.

Recommendations

To the Government of Georgia:

- Develop a methodology for the revision of the “Targeted Social Assistance Program” and regular assessment of its effectiveness based on findings of the household survey undertaken by the National Statistics Office of Georgia;
- Set up an interagency commission of the government to assess the needs regarding the access to food, define a state policy in response to existing challenges regarding this right and oversee the performance of state agencies responsible for the implementation of the policy.

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

- In order to reduce the time frame for the administration of subsistence allowance, make changes to the Resolution №225/6 of 22 August of 2006 of the Minister of Labor, Health and Social Affairs, and initiate amendments to Resolution №216 of 24 April 2010 and Resolution №145 of 28 July 2006 of the Government of Georgia;
- Ensure that when assessing socio-economic standing of families, declared prize/monetary award received by an underage member of the family as a result of his/her participation in intellectual games or a similar type of intellectual work, is not qualified as a monetary income earned by a specific member of the family, following the provision of relevant information.

17. Right to Adequate Housing

Realization of the right to adequate housing has been compromised by persistent and systemic problems piling up in the country for years. As in previous years there is no national strategy and a respective action plan on homeless people, nor is there a comprehensive legal definition of the term “homeless” or an appropriate legislative framework for the realization of the right to adequate housing. The absence of a unified and in a number of municipalities, local- database of homeless persons, scarce budgetary and infrastructural resources, as well as the lack or in some municipalities - ineffectiveness of support programs for those residing in social housings and shelters remains a problem.

The Public Defender welcomes a launch of the study into “The Situation on the Protection of the Right to Adequate Housing” in November 2019 by the Regional Policy and Self-Governance Committee of the Parliament of Georgia.⁸⁰² The aim of the study is to develop a set of recommendations by either the Committee or the Parliament of Georgia to support a state in developing a consistent and adequate housing policy. The Public Defender of Georgia addressed the committee in order to contribute to the study. She hopes that the engagement of the country’s parliament in matters relating to the protection of the right to adequate housing will be productive and will in future contribute to the improvement of government commission’s documents on an effective housing policy and action plan.

As part of the Georgia’s commitment outlined in the Open Government Partnership Action Plan for 2018-2019,⁸⁰³ a government commission was set up in April 2019,⁸⁰⁴ and tasked to develop a policy document and its action plan for overcoming a problem of homelessness in the country. In order to ensure the fulfilment of this objective, a working group was set up at the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs. The working group is comprised of representatives of different state agencies as well as non-governmental organizations, independent experts, and the Public Defender’s Office. Importantly, one session of the government commission and two meetings of the working group were held during the reporting period.⁸⁰⁵ Unfortunately, the work done by the working group for half a year cannot be viewed as satisfactory. It is true that an ongoing reorganization in the Ministry hampered the work of the working group, however, it should also be noted that if the pace of the work is maintained in the following year, the working group is unlikely to have the policy document and the action plan completed by the set deadline (December 2020).⁸⁰⁶ It is critical for the working group to stay active, organized in 2020 with specific, realistic and time-bound targets and

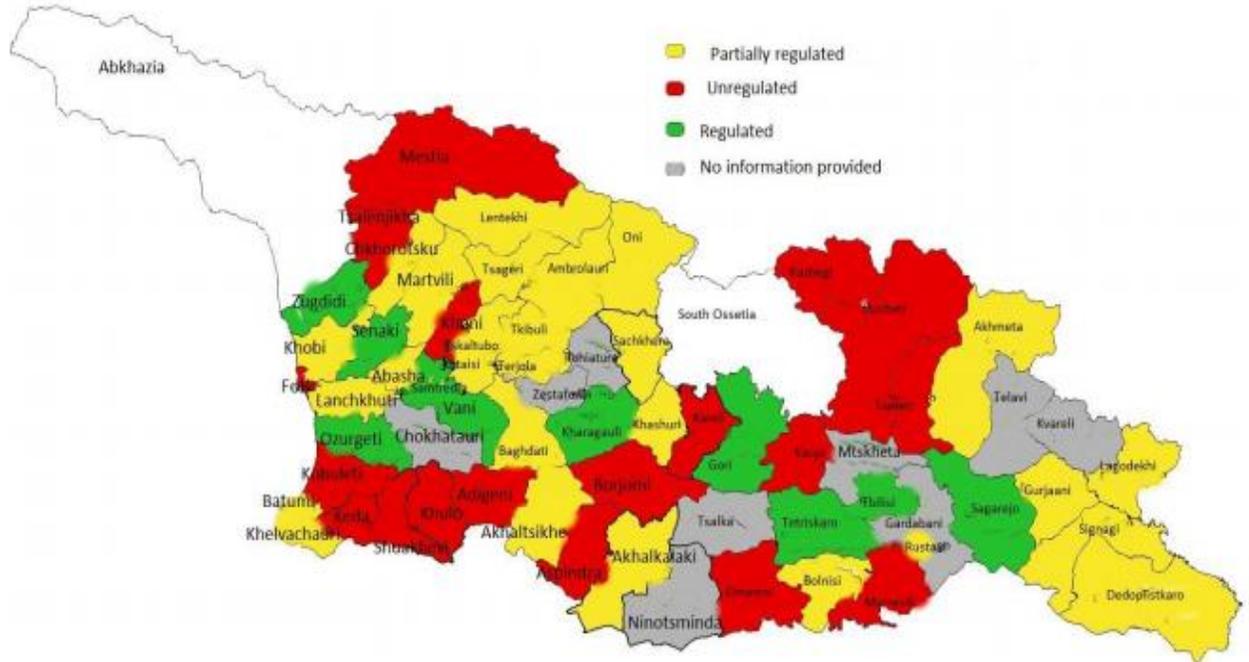
⁸⁰² Available in Georgian at: <<https://bit.ly/37tuVfj>> >> [accessed: 26.01.2019].

⁸⁰³ Resolution №537 of the Government of Georgia of 12 November 2018 on Approval of 2018-2019 Open Government Partnership Action Plan, Commitment №14.

⁸⁰⁴ Resolution of №190 of the Government of Georgia of 12 April 2019 on the Approval of the Establishment of the Governmental Commission and its Statute in Support of the Development of a Housing Policy Document and a Respective Action Plan.

⁸⁰⁵ Session on the government commission of 28.05.2019. Working group meetings were held on 25.06.2019 and 13.12.2019.

⁸⁰⁶ Resolution №537 of the Government of Georgia of 12 November 2018 on Approval of 2018-2019 Action Plan for Open Government Georgia, Commitment №14.



milestones and have access to an adequate venue for deliberations and discussions for the group members.

17.1. The Human Rights Situation of Homeless Persons in Georgian Regions

In 2019, in order to study the situation pertaining to the rights of homeless persons in the regions, the Public Defender’s Office of Georgia requested the following information from all municipalities in the country: a) whether there is a rule for registering homeless persons and granting a shelter; b) whether there is a database on the homeless persons and c) whether there is a specific social program forest out in 2019 budget to ensure shelter for the homeless. The map above shows the situation in the municipalities according to the provided information.

Unfortunately, only 10 municipalities in the country have a framework regulating issues relating to homelessness,⁸⁰⁷ 19 municipalities have no regulations whatsoever,⁸⁰⁸ while these matters are partially regulated in 26 municipalities.⁸⁰⁹

⁸⁰⁷ Tbilisi, Ozurgeti, Samtredia, Sagarejo, Vani, Kharagauli, Tetrtskaro, Senaki, Zugdidi and Gori Municipalities.

⁸⁰⁸ Khulo, Mestia, Dusheti, Keda, Kazbegi, Poti, Kobuleti, Marneuli, Tianeti, Adigeni, Kareli, Dmanisi, Aspindza, Shuakhevi, Kaspi, Khelvachauri, Khoni, Tsalenjikha and Borjomi Municipalities.

⁸⁰⁹ From which Tsageri, Sighnaghi, Lanchkhuti, Akhaltsikhe, Akhalkalaki, Kobi, Abasha, Oni, Lentekhi, Khashuri, Bolnisi, Chkhorotsku, Batumi, Terjola, Tskaltubo, Martvili, Akhmeta, SACHkhere, Lagodekhi, Baghdati, Gurjaani and Dedoplistskaro municipalities have a targeted housing program for homeless persons with respective legal framework in place. Ambrolauri, Kutaisi and Rustavi municipalities have adopted the rule for the registration of homeless persons and their housing. In addition, Ambrolauri municipality also runs a rent program while Kutaisi and Rustavi run a database of homeless persons.

17.2. The Situation of the Rights of Homeless Persons in Tbilisi

The absence of impartial criteria for defining beneficiaries for the compensation of rent with an extraordinary rule under a municipal sub-program “Compensation for the Owners of Destroyed Houses in Tbilisi” has been a problem in Tbilisi Municipality.⁸¹⁰ This problem was also discussed in details in the Public Defender’s previous parliamentary report.⁸¹¹ In addition to that, limited access to services provided by LEPL St Father Gabriel Palliative Hospice for Homeless Senior Citizens and the Lilo shelter for the elderly living in the streets and lacking self-care skills, remain a challenge. Pursuant to a memorandum of cooperation between the Tbilisi municipality City Hall and the above mentioned organization, social and medical services are only offered to beneficiaries of the Lilo shelter and the social housing, while those who live in the streets and lack the ability of self-care, have limited access to the Lilo shelter.⁸¹² Notably, in 2019, 22 homeless persons were denied services provided by the Lilo municipal shelter since the applicants were unfit for self-care.⁸¹³

In February 2019, the introduction of a new rule for the registration as a homeless and provision with shelter/housing,⁸¹⁴ resulted in stricter criteria for granting a status of the homeless person. In particular, according to one of the preconditions, for the registration as a homeless person, the applicant must have no verifiable lawful ownership of a house, or any other place or the right to use such accommodation or place free of charge.⁸¹⁵ Monitoring of a commission dealing with matters relating to the registration of the homeless and granting a shelter, revealed numerous cases of applicants being denied the status of the homeless since they were living in a place provided temporarily by their good-willed relatives or other individuals.⁸¹⁶ It is important to note that unlike legal owners of such property, applicants face a risk of ending up in the streets since such dwelling cannot be considered as a safe tenure as they are completely dependent on owners’ goodwill.

As held by the UN Committee on Economic, Social and Cultural Rights, the presence of legal safeguards of housing is the fundamental criterion for the concept of adequate housing.⁸¹⁷ Regardless of the type of

Batumi municipality implements a temporary overnight shelter program. No information was provided by Zestaponi, Chiatura, Tsalka, Ninotsminda, Mtskheta, Gardabani, Kvareli and Telavi municipalities.

⁸¹⁰ Ordinance №35-119 of Tbilisi City Council of 28 December 2018, Article 9.

⁸¹¹ 2018 Public Defender’s Report on the Situation of Human Rights and Freedoms in Georgia, a chapter on adequate housing, p. 177.

⁸¹² Ordinance №18.813.1186 of Tbilisi City Hall of 2 October 2018. Annex 1, Article 2(4)(D).

⁸¹³ L(E)PL Tbilisi Municipal Shelter. Letter №05-08, 16 January 2020.

⁸¹⁴ Ordinance №37-14 of Tbilisi City Council of 12 February 2019.

⁸¹⁵ Ibid, Annex №1, Article 3(1)(D).

⁸¹⁶ Pursuant to Article 615 of the Civil Code of Georgia “under a contract of lending, the lender undertakes the obligation to transfer property to the borrower for his/her temporary and gratuitous use”.

⁸¹⁷ General Comment 4 of the UN Committee on Economic, Social and Cultural Rights, Para 8, 13 December 1991.

tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.⁸¹⁸ The Public Defender of Georgia is mindful that under limited budget and infrastructural resources, local authorities cannot provide housing to all in need simultaneously. However, in this case it is pivotal that these individuals are recognized and given an opportunity to be granted a status by the authorities.

According to the above mentioned newly introduced rule, a record of payment of a rent for a house or other places by a homeless individual for the last six months consistently and independently, is one of the grounds for denial of the status of the homeless person.⁸¹⁹ The detection of such a record will automatically exclude the homeless individual from the status since no consideration is given to such factors as the amount of rent paid, a type of dwelling (for instance, the individual may live in a basement, garage or other spaces and pay 100 GEL), or a ratio of rent in the household's total income etc., In conjunction with the new terms and conditions, municipal authorities also kept the previous entry according to which the status is granted to the individual if the amount of income that one received for the last six months does not exceed the combined amounts of the compensation for six months' rent⁸²⁰(300 GEL per month) as calculated by the sub-program for the "Compensation of Residents of the Destroyed Houses" and a minimum cost of living for the same period as defined by the National Statistics Office of Georgia.⁸²¹ Therefore, the new norm drastically exacerbates the human rights of those homeless persons who independently pay for their rent and at the same time are put in unequal conditions as compared to those who are compensated against rent payment by the municipality.

Recommendations

To Tbilisi Municipality City Hall:

- Extend the coverage of the service stipulated by the memorandum of cooperation between Tbilisi Municipality City Hall and LEPL St Father Gabriel Palliative Hospice for Senior Citizens to those individuals residing on the territory of the municipality who are unable to take care of themselves.

To Tbilisi Municipality City Council:

- Revoke an entry in Article 3(1)(D) Annex 1 of the Decree №37-14 of Tbilisi Municipality City Council of 12 February 2019 according to which the applicant is denied the status of the homeless if she or he uses a dwelling or lodging free of charge;

⁸¹⁸ Ibid.

⁸¹⁹ Ordinance №37-14 of Tbilisi City Hall of 12 February 2019, Article 3(1)(E).

⁸²⁰ Ordinance N35-119 of Tbilisi City Hall of 28 December 2018, Article 6(4).

⁸²¹ Ordinance №37-14 of Tbilisi City Hall of 12 February 2019, Article 3(1)(G).

- Revoke an entry in Article 3(1)(E) Annex 1 of the Decree №37-14 of Tbilisi Municipality City Council of 12 February 2019 according to which the applicant is automatically denied the status of the homeless if she or he has paid a rent consistently and without discontinuation for six months.

18. Electoral Rights

Electoral rights enshrined in the Constitution of Georgia represent one of the most powerful instruments for the execution of the people's will in a country's political life. The realization of electoral rights, as a basis for the legitimacy of the government, plays a crucial role in the formation and functioning process of the country's institutions and democratic order. Therefore, both the coherent electoral legislation as well as the conduct of electoral processes in the country in accordance with the legislation are of utmost importance. With that being said, the Public Defender of Georgia has been monitoring pressing issues related to the realization of electoral rights for many years within powers granted to it by the Georgian legislation.⁸²²

Possible changes to the country's electoral system in the reporting period were seen among the most critical issues not only for the realization of electoral rights but also for Georgia's social and political life. Unfortunately, the Parliament did not support the abolishment of mixed electoral system and transition to a proportional electoral system for the 2020 elections. As everyone knows, this failure had resulted in waves of negative response among the wider public and led to greater radicalization in the country's political environment.

In addition to monitoring the processes, the Public Defender attempted to use her mandate to play a positive role in overcoming the crises and in December 2019 submitted a draft law prepared by the opposition (so called "German Model") to the OSCE Office of Democratic Institutions and Human Rights to obtain the latter's legal opinion. The conclusion of the international organization was released to the public in early 2020.⁸²³ It once again underlined the need for a broad inclusive discussion and a political consensus in a decision-making process regarding the election model.⁸²⁴

The Public Defender welcomes the fact of a political agreement over the electoral system reached in early March 2020 following a series of lengthy negotiations.⁸²⁵ The Public Defender finds it important to embed this agreement in a legislation in a timely manner so that the 2020 parliamentary elections are held in a most equal, peaceful and healthy environment.

During the reporting year, the Office of Public Defender of Georgia closely observed the midterm elections of Local Councils (Sakrebulo) and snap elections of Mayors and accompanying developments. Similar to the 2018 presidential elections, the pre-election period and election day of both midterm/snap

⁸²² Challenges related to the realization of electoral rights of persons with disabilities are highlighted in a chapter of the present report "Rights of Persons with Disabilities".

⁸²³ Available at: <<https://bit.ly/3ax6zTE>> [accessed 30.03.2020]., p. 2, para. 8.

⁸²⁴ Ibid, p. 4, para. 15.

⁸²⁵ According to the agreement, the next parliament will consist of 120 members elected through the proportional party lists and 30 members elected through majoritarian system (single mandate constituencies). The electoral threshold for proportional elections will be fixed at 1% of votes. Available at: <<https://bit.ly/3avMgWU>> [accessed 30.03.2020].

elections (midterm parliamentary and Local Councils (Sakrebulo) elections of 19 May 2019, as well as snap elections of Mayors) took place in difficult and intense environment. Open media sources released information on various violent incidents, confrontations between political figures, violations of vote secrecy, alleged attempts to control voter's will, possible cases of vote buying. The extremely tense situation in Zugdidi was particularly alarming in the pre-election period.⁸²⁶ The Public Defender believes that these incidents had a negative impact on a public interest to have elections conducted in a peaceful environment while effective and timely response from the law enforcement would have been important for the country's democratic development.

The Public Defender has repeatedly voiced concerns in recent years over the challenges related to the use of hate speech during the election period. In order to ensure a healthy election environment and prevent the use of hate speech during the election period, it is important to develop a universal document of mutual agreement and/or introduce other mechanism for the regulation/self-regulation of hate speech during election period which will aim to minimize and eliminate the use of hate speech while maintaining the existing standard of the freedom of expression.

It should be noted that the Parliament of Georgia is in the middle of reviewing a legislative package,⁸²⁷ including the amendments to the Election Code, certain norms of which, according to the Public Defender of Georgia, unequivocally worsens the existing standards. The Public Defender considers it unacceptable to reduce the period for prohibition of vote buying, set out in Article 47 of the Election Code of Georgia and limit it only to the election day, instead of the final tabulation day of the election results.⁸²⁸ The Public Defender hopes that changes to be adopted by the Parliament of Georgia will only improve the existing election environment.

18.1. Violent Incidents and Alleged Vote Buying

The Public Defender is concerned about a growing negative tendency of physical confrontation and violent incidents during the elections of 2018 and 2019. This situation indicates to the tense political and a violent electoral environment in the country. Besides, unfortunately, recent years have seen multiple reports of alleged vote buying which undermines the fundamental electoral principles and therefore, such fact(s) questions the legitimacy of the whole process and its results.

⁸²⁶ The statement is available at: < <https://bit.ly/2yl1RdG> > .> [accessed 30.03.2020].

⁸²⁷ The package of legal amendments authored by the Central Election Commission of Georgia and initiated by the Legal Issues Committee to the Electoral Code of Georgia and Law of Georgia on Funded Pensions (N^o312/1; 02.12.2019).

⁸²⁸ In addition, the amendments envision changes to the rule of submitting the final voting protocol by a precinct election commission to the Central Election Commission which is believed to lead to a considerable delay in publishing of the protocol by a precinct. This will deliver a heavy blow to the transparency of the electoral process and undermine trust towards an election administration. In addition, according to the proposed changes, those running for a majoritarian member of the parliament will have to go through a drug test. However, there will be no legal consequences should they test positive.

This is extremely damaging for the country's democratic development and requires harsh, effective and systemic response from the state authorities. Such responses should include taking effective preventative measures as well as timely and result oriented response and/or investigation of identified incidents. The Public Defender stresses out once again that investigation of alleged crimes taking place during the election period must remain a priority even after elections are over. Timely and consistent investigations performed by qualified professionals are critical for implementing and upholding the principle of rule of law in the country. In individual cases, the punishment of offender and the enforcement of the law has positive effects on strengthening the perception of justice in society and in the future, prevention of violent incidents. The Office of Public Defender of Georgia made inquiries into investigations pertaining to numerous violent incidents taking place during the elections of both 2019 and 2018. An analysis of information provided by the law enforcement authorities have revealed that an investigation was launched on 85 facts, which took place during the presidential and midterm/snap elections, including both the pre-election period as well as on the election day (including incidents relating to midterm/snap elections of 19 May 2019, and 8 cases relating to the second round⁸²⁹). It turns out that investigation is still pending with regard to incidents relating to the elections held in 2018⁸³⁰ and 2019⁸³¹. At the same time, it was revealed that similar to 2018, several violent incidents has taken place in 2019, which targeted journalists covering the election processes.⁸³²

⁸²⁹ In addition to cases involving alleged manipulation with voters, the investigation is pending in the following six criminal cases: №031230419004, №052230419001, №044140519002, №031190519002, №044050619002, №044140519001, №006090619005 and №006090619007.

⁸³⁰ According to the information available to the Public Defender's Office, 12 cases were opened following incidents taking place in the run-up to the election on 28 October 2018; criminal prosecution launched against 17 individuals while 14 persons were qualified as victims. On electoral violations taking place on 28 October 2018 and in the run-up to the second round investigation was launched into 34 cases. Charges were filed against 11 individuals and 9 persons qualified as victims; 31 criminal cases were opened on incidents taking place on the second round election day and in the following period. Charges were filed against two persons while two others were qualified as victims. Letter №13/6775 of 4/02/2020 of the Prosecutor's Office of Georgia. The Public Defender's Office of Georgia requested information individually on 12 criminal cases. Based on the response, in five cases (№015301018001, №059221118001, №037150918001, №041190918004 and №028291018001) criminal prosecution was launched against 10 individuals, while the investigation is still pending on others. Letter №13/6775 of 4/02/2020 of the Prosecutor's Office of Georgia. More information on these cases is available in the 2018 report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia from p. 186.

⁸³¹ Criminal prosecution was terminated on case №052230419001, while no charges have been filed and no one qualified as a victim in the investigation launched on cases stipulated by Article 105(1)(A) of the Georgian Criminal Procedural Code. Letter №13/6775 of 4/02/2020 of the Prosecutor's Office of Georgia. In addition, the Public Defender's Office was informed that criminal cases were not opened, nor administrative-legal proceedings launched on four incidents inquired by the Public Defender (involving incidents taking place at Zugdidi precinct №33, Koki precinct №97, Marneuli precinct №84 and Kakhati precinct №95. Interrogation of persons of interest revealed no signs of crime or administrative violations) while in two instances, investigation found signs of administrative offences.

⁸³² Letter №13/6427 of 03/02/2020 of the Prosecutor's Office of Georgia. No charges were filed, or a status of a victim granted in the case № 044190519001 on the act of violence against Giorgi Rurua (crime stipulated by Article 126(1) of the Criminal Code of Georgia). In the criminal case №044140519001 G.K. and M.T. were charged for crimes stipulated by Article 126(1)(B) and (G) of the Criminal Code of Georgia, while N.V. Z.T. and L.T. were granted a status of victim. Zugdidi District Court convicted G.K. and M.T. for crimes they were charged for. In the criminal case №001281118008 opened on violence against Tamar Chapichadze, a journalist, L.M. was charged for the crime stipulated by Article 126(1) of the Criminal Code of Georgia while Chapichadze was granted a status of victim as stipulated. Tbilisi City Court plead L.M. non-guilty and dropped the suit against the latter.

Similar to the elections of 2018, information on alleged cases of vote buying released through various open sources is one of alarming issues raised among the problematic tendencies of 2019 elections. Based on the information available to the Public Defender's Office, an investigation is still pending with regards to two cases, which took place in 2019.⁸³³ In addition, an investigation is still pending with regards to eight cases involving alleged vote buying in 2018. So far no one has been charged or given a status of the victim in any of these cases.⁸³⁴

The Public Defender once again calls on the law enforcement authorities for the timely investigation of all above mentioned offences and release information on the outcomes to the wider public. It is also important that the authorities demonstrate an explicit political will to condemn measures or acts which may be considered as vote buying or exerting pressure on a free will of voters during the pre-election period. Such occurrences, once they are revealed, must be followed by an immediate response in order to prevent such incidents in the future and punish perpetrators. The Public Defender will continue to follow up with the investigation into the incidents, relating to the elections of 2018-2019 and reflect findings in respective reports.

The Public Defender believes that flaws in the investigation of violations taking place during a pre-election period is linked with the case of Ia Kerzaia's death, the director of Zugdidi public school №6. As a matter of public knowledge, in an appeal submitted to the Public Defender Ms. Ia Kerzaia pointed out that an unplanned monitoring carried out in the school where she worked between the first and second rounds of the presidential elections in 2018 may have been related to political persecution against her. In present case the Public Defender holds that due to the delayed investigation, it was not possible to obtain critical pieces of evidence and thus, establish the truth.⁸³⁵

⁸³³ Letter №13/45382 of 24.06/2019 of the Prosecutor's Office of Georgia; a covert recording featuring Gia Danelia released on 14 May; criminal case №083140519802; a footage on electoral manipulation released on 13 May (the footage is available in Georgian at: <<https://bit.ly/3dHXkIC>> [accessed 30.03.2020].); criminal case №083140519801. In their turn, the State Audit Office looked into alleged electoral manipulation by delivering various types of food products and cash. According to the information provided to the Public Defender's Office, the investigation found no evidence and an administrative suit was eventually dropped. Letter №000673/10 of 28.01.2020 of the State Audit Office.

On 19 May information on possible electoral fraud at Zugdidi precincts №9, 25, №10 and №80, Kakhati precinct №95, and precinct №77 in the village Agmamedlo, was released in parallel to the voting process. However, the investigation authority did not specify whether an investigation was launched into these cases.

⁸³⁴ Letter №13/6529 of 03/02/2020 of the Prosecutor's Office of Georgia. Notably, no agency provided information on writing off debts, an initiative voiced by the Government of Georgia. See the 2018 Report of the Public Defender of Georgia on the situation in human rights and freedoms in Georgia, from p. 189.

⁸³⁵ The Public Defender's statement concerning the investigation in the Kerzaia death case is available at: <<https://bit.ly/3awrpTc>> [accessed 30.03.2020].

18.2. Violation of vote secrecy and alleged exertion of control over voters' will

Certain instances of the violation of vote secrecy underlined by watchdog organizations remains acute.⁸³⁶

Adherence to the constitutional principle of secrecy of vote requires that voters be able to cast a vote in private, in a closed election booth so that nobody has an opportunity to learn about voters' choice. Secrecy of voting is not only the right of voters but it is also an obligation. It is up to an individual voter to decide whether to publicly disclose information about their choice either before or after the vote.⁸³⁷ However, the Public Defender is concerned that a decision of citizen to publicly disclose information about his/her electoral preferences may be a result of an alleged control over his/her free will since the right of free suffrage implies the ability of the voter to form and express oneself freely without duress or coercion.⁸³⁸

Considering the abovementioned, the Public Defender of Georgia considers it important that the Central Election Commission run a continuous education campaign to fully inform and raise awareness of the citizens about the election rights, including the instruments ensuring the principle of secrecy of vote.

At the same time, based on the findings of observations over the voting process, the Public Defender views mass mobilization of coordinators recruited by political parties and collection of information by the former on voters' showing up at a polling station to be one of the main challenges. Recent midterm elections along with past experience has clearly demonstrated that such an environment outside polling stations is, in most cases, one of the main contributing factors to fueling up incidents and tensions. It is true that the existing legislative framework does not prohibit coordinators from undertaking such activities, the Public Defender nevertheless believes that this practice serves as one of the leverages for influencing voters' free will and therefore this issue requires due regulation in order to ensure that voters make their choices in a peaceful and free environment.

Proposals

To the Parliament of Georgia:

- In order to ensure the free expression of will and a peaceful environment for the conduct of elections, implement legislative amendments to ban and impose relevant liability for the practice

⁸³⁶ Available in Georgian at: <<https://bit.ly/2QYobQK>> [accessed 30.03.2020].

⁸³⁷ Commentary to the Constitution of Georgia, Chapter II: Georgian Citizenship - Fundamental Human Rights and Freedoms, 2013. P. 341 (available in Georgian).

⁸³⁸ Ibid, P. 338.

of collecting personal information related to the turnover of voters by coordinators of political parties on/at polling stations

Recommendations

To the Prosecutor General of Georgia:

- Provide public with information periodically, once in six months, on the course and progress of investigations pertaining to all violent incidents and alleged fact of vote buying identified during the 2018 and 2019 election period;
- Present discussion/deliberation on the progress of investigations into cases of all violent incidents and alleged facts of vote buying identified during the 2018 and 2019 election period in annual parliamentary report "On the Activities of the Prosecutor's Office" as per Article 172 of the Law of Georgia on the "Prosecutor's Office" and Article 68 of the Rules of Procedure of the Parliament of Georgia

To the Central Election Commission of Georgia, Interagency Commission for Free and Fair Elections:

- Develop and offer to political parties to mutually agree on a document about uniform definition of hate speech, refraining from the use of hate speech and any such statements during the election period.

19. Right to the Protection of Cultural Heritage

Cultural heritage, considering its value and potential, plays an important role for the country's sustainable development and contributes to improved quality of living . Therefore, the state should have a holistic vision as to what measures need to be undertaken in order to overcome challenges hampering the realization of the right to cultural heritage. The protection of cultural heritage requires the state to establish and implement an effective safeguard mechanism.

Problems uncovered by the Public Defender's Office during the past few years continued to raise concerns in the reporting year as well: there are no mechanisms to protect privately owned cultural heritage, division of competences and obligations of administrative agencies remain unclear when it comes to unauthorized construction works on monuments of cultural heritage, respective entities have failed to care and maintain cultural heritage monuments while investigations into important criminal cases are still pending.⁸³⁹ In addition to the above, the reporting period saw an unacceptable reduction of penalty for offences involving the violation of rules for care and maintenance of cultural heritage monuments. Issues related to the protection of cultural heritage became prominent in relation to several large infrastructural projects.

It should be noted that most challenges observed over years have been largely related to the absence of an overarching, complex and effective body of regulations. For this reason, the Public Defender of Georgia deems it important to accelerate the finalization of a draft code on cultural and natural heritage, a working process on which was launched as early as 2017. During this process the state must facilitate the engagement of wider public and professional groups, consider their expert opinions and ensure the initiation/adoption of the code.

Changes to the legal framework regulating construction activities resulting in reduced sanctions for offences with regard to cultural heritage are viewed as a negative development by the Public Defender of Georgia. More specifically, as a result of these changes authorities can no longer impose double sanction for a series of offences including unlawful actions undertaken in buffer zones protecting cultural heritage monuments such as unauthorized construction, violations of construction/construction permit conditions, abandonment of a construction site with violation of the conservation rules etc.⁸⁴⁰ The Public Defender notes that considering a strong public interest in the protection of cultural heritage, offences affecting this sphere require a harsh and effective response from the state authorities which is clearly not likely to be achieved by reduced responsibility.

⁸³⁹ For more information on these issues see the 2018 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia, pp. 198-201

⁸⁴⁰ For instance, the following clauses were abolished from the Code of Georgia on Spatial Planning, Architectural and Construction Activities: Article 131(E)(4), Article 132(2), Article 135(2). For greater detail on these issues see a chapter concerning the right to a healthy environment in the present report.

Issues associated to practical and legal problems related to the maintenance of monuments under the ownership of religious confessions have been repeatedly highlighted by the Public Defender.⁸⁴¹ In the 2018 parliamentary report the Public Defender welcomed a decision of the Constitutional Court to abolish a norm of the Law of Georgia on the Protection of Cultural Heritage allowing unjustified exemption from the responsibility over the maintenance of cultural heritage monuments under the ownership of religious confessions.⁸⁴² Unauthorized application of tiles on the floor of Kintsvisi monastery caught the attention of the public during the reporting period. An inquiry into the case revealed that⁸⁴³ in spite of the above mentioned decision of the Constitutional Court of Georgia LEPL National Agency for Cultural Heritage Conservation failed to implement measures prescribed by Article 30 of the Law of Georgia on Cultural Heritage in the course of unauthorized modification of a cultural heritage monument. According to the Agency no perpetrator has been identified to eliminate the consequences of unauthorized actions.⁸⁴⁴ The Public Defender holds that the above mentioned norm defines the owner of the monument (legitimate user) as a body to be held liable for unauthorized actions. Therefore, the Public Defender argues that the responsible agency is obliged to effectively and timely execute measures prescribed by the law. In addition, the Constitution also obliges the state to prevent and/or mitigate damage incurred to the monument of the cultural heritage to the possible extent. The state is responsible for preventing a third party from bringing about unrestricted impact on monuments of cultural heritage. This obligation must be manifested in banning certain actions on such monuments or prescribing respective sanctions against such actions.⁸⁴⁵

Large scale infrastructural projects launched during the reporting period in the country brought forward the urgency for considering the interest of cultural heritage protection in relation to such projects.⁸⁴⁶ The Public Defender calls upon the comprehensive assessment of potential impact on monuments of cultural

⁸⁴¹ For problems faced by religious associations with regard to property rights, see the chapter on freedom of faith and religion in the present report.

⁸⁴² The Constitutional Court of Georgia ruled that the contested norm violated the rights to equality (Article 14 of the Constitution) and protection of cultural heritage (Article 34(2) of the Constitution) and declared the words “this article and” in Article 30(8) of the Law of Georgia on Cultural Heritage unconstitutional. A full text of the ruling is available in Georgian at: <<https://bit.ly/2WTzMEp>>. > [accessed 30.03.2020].

⁸⁴³ Available in Georgian at: <<https://bit.ly/2krKSzB>> [accessed: 29.01.2020]. Implemented works in Kintsvisi Monastery were announced as unauthorized by the Council of Architectonics, Art and Restoration Center at the Patriarchate of Georgia and the Council of Immovable Heritage Monuments of Early Christian and Medieval Culture at the LEPL National Agency for Cultural Heritage Preservation. More specifically, the application of rectangular thick marble tiles on the floor of the Monastery without prior authorization of the Art and Restoration Center at the Patriarchate of Georgia and the National Agency, resulted in raising a level of the floor by several centimeters above the gravestone located in the hall. Such an arrangement is out of line with the architectural style of the interior of the cathedral and belittles the unique murals dating back to XIII c. LEPL National Agency for Cultural Heritage Preservation, Letter 09/579,14, 14 February 2020.

⁸⁴⁴ Data as of 14 February 2020.

⁸⁴⁵ Ruling of the Constitutional Court of Georgia of 27 July 2018 on case №2/6/1216.

⁸⁴⁶ The Batumi Riviera Project, The Public Defender of Georgia submitted proposals to respective agencies with the purpose of protecting the rights to cultural heritage and a healthy environment. The Public Defender’s Office has been looking into the construction of the Kvesheti-Kobi section of the motorway passing through Khada gorge, a project that has caused strong discontent among the local community with regard to many problems including the one of the protection of cultural heritage.

heritage that large-scale infrastructural projects may bring about and consideration of the urgency of monuments protection while making decisions on infrastructural projects.

At the same time the Public Defender of Georgia has been closely following up an investigation launched in Sakdrisi-Kachagiani gold mine case (started in 2014) ,⁸⁴⁷ as well as that concerning the destruction of archeological artifacts discovered during the construction of Ruisi-Rikoti section of the motorway.⁸⁴⁸ No charges have been made in these cases nor have any victims been identified so far.⁸⁴⁹ Therefore, the investigations pending for many years have not yet yielded any results which undermines the principles of rule of law and justice. In addition, this situation is not likely to have deterrent effects on similar actions in the future.

Proposals

To the Parliament of Georgia:

- Develop and introduce a regulatory framework to ensure the protection and development of privately owned monuments of cultural heritage through clear delimitation of powers and competences of respective agencies and strengthening the role of the State.

Recommendations

To the LEPL National Agency for Cultural Heritage Preservation:

- In every instance of violation of rules pertaining to maintenance and preservation of cultural heritage monuments take measures prescribed by Article 30 of the Law of Georgia on Cultural Heritage, including imposition of sanctions, in a timely and effective manner, taking into account the priority of protecting the cultural heritage.

To the Prosecutor General of Georgia:

- Release information on the progress of investigations into the destruction of archeological artifacts discovered in the course of the construction of Ruisi-Rikoti motorway and damage and destruction of Sakdrisi-Kachagiani ancient gold mine at certain intervals, once in six months.

⁸⁴⁷ Criminal case №074140214801 on granting a status of the monument of cultural heritage to the ancient mines of Sakdrisi with misuse of power containing the signs of Article 332(2) of the Criminal Code of Georgia. Prosecutor's Office of Georgia, letter №13/2107, 15 January 2020.

⁸⁴⁸ Criminal case №027291214001 on alleged negligence while issuing a mining licence containing signs of a crime stipulated by Article 34² of the Criminal Code of Georgia; Prosecutor's Office of Georgia, letter №13/2108, 15 January 2020.

⁸⁴⁹ Prosecutor's Office of Georgia, letters №13/2107 15/01/2020; №13/2108, 15 January 2020.

20. Human Rights Education

20.1. Introduction

The Public Defender pays close attention to Human Rights Education at every stage of the formal education system. In addition, the Public Defender's Office also provides informal education opportunities in the sphere of human rights protection. In 2019 the Department of Human Rights Education mandated by the Public Defender, studied a number of important individual cases and uncovered a series of challenges with regard to Human Rights Education. As a response to these challenges, the Public Defender appealed to responsible agencies with recommendations and proposals.

In 2019 the Public Defender's Office in cooperation with the East-West Management Institute launched a comprehensive study aiming to ascertain the quality of Human Rights Education as part of undergraduate programs in Law offered by Georgian higher education institutions. Findings of the study will be released in 2020. The Public Defender's Office within its mandate, planned and carried out trainings, seminars, information and working meetings in the capital as well as proactively with vulnerable target groups in the country's regions. The year of 2019 was marked by a series of educational activities in the fields of equality, the rights of the child and gender.⁸⁵⁰

20.2. National Policy of Human Rights Education

National strategic documents recognize Human Rights Education as a priority and an important instrument for the prevention of human rights violation.⁸⁵¹ Due to great importance vested in Human Rights Education and based on best international practice, developing a systematized vision driven from a strategic document with the purpose of ensuring consistency, sustainability and financial security is an apparent obligation of the state.⁸⁵² However, in spite of a recommendation prepared by the Public Defender of Georgia, the absence of a strategic document and an action plan⁸⁵³ is still seen as a challenge for the state.

The UN Declaration on Human Rights Education and Training calls upon the states to take steps to ensure the progressive implementation of human rights education and training by the adoption of legislative

⁸⁵⁰ In 2019, the Public Defender of Georgia conducted 286 trainings and 711 information meetings

⁸⁵¹ Resolution №2315-III of the Parliament of Georgia of 30 April 2014 on Approval of the National Human Rights Strategy for 2014-2020, a chapter on Principles Safeguarding the Human Rights. See also Resolution №533 of the Government of Georgia of 7 December 2017 on Approval of the National Education and Science Strategy for 2017-2021, Annex 1, pp.14, 21, 37.

⁸⁵² World Programme for Human Rights Education - National action plans/strategies for human rights education, available at: <<https://bit.ly/2v3il30>>>[accessed 01.02.2020].; also, see. Guidelines for National Plans of Action for Human Rights Education, available at: <<https://bit.ly/31rbpHL>>>[accessed 01/02/2020].; For more detail see the 2018 report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, pp. 267-268.

⁸⁵³ 2018 report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, pp. 268

and administrative measures and policies.⁸⁵⁴ This responsibility is also cemented by the UN World Program for Human Rights Education which calls for consistent incorporation of Human Rights Education in a national human rights strategy or development of a separate document in the form of an action plan for Human Rights Education.⁸⁵⁵ The 2018 parliamentary report of the Public Defender includes a recommendation for the development of Human Rights Education strategy and an action plan as suggested by best international practices.⁸⁵⁶ However, this recommendation appears in the resolution adopted by the Parliament of Georgia on the parliamentary report with a different content and missing on a part referring to the strategy and the action plan.⁸⁵⁷

Numerous international agreements adopted under the UN auspice define the state's critical responsibilities for ensuring Human Rights Education.⁸⁵⁸ It should be noted that fulfillment of these responsibilities is of utmost importance for the implementation of Human Rights based approach in formal education sector.⁸⁵⁹ The table below provides the quality of implementation of the country's international obligations based on periodic reviews and reports.

Recipient of the report/review	Norms establishing responsibility with regard to human rights education	Assessment
The Committee on the Rights of the Child	Article 29(1) of the UN Convention on the Rights of the Child	No discussion around human rights education
The Committee on the Rights Persons with Disabilities	Article 8 of the UN Convention on the Rights of Persons with Disabilities	The report does not include a discussion around activities/topics introduced in the formal education system with the purpose of fostering respect for persons with disabilities
The Committee on the Elimination of Discrimination against Women	Article 10 of the UN Convention on the Elimination of All Forms of Discrimination against Women	Gender sensitivity of teaching methods and programs has not been assessed

⁸⁵⁴ UN Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly, 19 December 2011, №66/137, Article 7(3), Available at: <<https://bit.ly/30GqsDH>> >> [accessed 20.01.2020].

⁸⁵⁵ World Programme for Human Rights Education - National action plans/strategies for human rights education, available at: <<https://bit.ly/2ttEw7H>> >> [accessed 20.01.2020].

⁸⁵⁶ 2018 report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, p. 206.

⁸⁵⁷ Resolution of the Parliament of Georgia of 20 September 2019 on the 2018 Parliamentary Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, Article 7(D).

⁸⁵⁸ Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education, p. 3.

⁸⁵⁹ Ibid, p. 18.

The Committee on the Elimination of Racial Discrimination	Article 7 of the UN Convention on the Elimination of All Forms of Discrimination	There has been no report on the progress of implementation of the commitment stipulated by the convention in preschool, vocational and higher education
United Nations Economic and Social Council	Article 13 of the International Covenant on Economic, Social and Cultural Rights	The last periodic report was submitted in 2001
Human Rights Council	The Universal Periodic Review	The overview pays little attention only to human rights education in general education.
General Conference of the United Nations Educational, Scientific and Cultural Organization	Convention Against Discrimination in Education, Article 5, Para A	The report provides just an overview of the human rights component in general education and covers only those subjects which were introduced with the purpose of incorporating human rights education. The report does not dwell on a training of respective education professionals in human rights.

To ensure the effectiveness of Human Rights Education requires state authorities to avoid fragmented and spontaneous interventions and make systemic, consistent and complex steps. Equally important is a full coverage of the progress in the implementation of international obligations achieved by the country in the direction of Human Rights Education in periodic reviews to be ensured by executive authorities. At the same time, it is critical that the Parliament of Georgia within their power, exercise parliamentary oversight.⁸⁶⁰

20.3. Continuity in Human Rights Education

Human Rights Education is a life-long process and refers both to formal as well as informal education.⁸⁶¹ Human Rights Education provided as part of general education is of particular importance for achieving

⁸⁶⁰ Standing Order of the Parliament of Georgia, Article 174(1)
⁸⁶¹ Resolution adopted by the Human Rights Council 16/1 United Nations Declaration on Human Rights Education and Training Article 3(1) and (2). Available at: <<https://bit.ly/2ThltVT>> [accessed: 25.02.2020].

the national policy goals.⁸⁶² In this light, the purpose of licensing of school textbooks is to ensure the availability of quality materials for education institutions.⁸⁶³

Experts nominated by the Public Defender also contributed to the process of licensing textbooks for the 7th grade of the basic level of general education taking place in 2019.⁸⁶⁴ Interagency cooperation allowed local human rights experts to work on integrating fundamental issues related to equality, rights of persons with disabilities, tolerance, gender equality and other human rights and freedoms into school textbooks. Recommendations provided by independent experts aimed to include such examples in the textbooks which would foster ethnic, religious and gender equality.⁸⁶⁵

The analysis of licensed textbooks for Human Rights Education in 2019 revealed the presence of the content irrelevant to fundamental human rights.⁸⁶⁶ The Public Defender appealed to the Ministry with a recommendation to work out definitions in line with the fundamental human rights and develop instructions for improved teaching of the human rights subject in schools.⁸⁶⁷

It should be noted that in 2019, for the first time a subject “Citizenship” was introduced to grade VII of Georgian language schools, which covers topics related to human rights.⁸⁶⁸ This is seen as a positive development for ensuring continuity in Human Rights Education. However, provision of non-Georgian schools with translated textbooks remains a challenge.⁸⁶⁹

Human Rights Education for grades from VII to X is backed up with a respective normative framework. However, the only subject dedicated to Human Rights Education for grades XI and XII, “The State and Law”, is optional.⁸⁷⁰ In 2019 there was no commitment to license a textbook for this particular subject. Pursuant to an order of the Minister of Education, Science, Culture and Sport of Georgia, licensing of textbooks for the secondary level grades will be carried out in 2020.⁸⁷¹ Against this backdrop, there has been no request submitted by any of schools to the Ministry for the latter’s consent for a textbook

⁸⁶² Law of Georgia on General Education, Article 3(1) and (2), Resolution N⁹84 of the Government of Georgia of 18 October 2004 on Approval of National Goals of General Education, Article H.

⁸⁶³ Order N⁹28/6 of the Minister of Education and Science of Georgia of 16 February 2017 on Approval of the Rule for Licensing Textbooks for General Education Institutions, Annex 1 (approved by Article 1), Article 1(2).

⁸⁶⁴ Experts nominated by the Public Defender have been working on the following textbooks: Georgian Language and Literature, Math, History, Geography, Biology, Art

⁸⁶⁵ Proposal N⁹17/8038 of the Public Defender of Georgia of 16 July 2019 regarding the improvement of processes of refereeing textbooks for general education institutions. Available in Georgian at: <<https://bit.ly/39hvhXA>> [accessed: 02.03.2020].

⁸⁶⁶ This resource is still used as the mandatory classroom material. however, the Ministry has developed definitions in line with fundamental human rights. Ministry of Education, Science, Culture and Sport of Georgia, letter MES 5 19 01562949, 15 November 2019 and letter MES 7 20 00161828, 10 February 2020.

⁸⁶⁷ Recommendation 17-1/617 of the Public Defender of Georgia of 20 January 2020. Available in Georgian at: <<https://bit.ly/2l8miw7>> >> [accessed: 02.03.2020].

⁸⁶⁸ Order 40/6 of the Minister of Education and Science of 18 May 2016 on Approving the National Curriculum, Article 71(C) of the annex approved by Article 1 of the Order. See also letter MES 1 20 00156882 of 12 February 2020 of the Ministry of Education, Science, Culture and Sport.

⁸⁶⁹ Marneuli Educational Resource Center, letter MES 0 20 00108640 of 31 January 2020, also, letter MES 1 20 00156882 of 12 February 2020 of the Ministry of Education, Science, Culture and Sport of Georgia.

⁸⁷⁰ Order N⁹36 of 11 March 2011 on Approval of National Curriculum, Chapter LXXVIII of the Annex.

⁸⁷¹ Order N⁹1222 of the Minister of Education, Science, Culture and Sport of Georgia of 3 October 2019 on Announcing and Defining Conditions for Licensing Textbooks/series for Certain Subjects of Primary and Basic Levels and all Subjects of Secondary Level of General Education, Article 2

pursuant to a respective rule.⁸⁷² The table below demonstrates the decrease in the number of students selecting “the State and Law” for the past few years.⁸⁷³ It is important that there be a fully integrated subject dedicated to fundamental human rights for students of XI-XII grades within the frames of the National Curriculum.

Academic Year	Total number of students in XI-XII grades	of Selected “the State and Law”	%
2017-2018	80122	7976	9.9
2018-2019	78501	7506	9.6
2019-2020	77258	5010	6.4

The principle of continuity in Human Rights Education implies its integration into higher education level. According to the UN standard, materials used in the teaching process in general should “be revised and upgraded so that they are in full compliance with the human rights principles”.⁸⁷⁴ A study into a list of literature designed for two mandatory courses at LEPL Tbilisi State Medical University by the Public Defender’s Office in the reporting period, revealed the presence of books the content of which is not in line with fundamental human rights. The Public Defender recommended the university to effectively respond to this issue and upgrade educational materials.⁸⁷⁵

20.4. Risks related to proselytism and indoctrination in schools

The reporting period was marked by cases involving the violation of religious neutrality in public schools, as well as events containing a risk of indoctrination and proselytism held in the learning process which led the Public Defender to submit recommendations/proposals to agencies in charge.⁸⁷⁶ Along with

⁸⁷² Ministry of Education, Science, Culture and Sport, letter MES 8 19 01606466, 25 November 2019.

⁸⁷³ Data provided in the table are pertaining to public and private general education institutions operating in the territory of Georgia. Ministry of Education, Science, Culture and Sport of Georgia, letter MES 6 20 00069604, 23 January 2020 and letter MES 9 20 00161000, 10 February 2020.

⁸⁷⁴ Draft plan of action for the second phase (2010-2014) of the World Programme for Human Rights Education, Human Rights Council, A/HRC/15/28 27 July 2010, p. 13.

⁸⁷⁵ Recommendation 17-1/2419 of the Public Defender of Georgia of 27 February 2020. Available in Georgian at: <<https://bit.ly/2TByCue>> >> [accessed: 02.03.2020].

⁸⁷⁶ Proposal 17-1/2888 of the Public Defender of Georgia of 29 November 2019 regarding organizing and conducting a series of public lectures for public school teachers on celebrations of Georgia’s Allotted to Virgin Mary. Available at: <<https://bit.ly/2vvC0yB>> [Accessed: 02.03.2020].; Recommendation 17-1/2139 of the Public Defender of Georgia of 24 February 2020 on a meeting between public school directors and members of clergy held on 30 October 2019 in Keda Educational Resources Center. Available in Georgian at: <<https://bit.ly/2Tg5B8e>> >> [accessed: 02.03.2020].

introducing a holiday dedicating to Georgia's Allotted to Virgin Mary meetings of confessional nature with teachers and directors as stipulated by an action plan⁸⁷⁷ had acquired characteristics of a campaign. Events and activities of this type are viewed by the Public Defender as violation of schools' religious neutrality and containing serious risks of religious indoctrination and proselytism.⁸⁷⁸ In response to the Public Defender's recommendation the Ministry of Education, Science, Culture and Sports of Georgia provided an explanation about Georgia's Allotted to Virgin Mary which is of substantial religious nature and which is planned to be introduced in schools.⁸⁷⁹ The execution of this decision will once again challenge religious neutrality in schools.

Against the backdrop of a widespread religious proselytism and the scale of indoctrination in schools, zero case of responsible bodies' using school process for religious indoctrination, proselytism, forced assimilation, as well as violation of schools' religious neutrality reported by an inspection system under the Ministry in 2018-2019 in the entire country, is indicative of an ineffective oversight mechanism existing in the Ministry.⁸⁸⁰ Importantly, risk identification and adequate response in this direction is critical for unhampered attainment of the national goals in education.⁸⁸¹ Following up on one of the meetings held in Adjara, the Public Defender of Georgia appealed to the Ministry of Education, Science, Culture and Sport of the Autonomous Republic of Adjara with a recommendation to proactively oversee the implementation of norms prescribed by the law to protect religious neutrality in public schools.⁸⁸²

20.5. Human Rights Education in Teachers' Professional Training

As explained by the UN Committee on the Rights of the Child, values relevant to the Convention on the Rights of the Child cannot be effectively integrated into the education space unless those "who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance."⁸⁸³ Therefore, training of school teachers in human rights is of utmost importance for the attainment of declared goals by the state.⁸⁸⁴

⁸⁷⁷ Annex to Resolution №1256 of the Government of Georgia of 31 May 2019 on Amending Resolution №1031 of the Government of Georgia of 3 May 2019 on Approving the Action Plan of Events Dedicated to the Celebration of Georgia's Allotted to Virgin Mary

⁸⁷⁸ Proposal 17-1/2888 of the Public Defender of Georgia of 29 November 2019 regarding organizing and conducting a series of public lectures for public school teachers on celebrations of Georgia's Allotted to Virgin Mary. Available at: <<https://bit.ly/2vC0yBj>> >> [accessed: 02.03.2020].

⁸⁷⁹ Ministry of Education, Science, Culture and Sport of Georgia, letter MES 2 20 00070068, 23 January 2020.

⁸⁸⁰ Ministry of Education, Science, Culture and Sport of Georgia, letter MES 9 20 00053505, 21 January 2020, Ministry of Education, Science, Culture and Sport of the Autonomous Republic of Adjara, letter MES 4 19 01674791, 9 December 2019.

⁸⁸¹ Human Rights Education and Monitoring Center (EMC), Religion in Public Schools: An Analysis of Educational Policy from the Perspective of Religious Freedom, Tbilisi 2014, p.23

⁸⁸² Recommendation 17-1/2139 of the Public Defender of Georgia of 24 February 2020 on a meeting between public school directors and members of clergy held on 30 October 2019 in Keda Educational Resources Center. Available in Georgian at: <<https://bit.ly/2Tg5B8e>> >> [accessed: 02.03.2020].

⁸⁸³ UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1. Available at: <<https://bit.ly/35oDnM8>> [accessed 16.12.2019], Para 18.

⁸⁸⁴ Ibid.

A recommendation included in the 2018 parliamentary report concerning the basic knowledge of human rights as one of the requirements of teachers' professional standard, has not been upheld.⁸⁸⁵ At the same time, recommendations addressed to specific local self-governments concerning the adoption of normative acts prescribed by the Law on Early and Preschool Education, were upheld partially by only a minority of local self-governments.⁸⁸⁶

In 2018, based on a memorandum concluded with the National Center for Teacher Professional Development, the Public Defender's Office developed modules for online training courses in human rights designed for teachers and handed the mover to the Center.

The 2016-2019 strategy of LEPL National Center for Teacher Professional Development has no reference to Human Rights Education for teachers or their training in incorporating human rights in classroom processes as strategic priorities.⁸⁸⁷ Nor has the Center developed an overarching training policy document with regard to Human Rights Education for teachers⁸⁸⁸ which makes the implementation of human rights based approach in the education system even more complicated.⁸⁸⁹

An analysis of the Center's activities of 2019 suggests that training in "prevention of bullying and fostering the culture of tolerance in schools" were delivered to 453 teachers while the rest of the activities, mainly workshops, covered a total of 170 teachers.⁸⁹⁰

Recommendations

To the Minister of Education, Science, Culture and Sport of Georgia:

- Develop an overarching strategy and an action plan for Human Rights Education based on international guiding principles;
- Develop a holistic human rights training policy document for teachers and other actors of education process;
- Support the effective introduction of the State and Law in schools and consider the possibility of allowing licensing for textbooks for this subject.

To the Ministry of Education, Science, Culture and Sport of Georgia and the Minister of Education, Science, Culture and Sport of the Autonomous Republic of Adjara:

⁸⁸⁵ Order №1014 of the Minister of Education and Science of Georgia of 21 November 2008 on Approval of Teachers Professional Standards

⁸⁸⁶ Recommended normative acts were developed and approved by Mtskheta, Kazbegi and Khashuri Municipalities.

⁸⁸⁷ Strategic plan 2016-2019 of the National Center for Teacher Professional Development.

⁸⁸⁸ The presence of a comprehensive training policy document for teachers' Human Rights Education is one of the standards established by the United Nations. See Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education, p. 20.

⁸⁸⁹ Plan of Action for the third phase (2015-2019) of the World Programme for Human Rights Education, Report of the Office of the United Nations High Commissioner for Human Rights, p. 7.

⁸⁹⁰ National Center for Teacher Professional Development, letter MES 7 20 00177687, 12 February 2020.

- Develop a strategy/action plan for the prevention of violation of religious neutrality and proactive detection of the use of education processes for religious indoctrination, proselytism and forced assimilation purposes.

To Local Self-Governments:

- City halls and municipal councils of Dedoplistskaro, Zestaponi, Lagodekhi, Lanchkhuti, Sighnaghi, Tkibuli, Chiatura and Khoni municipalities to develop and approve normative acts prescribed by Article 28(4)(D) and (E) of the Law of Georgia on Early and Preschool Education;
- City halls and municipal councils of Kaspi and Tianeti municipalities to develop and approve normative acts prescribed by Article 28(4)(E) of the Law of Georgia on Early and Preschool Education.

21. Situation of Children's Rights

21.1. Introduction

Adoption of the Code on the Rights of the Child by the Parliament in 2019 is a commendable step taken by the State to legally strengthen the protection children's rights in the country. Nonetheless, full and efficient implementation of children's rights still faces number of unsolved problems in the country.

Deficiencies in the system of social protection of children – scarcity of children's programs and lack of efficiency of available programs, as well as the lack of sufficient numbers of social workers and psychologists negatively affect the level of protection from poverty and abuse, including sexual abuse of children, particularly of minors in the state care.

The Public Defender carefully follows the changes made by the State to maintain the results achieved through the reforms and to develop the system further – the process of transformation into an efficient mechanism of children custody and guardianship of the newly formed LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking.

Once again, the Public Defender emphasizes the issues of stringent protection of child's right to life. In this respect, juvenile suicide rate is alarming. Development of strategy for the suicide prevention constitutes an urgent need.

Throughout the years the problems persist with regards to the prevention of violence against children, timely detection of the facts of violence and effective response to them. Moreover there still is no available rehabilitation services for children - victims of violence.

Protection of the right to education of minors also faces number of challenges. The high rate of dropping out from school, explicit trend of low motivation to pursue studies among the minors in the state care, as well as protection of the right to education of juvenile convicts in penitentiary facilities - all call for drastic measures.

The persistently high rate of child poverty shows that the state policy is not aimed at eradication of this problem. Neither can the municipal programs fully ensure meeting of the needs of poor families with children. In 2019 there were 150 065 minors registered in 70 792 families, who are recipients of the living wage.

21.2. Child's Right to Life

Right to life is the main principle of the UN Convention on the Rights of the Child (CRC). State parties to the Convention should ensure to the maximum extent possible the healthy development of a child.⁸⁹¹

⁸⁹¹ Convention on the Rights of the Child, Article 6.

One of the deplorable results of inefficiency of the system for child protection in Georgia is that throughout the years, lives of many children are endangered. Due to poverty, inadequate living standard, neglect and other social hazards, the rate of children mortality is still alarming in the country.⁸⁹²

Timely detection and prevention of the factors leading to juvenile suicide calls for particular attention of the State. We still encounter the neglect of children's needs and belated psychological support for them. The vivid example of this is the case of 15 year old juvenile, L. S., where competent agencies failed to take the due measures for timely identification of the psychosocial needs of the juvenile and for prevention of suicide.

According to the data from 2019, the number of suicides and attempted suicides by juveniles has increased in Georgia compared to the previous years. In 2019 there were 22 cases of child suicide and 69 cases of attempted suicide,⁸⁹³ while in 2018 there were 12 cases of suicide and 48 cases of the attempted suicide.⁸⁹⁴ This increase in numbers is alarming and shows that the present system of child protection in the country fails to protect and help the children at risk of suicide.

The Public Defender studies the individual cases of child suicide and analyzes systemic flaws yearly. Unfortunately, the majority of recommendations of the Public Defender to the competent agencies are not duly implemented. The system of the psychosocial protection and support of children is still weak. There are no services available for help and rehabilitation of children who are victims or under the risk of violence. No child suicide prevention strategy has been drafted yet.

The problem of possible spread of suicide is further aggravated by the fact that the practices of public schools are not oriented at identification of individual needs of the child. The lack of adequate understanding of specifics of working with the children at risk of suicide among teachers and responsible officers at schools is particularly problematic. Schools fail to identify in the timely manner the children who are victims of violence, who have behavioral problems and psychosocial needs and provide them with professional help.

In order to reduce and prevent the number of juvenile suicides it is particularly important that the media outlets covering these cases comply with the existing standards.⁸⁹⁵ Media outlets should avoid romanticizing such cases in order to prevent "imitation" effect in other juveniles. It is also important that while covering these topics media does not reinforce existing, suicide related stereotypes and myths in the society. Materials prepared while covering this topic should identify ways for solution of the problem and prevention of suicide.

⁸⁹² One of the cases of children mortality studied by the Public Defender of Georgia involves the case of four minors, who died in fire in Bagdati Municipality. In this case the competent agencies failed to provide timely protection to the children despite the fact that the problem of the possible neglect of children by the parent was present.

⁸⁹³ Available at: < <https://bit.ly/2VZyWWe> >> [accessed 05.03.2020].

⁸⁹⁴ Correspondence of the Ministry of Internal Affairs of Georgia NMIA 6 20 00132625, 17.01.2020, available at <<https://bit.ly/2TzD6lY> >> [accessed 05.03.2020].

⁸⁹⁵ Available at <<https://bit.ly/38KNlIt> > > [accessed 10.03.2020].

21.3. Situation of the Rights of Minors in the State Care

Throughout the years, protection of rights of minors in state care still poses a problem. The monitoring undertaken by the Public Defender's office demonstrates that protection of children in the State Care from violence and their rehabilitation, care for their mental health, protection of right to education, preparation for independent life, improvement of qualification of care-taking personnel and allocation of sufficient human and financial resources still pose a challenge.

In 2019, 465 minors were placed in the state care. Out of this number, 157 beneficiaries were placed in the small family-type homes, while 308 beneficiaries were placed under the foster care. As of December 2019 there are 305 juveniles registered in small family-type homes, while 1556 juveniles are enrolled in the foster care program.

Placement of juveniles in State Care on the ground of poverty still poses a problem. According to the available statistical data⁸⁹⁶ in 2019 18.4% of children were placed in the state care on the ground of poverty and inadequate standard of living, 72.8% - on the ground of violence, 2% - on the ground of child behavior, 5.2% as a result of abandonment by parent and 1.6% due to the health problems.

The issue of the protection of the beneficiaries living in the small family-type homes from sexual violence is critical. There were cases when LEPL Social Service Agency, as well as service providers were informed about the signs of the sexual violence amongst juveniles. In spite of this not only the alleged child victim did not receive appropriate support, in certain cases the victim and the offender were left to live together in the same house. This should be considered as a total neglect of the needs of child victims of violence from the state. In a number of cases personnel working with the children in the small family-type homes were informed about the violence, but they did not refer these cases to the Ministry of the Internal Affairs of Georgia.⁸⁹⁷

Teachers of small family-type homes, as well as foster parents fully or partially lack the knowledge and skills to handle the children with behavioral problems or children victims of violence, due to which in certain cases they change the type of care received by child. This is the source of additional stress for a child and worsens the existing situation further. In 2019 63 children were transferred from foster care to the other types of services, 130 children changed the foster family and 12 juveniles were transferred from small family-type homes to foster care, based on various grounds.⁸⁹⁸

From the perspective of protection from violence, minors with disabilities present a vulnerable group because the services for protection from violence, preparation for independent life, protection of right to

⁸⁹⁶ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking №07/402, 12/02/2020.

⁸⁹⁷ In this case the Public Defender of Georgia issued recommendation №10-3/193 (10/01/2019) to the Minister of Internal Affairs of Georgia and the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

⁸⁹⁸ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking №07/402, 12/02/2020.

education and health are not oriented at addressing their individual needs.⁸⁹⁹ The trend of placement of children with behavioral problems or mental health problems together was also identified, which particularly aggravates the existing situation in view of the available sources.

Protection of the right to education of minors in state care is also problematic. The lack of motivation and interest among children to pursue studies can be seen as a general trend. The majority of these children aim to complete the compulsory basic education in order to get employed on time and be able to take care of themselves after coming of age. However, when there are no official services for the support of beneficiaries once they leave the system, it is problematic for these young people to receive education and acquire occupation according to their interests and particularly to get employed. Therefore, in the majority of cases children leave the care system absolutely unprepared.

Along with the problem of leaving the State Care system unprepared, reintegration of the child into the biological family also poses a challenge. In 2019, 130 children were reintegrated, while 9 children returned to state care from reintegration. In the families enrolled in this service needs of juveniles are not duly met. The basic living conditions are not met for them. Often needs of juveniles are not sufficiently researched and existing risks are not fully assessed in the process of reintegration.

Boarding Schools of Religious Confessions

Functioning of the boarding schools run by religious confessions remains to be a problem and it involves the issues related to licensing of the boarding schools, failure of state control and orientation of the learning environment at the individual needs of beneficiaries. The majority of religious boarding schools are large institutions, which does not comply with the goals of the deinstitutionalization process. Up to now State has no complete information about the religious boarding schools operating in the country. Out of this boarding schools only three of them - Ninotsminda, Bediani and Feria⁹⁰⁰ boarding schools are licensed. The Public Defender's office enquired and found out that there are 101 minors registered in the Feria Boarding School, 73 - in Ninotsminda Boarding School and 6 beneficiaries in Bediani Center.

Religious boarding schools⁹⁰¹ cannot provide family like environment for children. They fail to duly identify children's needs and have no individualized approach to them. There are high risks of institutional violence. Moreover, in certain cases social worker is only formally involved and cannot ensure protection of interests and needs of each beneficiary.

Issue of licensing of boarding schools run by muslim denomination is problematic. In this respect it is particularly important to have efficient communication between the State and the boarding school

⁸⁹⁹ In total there are 330 disabled children registered in the small family-type houses and foster care program, while 14 minors are registered in specialized institutions.

⁹⁰⁰ The N(N)LE Saint Nino Boarding School in Javakheti, Ninotsminda of Orphans, Waifs and Children in Need of Care of the Patriarchate of the Orthodox Church of Georgia; N(N)LE Saint Matasa Apostle Foundation Boarding School in Village Peria of the Patriarchate of the Orthodox Church of Georgia; Children and Adolescents Rehabilitation Center of Bediani of the Patriarchate of the Orthodox Church of Georgia.

⁹⁰¹ In this respect situation is better in the Bediani Rehabilitation Center for Children and Adolescents of the Patriarchate of the Orthodox Church of Georgia.

administration and to inform them about the licensing standards in view of the interests of minor beneficiaries.

It is alarming that the representatives of The N(N)LE Saint Nino Boarding School in Javakheti, Ninotsminda of Orphans, Waifs and Children in Need of Care of the Patriarchate of the Orthodox Church of Georgia do not allow representatives of the Public Defender to carry out monitoring in the boarding school, while the Public Defender has emphasized the particularly grave situation of rights of children living in this boarding school in several of its reports. Nevertheless, involvement from the State is minimal in the process of working with this particular boarding school. It is impossible to carry out that kind of monitoring which would allow detection of each fact of violation of children's rights and in particular timely detection of incidents of child abuse.

Situation of Children's Right in Boarding Schools

According to the statistical data provided by the Ministry of Education, Science, Culture and Sport of Georgia⁹⁰² there are 16 schools in Georgia that provide boarding services to its pupils, including the seven functioning resource schools.

Monitoring carried out by the Public Defender's Office shows that ground for the enrollment in a number of boarding schools for pupils are poverty and inadequate standard of living. There are also cases of neglect of children by their families. However, standard of boarding services and efficient monitoring mechanism have not been developed for these boarding schools yet. Hence, situation of minors is not studied, their needs are not explored and they are not provided with services tailored to their interests.

21.4. Right to Education

From the perspective of proper implementation of right to education the country still faces number of challenges. The steps taken by the State to improve the current situation still do not suffice. The dropout rate from schools by pupils is alarming.

Preschool Care and Education

In spite of the measures undertaken by municipalities the issue of the available preschool care and education still poses a challenge. Infrastructural situation of kindergartens, overcrowding of classrooms, compliance of sanitary conditions and hygiene with official standards are particularly problematic. In 2019 representatives of the Public Defender's Office carried out monitoring in 143 public facilities of pre-school care and education to study this issue.

There are in total 1481 functioning preschool facilities in Georgia. 150,930 children are enrolled in these facilities. The study conducted by the Public Defender demonstrates that one of the acute problems is related to infrastructural situation of buildings of preschool care and education⁹⁰³, including adjustment of physical environment to the needs of disabled persons. Moreover, setup of yards of kindergartens,

⁹⁰² Correspondence MES 0 20 00036163, 16/01/2020

⁹⁰³ 25.3 % of identified 442 cases of violations of children's rights were related to the issues of water, sanitary conditions, and infrastructure in preschool educational facilities.

specifically their fencing and coordination of number and age categories of children with the demands of safety and provision of necessary equipment are problematic.⁹⁰⁴

It is noteworthy, that arrangement and equipment of the interior of these buildings in view of age and number of children and specifics of learning-caring activities, that would allow availability of all the functionally needed rooms in the building is also problematic.

On the positive note majority of the kindergartens pay attention to due arrangement and equipment of dining areas. Moreover, health condition of children and their special needs are taken into account in the process of providing food. It is also noteworthy that other than exceptions kindergartens are supplied with drinking and technical water. In this respect, kindergartens do not have a uniform approach to the periodic control of safety of drinking water and its laboratory testing.

The issue of improvement of qualification of preschool facility staff poses a challenge. It is also problematic to duly inform the employees on detection of facts of violence, due response to them and their prevention.

Out-of-School Children

Throughout the years the dropout rate from schools remains high. The issues of detection of reasons, registration and prevention of dropping out from school are particularly problematic. The Public Defender has emphasized this problem on several occasions in its reports, including the trends of violation of right of education due to early marriage, child poverty and labor. However, the problem is still unresolved.

It is noteworthy that schools have no uniform mechanism to process statistical data of dropping out from schools indicating the grounds of dropout. Part of the grounds indicated by the Ministry are general, overlapping and does not depict the real situation. For example, the rate of cases where pupil missed the school for 90 academic days consecutively is particularly high (approximately 22% of cases). Specific grounds of absence from school are not available and this does not allow analysis of these cases.

One of the problems is suspension of status of a pupil based on application of the parent or other legal representative. In such cases, the application does not usually contain the reason for suspension. Therefore the risk of violation of child's right by a parent is high, particularly in cases of early marriage of children.

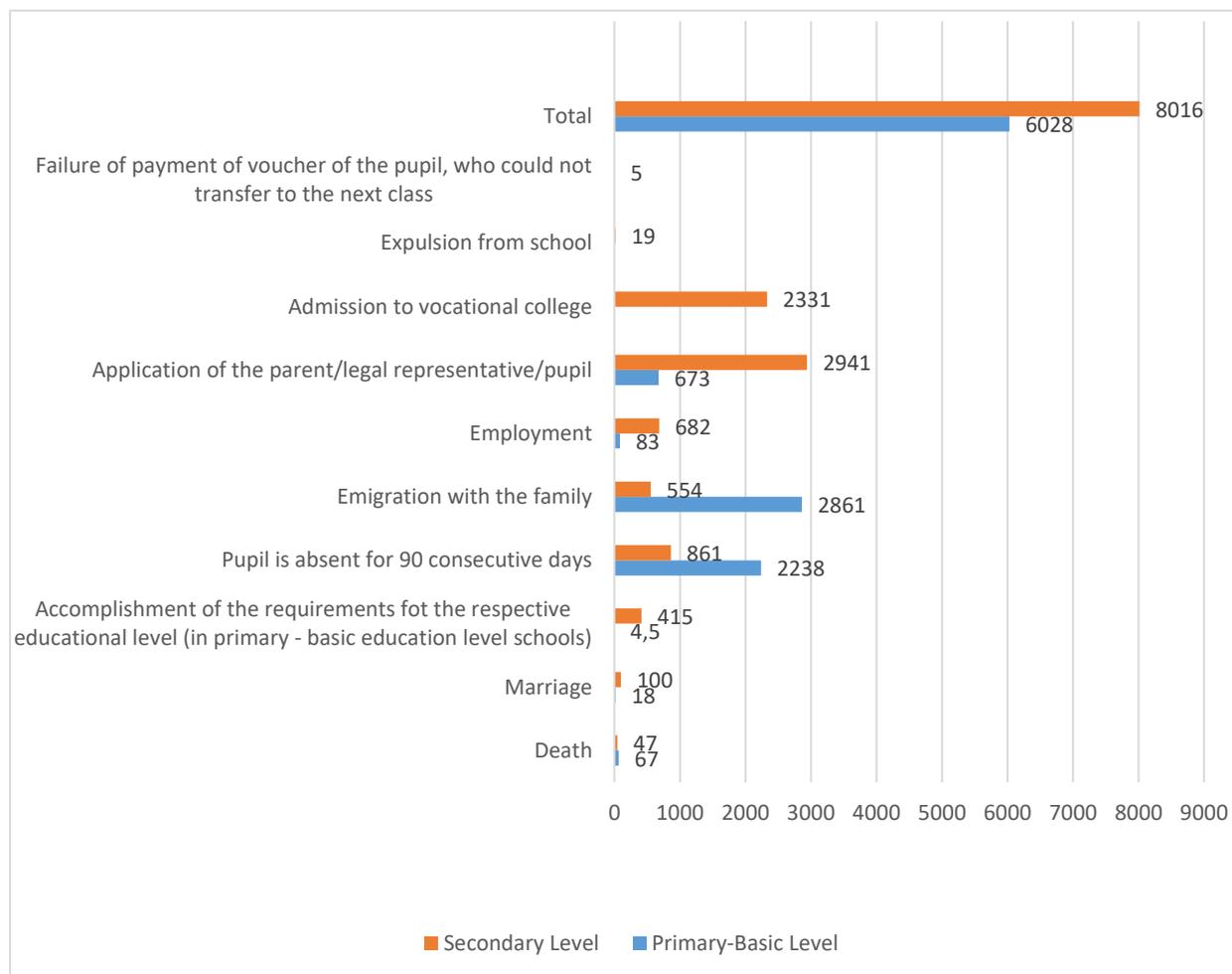
In cases of minor's dropping out, school and social worker do not cooperate properly. Often reasons of termination of studies by a child are related to such facts as are violence against children, health, neglect, extreme forms of child labor, poverty. In such cases it is particularly important that the state agency get involved with problem for its solution on time and take appropriate measures.

In academic years 2018-2019 and 2019-2020 including the fall term, 14044 minors had dropped out from school, out of which 6028 minors dropped out from primary basic education and 8016 minors - from secondary education.⁹⁰⁵

⁹⁰⁴ As part of proceedings on this issue the Public Defender's Office issued five recommendations.

⁹⁰⁵ Correspondence of the Ministry of Education, Science, Culture and Sport of Georgia MES 0 20 00036163, 16/01/2020.

Table №1: Grounds of Termination of Studies (from September 2018 to December 2019)⁹⁰⁶



Right to Education of Juvenile Convicts

Majority of juvenile convicts placed in the Penitentiary Facility N11 of the Special Penitentiary Service are enrolled in public schools. However, flaws in the process of submission of required documents that is caused by the problems of communication with the legal representative hinders timely enrollment of each juvenile convict in general educational facility. In such cases there also might be neglect of educational needs of a juvenile by their legal representative. Moreover, cooperation of Penitentiary Facility with the State Agency for Child Care is not efficient.

Moreover, identification of educational needs of juveniles through multidisciplinary approach is malfunctioning. Involvement of a special teacher, particularly in cases when child has experienced early dropping out of school and has no knowledge appropriate for his/her age and class, etc. is also weak.

⁹⁰⁶ Within the above-mentioned period the highest rate of termination of studies by regions was identified in Tbilisi - 4927 pupils, Kvemo Kartli - 2788 pupils, Kakheti – 1335 pupils, Imereti - 1256, Adjara -1087.

Process of rehabilitation of juvenile convicts remains to be a problem, as it does not include diverse developing activities, which would be adjusted to individual needs and interests of a child. For years, the juvenile convicts have no access to the professional courses that would be adjusted to their needs and would facilitate the process of preparation for release. Therefore, individual plans for serving the sentence are mostly bland and activities planned for each child are not adjusted to their individual interests and needs.

21.5. Poverty and Inadequate Standard of Living

Under the inefficient social system and programs child poverty and inadequate standard of living persists as a problem. Poor families with children in certain cases extremely suffer the acute problems with regards to meeting the basic needs of minors, ensuring their access to education and providing appropriate living conditions for them. Out of 442 cases that were studied by the Public Defender within the reporting period and which related to violation of children's rights 12.7% of cases were related to the needs of children living in poverty.

Child poverty is related to the grave violations of right to life and adequate development, education and health, as well as, to the worst forms of child labor.

LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking provided information⁹⁰⁷ according to which there were 70 792 families and 150 065 minors who were recipients of living wages in 2019. In addition to this, part of the families with children, who are not registered as recipients of living wages, also live in extreme poverty and cannot secure even elementary basic needs of minors.

Unfortunately, the state policy is not oriented at eradication of poverty in such families, empowerment of families, their support and securing adequate living environment for children. Programs available at the municipal level are mostly of one-time character and cannot ensure timely and comprehensive fulfillment of the needs of poor families with children, particularly, with regards to provision of adequate accommodation for poor families with children. As a result, in certain cases children live in the conditions that endanger their life and health.

The accident that occurred in Bagdati Municipality where six people living under the extreme poverty, including 4 minors died in their house as a result of fire is particularly alarming. This case vividly demonstrates once again the risks and dangers that follow from inefficient steps of government for overcoming the extreme poverty of children and endanger life and health of minors.

The issue of placement of minors in state care system on the ground of poverty persists as a problem. According to the provided statistical data⁹⁰⁸ in 2019, 18.4% of children were placed in state care on the

⁹⁰⁷ Written correspondence N^o07/402, 12/02/2020.

⁹⁰⁸ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking N^o 07/402; 12/02/2020

ground of poverty and inadequate standard of living, which is gross violation of children's rights and contradicts rights recognized under the United Nations Convention on the Rights of the Child. In addition to the placement of a child in the State Care, steps are not taken to improve social and economic conditions of biological families, develop parenting skills and take care for the issues of violence against children. As a result, years later, the minor beneficiary has to return to the same environment. It is noteworthy that among the heterogeneous factors leading to poverty, lack of positive parenting skills, inability to identify needs of a child or their neglect is also present in the families with children. This fact in its turn complicates the comprehensive evaluation of the problem and impedes the process of overcoming the poverty. Therefore, factors leading to poverty need the in-depth analysis and urgent evidence-based response from the State. The provided statistical data does not show that such analysis has been carried out.

21.6. Child Adoption

In 2019 there were 3033 adoptive parents and 212 prospective adoptees registered in the unified registry of adoptive parents. The Public Defender studied the issue of adoption and found out that main challenge of the adoption process is an insufficient efficiency of social services that are not able to ensure timely management of such procedures as are, for example, finding compatibility between the child and adoptive parent, timely detection of prospective adoptees, granting relevant status to them, etc.

The research of the Public Defender of Georgia found out that due preparation of the child before adoption and in-depth evaluation of their psychosocial conditions remains to be a problem. In most cases psychologist is not involved in process of adoption. Their involvement is used only in extreme cases, for example when there are facts of manipulation or abuse of a child.

In the territorial units of custody and guardianship there are no special and child friendly rooms, where candidate for adoptive parent and prospective adoptee child would meet in the safe and isolated space.

It is noteworthy that in 2015-2019 no training or special study course related to adoption was provided for social workers. The social workers were also not provided with guiding principles and recommended instructions on the basis of which they could prepare a child before adoption and provide them with information appropriate for their age and development.

21.7. Children Working and Living in the Street

Children living and working in the street are distinctively vulnerable social group in the view of abuse of their rights. They face the high risk of violence, including domestic violence and what is especially

alarming, sexual violence. These children are unprotected from labor and sexual exploitation and trafficking; their access to healthcare and right to education is problematic.⁹⁰⁹

Detection of children living and working in the street, reaching out to them, taking measures for their protection and assistance, provision of services to them and their families remain to be a problem. There are number of systemic shortcomings that are related to detection and implementation of preventive measures to those families where minors are under the risk of ending up in the street for various reasons. Unfortunately, there is a deep-rooted flawed approach in the society to help street children by giving them alms that encourages further leaving these children in the street and complicates implementation of necessary measures with regards to them.

Findings of the Public Defender's research demonstrate that the subprogram for provision of accommodation to homeless children suffers from the lack of material, financial and human resources. Absence of supporting services and infrastructural problems in majority of Centers also adds to these problems.

Currently, the subprogram for provision of accommodation to homeless children is implemented in Tbilisi, Rustavi and Kutaisi. Due to the seasonal migration of children working and living in the street this problem is especially acute in the Autonomous Republic of Adjara, namely in Batumi, where subprogram for provision of accommodation to homeless children is still not available.

Services determined for children and adolescents living and working in the street do not cover persons above 18. Therefore, beneficiaries who reach that age are under a risk of returning to the street, poverty, violence and possible involvement in criminal activities.

Stereotypical attitudes of public towards children living and/or working in the street and their families pose a problem. It is noteworthy that street children population is diverse. In Georgia, ethnic Georgians, two Roma language speaking groups, Kurds from Azerbaijan, children of Armenian refugees and children of IDPs from South Ossetia and Abkhazia dominate this group.⁹¹⁰

There still is a need of efficient detection by law-enforcement agencies of incidents of alleged trafficking and forced involvement of minors in anti-social activities. The State carries the obligation to use all the available resources to empower representatives of the supporting professions, in particular –social workers so that these children could benefit from the high standard of protection from violence and support.

21.8. Violence Against Children

⁹⁰⁹ According to the information provided by the Ministry of Internal Affairs (correspondence MIA 8 20 00169078, 22/01/2020). in 2008-2009 there were 16 criminal cases where investigation was launched under article 171 of the Criminal Code, which prohibits involvement of a minor in anti-social activities; there were 12 criminal cases, where investigation was launched under article 143² of the Criminal Code (Child Trafficking). According to the statistical data of the LEPL Social Service Agency (correspondence: №04/43409, 14/08/19), in 2014-2019 the facts of violence where detected against 47 homeless children, which were reported to the relevant agencies.

⁹¹⁰ UNICEF, Children Living and Working in the Streets of Georgia. See Report: <<https://uni.cf/332LQ7n>> [accessed 19.12.19].

In 2019, as in the previous years, the cases, studied by the Public Defender in the sphere of children's rights were dominated by the incidents of violence against children; namely 37,5% of total number of cases involved various types of violence against children. There are number of systemic problems in the country that need to be solved for prevention, timely detection and response to violence against children that would be efficient and in the best interests of the child.

Sexual Abuse of Children

In the process of protection of children from sexual abuse and their support, there is a persistent problem related to taking the timely and efficient measures by the responsible agencies for detection of child victims and psychosocial rehabilitation of minor victims.

To make the criminal policy stricter towards perpetrators of crimes against sexual freedom and sexual inviolability of minors and for prevention of these crimes, it is commendable that the Ministry of the Internal Affairs has drafted legislative amendments that provide stricter sentences and deprivation of certain rights for perpetrators of sexual offenses.⁹¹¹

Within the reporting period number of crimes against sexual freedom and inviolability of minors was still high. Within this period investigation was launched with regards to 262 alleged sexual violence cases against minors, including 24 cases of alleged rape of minors, 9 cases of other action of sexual nature, one case of coercion of penetration of a sexual nature into the body of a person, or of another action of a sexual nature, 79 cases of lewd act and 149 cases of sexual penetration into the body of person under 16.⁹¹²

It is noteworthy, that the Ministry of Internal Affairs has identified the network of child trafficking and producing and sale of pornographic materials with visual depiction of children. Members of the organized criminal group were arrested. According to investigation, citizens of the United States and Australia conspired and arranged photo studios in the rented apartments in Tbilisi. They had involved 8 to 14 year old girls in their criminal activity for sale of materials abroad with the consent of their parents and in return for money. Georgian accomplices assisted them in this activity. As a result, the Ministry of Internal Affairs has arrested the parents and teacher of these children. In order to help the child victims and protect their rights, they were enrolled in psychosocial assistance services.

Number of psychologists of the Social Service Agency is still disproportionately small and not targeting the needs. One of the main functions of psychologists is to work with the children who are victims or at the risk of violence. In the reporting period there were 13 psychologists employed in the LEPL Social Service Agency, two of them - in Tbilisi, two - in Imereti Region and remaining 9 psychologists - in other regions, one for each region. In 2019 approximately 900 juveniles were provided with the service of psychologist.⁹¹³

It is important for awareness raising of children that general education institutions conduct relevant educational activities including teaching about sexual inviolability, which has not been done until now.

⁹¹¹ Draft Law on Fight against Crimes against Sexual Freedom and Sexual Inviolability 07-2/318/9.

⁹¹² Ministry of Internal Affairs of Georgia MIA 3 20 00508869, 26/02/2020.

⁹¹³ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking.

Violence in General Education Institutions

From the perspective of timely detection of cases of violence and response to them, the issue of the qualification of professionals who work with children and especially of staff of general education institutions still poses a challenge. Number of complains registered with the Public Defender's Office proves how acute this problem is.

It is commendable that the Code of the Rights of the Child explicitly bans all forms of corporal punishment of children. It should be noted that at present legislation of Georgia does not provide for proportional and efficient administrative or criminal liability measures in case of violation of prohibition of corporal punishment of children.

In cases of violence against children in school, response mechanism of teachers or administration, disciplinary penalties, activities of disciplinary committees and steering councils are not oriented at eradication of the problem. This is particularly true in cases of bullying, both with regards to children victims of violence and with regards to protection of best interests of underage bullies and their rehabilitation.

According to the provided information⁹¹⁴ disciplinary proceedings were launched in 1134 cases of alleged violence among pupils and 259 cases of alleged violence committed by school employees towards pupils. Schools referred 198 cases to the Ministry of Internal Affairs, whereas 461 cases were referred to the LEPL Social Service Agency. In 2019 there were 3434 new cases referred to the Psychosocial Service Center of the LEPL Marshal Service of Educational Institution. In 61 cases the ground of referral was violence.

Tbilisi, Kvemo Kartli and Imereti regions account for the highest ratio of the referrals to the LEPL Social Service Agency, while there was only one case referred to the Agency from Racha-Lechkhumi. The main ground of referrals was alleged neglect of minor, early marriage or risk of early marriage, psychological or physical abuse of minor.⁹¹⁵

In 2019 the state still had no unified policy strategy and action plan to fight against violence, namely bullying. Therefore, response from educational institutions to the cases of violence is not uniform, does not allow for in depth study of these incidents and does not secure protection of the best interests of a child.

Domestic Violence

Timely detection of facts, adequate response to them, as well as provision of appropriate services to children victims of domestic violence pose problems for protection of children from domestic violence. There are still not available rehabilitation services for children victims of domestic violence and involvement of psychologists in these cases is minimal.

In 2019, 3881 alleged cases of violence against children were reported to the LEPL Social Service Agency. Out of this number 87 reports dealt with the alleged domestic violence.⁹¹⁶ According to the information

⁹¹⁴ Correspondence MES 0 20 00036163, 16/01/2020 of the Ministry of Education, Science, Culture and Sport of Georgia.

⁹¹⁵ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking.

⁹¹⁶ Correspondence of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking.

of the Ministry of Internal Affairs of Georgia in 2019 there were 740 (in total) restraining orders issued in domestic violence cases, where victims were minors.⁹¹⁷

Problem of due regard of the best interests of the child to have relationship with both parents still persists. Often it is extremely complicated to enforce court judgment on transfer of a child to the second parent or on direct contact of the second parent or other family member with the child. Detection of possible psychological violence of parents towards their minor children in this process and due response to it from responsible agencies remains to be a problem.

21.9. Situation of Rights of Stateless Minors, Minors under International Protection and Asylum Seekers

Minors who are asylum seekers, under international protection and stateless minors are under the high risk of various violations of their rights due to the language barrier and limited access to different services including health care, social protection and education in the receiving country. They face the risk of violence and exploitation and this is particularly true for the undocumented and unaccompanied minors. Poverty and social marginalization is one of the main challenges to their safety and welfare.

According to the national and international law, the State is obliged to protect in its territory under international protection asylum seekers and stateless minors. Therefore, the State is obliged to evaluate if a child born in its territory is citizen of another state. Child whose parents are unknown, and who belongs to distinctively vulnerable group due to being stateless should benefit from special protection. Stateless minors and asylum seekers under international protection should have access to social welfare benefits, including health care services, primary and secondary education same as other children. First of all, State should protect them from any type of violence through efficient mechanisms and in case of necessity should ensure their psychosocial rehabilitation.

As of December 31, 2019, there were registered 192 minor asylum seekers and 378 minors with international protection in Georgia.⁹¹⁸ According to the information provided by the LEPL Public Service Development Agency⁹¹⁹, within the period from 1 January 2016 to 25 October 2019 out of 29 applications for granting status of stateless person to minors, 19 were left to be decided, 4 were granted and 4 were denied the status, while one application was still under consideration.

According to the correspondence with the LEPL Social Service Agency⁹²⁰, in 2016-2019 only 12 minors were reached out. Out of this number, 6 minors had their necessary documents prepared, 3 minors were granted temporary identification card of an asylum seeker, two of them had humanitarian status and their social worker obtained for them new certificates after their expiration, and one minor was granted a document certifying refugee status. Out of these 12 minors two of them were placed under the state care, namely small family type home, while one minor was placed in Tbilisi Shelter for Victims of Domestic

⁹¹⁷ Correspondence of the Ministry of Internal Affairs of Georgia MIA 3 20 00508869, 26/02/2020.

⁹¹⁸ Correspondence of the Ministry of Internal Affairs of Georgia MIA 2 20 00784006; 31/03/2020

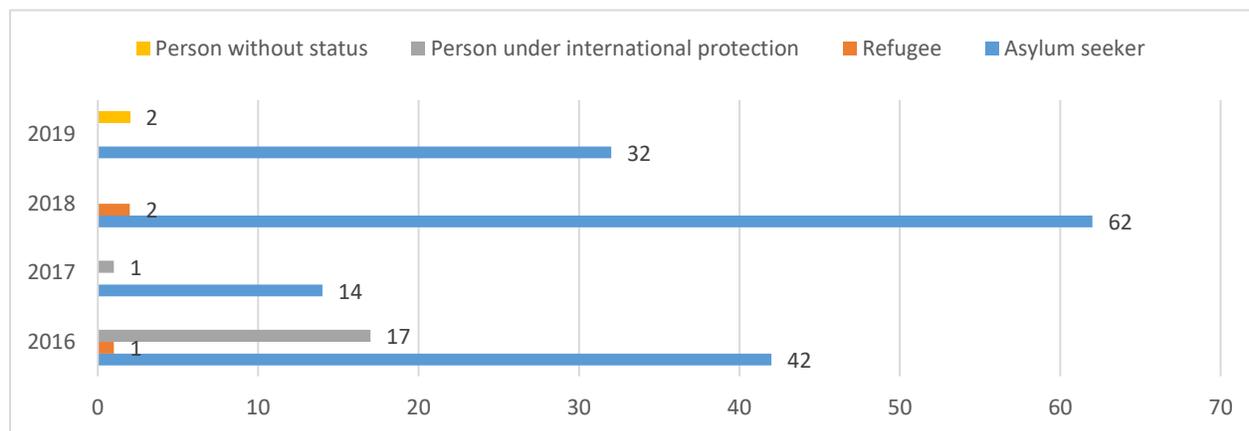
⁹¹⁹ Correspondence of the LEPL Public Service Development Agency №01/318423, 12 / 11 / 2019.

⁹²⁰ Correspondence of the LEPL Social Service Agency №04/60185, 19/11/2019.

Violence managed by the LEPL State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking. Temporary identification card of an asylum seeker was prepared for this person and later he was granted a refugee status.

According to the information of the Ministry of Education, Science, Culture and Sport, in order to facilitate their enrollment in general education system, the Ministry organizes learning of Georgian language by asylum seekers and persons with international protection in Georgia from the age of 6 to 18 years. These pupils will be enrolled in the LEPL Tbilisi Public School # 81.

Table #1 Statistical information of the LEPL Tbilisi Public School №81 on the Beneficiaries of the Program⁹²¹



Statistical data presented above and shortcomings in the Social Protection System of children in the country, including scarcity of programs, insufficient number of support professionals available for children, challenges to the system of psychosocial protection and support of children fail to guarantee stringent protection and fulfillment of rights of juveniles in the territory of Georgia, including those of children under international protection, asylum seekers and stateless children, whereas these children need the special conditions of protection and support.

21.10. Protection of Minors from Harmful Influence

According to the Code on the Rights of the Child protection of a child from harmful influence means protection of a child from negative factors of social environment and information dangerous for children through provision of appropriate legal bases and implementation of state and municipal programs and measures⁹²².

Involvement of a minor in gambling and games with prizes is one of the forms of harmful influence and is prohibited under the Georgian legislation. Namely, it is prohibited to allow a person under 18 into the places with slot machines and gambling (excluding incentivizing lotteries) and/or participation in the

⁹²¹ Correspondence of the Ministry of Education, Science, Culture and Sport of Georgia MES 4 19 01502340, 04/11/2019.

⁹²² Code on the Rights of Child, Article 62

gambling (including systematized electronic form of gambling); it is also prohibited to sell or otherwise distribute lottery tickets among persons under 18 and to transfer a prize to them.⁹²³

In 2019 one of the directions of the State Program for Healthcare was prevention of gambling addiction⁹²⁴, but this direction was aimed merely at the general awareness raising. Prevention component includes neither specific measures for detection of target groups among minors, nor implementation of preventive measures, oriented at their individual and specific needs.

In practice there are multiple factors that hinder protection of minors from involvement in gambling and rehabilitation of child victims of gambling. The most important among them is the absence of legal safeguards at the national level that would be efficient in protection of adolescents from gambling. The issue of advertisement of gambling is also unregulated and lacks control with regards to minors.

The state does not control that fact either, that juveniles have unlimited access to the various types of gambling, including online games. There are no available rehabilitation services that would help minors addicted to gambling to liberate from this harmful influence.

21.11. Situation of Rights of Children Living in Villaged Adjacent to the Occupation Line

In 2019 situation of rights of the children living in the villages adjacent to the occupation line was under the particular focus of the Public Defender of Georgia. Within the reporting period the Public Defender studied this issue in the villages adjacent to the separation line with Tskhinvali Region.⁹²⁵

Findings of the study demonstrate that children living in the villages adjacent to the occupation line have multiple needs with regards to the efficient implementation of right to education, social integration, access to efficient services of healthcare, psychosocial welfare and securing adequate standard of living and care.

Children in the villages adjacent to the occupation line are involved in the general education process. However, due to absence of informal learning activities that add to the problems of malfunctioning of municipal transport, minors are often not duly integrated in the society. Therefore, due conditions for comprehensive fulfillment of right of access to education are not available to them. They are not offered the various forms of informal education including sports, art and extracurricular activities. It can also be stated that approach of Municipalities to satisfaction of children's needs are not uniform and consistent.

There are no kindergartens operating in some villages. The functioning kindergartens and schools have malfunctioning infrastructure and learning-educational environment. There are no dining areas, playgrounds and acting halls in the majority of schools. There are no local outpatient healthcare services

⁹²³ Law of Georgia on Organization of Lotteries and Gambling, Article 32.1

⁹²⁴ Resolution of the Government of Georgia №693 of 31 December of 2018 on Approval of State Programs of Healthcare for 2019, State Programs of Healthcare of 2019, Article 10.

⁹²⁵ Representatives of the Public Defender have carried out monitoring in Gori Municipality villages: Nikosi, Flavi, Flavismani, Ergneti, Mereti, Zardiantkari and in Kareli Municipality villages: Dvani and Takhtisdziri

in the majority of villages, which causes many problems to the fulfillment of the right to health of the local population and particularly that of children.

Children and population living in the villages adjacent to the occupation line still experience high levels of the post-war stress. This situation is aggravated by fear and tension related to the possible conflict, that can easily become a factor of re-traumatization of such vulnerable population. The need of psychological support can be seen in children as well as their parents and teachers. Therefore the responsible agencies should implement more active and efficient measures to meet the needs of children living in the villages adjacent to the occupation line.⁹²⁶

Recommendations

To the Government of Georgia:

- Form a special group under the Interagency Commission for implementation of the UN Convention on the Rights of the Child that will work on preparation of necessary measures, strategic vision and action plan for prevention of suicide;
- Elaborate support and care program for beneficiaries who reach the age of majority and leave the system of State, that will ensure the protection of rights of the young adults, their integration and preparation for independent life;
- The Government of Georgia should elaborate the action plan in line with the requirements of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse;
- Based on the conception of rehabilitation of child victims of sexual abuse speedily form appropriate psychosocial rehabilitation service;
- In order to eradicate the shortcomings present in the process of cooperation between the agencies responsible on domestic violence introduce referral mechanism evaluation instrument;
- To protect minors from harmful influence and to prevent their involvement in gambling, form a working group with participation of specific agencies and launch work for proposal of appropriate legal amendments;
- In the villages adjacent to the occupation line introduce the services for promotion of formal and informal education, social welfare, healthcare and psychosocial support and increase number of kindergartens and village outpatient clinics, improve the school and sport infrastructure; provide access to the services of psychologist for children and population living in the villages;
- Introduce the monitoring mechanism for the Resolution of the Government on Approval of Procedures of Child Protection Referrals, which will allow the Educational Resource Centers to timely detect the facts of violation.

To the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking:

- Launch work on development of the psychosocial and rehabilitation programs tailored to the individual needs of minors with traumatic experiences, behavioral and mental problems;

⁹²⁶ Detailed findings of the monitoring on the situation of children living in the villages adjacent to the occupation line will be provided in the special report of the Public Defender.

- For full implementation of official standards of child care and for protection of the situation of rights of beneficiaries enrolled in the boarding schools run by religious confessions start individualized work with each child and determine the most efficient forms for placement of children in alternative State Care;
- Implement appropriate measures to detect each unlicensed religious boarding school, that operates in Georgia and ensure that they get licensed or implement other measures prescribed by law;
- Strengthen particularly efficient internal monitoring of the N(N)LE Saint Nino Boarding School in Javakheti, Ninotsminda of Orphans, Waifs and Children in Need of Care of the Patriarchate of the Orthodox Church of Georgia, as well as of the other religious boarding schools. Implement the policy that would allow the Public Defender's Office to carry out full monitoring on the situation of children's rights in these boarding schools;
- For each minor who is victim of violence and under the State Care plan specific rehabilitation, therapeutic activities and take specific decision on each fact of violence for the protection of situation of rights and safety of children. In case of violence carry out constant monitoring on enforcement of referral procedures by the professionals working with children;
- Revise state policy to fight against the child poverty and inadequate standard of living, so that the present social programs are evaluated and in view of the identified needs, plan the efficient services tailored to the individual needs and aimed at prevention of poverty for the support of families with children, who live in extreme poverty;
- Propose legislative amendment to the rule of matching a child with the adoptive family in the process of adoption so that the ground of matching of the child with the family is not the sequence in the registry, but the child's needs and the best interest;
- Provide regular training for social workers, psychologists and other professionals involved in child adoption on the children's rights and individual needs, management and prevention of behavioral problems in children;
- Develop guidelines and recommendations for social workers and professionals who work on child adoption; part of the guidelines should prescribe the rule for interview and evaluation of a child;
- In the central and local offices of custody and guardianship authority organize safe and child friendly environment, tailored to the needs of children for meeting and interviewing them;
- Extend the service provided by the Subprogram for Provision of Accommodation to Homeless Children to Adjara region. Strengthen the existing service with financial and human resources. Evaluate the quality of mobile groups' work and develop an efficient evaluation form, through which individual needs and risks of each child living and working in the streets will be determined;
- Ensure timely detection of families, where children face a risk of living and working in the street. Provide them with timely and efficient services;
- Develop and introduce additional services for the urgent financial support for the families and parents of children who live and work in the streets, as well as for development of necessary skills to incentivize their employment and provide them with relevant opportunities;
- Take steps to raise public awareness and sensitivity to the children living and working in the street. Plan information campaigns on the respective topics, including the issues of giving alms to children in the street and on steps to be taken in case of violence against these children;
- Provide respective services to the beneficiaries of the Subprogram for Provision of Accommodation to Homeless Children after reaching the age of majority;

- Strengthen the local Centers of the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking by adding human, technical, and financial resources. Increase the number of social workers and psychologists;
- Introduce an efficient monitoring mechanism on response measures, evaluation process, available instrument and evaluation criteria in cases of domestic violence against children in order to detect and prevent present shortcomings and inappropriate response;
- Involve psychologist at the early stage of working with each child victim of domestic violence and plan process of psychosocial rehabilitation of minor;
- Ensure regular evaluation of situation of the rights of stateless minors, asylum seekers, and minors under international protection. Detect violation of their rights and duly address them in the best interest of the child;
- Ensure the timely involvement of stateless minors, asylum seekers and minors under international protection in Georgia in education, healthcare and other state services.

To the Minister of Education, Health, Culture and Sport of Georgia:

- Develop the methodology for identification of children at suicide risk in schools and refer them according to their individual needs in the manner that will ensure the provision of services of social worker and psychologist;
- Make available information on mechanisms for protection of rights and their contact information in schools in places accessible to children;
- Provide active training and retraining for the personnel working with children in schools on the risks of violence and management of behavioral problems in children;
- Develop uniform standard of boarding services and introduce efficient mechanism of monitoring of situation of children's rights in this establishments;
- Develop uniform methodology and standard for registration and processing of statistical data on school dropout;
- Multidisciplinary group should speedily evaluate the educational needs of juvenile convicts and provide them with access to special teacher;
- In the process of provision of general education to minors under international protection, asylum seekers, and stateless minors in Georgia, ensure geographical accessibility;
- Increase the number of Psychological Service Centers under the LEPL Educational Establishment Marshal Service and strengthen capacities of the existing centers.
-

To the Minister of Justice of Georgia:

- In view of the interests of juvenile inmates in the Penitentiary Facility №11 of the Special Penitentiary Service, plan the efficient rehabilitation, education and vocational programs that will be aimed at strengthening of their skills, interests and incentives and will help their due integration in the society.

- Intensify cooperation with the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking in case of neglect of educational needs of juveniles by their legal representatives for timely protection of interests and situation of rights of juveniles.

To the Minister of Environment and Agriculture of Georgia:

- Elaborate the instrument for examination of safety of water and regularity of its inspection in preschool care and education facilities in order to introduce uniform standard on this issue.

To Local Self-Governments:

- Municipalities should register poor families with children and their individual needs, evaluate efficiency of the programs for overcoming the child poverty running at the local level and plan such programs that would help local prevention of child poverty;
- In their respective territories municipalities should ensure provision of goal-oriented services to the families of children living and working in the street, including children belonging to various ethnic minorities as well as children who are under the risk of involvement in antisocial activities;
- Carry out appropriate measures to bring the infrastructure and functional setup of preschool care and education facilities in line with the standards prescribed by the legislation of Georgia;
- Allocate the relevant funds to increase the human and financial resources in kindergartens
- Ensure regular professional re-training for employees of kindergartens;
- Provide the preschool care and educational facilities with the necessary equipment, books and toys;
- Municipalities should ensure in their respective territories registration and provision of goal-oriented services to the minors under international protection, asylum seekers and stateless minors and their families;
- Municipalities should ensure in their respective territories promotion of preschool education for minors under international protection, asylum seekers and stateless minors.

22. Protection of the Rights of Persons with Disabilities

22.1. Introduction

In 2019 there were no significant changes made in terms of the protection of rights of persons with disabilities. From year to year, the Public Defender has to emphasize the same issues, as the recommendations provided in the reports of previous years mostly have not been fulfilled.

No significant steps have been taken to implement the UN Convention⁹²⁷ on the Rights of Persons with Disabilities. The official agency⁹²⁸ responsible for coordination of this process has still not been designated. Within the reporting period the Optional Protocol of the Convention has not been ratified.

Harmonization of national legislation with the UN Convention is still an issue. In February 2020 the draft law on the Rights of Persons with Disabilities was proposed to the Parliament. The draft law is flawed. Despite the fact that in the process of drafting the Public Defender's Office has prepared several opinions and comments, they found only minimum of reflection in the draft law. As a result, the Public Defender applied to the Parliament of Georgia with the proposal on this draft law and related legislative amendments.

During 2019 the process of revision of national legislation regulating space planning for persons with disabilities and its harmonization with the Convention has been active. In 2019 the draft legislative amendments to the Law of Georgia on Psychiatric Assistance was also prepared, which can be regarded as a positive step.

In 2019 despite the growth in funding of disability targeted state programs, the number of beneficiaries (including children with disabilities) engaged in those programs has not changed significantly. Existence of waiting lists to access to the mentioned services and quality of services provided by some of state subprograms still pose a challenge. The state still fails to ensure rehabilitation services for adults with disabilities.

Within the reporting period, measures taken by the state in the field of mental health and for protection of persons with mental health problems have not been sufficient. The number and geographical coverage of community services is still limited. The strategy of deinstitutionalization of the field has not been developed.

Within the reporting period there has been no improvement in terms of participation of persons with disabilities in political and public life of the country and fulfillment of respective rights. The problems remain with regards to the effective functioning of regional and local councils working on disability issues and engagement of disabled persons and/or their representative organizations in the mentioned councils

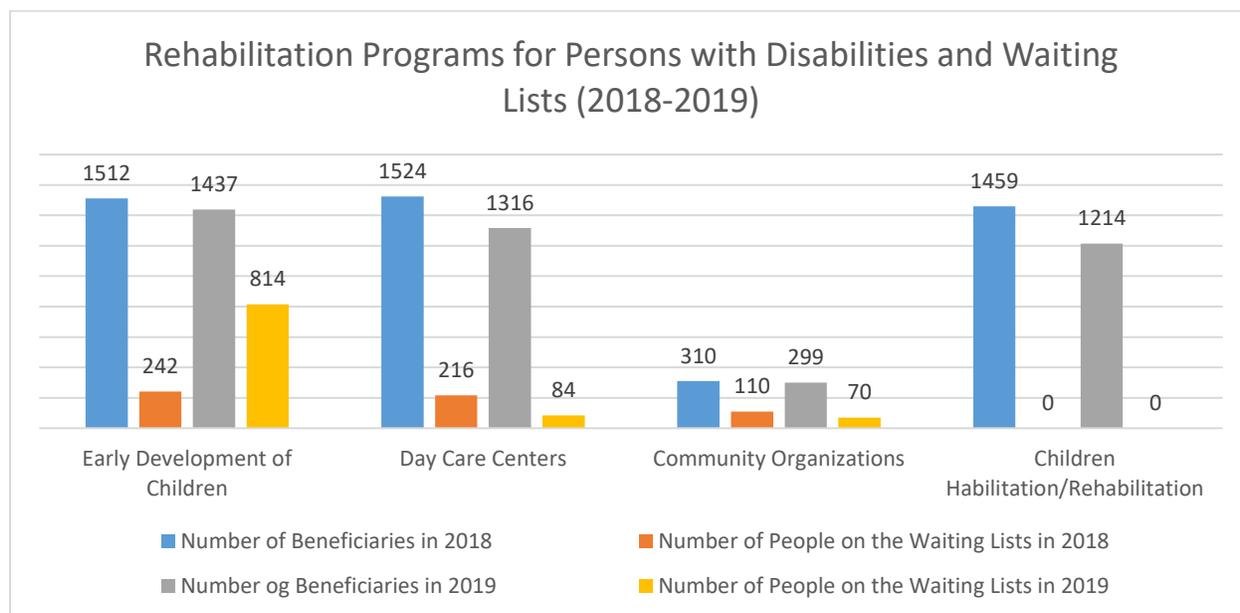
⁹²⁷ Convention of the Rights of Persons with Disabilities, information is available: <<https://bit.ly/2CqO7wZ>> > [accessed 20.01.2020].

⁹²⁸ According to the available information, it is planned for 2020 to revise the structure of the Human Rights Interagency Council under the Government of Georgia and this Council will also operate the national mechanism of implementation of the Convention and coordination of the issues of disabled persons.

mostly has not improved. The issue of quality inclusive education at all educational levels, as well as employment of disabled persons still pose a challenge.

22.2. Habilitation and Rehabilitation

Despite the positive trend of increase of budget of the state program for child care and social rehabilitation in 2019,⁹²⁹ the number of beneficiaries (including children with disabilities) of the targeted subprograms has decreased. The problem of the waiting lists⁹³⁰ of beneficiaries still persists. Quality of services provided by certain subprograms also poses a challenge. Majority of the disability targeted services that are aimed at the needs of persons with disabilities within the state program does not cover all regions and the existing demand in the whole country.



On the positive note, it should be mentioned, that ten new organizations were registered as service providers of Children’s Early Development sub-program in 2018-2019. However, the number of beneficiaries on the waiting list for this Program is still large.⁹³¹

Persons with hearing impairment also encounter certain problems while benefiting from the state program. The program component, which provides cochlear implants has 33 beneficiaries while 44 perspective beneficiaries are on the waiting list. Moreover, at present the beneficiaries are not provided with the processor of the cochlear implant, which hinders maintaining the results achieved through the aid device and leads to worsening of the condition.

⁹²⁹ The budget of the State Program for Social Rehabilitation and Child Care of 2019 has increased by 27% in comparison with the previous year and amounted to 35 890 000 GEL.

⁹³⁰ Correspondence of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia №01/1451 (06.02.2020).

⁹³¹ Number of people on the waiting list of beneficiaries of the Subprogram of Support of Children Early Development amounts to 814 persons.

Several municipalities inconsistently fund assistive technical means for the cochlear implant, speech processor (cable, batteries, etc.), which hence is not available to all the persons with hearing problems.

Therefore, it is important that the state program fully provide mentioned assistive means as well for better benefitting of this component of the program.

It should be positively noted that the Subprogram for Provision of Aid Devices for persons with hearing impairments has a new component – provision of disabled persons, who are deaf or with hearing loss with technical device (smart phone) with the function of videoconference. However, there are 21 persons waiting for the technical device provided by this component according to the data of 2019. The state program does not provide for hearing rehabilitation along with the provision of hearing device.

Within the reporting period budget of the community organizations' subprogram has increased.⁹³² Despite the growth in limited number of beneficiaries, there are tens of individuals waiting for engagement in the subprogram.⁹³³ Number of individuals involved in the component Promoting independent living, is low.

The relevant components of the State Program of Social Rehabilitation and Child Care still do not consider children with behavioral or mental health problems as a target group and do not provide them with the necessary targeted services until now. According to the information submitted to the Public Defender, with the support of donor organizations social pedagogical center "Compass" has launched pilot activities from September 2019 in Tbilisi. Once the efficiency of the center's services is evaluated, funding for similar services will be determined under the State Program for Social Rehabilitation and Child Care.⁹³⁴ It is noteworthy that the area of coverage of the service under this project, as well as list of eligible persons and age of beneficiaries with relevant needs is limited. Children with behavioral and mental health problems are still left without necessary therapy and rehabilitation.

The state still cannot provide adults with disabilities with the rehabilitation services. Despite the fact that

⁹³² Per diem compensation for the service of beneficiaries has slightly increased in the component of provision of community services to disabled persons. The component of the subprogram that provides service for fostering of independent, family type life for disabled persons has seen more tangible increase, up to 30 GEL (correspondence of the Ministry of IDPs from the Occupied Territories, Labor, health and Social Protection of Georgia №01/1451 (06.02.2020).

⁹³³ There are 70 individuals waiting for community organizations subprogram.

⁹³⁴ Correspondence of the Ministry of IDPs from Occupied Territories, Labor, health and Social Protection of Georgia №01/1451 (06.02.2020).

with the support of donor organization the State was enabled to take certain steps for establishing the subprogram,⁹³⁵ adults with disabilities still cannot benefit from the services necessary to them.⁹³⁶

Analysis of the acquired information about the difference between allocated and spent amounts under each subprogram within the State Program of Child Care and Social Rehabilitation in 2019 demonstrates, that there are several millions of GEL provided by the budget that was not spent by the program, as a whole.⁹³⁷ This leads to presumption that programs are not operated based on the sufficient needs assessment.

Daycare Centers for Persons with Disabilities

Within the reporting period Day care services still cannot cover and meet needs of all beneficiaries through the country in need of the service. ⁹³⁸ The monitoring conducted by the Public Defender's Office in 2019 demonstrates that the shortcomings related to the prolongation of voucher for beneficiaries (including children), disproportional geographical coverage of services and in certain cases, low quality of services is negatively reflected on the number of service beneficiaries (including children with disabilities) .

Despite the increase 2019 year budget of the day care centers subprogram by 248300 GEL, the significant part of it has not been utilized by the program,⁹³⁹ which points to the incorrect allocation within the program itself. In certain regions there still are individuals on the waiting list of the Subprogram. Moreover, due to the scarcity of funding per one beneficiary the centers fail to be staffed by experienced and qualified human resources.

⁹³⁵ According to the correspondence of the Ministry of IDPs from Occupied Territories, Labor, health and Social Protection of Georgia №01/1451 (06.02.2020), Emory University together with the partner organizations (Corporation "Partners for International Development", Tbilisi State Medical University, Coalition for Independent life) started in 2018 implementation of physical rehabilitation program in Georgia for development and planning of rehabilitation/habilitation of adult disabled persons under the state programs with the support of USAID. Goals of the project include empowering of physical rehabilitation profession in Georgia, re-training of the professionals, improvement of services, facilitation of access to aids and technological devices and other measures for disabled persons. The project is led by the governing council founded under the Order № 01-1301/o of 19 November of 2018 of the Minister of IDPs of the Occupied Territories, Labor, Health and Social Protection of Georgia. Within the reporting period the thematic working groups actively work on specific issues related to the topic of rehabilitation. Moreover, from February of current year at the initiative of World Health Organization preparation works were to be launched in Georgia. Their goal is to carry out situational evaluation of rehabilitation in Georgia and drafting of strategic plan and monitoring framework for rehabilitation.

⁹³⁶ According to information of the Minister of IDPs of the Occupied Territories, Labor, Health and Social Protection of Georgia and in line with the requirements of Governmental Action Plan of Human Rights Protection it is planned for 2020 to determine only rehabilitation needs and opportunities for service development for adults.

⁹³⁷ LEPL Social Service Agency letter №04/65091 – 23.12.2019.

⁹³⁸ In comparison with the previous year the number of individuals on the waiting list for the day care service has decreased. In 2018 there were 116 disabled children and 77 disabled persons on the list; in 2019 - 100 disabled children and 7 disabled persons.

⁹³⁹ LEPL Social Services Agency letter №04/65091 – 23.12.2019. N15855/19.

As a result of the monitoring⁹⁴⁰ conducted by Public Defender in the day care centers for persons with disabilities in 2019, it was found that some the service providers do not meet duly the requirements established by the State Program and standards. The existing standard needs amendments itself; namely, it needs to be brought in line with the State Program of Social Rehabilitation and Child Care, as well as, with the legislative regulations currently in force in the country.⁹⁴¹

Together with the other shortcomings of the service, the monitoring has demonstrated that beneficiaries are not provided with the service that would be tailored to their individual needs, functional abilities, and disability types. The lack of qualified specialists, especially in the regions, as well as important flaws with regards to the lack of skills for detection, determination, and response to violence, pose acute problems. Physical environment of the day centers, their internal and external infrastructure are not fully accessible for persons with disabilities, which is also problematic. The state does not renew the voucher on time, which leads to suspension of services for several months.

22.3. Right to Education

Fulfillment of the right to quality inclusive education still poses a challenge at all levels of education, including the level of early and preschool education, as well as, at the levels of general, vocational and higher education.

Information obtained from local self-governments shows that the comprehensive assessment of the needs existing in the sphere of inclusive preschool education, mobilization of appropriate funds, access to infrastructure/learning resources, involvement of supporting personnel⁹⁴² required in the process of preschool education, training of the existing personnel⁹⁴³ are problematic. Despite the requirements set forth in the Law of Georgia on Early and Preschool Education, relevant consultative councils operate only in 22 municipalities.⁹⁴⁴

It should be mentioned, that within the reporting period there were drafted working versions of the following documents: "Transition Model from Preschool Education to Primary Education Level of General Education System", and "Framework Instrument of Early Inclusive Education".⁹⁴⁵ Therefore, public Defender considers, that it is important to accelerate the processes for timely separation of competencies

⁹⁴⁰ Monitoring was undertaken by the Department of Protection of the Rights Persons with Disabilities with participation of the members of special preventive group from 30 October to 20 December, 2019 in 26 day care centers in Tbilisi and other regions.

⁹⁴¹ Including the requirements of the Law of Georgia on Protection of Personal Data.

⁹⁴² For example: special teacher, occupational therapist, psychologist, speech and language therapist, etc.

⁹⁴³ From the perspective of re-training, in 2019 all the assistant caretakers of kindergartens in Signani Municipality were provided training with regards to inclusive education, which should be noted positively. The Free Trade Union of Teachers and Scholars held training on the due approaches to disabled pupils in Aspindza Municipality. In 2019 there was also held an inclusive education training for kindergarten employees (caretakers, assistant caretakers) and education specialists of the Union in Dedoplistskaro.

⁹⁴⁴ Information was provided to the Public Defender's Office from only 43 municipalities. According to this information, municipalities mostly plan to establish consultative councils in 2020.

⁹⁴⁵ Correspondence of the Ministry of Education, Science, Culture and Sport of Georgia MES 2 20 00016464-10.01.2020.

of agencies with regards to inclusive, early and preschool education and for detailed regulation of these issues.

It is noteworthy, that the Law of Georgia on Early and Preschool Education has been amended.⁹⁴⁶ Namely, it was determined as obligation of the preschool care facility to provide information to the children on their rights and remedies according to their age and individual abilities and through the means of communication that is accessible to children.⁹⁴⁷ The amendment will enter into force on 1 June, 2020.

As to the general education, it is important to mention, that inclusive education was introduced only in 1400 schools out of 2100 public schools.⁹⁴⁸ Detection of children with disabilities, who are left beyond the formal educational system and their engagement in the educational process is still a serious problem. At present students with special needs are enrolled in only 67% of public schools.⁹⁴⁹ It is still challenging to provide detailed statistics on persons with disabilities who are left beyond the formal education, as well as pupils with disabilities who are involved in educational process.

The Public Defender's Office has requested information⁹⁵⁰ regarding fulfillment of recommendations provided in the special report published in 2019 on Inclusive Education in the Pilot Public Schools⁹⁵¹. The analysis of submitted information show that it is still challenging for schools to introduce appropriate mechanisms for management of behavioral problem of students', to ensure access of internal and external infrastructural/ learning resources at schools, to employ inclusive education specialists and to provide them with adequate salary, due readiness of school staff and parents to meet needs of students with special educational needs (students with disabilities), operation of efficient system of internal and external monitoring of these educational facilities. It should be emphasized that despite the issued recommendations, not all the schools have developed an action plan for the introduction/implementation of inclusive education, which in turn hinders the development of the uniform vision and taking of consistent steps.

It is noteworthy that based on the recommendation⁹⁵² of the Public Defender, the Inclusive Development Unit of the Strategic Development Department of the Ministry of Education, Science, Culture and Sport has developed the draft amendments to the "Mechanism of Identification of Students with Special Educational Needs and Rules of Introduction, Development and Monitoring of Inclusive Education". These amendments provide for referral to the authority of custody and guardianship by the factual residence

⁹⁴⁶ Legal amendment is available at : <<https://bit.ly/39ad7Xw>> [accessed 10.03.2020].

⁹⁴⁷ Law of Georgia on Early and Preschool Care and Education, Article 17, Section 2, Paragraph "f", available at: <<https://bit.ly/2ttUZZh>> [accessed 10.03.2020].

⁹⁴⁸ "Improvement of the Services Supporting Inclusive Education", Study of Ivane Javakishvili Tbilisi State University, pg. 18.

⁹⁴⁹ Id, pg. 16.

⁹⁵⁰ Correspondence №09-2/9-03.01.2020.

⁹⁵¹ Report is available at <<https://bit.ly/2TfFa2u>> [accessed 30.03.2020].

⁹⁵² For detailed information, see Report on Inclusive Education in the Pilot Public Schools, pg. 14, available at: <<https://bit.ly/31xP2qT>> [accessed 30.03.2020].

of the student in case the parent/ legal representative does not agree to evaluation of special educational needs of the pupil under a rule determined by article 1198¹, Section 2 of the Civil Code of Georgia. ⁹⁵³

As to the system of specialized education, the trend of fulfillment of recommendations issued as a result of the monitoring of the Public School №202 (boarding school for children with visual impairment), should be especially noted. ⁹⁵⁴ Changes to the board of directors in the School should be positively noted. As to the other issues, the obtained information⁹⁵⁵ shows that the infrastructure of the Boarding School is still not fully accessible to students.⁹⁵⁶ Moreover, due to the lack of sufficient financial resources, the School fails to work on habilitation and rehabilitation of students in line with the contemporary standards. Involvement of the due amount of required specialists in the educational process remains to be a problem: these include occupational therapist, mobility trainer, assistant to the student with special educational needs, assistant caretaker, etc.

22.4. Accessibility

At the national level it still remains challenging to ensure access of persons with disabilities to physical environment, as well as services and information.

According to the information obtained from local self-governments, it is a problem at the municipal level to fully study present needs related to accessibility, to develop respective recommendations and to process statistics on indicators of the improved physical environment.⁹⁵⁷

On the negative note, despite the recommendations⁹⁵⁸ of the Public Defender, not all the Municipalities have developed a national action plan for ensuring accessibility to the physical environment for persons with disabilities, indicating specific measures, responsible agencies, timelines, funding component and outcome indicators that can be measured.

It is a problem for persons with disabilities to have access to the Governmental offices and courts, as well as other public establishments. According to the research carried out in 2019, which evaluated access to courts for persons with physical and/or sensory impairments, it was revealed that there are only a few court buildings with services accessible for persons with physical impairments. However, none of the buildings are accessible for persons with sensory impairments. Ramps of majority of court buildings as

⁹⁵³ Here it is implied that within one month from the original denial of parent/ legal representative, pupil still experiences the difficulties with learning and the repeated denial of evaluation by parent/ legal representative hinders child development; correspondence of the Ministry of Education, Science, Culture and Sport of Georgia MES 2 20 00016464-10.01.2020.

⁹⁵⁴ Report on Monitoring of Boarding School for Blind Children of LEPL Tbilisi Public School №202, 2018, available at <<https://bit.ly/2GYfVLf>> >[accessed 30.03.2020].

⁹⁵⁵ Correspondence MES82000042083-17.01.2020.

⁹⁵⁶ It should be positively noted, that the project on strengthening, renovation and rehabilitation of the LEPL Tbilisi Public School №202 has been prepared. The action plan of 2020 provides for implementation of rehabilitation works according to this project. Correspondence of the Ministry of Education, Science, Culture and Sport MES 2 20 00016464-10.01.2020.

⁹⁵⁷ In this respect Municipalities of Bagdati, Mtskheta, Sagarejo and Khobi are exceptions.

⁹⁵⁸ Special Report of the Public Defender on the Shortcomings of Access to Physical Environment for Persons with Disabilities, 2018, available at <<https://bit.ly/39etaU1>> >[accessed 30.03.2020].

well as interior and exterior staircases do not meet the accessibility standard. Amount of ramps is limited, in its turn. The monitoring revealed that out of 75 buildings inspected in the audit process for accessibility only 7 (4%) met the minimal standard.⁹⁵⁹

Amendments to the Code of Georgia on Spatial Planning, Architectural and Construction Activities, as well as to the Code of Administrative Offences should be evaluated as a step forward.⁹⁶⁰ According to the Amendments to the Code of Georgia on Spatial Planning, Architectural and Construction Activities there are fines provided for ignoring the elements required by the technical regulations for persons with disabilities in the process of arrangement of the space and architectural and planning activities.⁹⁶¹ The amount of these fines differs in according the place of commission of an offence and the class of building. Moreover, the obligation of the Government of Georgia to approve the “Technical Regulations - the National Standard of Accessibility” in line with the standards and principles of universal design and in view of the “Accessible and Usable Buildings and Facilities”⁹⁶², that should be implemented until 12 May, 2020 should be evaluated as the most important achievement. The Government of Georgia was also assigned to approve the “National Plan of Accessibility” until 14 June, 2021. In view of this, facilities with the public function, already constructed or under construction should be brought in line with the requirements of the technical regulations and the “National Plan of Accessibility”. It should also be noted that the above-mentioned plan should be developed with the maximum participation of persons with disabilities and organizations working on the rights of persons with disabilities.

As to the Code of Administrative Offences text of Article 178¹ was amended⁹⁶³, while Article 178² and Article 239, Section 45 were canceled. Articles 211-214 were amended and the agency responsible for enforcement was changed.⁹⁶⁴

In spite of these positive changes, it is still challenging to create conditions necessary for persons with disabilities to have access to information, means of communication and various services, which also need detailed regulation at the legislative level.

⁹⁵⁹ “Evaluation of Access to Court Buildings for Persons with Disabilities”, 2019. The report was prepared by the NGO Partnership for Human Rights, available at: < <https://bit.ly/31ykFR1> > [accessed 30.03.2020],, page 29.

⁹⁶⁰ The draft law aims at setting forth the legislation regulating spatial planning, architectural and planning elements for disabled persons, to make the law consistent and foreseeable, to provide for administrative liability in case of violation of these requirements, to determine the agency responsible for enforcement and efficient mechanisms for enforcement.

⁹⁶¹ Except for individual residential houses.

⁹⁶² ICCA 117.1.

⁹⁶³ The text of this Article was amended as follows: “Evasion from creating the necessary conditions for using transport and transport communications by persons with disabilities will be fined by: a. 1500 to 2000 GEL of airport operator/air carrier/service air carrier; b. 3000 to 5000 GEL of sea harbors/terminals; c. 500 GEL of persons providing services in the field of transferring passengers or cargo through car and railway transports (in the means of transportation, railway stations and bus stations).

⁹⁶⁴ In particular, the following agencies were designated as responsible for enforcement: respective authorities of the Georgian Railway, maritime transport bodies, Civil Aviation Agency, authorities of automobile transport and electric transport. Prior to entry into force of this law (12 May, 2020). air, sea, railway, and terrain transport managed by their owners should be brought in line with the requirements of the legislation and the National Plan of Accessibility. The National Plan of Accessibility sets timelines. Deadline for the development of the Plan is 14 of June, 2021.

22.5. Right to Health

The current healthcare system of the country does not address the individual needs of persons with disabilities. Financial availability of health care services, as well as access to physical environment of medical facilities and qualification of personnel are among important problems. It is problematic to re-train the staff on specifics of providing services to persons with different typed of disabilities, as well as providence of hospitals with the appropriate adapted and accessible medical equipment.⁹⁶⁵

The low involvement of persons with disabilities and particularly women with disabilities in the Universal Healthcare Program points to the additional barriers, which they encounter in the process of access to healthcare services.⁹⁶⁶ Due to the inability to benefit from the services independently, confidentiality of medical services is violated in the majority of cases.

Mental Health

Persons with mental health problems encounter additional barriers in accessing mental health services. Improvement of situation of the rights of these persons significantly depend on efficient and timely enforcement of the crucial policy document in the field - "Strategic Document for Development of Mental Health and Action Plan for 2015 -2020."⁹⁶⁷

Outcomes of the Monitoring on Enforcement of the Mental Health Development Action Plan

Within the reporting period results of the monitoring by the Public Defender's Office on the enforcement of activities provided by the Action Plan of Mental Health Development for 2015-2020, reveal that despite the positive trend of annual increase of the budget of mental healthcare, the Plan is not implemented in timely and efficient manner in practice.

As of 2019, suicide prevention strategy of people with psychosocial needs still has not been elaborated.⁹⁶⁸ Number of patients who are institutionalized for more than 6 months is still high.⁹⁶⁹

There is no progress from the perspective of development of social integration and rehabilitation services for persons with mental health problem. Budget of the psychosocial rehabilitation component of the Mental Health State Program experienced increase in 2018-2020. However the amount of the mentioned

⁹⁶⁵ See the Report of the NGO Accessible Environment for All, "Access to Medical and Rehabilitation Services for Persons with Disabilities in Georgia" (2018), page 9, available at <<http://bit.ly/jandacvismisawvdomoba>> [accessed 06.03.2020].

⁹⁶⁶ See the thematic inquiry "Access to Healthcare Services to Disabled Woman and Girls" (2019), Parliament of Georgia, Available at <<http://bit.ly/2v40XAlqaltajandacva>> [accessed 15.03.2020].

⁹⁶⁷ Resolution №762 of 31 December, 2014 of the Government of Georgia on Approval of the Strategic Document on Development of Mental Health and Action Plan for 2015-2020, available at <<https://bit.ly/33WZXvq>> [accessed 06.03.2020].

⁹⁶⁸ The process of elaboration of strategy has started in 2018 and is not finished yet. The action plan envisaged launching of the program in 2016.

⁹⁶⁹ Until November 2019 there were 7723 persons admitted for the in-patient care; out of these, in 1067 cases patient was hospitalized for more than 6 months. Moreover, in 2019 out of 9567 patients who were discharged from the hospital, only 68 patients had spent more than 6 months there, which accounts for 0.7% of patients who has been discharged from the hospital.

increase⁹⁷⁰ cannot guarantee efficient development of services. Funding of the psychosocial rehabilitation (there are still only three centers functioning) account for only 0.4% of the Mental Health State Program overall budget,⁹⁷¹ which does not allow for opportunity to increase the number of psychosocial rehabilitation centers.⁹⁷²

Despite the recommendation⁹⁷³ of the Public Defender, timely and efficient detection of mental and behavioral disorders caused by the use of psychoactive substances and provision of these persons with appropriate psychiatric and narcological services are still problematic.

Situation has not changed with regard to the arrangement of inclusion of (both voluntary and involuntary) beneficiaries of in-patient psychiatric care in the Universal Healthcare Program that often leaves these persons without necessary healthcare services.

In 2019, certain steps were taken to harmonize the national legislation on psychiatric care with international standards. The legislative amendments to the Law of Georgia on Psychiatric Assistance have been prepared. However, their adoption has been delayed.⁹⁷⁴

The authenticity of the consent on mental health treatment expressed by the beneficiaries of in-patient psychiatric care still remains to be a problem. In the majority of cases, giving consent to the in-patient psychiatric treatment by a patient, as a rule, takes place without duly informing them and is of formal character.⁹⁷⁵

Situation with regards to human resources in psychiatric care has not changed.⁹⁷⁶ It is necessary that the State take effective and complex measures to increase the number of professionals in the field, including psychiatrists, psychotherapists, psychiatric nurses and social workers.

Within the reporting period the activities aimed at awareness raising on mental health, changing of attitudes and reduction of stigma failed to achieve the goal provided in the Mental Health Development Action Plan.⁹⁷⁷ Long-term and short-term awareness rising strategies have not yet been drafted.

⁹⁷⁰ In 2017 it amounted to 77.8000 GEL, in 2019 it was 88000 Gel, while in 2020 it is 101000 GEL.

⁹⁷¹ Correspondence of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia №01/2147 (19.02.2020).

⁹⁷² According to this plan this objective was determined for 2017.

⁹⁷³ See Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia (2019), page 280, available at <<https://bit.ly/2wt4fhR>> [accessed: 06.03.2020].

⁹⁷⁴ The Public Defender's Office has studied the drafted amendments and issued a proposal with regards to them to the Parliament of Georgia.

⁹⁷⁵ See the thematic Report of the Public Defender of Georgia on Monitoring of the LLC Academician B. Naneishvili Mental Health National Center, (2019), page 19, available at <<https://bit.ly/2OCiirf>> [accessed: 06.03.2020], and Report of the Public Defender of Georgia following the visit to Bediani Psychiatric Clinic – LLC East Georgia Mental Health Center, (2019), page 15, available at <<https://bit.ly/388BeWr>> [accessed 06.03.2020].

⁹⁷⁶ As of today, there are 279 psychiatrists, 20 children psychiatrists, 15 adult and 14 child psychotherapists, and 303 psychiatric nurses employed in the field.

⁹⁷⁷ According to the information of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia (letter №1134/20), in 2019, within the "Component of Fostering the Mental Health" of the State Healthcare

The trend of growth of community services should be positively noted.⁹⁷⁸ In 2019 number of community mobile groups and geographical area of their coverage has significantly increased (from 11 to 31). The ratio between funding of in-patient and community based services has been positively changed.⁹⁷⁹ It should be noted here, that monitoring and evaluation of quality of community services is also crucial in order to make final assessments concerning the service. It is also important to continue efforts for trend of growths of outpatient community services in order to ensure continuous provision of services to persons with respective needs.⁹⁸⁰

Within the reporting period strategy for deinstitutionalization of the mental healthcare sphere has not been approved. From 2018 up to now study of the geographical location of services has been underway; this study should form the basis for elaboration of the strategy.

Despite no existing strategy, it is noteworthy that the State takes certain steps for the deinstitutionalization of large psychiatric facilities.⁹⁸¹ Public Defender welcomes all the practical decisions aimed at improvement of situation of patients and development of modern community based services in the country. However, undertaking this process without a specific strategy contains the risks that deinstitutionalization will fail to progress in the right direction.

Monitoring of the Rights of Sexual and Reproductive Health of Women in Psychiatric and State Care Facilities

Women with mental health problems present especially vulnerable group. They are under the heightened risk of violation of their health rights. Monitoring⁹⁸² carried out by the Public Defender in 2019 exposed the whole range of systemic and specific shortcomings with respect to protection of reproductive health of women in the psychiatric and state care facilities.

In particular, the monitoring demonstrated, that in spite of the obligations imposed to the State in terms of protection of women's rights, the legal acts and national guidelines regulating this field in Georgia practically omit the issues of sexual and reproductive health of women with disabilities leaving in institutions. National Clinical practical guidelines recognized by the State in the field of mental health are outdated and need revision. There is no guide applied in the country that would help with treatment and

Program there have been developed educational materials on inclusion and community based approaches, available studies about the services and their findings.

⁹⁷⁸ In 2019, as part of the increased budget of the Mental Health Program, budget of the community outpatient services has increased by 23%, while budget of the community based mobile group services has increased by 123%.

⁹⁷⁹ According to the letter №1134/20 of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia, in 2019 the above-mentioned ratio was 42/58%. The ratio provided by the Plan is 50/50.

⁹⁸⁰ In 2019 (including November) number of beneficiaries of the community based mobile group services component amounted to the 923 persons. Following the discharge from hospital, number of applications for services under the community based mobile group component amounted to 216.

⁹⁸¹ According to the letter №1134/20 of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia it is planned to operate long-term accommodation for 24 beneficiaries in Rustavi and Batumi in 2020. Also is it planned to build four accommodations in Kutaisi, Poti and Senaki. It is also planned for this year to fund small family type houses (determined for 6 beneficiaries).

⁹⁸² See the Special Report of the Public Defender of Georgia, Situation of Sexual and Reproductive Health and Protection of Rights of Woman in Psychiatric and State Care Facilities, 2019.

care during pregnancy and childbirth by women with mental health problems. In-patient psychiatric hospitals and state care facilities do not check sexual and reproductive health conditions of women prior to treatment with psychotropic drugs and do not carry out its monitoring in the process of mental health treatment. For women who are institutionalized for a long period, gynecological service is not duly provided. Women with mental health problems are not duly involved in the state screening programs for the early detection of diseases (other than Hepatitis C). Test for AIDs and Syphilis is not administered systematically. Moreover, awareness of patients/beneficiaries on their sexual and reproductive health and rights, including influence of psychotropic drugs on their sexual and reproductive health, is significantly lower than average. Detection of Violence between patients/beneficiaries, including identification of sexual violence between them, represents a challenge for the administration and personnel of the mentioned facilities.

22.6. Participation of Persons with Disabilities in Political and Public Life

In its annual reports the Public Defender has always emphasized the barriers that persons with disabilities encounter in the process of participation in political and public life. The situation has seen no improvement within this reporting period. There is no sufficient environment and conditions in the country that would facilitate participation of persons with disabilities in public life, such as due access to infrastructure, supporting services, information and means of communication.

The legislation fails to provide inclusive environment, safeguards of fulfillment of active and passive voting rights, accessible mechanisms for filing and consideration of complaints in cases of violation of right to election. There are no measures provided for promotion of participation of persons with disabilities placed/living in closed institutions in the elections. Persons with disabilities consider, that political parties are not interested in their rights. They do not perceive them as their electorate and there is no exchange of information and/or debate on this issue either within the political parties or among them. The programs of the political subjects mostly are not comprehensible and accessible to persons with disabilities.

Existing regulations also do not provide for measures of facilitation of inclusive environment for equal opportunities for persons with disabilities to enter the public service. Persons with disabilities have no access to certification exam of public servants, materials for preparation for the test or the website of the Public Service Bureau.

Local Councils Working on Disability Issues

Study⁹⁸³ of the situation of establishment/ operation of the local councils working on Disability issues and involvement of persons with disabilities and their representative organizations⁹⁸⁴ in this process, has found that in spite of some progress, effective functioning of consultative bodies remains to be a challenge. Despite the fact that there is a council in the majority of municipalities⁹⁸⁵ its members have no sufficient knowledge and qualification on the rights of persons with disabilities and obligations incurred by the State under the UN Convention.⁹⁸⁶ Moreover, it is problematic to involve community of persons with disabilities in the process of decision-making, the cause of which could be the lack of information on the functioning of councils, as well as scarcity of local representative organizations.

The number of meetings⁹⁸⁷ of these councils and similarity of issues/proposals⁹⁸⁸ discussed by them, point to the inefficient functioning of councils. This, in its turn, points to the fact, that needs of persons with disabilities are not duly studied by the local self-governments. Therefore measures taken by the municipalities are not efficient and tailored to individual needs of persons with disabilities.

Despite the recommendation of the Public Defender, made in the previous years councils working on the rights of persons with disabilities are still not established in some municipalities.⁹⁸⁹ There were no council meetings throughout 2019 in some municipalities.⁹⁹⁰

22.7. Deinstitutionalization Process of Care Facilities for Children with Disabilities

Deinstitutionalization of large care facilities of children with disabilities is reflected in the various governmental action plans adopted in the country since 2014.⁹⁹¹ This process, in its turn, considers moving children with disabilities in view of their best interests from the big facilities to the biological families for their reintegration or the placement in the specialized family type service and/or specialized foster care.

⁹⁸³ In addition to Governmental Action Plan for Protection of Human Rights for 2018-2020 approved by the Resolution №182 of 17 April, 2018 of the Government of Georgia, establishment and formation of councils from 2010 was provided by the various governmental action plans adopted in the country.

⁹⁸⁴ Information was obtained from 64 municipalities. Meetings were held in Signagi, Ambrolauri, Batumi, Mestia, Ozurgeti and Kutaisi Municipalities.

⁹⁸⁵ As of 2019, councils were established in 55 municipalities.

⁹⁸⁶ UN Convention on the Rights of Persons with Disabilities.

⁹⁸⁷ There are some exceptions (5 sittings in Zugdidi and Aspindza, 4 sittings in Ozurgeti, Bagdati, Signagi, Shuaxevi and Tsageri; 3 sittings in Oni, Sachkhere, Ambrolauri, Adigeni, Tskaltubo and Kutaisi), but the number of sittings held mostly fluctuates from 1 to 2.

⁹⁸⁸ Majority of proposals are still aimed at adjustment of internal and external facilities and grant of onetime material assistance. From the perspective of diversity of proposals, good practices can be seen in Kutaisi and Zugdidi municipalities.

⁹⁸⁹ In Gardabani, Dusheti, Vani, Tianeti, Kaspi, Kazbegi, Tsalka, Chiatura and Khashuri Municipalities.

⁹⁹⁰ Terdjola, Lanchkhuti, Tkibuli, Ninotsminda (have never held any sittings since their establishment), Zestafoni, Akhalkalaki. Moreover, functioning of Kvareli and Khoni Councils are questionable, because the process of their establishment has been underway for two years already.

⁹⁹¹ Human Rights Protection Governmental Action Plan for 2018-2020, Human Rights Protection Governmental Action Plan for 2016-2017, Governmental Action Plan for Provision of Equal Opportunities for Disabled Persons for 2014-2016.

In 2019 only 5 beneficiaries with disability status⁹⁹² were transferred to alternative care services and 47 children with disability status are remaining in two state care facilities.⁹⁹³ In view of this, it can be stated, that the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia has not taken efficient steps to secure the services for children, which would be as close to the family environment as possible and to run efficiently the process of deinstitutionalization of the large care facilities for children with disabilities.

Recommendations

To the Government of Georgia:

- Ensure accessibility of services provided by subprograms for child early development, child habilitation/rehabilitation, day care centers and community organizations - for everyone with relevant needs in the whole country, including through needs assessment, study of the exposed shortcomings/challenges of services, increase of funding and training and re-training of the personnel involved in provision of respective services;
- Ensure inclusion of children with behavioral or mental health problems, as a target group in the respective components of the Social Rehabilitation and Child Care state program and provision of respective services to them;
- Within the framework of the state program, along with the provision of hearing aids, ensure provision of sufficient rehabilitation and full access to hearing technologies;
- Ensure the increase of number of beneficiaries engaged in the family type services promoting independent living of persons with disabilities;
- Ensure such increase and allocation of the budget for day care services subprogram, which will allow hiring qualified personnel for provision of services and implementation of the appropriate rehabilitation activities for the beneficiaries;
- Ensure arrangement of the information campaigns on the legislative amendments related to accessibility, regulations and obligations provided in the technical regulations elaborated on the basis of the universal design standards, in order to duly inform the public and responsible agents;
- Elaborate the national plan of accessibility with the maximum of engagement of persons with disabilities and organizations working on disability issues. Set as priority of the plan securing the access to the public facilities/services and public agencies. Moreover, ensure setting constrained timelines by this instrument.

To the Minister of Education, Science, Culture and Sport of Georgia:

- Ensure collection of statistical data for both, children with disabilities left beyond the formal education system and students with special educational needs (students with disabilities), who are enrolled in the system of education;
- Ensure re-training of the schoolteachers and inclusive education specialists on the educational needs of students with disabilities through elaboration of practice-oriented training modules and

⁹⁹² Response of the LEPL Social Service Agency №04-00-d/18888, 02/05/2019; №04/65942, 30/12/2019; Response of the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking №07/1477, 19/12/2019.

⁹⁹³ Tbilisi Infant House, Kojori House of Disabled Children

programs, inter alia, on development of individual learning plans, management of difficult behavior, methods of teaching students with autism, students with profound and multiple mental disorders, use of communication aids and alternative technologies, evaluation of students;

- Ensure development of programs/services for positive management of behavior and their implementation at schools;
- Ensure feedback on the internal monitoring undertaken by schools with regards to inclusive education (including the reports submitted by the schools);
- Conduct external monitoring more often (at least once per semester). Moreover, ensure in the process of monitoring in-depth study of the needs related to inclusive education, analysis of documentation and preparation of recommendation on the revealed shortcomings;
- Supervise the general educational facilities in the process of:
 - ensuring access for students with special educational needs (students with disabilities) to interior and exterior infrastructure of schools, as well as teaching materials according to their individual needs;
 - developing an action plan for the introduction and implementation of inclusive education;
 - organization of information meetings with parents on inclusive education, rights of children with disabilities, issues of protection from discrimination and violence, including types of violence, its consequences, importance of intervention of a psychologist and forms of liability;
 - employment of inclusive education specialists (psychologist, occupational therapist, mobility and orientation specialist, sign language specialist, sign language interpreter, speech and language therapist) according to relevant needs;
 - conduct of internal monitoring of inclusive education at least once per academic year and full exposure of shortcomings related to the inclusive education in the process of internal monitoring and planning and implementation of appropriate measures.

To the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia:

- In the shortest time possible, ensure development of deinstitutionalization strategy and introduction of the community based services according to the mentioned strategy, including shelters, day care centers and arrangement of modern community based safe housing;
- Ensure in the shortest time possible development of suicide prevention strategy for persons with psychosocial needs;
- Ensure the development of mechanism for internal inspection and monitoring of psychiatric facilities and introduction of this mechanism in practice through detailed description of functioning of this mechanism and determination of functions and obligations;
- Take necessary measures, by taking into account the principle of geographical accessibility, to increase the number of psychosocial rehabilitation centers and to duly develop the psychosocial rehabilitation services;
- Draft the long-term strategy for development of human resources and take effective measures in line with the strategy to increase the number of personnel (psychiatrists, psychotherapists,

psychiatric nurses and social workers) in the field of psychiatry and for their proper distribution in the country;

- Ensure approval of the strategic plan for education and awareness raising on the mental health and supervise process of its implementation;
- Ensure adoption of the rule and procedure for inclusion of the (voluntary and involuntary) beneficiaries of the in-patient psychiatric care in the Universal Healthcare Program and for establishment of the uniform efficient practices for the mention purpose;
- Take all the necessary measures to revise the mental health treatment national guidelines in the manner, that will ensure that they include the issues of sexual and reproductive health management of women in line with the modern international practice;
- Based on the international good practices, ensure elaboration of guideline/protocol on management of pregnancy during mental health treatment of persons with mental health problems for various psychiatric diagnoses;
- Prior to starting the treatment with psychotropic drugs ensure the access to relevant laboratory tests, including determination of prolactin in blood and pregnancy tests, through setting forth the obligation of undertaking laboratory checkup for women of reproductive age, who are institutionalized in the psychiatric facilities and under the state care, through allocation of respective resources;
- Ensure re-training of the personnel of psychiatric facilities, boarding houses and community organizations on the issues of reproductive health;
- Ensure supervision and analysis of cases of referrals on the facts of violence by the psychiatric facilities, boarding houses and community organizations.

To Local Self-Governments:

- Conduct comprehensive study of needs of preschool education facilities (with regards to the inclusive education) and reflect them in the municipal programs and financial plans. Pay particular attention to the access to internal and external infrastructure/resources of kindergartens, employment of the inclusion supporting personnel and re-training of the employed personnel on the needs and appropriate approaches to the children with disabilities;
- Ensure the formation of the consultative councils and their operation pursuant to the Law of Georgia on Early and Preschool Education. Moreover, facilitate engagement of the parents of children with disabilities in these councils, including, through duly informing them;
- Ensure education and support of the parents/legal representatives of the children in preschool education system, their awareness raising on the importance of the preschool education, children's rights, essence of inclusive education and needs of children with special educational needs (children with disabilities), importance of due approaches and interventions and safeguards related to violence both through individual and group meetings;
- Re-train the personnel of the respective architectural and supervisory agencies on the technical regulations elaborated on the basis of the universal design standards;
- Collect statistics on indicators of the improvement of physical environment at the municipal level
- Conduct a comprehensive study of the shortcomings with accessibility at the municipal level and prepare appropriate recommendations to eradicate the problems;

- Ensure efficient operation of the local councils working on the issues related to persons with disabilities , through engagement of persons with disabilities themselves and their representatives;
- Municipalities of Gardabani, Dusheti, Vani, Tianeti, Kaspi, Kazbegi, Tsalka, Chiatura and Khashuri should ensure establishment of local councils working on the issues of persons with disabilities and efficient functioning of these councils, through engagement of persons with disabilities and their representatives.

23. Situation of Rights of Elderly Persons

Ageing of population is accelerated in Georgia.⁹⁹⁴ According to the last census, every fifth person in Georgia is 60 or above 60. By 2050 the number of people over 60 will increase even more and exceed 30% of the population.⁹⁹⁵

Challenges related to ageing are one of the important issues at the international agenda. The UN leads efforts to activate the issues relating to ageing healthily and with dignity and calls on the states to take active measures to protect the rights of elderly persons, so that they can also contribute significantly to the welfare and development of the State and not be perceived as beneficiaries of assistance, who present a burden to the economy and system of social welfare.⁹⁹⁶ Moreover, it has been ongoing discussion for years to adopt the UN convention aimed at protection of elderly persons.⁹⁹⁷

Unfortunately, despite the importance of the issue, Georgia has no national action plan in place based on the official conception of the issues of ageing population. Namely, the National Action Plan for 2017-2018 for Official Conception of Ageing of Population in Georgia has expired.⁹⁹⁸ The action plan itself defined that the interim review of implementation of the plan should have been conducted in 2018. Outcomes of this review should have been taken into consideration in the plan for the next two years,⁹⁹⁹ which unfortunately, was not fulfilled¹⁰⁰⁰ and according to the obtained information, working on the new action plan will be finalized only in the second quarter of 2020. It is unfortunate that outcomes of the Action Plan for 2017-2018 have not been analyzed by now and the new action plan on aging population in Georgia, which is important for the State policy on aging and activation of "active aging" attitudes, has not been elaborated.

⁹⁹⁴ National Action Plan for 2017-2018 on the Official Policy Conception on the Issues of Aging Population in Georgia, Annex, page 1.

⁹⁹⁵ Report of the UN Independent Expert, page 3, available at < <https://bit.ly/2TLJmsS> >[accessed 6.02.2020].

⁹⁹⁶ UN General Assembly, UN General Assembly Resolution adopted on 9 January, 2019, 73/143, available at <<https://bit.ly/2PnMEhu>>[accessed 25.02.2020].

⁹⁹⁷ For detailed information see the official webpage of the UN Open-ended Working Group on Ageing < <https://bit.ly/33UaTtS> >[accessed 01.03.2020].

⁹⁹⁸ The Public Defender discusses at length the failure to fulfill obligations provided in the Action Plan in its Report of 2017 on Situation of Protection of Human Rights and Freedoms in Georgia, page 311. Report is available at <<https://bit.ly/2OleRiP>> >[accessed 10.02.2020].

⁹⁹⁹ National Action Plan for 2017-2018 on the Official Policy Conception on the Issues of Aging Population in Georgia, Annex, page 3.

¹⁰⁰⁰ Letter of the Administration of Government of Georgia №53402, 26 December 2019.

The Public Defender's Office has conducted monitoring in the specialized facilities¹⁰⁰¹ for the elderly people in the reporting period that exposed several problems with regards to protection of health and encouraging social activity of elderly people, as well as individual approaches in the process of providing services.

Within the same period, the Public Defender assessed the legality of withholding of 50% of the monthly pensions of elderly people by banking organizations that further aggravates social and economic situation of pensioners. It was found that there is no regulation or legal constraint on withholding pensions in this regard.

Within the reporting period the Public Defender also found the discrimination on the ground of age towards the elderly people.¹⁰⁰²

The problems related to absence of statistical data and detection of violence against elderly people still remain. Additionally, taking care of social welfare of elderly people in local self-governments remains a challenge.

23.1. Situation of Rights of Elderly People in 24-Hour Care Institutions

To study the situation of rights of elderly people representatives of the Public Defender's Office visited the residential¹⁰⁰³ facilities operating in Georgia together with the members of the special preventive group in October 2019. In the process of monitoring situation of rights of beneficiaries placed in Tbilisi and Kutaisi boarding homes for elderly people was examined and compatibility of their conditions with the international and national standards was checked. The monitoring has exposed violations in institutional setup as well as in the flawed regulations and practice.

The monitoring was conducted on the basis of instrument elaborated by the Public Defender's Office – Monitoring Methodology on the Protection of Rights of Elderly People under State Care and in Other Residential Facilities -which provides for examination of 11 standards.¹⁰⁰⁴

There were 43 beneficiaries in Tbilisi Boarding Home for elderly people and 92 beneficiaries in Kutaisi Boarding Home for elderly people at the moment of monitoring. Out of this number 42 people were in need of palliative care. At present, 27 elderly persons are on the waiting list for the services of 24 hour specialized facilities.

Based on the monitoring, the Public Defender considers that rights of elderly people under the state care are not sufficiently protected. The monitoring revealed that after admission of elderly person to the

¹⁰⁰¹ Specialized facilities under the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking – Tbilisi and Kutaisi Boarding Homes for Elderly People

¹⁰⁰² Information is available at <<https://bit.ly/2SgwRTD> >>[accessed 10.02.2020]. For additional information, see the Chapter on Right of Equality.

¹⁰⁰³ At present there are two large residential facilities in the whole country, Tbilisi and Kutaisi Boarding Homes, which are administered by the LEPL State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking.

¹⁰⁰⁴ Information on the service, beneficiary-friendly environment, safety and sanitary conditions, protection of confidentiality, individualized approach in the provision of services, nutrition, encouraging the social activity, health care, feedback and complaint procedures, protection from violence and discrimination, requirements to the personnel.

facility, the custody and guardianship authority¹⁰⁰⁵ did not carry out supervision and oversight on the beneficiary and no monitoring was carried out on the necessity of continuation of receiving of services of the specialized institutions. Beneficiaries of specialized facilities have no access to the service of social worker. Professional of this field was not involved in the activities of the multidisciplinary group either, which drafts the individual service plan for beneficiaries. Under these conditions issue of competence of these plans is questionable. It is considerable that according to the adopted amendments, competences of the custody and guardianship has been transferred to the LEPL Agency for State Care and Assistance to the Victims and Persons Affected by Trafficking from 1 February 2020, which directly supervises the facilities for elderly people. Therefore, the Public Defender hopes that these structural changes will help the authority of custody and guardianship to get actively involved in operation of boarding homes for elderly.

The monitoring also revealed that part of beneficiaries placed in the facilities of elderly people have mental health problems. However unfortunately, service of psychiatrist is not available in these institutions. Therefore, beneficiaries in the boarding homes have no access to mental health services.

Beneficiaries with relevant needs in specialized institutions often have no appointed support persons. Therefore, there is a real risk of abuse of their rights.

The low wages of medical personnel and caretakers¹⁰⁰⁶, which is not adequate to the work they do, is an important problem.¹⁰⁰⁷ This demotivates the personnel to provide the quality services. Moreover, the personnel is not provided with the trainings/seminars/courses for professional development aimed at needs of elderly people. It is important that the working medical and other personnel be provided with more opportunities to get continuous professional education.

It is noteworthy, that there is no predetermined plan in boarding homes for social activities to ensure active aging. Undertaken activities are of spontaneous character and are mostly related to the offers of the various volunteering organizations.

23.2. Withholding of State Pension of Elderly People

Within the reporting period the Public Defender has evaluated the issue of legality of withholding of over 50% of the official old-age monthly pension by banking organizations. Under the legislation of Georgia withholding of over 50 % of state pension is allowed only under the court ruling.¹⁰⁰⁸ In case of taking pension loans from the banking organizations monthly sum to be withheld is determined by the terms of contract concluded between the banking organization and a pensioner as a bank customer and the above-mentioned legislative constraint does not apply in this situation. It is noteworthy that there is an Agreement between the LEPL Social Service Agency and JSC Liberty Bank on Free Bank Services for Transfer/Distribution of Monetary Allowances, which does not provide for any regulation or constraint on withholding of sums from monetary allowances.

¹⁰⁰⁵ At the moment of monitoring authority of custody and guardianship was the LEPL Social Service Agency.

¹⁰⁰⁶ In boarding homes salary of a doctor (net) amounts to 420 GEL and that of a caretaker – to 360 GEL.

¹⁰⁰⁷ For example, caretaker serves simultaneously to 15 beneficiaries.

¹⁰⁰⁸ Law of Georgia on State Pension, Article 19, Paragraph 3.

According to the data of 2019 available at the webpage of the LEPL Social Service Agency there are 762,621 persons above 60 who receive the old-age pension.¹⁰⁰⁹ More than half of the pensioners have taken loans¹⁰¹⁰ and the sum of monthly payment determined under the loan contract is withheld from pension account. As a result, over 50% of their pensions were withheld each month by the bank.¹⁰¹¹ When the state pension is the only income for pensioners, the remaining sum is much less than the subsistence minimum, which further aggravates the already grave social and economic conditions of pensioners.

According to the information received from the LEPL Social Service Agency, the Agreement concluded in 2014 with the JSC Liberty Bank on Free Banking Services for Transfer/Distribution of Monetary Allowances should have expired at the end of 2019. According to the Agency it has planned to determine new contractual terms for banking services in line with the legislation and interests of receivers of monetary state allowances, including the favorable conditions of service for the beneficiaries of the agency in their relationship with the bank.¹⁰¹² Despite the existing expectations, the Public Defender was notified¹⁰¹³ that the duration of the above-mentioned contract with the JSC Liberty Bank on provision of services has been extended by three years. Therefore, in the next three years contracts will be concluded between beneficiaries and the bank under the present terms and there will be no favorable conditions provided for protection of interests of receivers of state monetary allowances. It is important that the State undertake appropriate measures in line with the interests of beneficiaries in order to avoid withholding of the major part of pensions and aggravation of social and economic conditions of pensioners.

23.3. Violence against Elderly People

Based on the cases studied by the Public Defender of Georgia in 2019 it can be stated, that domestic violence against elderly people is mostly of economic and psychological nature and there is also a trend of not caring and ignoring the needs of the elderly people.

While applying to the Public Defender of Georgia, in certain cases, applicants have difficulty to understand the fact of violence; often, they experience affection and attachment towards the alleged abuser due to which they are reluctant to apply to the law-enforcement agencies. Moreover, even in case of application, the victim does not cooperate with the law-enforcement agency as soon as violent incident is over. As a result it is hard for these agencies to detect the facts of violence and the situation gets even more difficult when possible victim is also a disabled person.

The Ministry of Internal Affairs of Georgia still does not process statistical data on the violence against elderly people. It is joined with the statistical data on violence against people above 45 that naturally

¹⁰⁰⁹ Data is available at: < <<https://bit.ly/3ayk1qo>> [accessed 6.02.2020].

¹⁰¹⁰ Information is available at: <<https://bit.ly/3c5MmFl>> > [accessed 25.02.2020].

¹⁰¹¹ Information is available at: <<https://bit.ly/3c5MmFl>> [accessed 25.02.2020].

¹⁰¹² Letter of the LELP Social Service Agency № 04/33595, 20 June, 2019.

¹⁰¹³ Letter of the LELP Social Service Agency №04/624, 10 January, 2020.

cannot provide precise information. According to the data of the Ministry of Internal Affairs of Georgia 2349 restraining orders were issued in cases of violence committed against persons over 45.¹⁰¹⁴

The State has no separate psychosocial services and programs for protection and assistance tailored to the elderly victims of violence, including at the local municipality levels, which remains to be a problem.

It is important to develop comprehensive approach to the problem of domestic violence against elderly people, coordinated work of state agencies and undertaking of the specific measures, including the increase of social workers resources for protection of interests and provision of due support of victims.

23.4. Care for Social Welfare of Elderly People in Local Self-Governments

Situation of rights of elderly people in the local self-governments, which is caused by the inefficiently planned programs and absence of sufficient funding, poses an important challenge.

The Public Defender's Office has obtained information from 64 self-governing units, analysis of which proves that local self-governments have not studied the needs of elderly persons and therefore there are no goal-oriented programs and services tailored to their needs. As in the previous years, local self-governments limit their efforts to granting of one-time assistance that is provided to the different age groups in different municipalities. One-time assistance is mostly provided to the veterans of the World War II and the longest living people (of age of 80+, 95+, or 100 years and 100 +). The fact that goal-oriented program for at home care for elderly persons is not included in the budget still poses a challenge.

It is noteworthy, that according to the Law of Georgia on Social Work municipalities carry out social work in their territories, which involves, among others, active detection of elderly persons, determination and assessment of their needs, detection of problems and provision of information to the appropriate agencies in the field.¹⁰¹⁵ Unfortunately, municipalities do not carry out this obligation ; they do not conduct assessment of the needs of elderly persons and do not plan the appropriate measures.

Recommendations

To the Minister of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia:

- Conduct a study of the needs of personnel of the facilities for elderly people and take appropriate measures in line with the identified needs, including the improvement of qualification of the personnel.

To LEPL Social Service Agency:

- In view of the terms tailored to the interests of the beneficiaries, conduct negotiations with the JSC Liberty Bank to amend the concluded agreement.

To the LEPL Agency for Protection and Assistance to Victims and Persons affected by Human Trafficking:

¹⁰¹⁴ Available: <<https://bit.ly/2xul2kT>> [accessed 11.03.2020].

¹⁰¹⁵ Law of Georgia on Social Work, Article 56, Section 1, Paragraph "a".

- Conduct a study of situation of mental health of the beneficiaries in boarding homes and in case of necessity ensure accessibility to mental health services for them;
- Ensure regular monitoring over provision of services to the elderly people by 24 hour specialized facilities;
- In the process of care for beneficiaries in the boarding homes, including the activities of the multidisciplinary group, involve social workers.

To the Administration of 24-Hour Specialized Facilities for Elderly Persons:

- Considering the needs of beneficiaries develop individual plan of services;
- Develop plan of social activities for the purpose of the active aging;
- Identify beneficiaries in need of support and take appropriate measures to initiate procedures for appointment of support person for them.

To the Minister of Internal Affairs:

- Develop appropriate methodology and based on this methodology process specific statistics on the cases of violence against elderly people that will provide precise data disaggregated by gender.

To the Local Self-Government Authorities:

- Conduct a study on the needs of elderly persons on the territory of municipalities, develop goal-oriented programs and include them in the budget of local self-government.

24. Protection and Civic Integration of National Minorities

24.1. Introduction

Protection of rights and civil integration of national minorities in Georgia still poses number of challenges. Systemic problems persisting for years and lack of efficient steps to address them by the State is negatively reflected on the situation in the country.

The Public Defender of Georgia has to describe the same systemic problems and offer the same recommendations to address them in its parliamentary reports from year to year, as the steps taken for solution of these problems at the level of national or local governments are not effective and sufficient to change the situation.

In 2019 the Advisory Committee on the European Framework Convention for the Protection of National Minorities has published its third monitoring opinion on Georgia. According to the assessment of the Advisory Committee, the process of implementation of the Framework Convention essentially has not changed since the last monitoring period.¹⁰¹⁶ According to the document, the legal framework for protection of rights of national minorities has been strengthened as a result of adoption of the Law of Georgia on Elimination of All Forms of Discrimination. However, it is also emphasized in the Opinion, that there is a need to implement the active awareness raising campaign. The problematic issues include scarcity of appropriate statistical data, efficient exercise of right of education of minorities, etc.

Access to the right of education, teaching of the official language, efficient access to the information and services, care for cultural heritage, maintaining distinctive character, participation in the decision-making process, lack of incentivizing initiatives for representatives of national minorities, anti-western propaganda - this is the non- exhaustive list of the issues which negatively affect situation of rights and process of civic integration of national minorities on a daily basis.

The rate of participation of national minorities in the decision-making process at the level of the national and local self-government is critically low. Moreover, engagement of population and participation in the decision-making process on the issues important directly for national minorities, as well as on the issues important for the whole country remains to be problematic. Participation in the village assemblies or other activities is often formal and does not serve the goal of efficient engagement.

Comprehensive fulfillment of the right of education at all levels of education remains to be a problem; scarcity of educational resources, quality of textbooks, problems with regards to re-training of teachers and other barriers cause reduction in the quality of education of national minorities and they need to exert special efforts to receive education at different levels of studies.

The issue of the teaching of the official language poses a particularly acute problem. Despite the operation of language learning program for years, from the perspective of outcomes, in view of the overall number of population, number of people, who know and use the official language is still low.

¹⁰¹⁶ information is available at: < <https://bit.ly/2UqLBRO> >[accessed 30.03.2020].

There is also an additional challenge of the quality of teaching of the official language at the level of preschool and general education.

The issue of the civic integration and restoration of trust in Pankisi Gorge is still problematic. The situation of the Roma community is especially grave¹⁰¹⁷ and no result-oriented steps are taken in this regard.

The Public Defender of Georgia considers it crucial that in the process of elaboration of the new strategy and action plan for the civic equality and integration all those challenges be taken into consideration that we are exposed in the process of implementation of the present strategy and action plan. It is important that this process is planned and carried out with the wide participation of the national minorities.

24.2. Access to Right of Education

Efficient access to right of education of national minorities remains to be a problem on all levels of studies. Scarcity of educational materials and resources, inappropriate quality, professionalism of the part of teachers negatively affect the quality of teaching to national minorities and calls for special attention of the state.

Early and Preschool Education

In the regions populated by national minorities preschool educational institutions have a special role to teach the official language and to prepare children for later general educational process. Unfortunately, measures taken by the local self-government in this regard is not sufficient. The Public Defender of Georgia has been pointing out the necessity of development of Georgian Sector in kindergartens of Akhalkalaki Municipality for years; the local population also demands this. However, this problem remains unresolved until now.¹⁰¹⁸

Other important challenges include the absence of the uniform conceptual approach and vision, preparation of bilingual teachers and equipment of these facilities with appropriate teaching and methodological programs, assisting manuals, educational materials and other necessary material and technical resources. These issues were raised by the Public Defender in the Parliamentary Reports of 2007-2018, however, no efficient steps have been taken in this regard.

General Education

In 208 schools in Georgia the language of instruction is only the language of national minorities (Azerbaijani, Armenian and Russian), while in 76 schools language of national minorities is used for instruction by sectors. In these schools there are enrolled 13000 Russian speaking, 13500 Armenian speaking, and 25000 Azerbaijani speaking pupils at the level of general education.

During the last decades, the textbooks of the native language and literature for Armenian, Azerbaijani, and Russian schools in Georgia have been supplied from Armenia, Azerbaijan and Russia, respectively and are not in line with the learning program and standards of the Georgian educational system. Despite

¹⁰¹⁷ Situation of Roma community is described in the Parliamentary Reports of 2006-2018 of the Public Defender.

¹⁰¹⁸ Public Defender's recommendation is available at <https://bit.ly/3bCokB8> >[accessed 31.03.2020].

of the several proposals and recommendations of the Public Defender and Council of National Minorities under the auspices of the Public Defender this problem remains unresolved.¹⁰¹⁹

The qualification of teachers, absence of uniform strategy for their training and re-training and lack of learning programs remains problematic. Attracting of bilingual teachers and their involvement in the system of education also poses a problem.

The Ministry of Education, Science, Culture and Sport of Georgia has been introducing the multilingual (bilingual) teaching model in the schools with languages of minorities for the last ten years. Since 2015 there has been elaborated the bilingual teaching model and part of the resources for primary educational level is also available. These are tested in 5 pilot schools that have been selected in cooperation with the UN Children's Fund. In spite of this, efficient teaching failed to become a reality yet. For the schools with national minorities language of instruction, quality and inefficiency of multilingual (bilingual) school textbooks remains to be a problem.¹⁰²⁰

In the schools with national minorities' language of instruction the textbooks approved in 2011 are used for teaching. These textbooks are obsolete and do not comply with the national educational plan. Despite the fact that the tender has been declared for production of new textbooks, this process was not successful due to the quality of translation of textbooks. Hence, teaching is still conducted with the old textbooks.

Teaching of the Native Languages to the Small Ethnic Groups

Native languages of the small national minorities have been taught in Georgian schools since 2015.¹⁰²¹ Such teaching is carried out in the schools located in settlements of respective ethnic minorities.

In spite of the fact that these languages have been taught for 5 years already, the issue of production and publication of teaching textbooks for these languages remains to be a problem. Teaching of the native languages of the small ethnic groups at schools takes place via different and unsuitable textbooks some of which are written in Soviet times and others are provided by teachers and representatives of the community or are obtained from abroad. It is important that teaching of native languages of the small ethnic groups take place via the textbooks approved by the Ministry of Education, Science, Culture and Sport.

Training and re-training of teachers of native languages of the small ethnic groups is also problematic. No effective steps have been taken in this regard yet.

¹⁰¹⁹ No one took part in the bidding declared by the Ministry of Education, Science, Culture and Sport of Georgia; thus more efforts are needed.

¹⁰²⁰ In bilingual textbooks 30% of the text is in Georgian and 70% is in minorities' languages. Employment of these textbooks in the majority of cases is impossible due to the poor command of Georgian among teachers and pupils.

¹⁰²¹ Overall there are 6 languages of the small ethnic minorities (Ossetian, Chechen, Khundzian/Avarian, Udi, Assyrian and Kurdish/Kurmanji languages) that can be taught. However, due to the absence of teacher, Kurdish/Kurmanji is not taught in practice.

Higher Education

Despite the favorable policy for students belonging to the ethnic minorities in the process of admission to the higher education institutions, which has been implemented since 2010, these students encounter number of impediments.

In 2019 there were 436 entrants to the higher education institutions, who enrolled by taking Armenian language test and 893 entrants, who enrolled by taking Azerbaijani language test. It is also noteworthy that since 2017 students are admitted to the universities on the basis of Ossetian and Abkhazian language tests. In 2019 5 students took Ossetian language test and one student took Abkhazian language test for admission to the higher education institution. It is noteworthy, that overall in 2011-2019, 2532 entrants were admitted to the Georgian universities on the basis of Armenian language test and 5350 entrance were enrolled on the basis of Azerbaijani language test.¹⁰²²

There is the allocated funding of 225 000 GEL for each language group of students, who were admitted to the higher education institutions based only on Azerbaijani and Armenian versions of general skills test of the school graduation exam (national exam). This budget is used to fund the students with the best results at the admission exams. In view of the fact that every year 1200-1300 students are registered in the program, the major part of students are left without funding, which causes considerable difficulty for students with poor social and economic background and often hinders them to receive higher education. To increase efficiency of the program, it is important that the state increase the funding for students.

24.2. Access to Information

Media policy that has been implemented by the State up to now for promotion of civic integration is inefficient, while no steps have been taken to counter the influence of anti-western propaganda and information channels of the occupier country.

With regards to fostering of civic integration and protection of rights of minorities media outlets have a crucial role. The State traditionally supported publication of Armenian and Azerbaijani language newspapers "Vrasta" and "Gurjistan". The group of the Public Broadcaster "Diverse Georgia" and online televisions in Armenian and Azerbaijani languages produced news and other programs in these languages. The website of the Public Broadcaster posts information in Georgian, Azerbaijani, Armenian, Russian, Abkhazian and Ossetian languages.

In the regions populated with national minorities regional media (televisions, radios and information agencies) is active and they regularly disseminate information in Georgian, Armenian and Azerbaijani languages and inform the population.

Despite the above-mentioned the issue of providing information to the national minorities has been remaining an unresolved problem for years. Population in the regions inhabited by the national minorities mostly receives information from the foreign information channels. Despite the presence of central and regional media outlets in Georgia, the decisive influence on the shaping of public opinion in the regions

¹⁰²² Letter of the Ministry of Education, Science, Culture and Sport MES 4 19 01467584.

settled by the national minorities is exerted by the information channels of the neighboring countries (Azerbaijan, Armenia, Russia, Turkey, Iran).

The anti-western propaganda is influential in Kvemo Kartli and Samtskhe-Javakheti, which portrays the western integration in skeptical and negative light. The anti-western propaganda is mostly shaped under the influence of Russian information channels. Along with the anti-western propaganda that is aimed at formation of skeptical attitude to the West and western integration, there is an additional problem of spreading the information that increases tension among ethnic groups (these are mostly myths and fake anti-Armenian, anti-Azerbaijani, anti-Muslim stories); this information is later discussed and shared in social networks and serves as a ground for wider spread of the hate speech.

24.3. Protection and Popularization of the Culture of National Minorities

Georgia is rich with cultural heritage; there are thousands of registered and yet unregistered monuments of cultural heritage in the country. Among these, there are numerous monuments of cultural heritage that are linked to the national minorities. It is important to continue registration and making inventory of the cultural heritage monuments related to national minorities on one hand, and to start conservation and restoration works on the respective monuments, on the other hand.

During 2019 the state agencies traditionally supported culture of the national minorities, including the support of Tbilisi Armenian, Azerbaijani and Russian theaters and museums. Building of Armenian theater was under way, which is very important.

In the regions with compact settlements of the national minorities, municipality and village culture houses used to serve as important cultural centers. Nowadays, culture houses operate mostly in the municipal center, while the major part of village culture houses is either abolished or non-functional. In order to invigorate the cultural life in the regions, it is important to strengthen the functioning of culture houses and centers located in the municipal centers and to promote revival of functioning of culture houses in the villages.

Compared with the municipal centers, cultural, intellectual or entertainment activities are rarely organized in villages. Places of entertainment, recreation, and gathering are also scarce. Therefore, there is the strong interest to revival of culture houses in villages. This need is reinforced by the fact that there are rarely available culture teaching courses in villages, as well as, art and folklore groups (singing, music, dancing etc.).

In the regions settled with the national minorities organization of cultural programs that would be interesting for the major part of population is rare. Moreover, tours of ensembles, theaters, and creative groups from Tbilisi and other regions of Georgia does not happen at all or is very rare.

In the regions settled with the national minorities there has been no appropriate promotion of ethno-tourism. It is desirable to take efficient steps for promotion of ethno-tourism in the regions settled with national minorities, to prepare touristic tracks, to promote local folklore and carry out advertisement of these activities.

Recommendations

To the Government of Georgia:

- Implement informational, educational activities and campaigns to eradicate the influence of informational channels of the occupying country (Russia) and anti-western propaganda in the regions with settlements of the national minorities;
- Develop vision and specific action plan to promote proportional and equal participation of national minorities in decision-making process of the state agencies of Georgia.

To the Government of Georgia, State Minister for Reconciliation and Civic Equality of Georgia:

- Elaborate the state strategy and action plan for promotion of civic equality and integration, with active participation of the national minorities including the representatives of the National Minority Council under the Auspices of the Public Defender.

To the Public Broadcaster:

- Strengthen broadcasting in the languages of national minorities and promote accessibility and popularization of media products produced in the languages of ethnic minorities in the regions with compact settlements of national minorities.

To the Minister of Education, Science, Culture and Sport:

- Foster elaboration and introduction of multilingual teaching/models for schools with national minorities' languages of instruction, training and re-training of bilingual teachers, production of new school textbooks and learning materials;
- Launch the process of translation and printing of school textbooks compatible with national learning plan of Georgia to the languages of national minorities and supply schools with these textbooks;
- Launch implementation of effective activities for production of textbooks of the native language and literature for Armenian, Azerbaijani and Russian language schools, printing of these books and ensuring that the textbooks printed in Georgia are employed for teaching these subjects in the educational process;
- Ensure production and printing of school textbooks for the languages of the small national minorities (Ossetian, Chechen, Khundzian/Avarian, Udi, Assyrian and Kurdish/Kurmanji), as well as re-training of the teachers;
- Promote concerts and artistic gatherings of prominent artists and creative groups (ensembles, theaters, etc.) of national minorities in Tbilisi and various regions of Georgia; moreover, strengthen the exchange programs of students and pupils within the country;
- Support tours of popular and famous artistic groups, ensembles and theaters of the Georgian culture, as well as other artistic groups (that are state funded), organization of performances, concerts and artistic gatherings in the regions with compact settlements of national minorities;

- Continue the process of registration and making of inventory of the cultural heritage monuments linked to the national minorities and start conservation and restoration of cultural heritage monuments linked to national minorities;
- In cooperation with the local self-governments, support functioning of culture houses/culture centers, their revival and implementation of learning educational programs in the municipalities and villages in the regions with the compact settlements of national minorities.

To Local Self-Government Authorities:

- In cooperation with the Ministry of Education, Science, Culture and Sport support functioning of culture houses/culture centers, their revival and implementation of learning educational programs in the municipalities and villages in the regions with the compact settlements of national minorities;
- Raise efficiency of operation and quality of education in preschool care facilities in the regions with compact settlements of national minorities; start re-training of teachers, production, and supply of learning resources.

25. Human Rights in the Defence Field

25.1. Introduction

The goal of the Public Defender of Georgia in the defence field is to assess the situation of the rights of conscripts, military servicemen and the veterans of war and military forces by means of systemic monitoring and effective response to individual complaints. The Department of Human Rights Protection in Defence carried out 47 monitoring visits in 2019.¹⁰²³ 5 reports were prepared based on the results of the conducted monitoring and relevant recommendations were sent to the Ministry of Defence of Georgia.

We would like to note a positive development from the outset: the Parliament of Georgia has taken into account the recommendation provided to the Government by the of the Public Defender of Georgia in its 2018 Parliamentary Report¹⁰²⁴ concerning initiating amendment and additions to the Tax Code and has introduced the obligation for the Ministry of Finance of Georgia to increase from 2020 income tax-cut for veterans to GEL 6,000, while for the veterans with prominent or significantly marked disability -- to 9,000 GEL. Although, unfortunately, the Ministry of Finance did not deem the increase of tax-cut specified in the above-mentioned recommendation reasonable.¹⁰²⁵

The Public Defender assesses this decision of the MOF negatively, since she thinks that given the dire economic and social conditions in the country, introducing such reliefs will contribute to the improvement of social-economic situation of the veterans. According to the Law of Georgia on the Veterans of War and Military Forces, state policy for veterans envisages developing and implementation of state programs for creating a system of legal and social-economic relief guarantees for veterans and their family members and of the activities for their practical implementation.

The Parliament of Georgia has also accepted and entered into the Decree about the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in 2018 in Georgia the recommendation issued to the General Prosecutor of Georgia under which the Public Defender demanded that the General Prosecutor of Georgia, in the report submitted according to Article 172 of the Parliament of Georgia Rules of Procedure, submit an opinion about the effectiveness of investigations of criminal cases instituted on the facts of deaths in the military units of the Ministry of Defence –

¹⁰²³ 39 visits to the MOD of Georgia military units; 2 visits to the Ministry of Regional Development and Infrastructure of Georgia Conscription and Coordination Department; 2 visits to the Special Penitentiary Service Outer Security and Guarding Units; 4 visits to the military units of Mtskheta and Tbilisi Municipalities.

¹⁰²⁴ The Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, 2018, pg. 303. Available at: < <https://bit.ly/2UruE8S> >> [accessed 24.02.2020].

¹⁰²⁵ The Ministry of Finance of Georgia Letter №08-02/139876.

unfortunately, the mentioned recommendation of the Public Defender is not included in the 2018 Report of the Activities of the Prosecutor's Office of Georgia.

The Ministry of Internal Affairs of Georgia LEPL -- Security Police Department's Division of the Security of Diplomatic Missions and the National Treasury of Georgia, has partially considered and fulfilled the recommendations provided in the Public Defender's 2018 Parliamentary report.¹⁰²⁶ Unfortunately, the recommendation about setting up larger, well-furnished rooms instead of the existing small booths for resting of the personnel on assignment at the units of the Division of Security of Diplomatic Missions and the National Treasury of the Ministry of Internal Affairs of Georgia Security Police Department has not been fulfilled.

There is a positive change that the Government of Georgia has entered in the Decree N 4 dated January 11, 2007 of the Government of Georgia on the Monetization of Social Benefits with an aim to fulfill the Public Defender's recommendation. Based on this amendment, the LEPL Social Services Agency is authorized to, in exchange of the submission of a document proving a veteran's status or the submission of a certificate proving relevant status, consider and equivalent document and appoint livelihood subsidy to the individuals with relevant category based on the data contained in the Veterans' electronic registration database, which is provided to the Agency by the State Service on Veteran's Affairs, LEPL. Importantly, based on the above-mentioned amendments, the appointment of livelihood subsidy for those with the status of veterans and individuals who have lost breadwinner has become substantially simpler, since the requirement of submitting an application additionally to the SSA has been eliminated.

Furthermore, it should be assessed positively that under the Government of Georgia Decree N222 dated May 14, 2019, an amendment was entered in the Government of Georgia Decree N279 dated July 23, 2012 on determining the Social Package, based on which the situation of livelihood subsidy recipients has been equalized and all individuals with a veteran's status were given the possibility to enjoy the livelihood subsidy. Notably, the Public Defender had been proposing this recommendation to the GoG for a number of years.¹⁰²⁷

¹⁰²⁶ In sub-divisions 6 and 7 of the Division of the Security of Diplomatic Missions and the National Treasury infrastructure problems with WCs and sanitary-hygiene standards in units have partially been resolved; From July, 2019, for the fulfillment of additional services on the days free from the working shift employees and military servicemen of sub-divisions 6 and 7 of the Division of Security of Diplomatic Missions and the National Treasury are provided a supplement to gross wages; the General Inspectorate regularly inspects the units where compulsory military servicemen are serving their duty.

¹⁰²⁷ In 2018, the Parliament of Georgia accepted (The Parliament of Georgia Decree N93148-სს Dated July 19, 2018) the Public Defender's recommendaiton and made a decision that the GoG should enter relevant change for the fulfillment of this recommendation, although, according to the MOF of Georgia, there was no plan to increase budget allocations in this direction. Considering the afore-mentioned, the Public Defencer filed a constitutional complaint to the Constitutional Court. Following this, the GoG made a decision and amended the decree based on which all individuals with a veteran's status are entitled to livelihood subsidy.

25.2. The Ministry of Defence of Georgia

The decision of the MOD should be assessed positively according to which, in the Georgia's Defense forces subunits, from September 1, 2019, conscripts undergo compulsory military service at the military unit once every 3 days, although, following the mentioned change, they have to travel from their home to military unit more often, respectively, their transportation expenses have been increased, while their salary (GEL 50) is not sufficient for covering the transportation expenses and they have to use their own funds to travel from residence to a military unit.

It has been revealed during the monitoring visits to the Ministry of Defence of Georgia during the 2019 reporting period that the application of non-statutory sanction (Extra physical exercise as a punishment) and group punishment practice towards compulsory military servicemen in case of disciplinary misconduct as a measure of responsibility remains an unaddressed problem in a number of military units¹⁰²⁸ of the MOD.

Infrastructure problems have been identified in various military units of the MOD.¹⁰²⁹ According to the MOD of Georgia,¹⁰³⁰ significant changes have been planned in this direction, compared to previous year, the indicator of approved infrastructure projects of the MOD in 2020 has relatively increased totaling GEL 100 million. Furthermore, according to provided information, in 2020 the MOD plans to perform capital renovation of 52 canteens, upgrading the fittings and equipment and add own bakeries. the PDO will actively monitor the mentioned process.

During 2019, following interviews with the personnel, it has been revealed that one of the pressing problems for personnel is the restriction of the right to use mobile telephones during free time. It is worthy of special attention that that mobile telephone is the only means for their communication with family members, given that many of them are serving their official duties far away from their homes.

Although, in case of absolute necessity, during a day military servicemen are able to use corporate telephones available at a military units' station, or borrow mobile telephones from their immediate supervisors, they say that communication with their family members in this manner on a daily basis is inconvenient and discomforting for them, especially that calls made using the telephones at the station room cannot be confidential and they cannot speak freely.

Until February 3, 2020 the restriction of using a mobile telephone in military units was regulated under the Minister of Defence of Georgia Order N1154 dated October 3, 2013 on the Rules of the Use of Means of Communication by the personnel/servants of the Armed Forces of Georgia; which placed

¹⁰²⁸ The Division of Armament, Ammunition and Military Equipment Repair Bases of the Logistics Command of the Armed Forces of Georgia; The Training and Military Education Support Center Krtsanisi; Giorgi Antsukhelidze NCO Traiing Academy; the Special Operation Forces of the Defence forces of Georgia; Air Defence Brigade of the Defence Forces of Georgia.

¹⁰²⁹ Disorganized electricity and lighting system; dysfunctional air conditioning and exhaust/ventillation system, poor sanitary conditions in WCs/sanitary-hygiene units and canteen and kitchen.

¹⁰³⁰ The Minister of Defense Correspondence №MOD 12000076147 dated 24/01/2020.

personnel/servants of the MOD in unequal conditions and furthermore, was contrary to the equality right guaranteed under the Constitution of Georgia.

Despite the fact that under February 3, 2020 Order №MOD32000000115, the above-mentioned order was annulled and certain changes were introduced concerning the rule of the use of the means of communication by the armed forces servicemen, key principles have substantially remained the same. Under Paragraph 2 of this Order, the use of a mobile phone is fully prohibited during the working hours set forth under the internal regulations. Furthermore, military servants of the Defence Forces are placed in unequal conditions which is contrary to the fundamental rights guaranteed under the Constitution of Georgia.

In certain military units of the Defence authority¹⁰³¹ majority of military servicemen are ethnic Azerbaijani. They do not understand and cannot speak Georgian, which often causes disagreement among the military, several times there have been cases of physical confrontation as well. Due to the lack of command of the language they are also unable to receive full-fledged military education and are unable to adequately perform imposed functions and duties. Furthermore, they are also unable to speak to their immediate supervisors in a confidential setting if they have such wish/necessity.

In the majority of military units of the Defence Ministry there is a pressing problem of unscheduled frequent 24-hour assignments. They mostly have to go to 24-hour assignments every other day, which is due to the fact that certain subunits are staffed only partially. Furthermore, the mentioned problem is also related to the use of annual leave by military servants, personnel are unable to use annual leave at the duration and periodicity as they wish.

The monitoring has also revealed the problems related to health insurance. The insurance company often does not compensate to contracted military servicemen the expenditures for medical services received at non-provider clinics. In relation to the above-mentioned, the Public Defender provided a relevant recommendation to the Ministry of Defence in its monitoring report for 25.11-04.12, 2019¹⁰³². It is a positive development that, according to the MOD, in 2020 the MOD¹⁰³³ employees will be provided substantially improved health insurance service conditions and it will enable them to receive high quality services in a considerably streamlined manner. An insured person will be free (as they wish) to receive outpatient/inpatient services at a non-provider clinic and get reimbursement for incurred costs, based on the submission of medical and financial documentation, according to the decision of the insurance company.

¹⁰³¹ The Defence Forces of Georgia Aviation and Air Defence Command Combined Air Squadron; The Defence Forces of Georgia Training and Military Education Support Centre Krtsanisi; The Defence Forces of Georgia Trainings and Military Education Command Giorgi Antsukhelidze NCO Academy.

¹⁰³² The PDO Letter №14/14235 dated December 30, 2019.

¹⁰³³ The Minister of Defence of Georgia Correspondence №MOD 12000076147 dated 24/01/2020.

As part of the monitoring, legal documentation was also examined. In a number of military units,¹⁰³⁴ orders on the imposition of disciplinary measure, the rule and conditions of appealing individual administrative-legal acts were not explained comprehensively. In particular, they did not contain reference to the right of reviewing a disciplinary measure envisaged under Article 66 of the Disciplinary Charter. For eliminating the above-mentioned deficiency, relevant recommendations were provided at the military unit and also included in the Public Defender's Monitoring reports.¹⁰³⁵ It should be assessed positively that the MOD has considered¹⁰³⁶ the Public' Defender's recommendation and amended relevant orders.

It has also been revealed as part of monitoring that in the military units 30 minutes prior to distributing meals a physician/nurse on duty of the military unit tastes meals, although the need for the introduction of such practice and its legal basis is unclear. In relation to this matter, the Public Defender provided a recommendation to the MOD¹⁰³⁷ to reconsider the advisability of the existing practice of tasting meals by a physician on duty and to develop new instruction that will take into account international experience and will be based on the principle of defending the rights of physicians. According to the information received from the MOD¹⁰³⁸, currently the MOD is designing a new draft internal charter of the Defence forces of Georgia. The Public Defender welcomes the drafting of a new internal regulations of the Defence Forces of Georgia and hopes that these regulations will refine the existing practice of tasting/inspection of meals in the military units of the MOD and will be based on the protection of the rights of physicians.

In the majority of military units complaint boxes set up by the General Inspectorate of the Ministry of Defence are located in prominent places, primarily, at the entrance of the canteens and checkpoints. Since such positioning of complaints box does not ensure the anonymity of the author of a complaint, in the 30.09-04.10, 2020 Monitoring Report the Public Defender put forward a recommendation¹⁰³⁹ to the MOD to place the complaint boxes at the military bases in such places where military servant will be able to move independently and, as necessary, use a box in a confidential manner. According to the MOD,¹⁰⁴⁰ Consultations are underway among relevant structural subunits of the MOD of Georgia, concerning the location of the boxes of the Hotline of the General Inspectorate.

¹⁰³⁴ The Division of Armament, Ammunition and Military Equipment Repair Bases of the Logistics Command of the Armed Forces of Georgia; The Training and Military Education Support Center Krtsanisi; the Special Operation Forces of the Defence forces of Georgia; Air Defence Brigade of the Defence Forces of Georgia; The National Guard of the Defence Forces of Georgia; The Defence Forces of Georgia Eastern Command Engineering Command Battalion; The Defence Forces of Georgia Western Command 2nd Infantry Brigade.

¹⁰³⁵ Monitoring conducted during July 1-5, 2019 - The Letter №14/8449 of the PDO dated July 26, 2019; Monitoring conducted during July 16-30, 2019 - The Letter №14/8906 of the PDO dated August 9, 2019; Monitoring conducted during August 12-16, 2019 - The Letter №14/10388 of the PDO dated September 23.

¹⁰³⁶ The Letter of the Minister of Defence of Georgia №MOD 71900846311 dated 6/08/2019; The Letter of the Minister of Defence of Georgia №MOD 81900894607 dated 02/09/2019; The Letter of the Minister of Defence of Georgia №MOD 31901083809 dated 22/10/2019.

¹⁰³⁷ Monitoring conducted during 30.09 – 04.10, 2019 - The PDO Letter №14/12305 dated November 13, 2019.

¹⁰³⁸ The Letter of the Minister of Defence of Georgia №MOD 01901272824 dated 09/12/2019.

¹⁰³⁹ Monitoring conducted during 30.09 – 04.10, 2019 - The PDO Letter №14/12305 dated November 13, 2019.

¹⁰⁴⁰ The Letter of the Minister of Defence of Georgia №MOD 01901272824 dated 09/12/2019.

Recommendations

To the Government of Georgia:

- Initiate amendments and additions to the Tax Code and increase income tax-cut for veterans from 2021 to GEL 6,000 (to GEL 9,000 – for the veterans with prominent and significantly marked disabilities).

To the Minister of Defence of Georgia:

- Increase the pay of compulsory military servants at least by the amount to ensure that their transportation expenses from home to a military unit are fully covered;
- Eliminate the application of a non-statutory disciplining (extra physical exercise as a punishment) and group punishment practice towards compulsory military servicemen. For this purpose, the Military Police Department of the MOD Defence Forces should be tasked to perform systemic control over the use of non-statutory punishment and group punishment at the military units;
- Introduce an interpreter's position in military units with ethnic minorities in order to avoid conflict among military servants and, if necessary, enable them to speak with their commanders in a confidential setting;
- Increase the number of personnel in military units of the Defence Ministry so that military servants do not have to frequently go to 24- hour unscheduled assignments and all servants to be able to use their annual leave equally;
- Amend the Order of the Minister of Defense of Georgia №MOD32000000115 dated February 3, 2020 on the Rule of the Use of the Means of Communication by the Servicemen of the Defense forces of Georgia, to allow the use of a mobile phone for military of any rank and for civilians during a working day except for the time when they are in 24-hour assignment and except for the period of training and education;

Develop new regulations for tasting meals that will be in conformity with international experience and will be based on the principle of the protection of the rights of physicians.

26. The Human Rights Situation of the Conflict-affected Population

2019 was still filled with difficulties for conflict-affected population in the Georgia-controlled territories as well as on occupied territories. Despite the fact that there are no active hostilities in Georgia, Georgian, as well as Ossetian and Abkhazian population living in the conflict zone are still severely suffering from the devastating consequences of the war.

The facts of the violation of right to life on the occupied territory is still alarming. This is evidenced by breach of the right to life of David Basharuli back in 2014, Giga Otkhozoria in 2016, Archil Tatunashvili in 2018 and Irakli Kvaratskhelia, citizens of Georgia, on the Russian military base of Village Nabakevi, Gali District in the occupied Abkhazia. It should be stressed that the people directly involved in this murder are representatives of the occupied regimes and still remain unpunished, despite numerous demands.

The Public Defender also deems the closure of the so-called checkpoints in 2019 for an extended period of time alarming; this closure has caused the humanitarian crisis and problems related to the access to medical services in the occupied Akhgori District.

One of the significant challenges has been illegal detention and arrest of Georgian citizens for crossing the so-called border. Illegal detention of Vazha Gaprindashvili, the physician, was a clear example of this.

The resumption of the illegal borderization process by the occupation forces in Village Gugutiantkari, Gori Municipality, and Village Atotsi, Kareli District is a significant problem.

It should be noted that, according to the assessment of the Public Defender, the situation is further aggravated by obstacles developed in relation to the entry of international human rights observer organizations to the occupied territories. Furthermore, there number of international donor or NGOs who would empower Abkhazian and Ossetian civil society is low. And all of the afore-mentioned has negative impact on the rights of the population living in the conflict regions.

The present chapter provides an overview of the situation of the human rights of Georgian citizens on the occupied territories and along the occupation lines and offers relevant recommendations.

26.1. The Issue of Documentation and the Freedom of Movement

During the reporting period movement across the occupation line has been one of the major challenges. The formal regime introduced by the De-facto authorities and the Russian border forces, referring to artificial reasons, limits the movement of local residents, while periodically, the checkpoints are closed altogether.

In this respect, the situation in the occupied Akhlagori district is alarming. On September 4, 2019, the De-facto South Ossetia authorities arbitrarily closed the so-called 'razdakhani' checkpoint and were planning to reopen it in two days,¹⁰⁴¹ although, opening a police guard post in Village Chorchana and the related processes became another reason for the Tskhinvali De-facto regime to close the so-called borders and cause complete isolation of the population and the humanitarian crisis.

With the closure of the so-called checkpoints, ethnic Georgian as well as Ossetian population in Akhlagori appeared in complete isolation and humanitarian crisis, since they do not have the possibility to use proper medical care, food, pension or other subsistence services.

The majority of the population living in the Akhlagori District has residences, small farms and jobs on the Georgia-controlled territory, in Tserovani IDP settlement. After the closure of the checkpoint, some of the residents stayed in the Akhlagori district, while their family members were on the Georgia-controlled territory. As a result, both those living in Akhlagori district and those in Georgia-controlled territory appeared in dire social and economic situation.

Restricting the freedom of movement and artificial barriers imposed by the De-facto Government of the occupied Tskhinvali are directly related to the access to the right to health for the population living in the occupied territory. The facts of death of individuals living on the occupied territory due to inadequate medical assistance are clear examples for this. In particular, the death of Margo Martiashvili, 70, on October 28, 2019,¹⁰⁴² and the death of 49 year old Besik Obesov and 72 year old Shota Driaev in November.¹⁰⁴³

After a 5-month closure, the De-facto Authorities changed their approach towards the so-called checkpoint and to some extent opened the so-called border for those Akhlagori residents that require emergency medical aid, as well as for those pensioners who are receiving Georgian pension only,¹⁰⁴⁴ although it should be noted that this exception applied to very small portion of the population only and the majority of those living in Akhlagori are still in complete isolation.

The so-called border had been closed in previous years too, for example, the last time the Ossetian side restricted the freedom of movement was in January-March, 2019, due to the spread of the virus. Although, unlike previous cases, the closure of the checkpoints in September, 2019 has had considerably direr consequences.

As for the Occupied Abkhazia, during 2019, the freedom of movement was restricted several times across the Enguri bridge for various reasons. At the beginning of the reporting year, the so-called checkpoint

¹⁰⁴¹ "The entry to the occupied Akhlagori may not be resumed", Reginfo, available at: << <http://bit.do/fyfTj> >> [accessed 16.02.2020].

¹⁰⁴² "The body of the 70-year old woman who died in the Tskhinvali hospital will be taken to her native village today", news available on the website: <<http://bit.do/fygpC> > [accessed 30.03.2020].

¹⁰⁴³ "The body of the man who died due to the indifference of the occupants has been taken to the forensic examination in Tskhinvali", news available on the website: < <https://bit.ly/2xCeEYC> > . > [accessed 30.03.2020].

¹⁰⁴⁴ The De-facto authorities have eased the regime at the closed so-called border < <http://bit.do/fygpP> > [accessed 30.03.2020].

was closed due to the spread of the virus on the Georgian territory. Exception was introduced only for the patients who had a certificate about medical necessity from a local medical institution. Later, in June, due to artificially introduced restrictions by the De-facto authorities, Enguri bridge was fully closed, which has affected potential students living on the occupied territory. Those who wanted to receive higher education on the Georgia-controlled territory were unable to take part in the Unified National Exams due to the restrictions imposed by the De-facto authorities. Later, the movement across the Enguri bridge was restored, although certain restrictions were introduced. The movement of men was allowable only for those under the age of 14 and over 60, while for the remaining males the movement was banned altogether. The restriction did not apply to women. According to the information available to the Public Defender, in case of paying 5,000 Russian Rubles, which is about GEL 225, such restrictions are not enforced.¹⁰⁴⁵

The freedom of movement may be restricted only based on the legitimate objectives. Georgia and Russia are the parties of the International Covenant on Civil and Political Rights; according to the Covenant, the right to free movement may be restricted only in cases when this is necessary for protecting state security, public order, health and morale of the population, or the rights and freedoms of others and is in line with other rights recognized by the present Covenant.¹⁰⁴⁶ According to the international humanitarian law, the occupation force (In this case, the Russian Federation) shall carry out only those measures for control and security in relation to the population that have become necessary due to the armed conflict.¹⁰⁴⁷

The Public Defender is of the opinion that arbitrary restrictions imposed on the freedom of movement by the De-facto authorities have negative impact on the enjoyment of various rights by local residents as well. Among them are the right to healthcare, education, security, adequate level of living, the right to family life and the freedom of religion. As a result of the imposed restrictions, citizens living in the occupied Gali and Akhagori districts may gradually leave their own residences which will result in ethnic cleansing. The Public Defender, has made numerous public statements and addressed the Government of Georgia in relation to the cancelling of the so-called crossing points to ensure, in close cooperation with the international community, to maximally protect the freedom of movement guaranteed by numerous international documents.¹⁰⁴⁸

As for the documentation, at this stage the movement across the so-called checkpoints is possible only using the following documents: 1) the so-called form N 9; 2) De-facto passport; 3) so called the residence permit; 4) for individuals under the age of 14 – using a birth certificate; 5) movement is also allowable using a Georgian passport for the individuals who have the permit to enter the Abkhazian territory (the so-called visa).

¹⁰⁴⁵ Information obtained by the Public Defender based on a confidential source, December, 2019.

¹⁰⁴⁶ Article 12.3, International Covenant on Civil and Political Rights.

¹⁰⁴⁷ Article 27, the Geneva Convention IV.

¹⁰⁴⁸ The Public Defender's statement of November 15, 2019, available at: < <http://bit.do/fygggb> >[accessed 30.03.2020].

From 2017, the De-Facto Administration further worsened the situation when it made a decision on discontinuing the use of old Abkhazian passports and the replacement of Form N 9 with the residence permit. Although the citizenship of Abkhazia or the so-called South Ossetia or the passports issued by the De-Facto Authorities are not legal documents recognized by Georgia or the International Community, holding them is related to the enjoyment of basic rights for the residents of this territory. The majority of Gali residents are against getting a residency permit, which grants them the status of a foreigner. The residency permit has strict criteria and a 5-year term, which can be used as a mechanism for additional pressure over Gali residents. It also does not grant an individual holding this document the title to real estate which is one of the most important factors. Although, at the same time, this document is the possibility to move across the occupation line for Gali residents, hence, local residents are compelled to take this document. It is especially hard to get a residency permit for the students since local administration does not issue a certificate that they live in the district. Respectively, they have to return to their own residence under the so-called visa, which is valid for a specified period.¹⁰⁴⁹

As for the individuals living in the Kodori gorge, unfortunately, they are in the same situation. They are able to move only using the special pass which is issued for 2 weeks, at the location by the De-facto Security Service.¹⁰⁵⁰

26.2. Security Matters

On the occupation line, in the direction of Abkhazia, as well as South Ossetia, the vicious practice of detention of the individuals living in Georgia-controlled territories and in the occupied territories still continues.

According to official data, 86 individuals were detained in the direction of the Tskhinvali region on the occupation line in 2019,¹⁰⁵¹ among them, 9 women and 2 minors (meaning Individuals detained on the territory controlled by Georgia or those detained when crossing the occupation line, analogous figure for 2018 is 96), while 26 individuals were detained in the direction of the occupied Abkhazia, among them, 2 women and 2 minors (analogous figure in 2018 was 28).¹⁰⁵²

Illegal detention of Vazha Gaprindashvili, Georgian physician, was especially alarming. He was detained by the De-facto Tskhinvali regime at the occupation line on November 9, 2019 and later he was subjected to illegal imprisonment. He was charged with illegal crossing of the so-called border. In the same period, 3 more Georgian citizens were detained/abducted. The so-called administrative proceedings were conducted against them and a penalty was imposed over all three individuals, while the Occupation regime instituted a criminal case against Vazha Gaprindashvili.

¹⁰⁴⁹ Information provided to the Public Defender by a confidential source, January, 2020.

¹⁰⁵⁰ Information provided by the Abkhazia A/R Representative Office in Zemo Abkhazia, January, 2020.

¹⁰⁵¹ The State Security Service of Georgia Letter №SSG62000005002 dated January 13, 2020.

¹⁰⁵² Ibid.

The De-Facto Authorities charged Vazha Gaprindashvili with intentional breach of the so-called state border under Article 322 of the Criminal Code of Russia, which envisaged fining with 200,000 Rubles, up to two years of forced works, or up to two years of the deprivation of liberty. On November 15, Tskhinvali de-facto court imposed two-month preliminary detention to Vazha Gaprindashvili.¹⁰⁵³ While Later, on December 20, 2019, he was sentenced to the illegal imprisonment for 1 year and 9 months. Fortunately, on December 28, 2019, the occupation regime released the physician.¹⁰⁵⁴ The Public Defender of Georgia had been involved from the instance when Vazha Gaprindashvili was detained and used all possible levers to defend the rights of the physician Vazha Gaprindashvili to the extent possible to return him to Georgia-controlled territory within the shortest timeframes.¹⁰⁵⁵

At the end of December, 2019, Tskhinvali De-facto court also sentenced Genadi Besaev, resident of Village Zardiaantkari, Gori municipality, to 2 years of imprisonment. The representatives of the occupational forces detained Genadi Bestayev on November 21, 2019 under the charges of breaching the so-called border.¹⁰⁵⁶

Along with illegal detentions of citizens on the occupation line, issues that have been current for years include beating prisoners, ill-treatment and torture in temporary detention isolators or prisons in the occupied territories remain a problem; and the Public Defender has been raising this issue in annual reports for years. On October 22, 2019, news and video recording were disseminated in the social network and mass media about the beating and ill-treatment of prisoners at the Tskhinvali temporary detention isolator.¹⁰⁵⁷ Unfortunately, the above-mentioned information and video material once again confirms the most dire situation with human rights on the occupied territories. Tskhinvali isolator is presumably where the Georgian citizen, Archil Tatunashvili, died as a result of alleged torture and ill-treatment.¹⁰⁵⁸

The whereabouts of five ethnic Ossetians who went missing following the 2008 war remains unclear, among them the fate of three ethnic Ossetian youth, who, on October 13, 2008, presumably, disappeared on the Georgia controlled territory.¹⁰⁵⁹ According to the Prosecutor General investigation continues, while, despite performed investigative activities, the whereabouts of the missing individuals could not be established. Achievement of progress on this issue would be important for human rights, as well as the for the restoration of confidence.

¹⁰⁵³ Vazha Gaprindashvili sentenced to imprisonment, information available at: < <https://bit.ly/2JsRx5w> >[accessed 30.03.2020].

¹⁰⁵⁴ The statement of the State Security Office on December 28, 2019 about the release of Vazha Gaprindashvili. Available at: < <http://bit.do/fygsL> >[accessed 30.03.2020].

¹⁰⁵⁵ The Public Defender of Georgia public statement dated November 15, 2019, available at: < <http://bit.do/fyqqb> >[accessed 30.03.2020].

¹⁰⁵⁶ Genadi Bestaev, detained at Village Zardiaantkari sentenced to imprisonment. Information available at: < <https://bit.ly/3bFfC54> >[accessed 30.03.2020].

¹⁰⁵⁷ Information available on the website: < <http://bit.do/fygtc> >[accessed 30.03.2020].

¹⁰⁵⁸ The Public Defender of Georgia public statement dated October 25, 2019. Available at: < <http://bit.do/fygsa> >[accessed 30.03.2020].

¹⁰⁵⁹ For more information, see the Public Defender of Georgia 2014 Parliamentary Report, pg. 848.

26.3. The Right to Education

The realization of the right to education is also facing many challenges in the occupied territories of Abkhazia and South Ossetia. In all schools in Gali and Akhagori instruction at the primary grades in the Georgian language is fully prohibited, while the Georgian language as a foreign language is taught in some schools only. This has negative impact on the Georgian language skills of the students, as well as on the quality of education. For exercising the right to get education in the native tongue, including with the initiative to introduce multilingual education, representatives of the Georgia party as well as of international organizations are carrying out negotiations with the representatives of the De-Facto Authorities, although this process has not produced any actual results yet.

In consideration of the current reality, the Government of Georgia should take proactive steps to protect the rights of the students and prospective students on the occupied territories, including, in the context of the right to education, since current situation inflicts irreparable harm to the opportunities of education and development of youth. The projects and initiatives implemented by the Ministry of Education and Sciences of Georgia and the Government of Abkhazia A/R, and especially, those aimed at the improvement of the quality of education of youth living in the Gali district, are extremely important. Although, significant challenges remain and the Government of Georgia should be even more active to compensate the deficiency that children and adolescents living in the occupied territories are suffering in the process of receiving education.

Like previous years, during the reporting period, too, the persecution and psychological pressure based on ethnicity over students and teachers has been identified. According to the information available to the Public Defender, the De-facto Authorities instructed teachers to hold classroom events in the Russian language and post it in the social network afterwards.¹⁰⁶⁰ The environment of school and other educational spaces also have dire impact on the quality of education of the students. According to the information available to us, students are unable to freely express differing opinion at schools.¹⁰⁶¹ To develop safe space for children, it is important to implement educational projects of various international and NGO organizations in this direction. School infrastructure is an important matter. In this area, like previous years, infrastructure projects have not been implemented at the educational institutions on the occupied territories.¹⁰⁶²

Prior to the Abkhazia War, there were 58 general education schools in Gali District.¹⁰⁶³ Of this total number, only two schools were Russian,¹⁰⁶⁴ three schools – Russian-Georgian, while only one –

¹⁰⁶⁰ Information provided to the Public Defender by a confidential source, January, 2020.

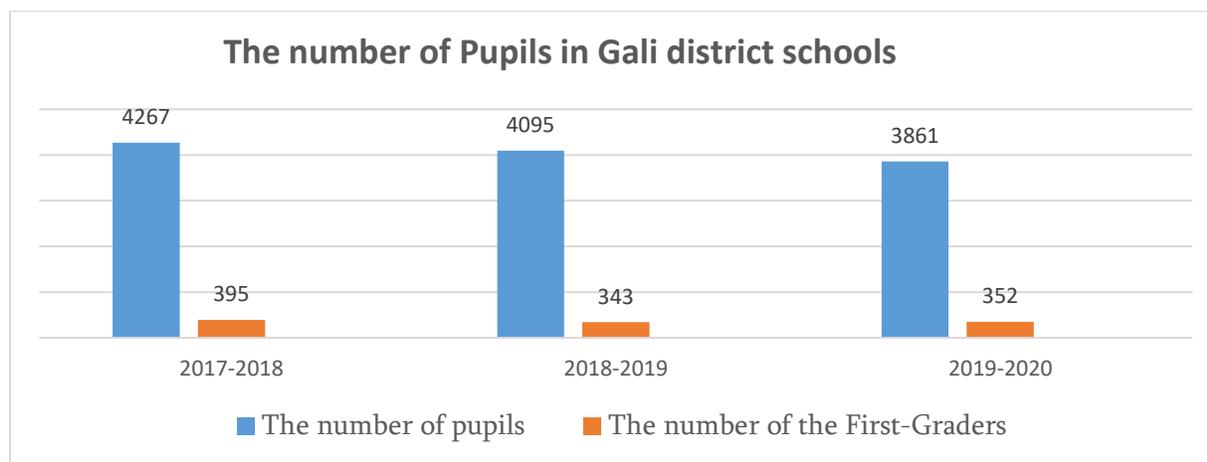
¹⁰⁶¹ Information provided to the Public Defender by a confidential source, January, 2020.

¹⁰⁶² Abkhazia A/R Minister of Education January 27, 2020 Letter №MES 7 20 00080152.

¹⁰⁶³ Abkhazia A/R Minister of Education Letter №MES 7 20 00080152 dated January 27, 2020.

¹⁰⁶⁴ Gali №1 and Gindze Etseri secondary schools.

Georgian-Abkhazian. In the remaining 52 schools education was fully conducted in the Georgian language. There were 13,180 students enrolled in the schools.¹⁰⁶⁵ While, as of January of the 2019-2020 academic year, there are 30 full general education schools, 9 pre-school establishments, 5 artistic schools in the occupied Gali district. There are 3,861 students enrolled in the schools.¹⁰⁶⁶



Among significant problems is the qualification of teachers in Gali district. Since they are not allowed to conduct classes in Georgian, they are hired not based on their pedagogical qualification and experience, but according to the Russian language skills. It should be noted that considering the problems the teachers working on the occupied territories face, as well as considering psychological pressure and other difficulties, it is important to support them as much as possible. In this direction, the Public Defender welcomes retraining/professional development of 45 teachers of various subjects from the occupied Gali district as part of the Ministry of Education, Sciences, Culture and Sports of Georgia sub-program Retraining of Gali district teachers and preparing Prospective Students for the National Exams during 2019.¹⁰⁶⁷ It is highly important to continue this process.

The instruction of Georgian history and Georgian geography is still strictly prohibited. Instead, they are teaching the history of Russia, the geography of Russia written by Russian authors, the history of Abkhazia printed in the Russian language.¹⁰⁶⁸ Furthermore, it is not allowed to keep and use encyclopedia or various extracurricular literature written in the Georgian language at school libraries.

As for Akhagori, according to the information obtained by the PDO, there are currently 7 schools functioning.¹⁰⁶⁹ Of these, instruction is in Georgian only at 6 schools and only from Grade 7 to grade 11. In all other cases, just five hours are allocated to the Georgian language per week. From Grade one through

¹⁰⁶⁵ Abkhazia A/R Minister of Education Letter №MES 7 20 00080152 dated January 27, 2020.

¹⁰⁶⁶ Abkhazia A/R Minister of Education Letter №MES 7 20 00080152 dated January 27, 2020.

¹⁰⁶⁷ The Ministry of Education, Science, Culture and Sport of Georgia Letter №Mes62000011715 dated 2020.

¹⁰⁶⁸ Abkhazia A/R Minister of Education Letter №MES 7 20 00080152 dated January 27, 2020.

¹⁰⁶⁹ Information provided to the Public Defender by the Education Office of the South Ossetia Administration, January, 2020.

grade six, education in all schools is allowed only in the Russian language. According to 2019 Academic Year, a total of 88 students are enrolled at Akhagori Georgian schools and 129 teachers are employed.

School title/the number of students by grades	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	Total
Akhagori Georgian	2	4	2	1	8	2	5	1	3	10	12	50
Akhagori Russian	11	6	7	7	6	6	6	3	6	3	1	62
Ikoti	2	2	2	1	1	2	1	1	2	2	2	18
Balaani	0	0	1	0	2	1	1	1	1	1	0	8
Korinta	0	0	0	0	1	0	1	2	0	0	1	5
Akhmaji (Basic)	0	0	0	0	0	0	0	1	0	0	0	1
Zemo Bolo (Basic)	0	0	1	1	0	1	1	1	1	0	0	6
Total	15	12	13	10	18	12	15	10	13	16	16	150

The above-mentioned table evidences that the number of first graders in Akhagori schools decreases year by year. In 2019, four schools (Balaani, Korinta, Akhmaji, Zemo Bolo) out of seven Akhagori schools do not have first graders at all.

As for higher education, in 2018-2019 academic year, 410 11th-graders finished school in Gali district. 202 students registered for national exams. Based on the exam results, 89 students enrolled, based on the exception rule related to the closure of the so-called checkpoint – 110, as part of afterschool education program – 137. Overall, in 2019, 336 school graduates became students of various programs at various universities of Georgia. 21 students enrolled in vocational programs. only 29 students enrolled in Sokhumi.¹⁰⁷⁰

Notably, the De-Facto Authorities of the occupied Abkhazia do not recognize university diplomas issued on the Georgia-controlled territory; hence, youth find it hard to find employment on the occupied territory. Considering all of the above-mentioned, they try to settle down in Tbilisi or another city, which results in artificial division of families.

¹⁰⁷⁰ The Ministry of Education, Science, Culture and Sports of Georgia Letter N^oMes62000011715 dated 2020.

26.4. The Right to Healthcare

The right to healthcare is recognized by a number of international documents. Including, according to Article 12 of the International Covenant on Economic, Social and Cultural Rights, everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. The right to healthcare also comprises access to the healthcare system and it is an absolute human right, and respectively, is subject to special protection. Although, low-quality medical services and infrastructure, poor quality of medical personnel and expensive services, as well as complicated movement of the patients across the division line has negative impact on the right to access to health for the population. Considering these circumstances, majority of the population living on the occupied territories try to receive medical assistance outside the occupied territories. In this respect, Georgia's state programs for healthcare of the individuals living in the occupied territories becomes especially important.

As has already been mentioned, the situation in the occupied Akhlagori was alarming in this direction; as a result of closing of the so-called checkpoints, residents were unable to receive medical services and several ones died.¹⁰⁷¹

Considering the developed situation, state healthcare and social protection programs implemented on the Georgia-controlled territory are vitally important for people living in the occupied territories. The state program for referral services should be considered the most successful program of the Government of Georgia. As part of this program, individuals living in the occupied territories are enjoying absolutely free treatment at medical institutions of Georgia. For example, during 2019, the Referral Services program funded 863 patients from the occupied territories, of those, 689 individuals were from the occupied Abkhazia and 174 from the occupied Tskhinvali.¹⁰⁷² As for the services (diagnostic, treatment) envisaged under the Hepatitis C Management State Program, according to 2019 data, 25 individuals with neutral documents living on the occupied territories have benefited from it.¹⁰⁷³ Although, at the beginning of 2017, as a result of the change in the rule of funding of patients, according to which primary diagnostic will no longer be funded, the number of patients decreased considerably.

The right to reproductive health of women on the occupied territories

The right to sexual and reproductive health also remains a challenge on the occupied territories. Abkhazia de-facto Parliament supported complete ban of the abortion in 2016. The Law on Healthcare that entered into effect does not envisage induced abortion even in case of a medical indication. According to the current regulation, abortion service can be obtained legally only when based on a medical conclusion, pregnancy has been terminated in Abkhazia region. The absence of abortion services contributes to the introduction of various illegal practices. The Public Defender has found out about the cases when women

¹⁰⁷¹ "The body of a 70-year-old woman who passed away at the Tskhinvali hospital will be taken to her native village today", information available at: < <http://bit.do/fygrA>

¹⁰⁷² The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia Letter №01/330 dated January 14, 2020.

¹⁰⁷³ Social Services Agency, LEPL Letter №04/744 dated January 13, 2020.

living on the occupied territory who have decided to terminate abortion resort to various “underground” (prohibited) methods for receiving this service. Artificial restrictions introduced by the De-Facto Authorities jeopardizes women’s health and life. According to the PDO, in 2019, 15-20 cases of referrals to medical establishments with complications following induced abortion have been identified. Furthermore, the cases of the childbirth of minor pregnant girls who have moved to Georgia-controlled territories from the occupied regions and giving newborns out for adoption (means by bypassing the law-prescribed procedures) have been identified.¹⁰⁷⁴ According to the provided information, after the banning of the abortion service, the facts of leaving newborns in garbage bins have become frequent in the occupied regions.

Access to safe abortion service is an integral part of a woman’s sexual and reproductive health. It is important to change the existing regulations which makes the situation of the rights of women especially precarious. Furthermore, it is important to raise awareness of women and girls, ensure access to contraceptives, rather than to introduce prohibitions that will compel them to resort to the methods that jeopardizes their health and in the extreme case, their life.

26.5. Freedom of Expression

The situation with respect to the freedom of expression on the occupied territories remains precarious. Due to public expression of critical opinion, Tamar Mearakishvili has been suffering pressure from the De-facto government since 2017. During this period, she has been deprived of her identity documents and other personal belongings, her freedom of movement and other fundamental rights are restricted.

For years, Mearakishvili cooperated with international mass media outlets and NGOs, actively spoke about the problems in the Akhalkalaki district and it has become the reason for pressure over her. If we consider restrictions with access to mass media on the occupied territory it can be said that such activism is one of the valuable sources of information.

According to the assessment of the Public Defender of Georgia, along with the breach of the rights of expression and privacy and the right to the freedom of movement of Tamar Mearakishvili, the goal of a number of criminal prosecution against her is to force her to leave the region for good.

Although the authorities of Georgia are unable to perform effective control in the Tskhinvali region and the international law does not recognize De-facto regime, even given this situation, the protection of human rights should be one of the priority matters. Respectively, with the support of the International Community, the Government of Georgia should use all possible methods for pressurizing the De-Facto Authorities. It is important to include this case in the agenda of all international talks.

¹⁰⁷⁴ Informational meetings conducted by the Public Defender in the Samegrelo-Zemo Svaneti Region. Meeting in Zugdidi 19.12.2019.

26.6. Borderization and its impact on the population living in the villages along the occupation line

The PDO regularly monitors the situation of human rights in the villages of Samegrelo, as well as Shida Kartli regions situated along the occupation line. The goal of regular monitoring by the PDO during the reporting period in the so-called occupation line villages was to monitor the rights of the population living in those areas and the provision of information to them about the matters important to them (what services they can use, what programs are implemented, etc.).

It can be said as a result of conducted monitoring¹⁰⁷⁵ that despite social and infrastructure projects implemented by the Government, local population still heavily suffers from the damages from war. This is especially the case with the villages of Shida Kartli occupation line, who have been directly affected by 2008 hostilities, while following the war, after the installation of barbed wire, their access to agricultural lands and irrigation water -- their primary source of income -- was gradually restricted.

The matter of rehabilitation/compensation of the houses damaged during war in the villages along the occupational line, finding the source of employment and income for local residents remains a problem. The Public Defender spoke about these matters in detail in annual reports and respective recommendations had been developed.¹⁰⁷⁶

During the reporting period, occupational forces resumed the borderization process at village Gugutiantkari.¹⁰⁷⁷ A new stage of creeping occupation started on August 7 in Gori Municipality village Gugutiantkari and continued for about more than 2 weeks. Over this period, they erected up to 300 meters of new fences and houses destroyed during the war and land plots of two families (Gugutishvili and Razmadzes) appeared beyond this fence. The Public Defender personally visited Village Gugutiantkari.¹⁰⁷⁸ The affected families noted during the conversation with the Public Defender that as a result of artificial barriers erected by the occupational regime, they lost agricultural land plots, which was their only source of income. They also noted that they are always expecting threat. The borderization process was conducted in Kareli Municipality village Atotsi as well in 2019.

In the course of monitoring, local population often speaks about general feeling of the lack of security. In their view, this is due to the obscurity and the lack of information about the creeping "borders". Respectively, some residents do not know where there is the so-called border line and there are frequently

¹⁰⁷⁵ Monitoring was performed in the villages: Atotsi, Gugutiantkari, Koshka, Khurvaleti, Arbo, Qordi, Ditsi, Mejriskhevi, Patara Liakhvi, Ergneti, Berbuka and Jariasheni.

¹⁰⁷⁶ 2018 Report of the Public Defender of Georgia about the Situation with the Protection of Human Rights and Freedoms in Georgia. Pg. 316. Information available at: < <http://bit.do/fygtB> > [accessed 05.03.2020].

¹⁰⁷⁷ The statement of the State Security Service about the developments in Gugutiantkari. Available at: < <http://bit.do/fygtW> > [accessed 30.03.2020].

¹⁰⁷⁸ The statement of the Public Defender dated August 15, 2019 about the developments in Gugutiantkari. Available at: < <http://bit.do/fygt7> > [accessed 30.03.2020].

the cases when Russian officers or the De-facto security actors are arresting individuals with the charges of breaching the “state border”.

Recommendations

To the Government of Georgia and the Foreign Minister of Georgia:

- Conduct negotiations using all possible international formats to ensure that the Russian Federation government allows full and unrestricted access of international monitors to the occupied territories of Georgia.

To the Minister of Education, Sciences, Culture and Sports of Georgia:

- Facilitate non-formal education projects on the occupied territories, by means of negotiations with donors, or allocation of funding to NGOs;
- Restore the instruction of the Georgian language for children and youth from the occupied territories at summer camps and summer schools organized or funded by the central authorities; offer Georgian language academic programs parallel to study at educational institutions to students;
- Develop scholarship and/or accommodation program for students from occupied territories so that they are able to continue studies at university in case they successfully pass exam;
- Continue building new students’ accommodation facility, meanwhile, allocate relevant quota for the students from the occupied territories in the existing accommodation facilities.

To the Office of State Minister for Reconciliation and Civic Equality:

- Conduct negotiations with various donor and international organizations to support the opportunities of non-formal education for school students and youth in Abkhazia and especially in Gali district;
- For the protection of the rights of Tamar Mearakishvili, to timely stop persecution against her and to immediately ensure the freedom of movement, conduct negotiations using all possible international formats.

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

- Reinstate the funding of outpatient diagnostic expenses for the population living in the occupied regions, similar to prior 2017;
- Carry out relevant activities to effectively provide emergency medical aid to the patients from the occupied territories. Review the time of the taking of decision by the referral commission and review cases within the shortest timeframes;
- Engage physicians working on the occupied territories in the programs available to the physicians in the rest of Georgia, as well as increase support for medical institutions and medical personnel on the occupied territories.

To the Temporary Governmental Commission Responding to the Needs of the Conflict-Affected Population in the Villages Along the Occupation Line, and its member agencies:

- Perform rehabilitation/compensation works of the property damaged during 2008 war and develop programs for employment and finding the source of income for local residents.

To the Office of the General Prosecutor of Georgia:

- Periodically, once every 6 months, Inform the public about the process of and the progress with the investigation of cases of individuals who went missing after the 2008 August war.

27. The Situation of the Rights of the Internally Displaced Persons - IDPS

As of January 31, 2020, there are 286,367 internally displaced persons and 90,861 IDP families registered in Georgia. The state has resettled 41,263 families, 41,738 families have completed applications and are awaiting resettlement.¹⁰⁷⁹ It should be mentioned separately that there are 3,191 families registered who live under a heightened risk.¹⁰⁸⁰ High indicator of applications of IDPs to the PDO of Georgia during the reporting period was related to the resettlement process – the PDO examined about 150 cases during the year. Similar to prior years, main challenge remains to be the situation of rights of individuals living in the buildings posing increased threat to life or health. Notably, over the past years an authority responsible for IDPs was changed several times.¹⁰⁸¹ Presently, the Agency for IDPs and eco-Migrants is in charge of IDP cases.¹⁰⁸² The above-mentioned changes were accompanied by an extended reorganization process causing the delay in various activities.

27.1. Long-term accommodation of IDPS

During the reporting period, IDPs' long-term accommodation in newly constructed or rehabilitated buildings took place in several regions of Georgia.¹⁰⁸³ The major number of those were in Tbilisi.¹⁰⁸⁴ From the applications examined at the PDO, in specific cases, negative decisions about resettlement were taken without taking into account significant circumstances for the case and lack of sufficient reasoning has been identified. Furthermore, in case the court annuls such decision, the reinstatement of breached right – provision of housing – is delayed, since by the time when a court renders a final decision on the case the resource of apartments to be distributed is mostly exhausted and an IDP family has to wait for a long time for the next stage of resettlement (E.g., after 2016, IDPs were accommodated in 2019, in Zugdidi they have not performed resettlement since 2018, etc.).

In addition to the aforementioned, it has been identified that the number of apartments bought out for housing families with relevant number of members is low. For example, only 143 two-room apartments were distributed in Tbilisi, which is envisaged for 3-4 member families, while in Tbilisi, out of 10,414 applications registered at the planned long-term accommodation, 4,849 were about two-room apartments.¹⁰⁸⁵ Prior to the commencement of long-term accommodation of IDPs, there should be a

¹⁰⁷⁹The Agency for IDPs and Eco-Migrants, LEPL Letter №03/2060 dated January 31, 2020.

¹⁰⁸⁰ The Agency for IDPs and Eco-Migrants, LEPL Letter №03/1358 dated January 21, 2020.

¹⁰⁸¹ From September, 2018 the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia is in charge of these matters, while until November 28, 2019 the Social Services Agency, a LEPL within the same Ministry was in charge of implementing the policy.

¹⁰⁸² The Government of Georgia Decree N 473 dated September 14, 2018 on the Approval of the Regulations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, Article 5(2)(i).

¹⁰⁸³ According to the Letter N 03/2060 dated January 31, 2020 of the Agency for IDPs and Eco-Migrants, 164 families were accommodated in Batumi, 120 families – in Mtskheta, 13 families – in Khashuri, 13 – in Zugdidi, and 29 – in Marneuli.

¹⁰⁸⁴ According to the Letter N 03/2060 dated January 31, 2020 of the Agency for IDPs and Eco-Migrants, 707 families were accommodated in Tbilisi.

¹⁰⁸⁵ The Agency for IDPs and Eco-Migrants, LEPL Letter N 03/2285 dated February 5, 2020.

mechanism in place to identify the needs of IDPs, which housing authority must take into account while purchasing the apartments.

As a result of the analysis of the applications submitted to the PDO, the problem of delaying the review of applications of families willing to take part in the program of purchasing a private house has been identified. Unlike the procedure of accommodation in newly built or rehabilitated buildings, when the Commission Studying IDP matters determines the term for reviewing application, such possibility is not envisaged in case of the purchase of private houses. Thus, IDPs do not have information about estimated date of consideration of their application. It is important that, similar to other resettlement programs, after an application about purchasing a private house is filed, the Commission to be granted the powers to determine relevant timeframes for their consideration.

27.2. Resettlement of IDPS from the buildings posing increased threat to life or health

In the area of the situation with the rights of IDPs, the accommodation of IDPs in the buildings posing increased threat to life or health remains a problem. According to the information provided by the Agency,¹⁰⁸⁶ out of current 154 buildings that are in dire condition, 133 pose increased threat to life and health. Respectively, during the assessment 21 buildings among those examined did not pose increased threat. Technical stability of buildings is inspected based on written request of IDPs in majority of cases. Respectively, not all buildings in dire condition may be inspected and the data of the Agency may not be complete. It is important for the Agency to proactively, on its own motion, inspect technical stability of the buildings where IDPs are accommodated and this should not be dependent only on the written application of IDPs.

According to the Agency, 29 buildings posing increased threat to life had been closed. Out of the closed buildings, as part of the long-term accommodation program, 245 families were accommodated,¹⁰⁸⁷ which is 92 families less than the number of families¹⁰⁸⁸ accommodated in 2018. During the reporting period, the decreased number of families resettled from the so-called demolishing buildings should be assessed explicitly negatively. The situation is further exacerbated by the fact that the situation of compact settlement facilities gradually gets aggravated. Therefore, it is important that the Agency, by means of relevant expert assessments, periodically inspect the stability of hazardous buildings,¹⁰⁸⁹ as well as maximally ensure priority resettlement of IDPs residing in the buildings that are in dire condition.

As a result of the examination of individual cases by the PDO it has been identified that there are no formalized procedures for the resettlement of IDPs from buildings that pose increased threat to life and health, including those for proving that an individual actually lives in such a building, therefore, in some cases, it cannot be established whether an IDP family actually lives in the so-called demolishing building.

¹⁰⁸⁶ The Agency for IDPs and Eco-Migrants, LEPL Letter N03/1358 dated January 21, 2020.

¹⁰⁸⁷ The Agency for IDPs and Eco-Migrants, LEPL Letter N03/1358 dated January 21, 2020.

¹⁰⁸⁸ The Public Defender of Georgia 2018 Parliamentary Report, pg. 320.

¹⁰⁸⁹ The Public Defender was referring to the mentioned problem in 2016 Parliamentary Report, pg. 750.

It is important to stipulate the rule of resettlement of IDPs from the buildings that pose increased threat to life and health in the regulatory act governing IDP accommodation which would set forth all necessary procedures for monitoring the building and checking whether individuals actually live there. This will ensure that decision would be justified and based on the examination of all important circumstances for the case.

Recommendations

To the Agency for IDPs and Eco-Migrants, LEPL:

- Out of 21 buildings in dire condition registered in the Agency database, in 2020 identify the buildings stability of which has not been verified over the past 2 years, and check their condition by means of expert assessments;
- By means of expert assessments, proactively verify the stability of the buildings where IDPs are settled so as to enable the collection of complete information about the number of the so-called demolishing buildings;
- Maximally use all levers available thereof in order to provide long-term resettlement of IDPs from collective settlement buildings that pose increased threat to life and health. In case of the absence of sufficient resources (apartments to be distributed), provide rental payment to such families until they are provided long-term accommodation.

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

- Amend the Minister's Order N 320 and prescribe a relevant rule for the resettlement of IDPs from the buildings that pose increased threat to life and health, that would set forth all procedures necessary for conducting monitoring and examining the fact of actually living in the building;
- Amend the Minister's Order N 320 and similar to other resettlement programs, after the submission of an application about buying a private house, grant to the Commission Studying the Matters of IDPs the powers to determine relevant timeframes for its consideration.

28. The Situation of the Rights of Eco-Migrants

No significant changes can be observed in the situation of the rights of eco-migrants in 2019. The lack of the funds allocated for resettlements and the lack of the activities to prevent the causes of Eco-migration remain a main challenge. The non-uniform approach of local municipalities has also been identified in relation to the individuals affected by the acts of nature and subjected to resettlement. During the reporting period the trend of the increase of the number of Eco migrant families has been maintained.¹⁰⁹⁰ According to 2019 data, there are 6,187 Eco migrant families registered in the Agency for IDPs and Eco-Migrants (Hereinafter – the Agency). Of those, 1,957 families have been provided housing by government authorities and international organizations.¹⁰⁹¹

28.1. The Resettlement of Eco-Migrants

The lack of the budgetary funds allocated for the resettlement of Eco-migrants is one of the main problems. In 2019 housing was provided¹⁰⁹² to 281 families. Given the rising number of Eco-migrants, it is important to also increase the number of resettled families as well. Additionally, it should be mentioned that some of the Eco-migrants resettled during 2004–2012 still have not been given title to the housing. During the mentioned period, out of the 1,062 families¹⁰⁹³ resettled to various regions in Georgia only 649¹⁰⁹⁴ families have been given title to immovable property, while others have been waiting for years.

As for the families living under high risk, in 2019 the National Environmental Agency-LEPL, issued a conclusion about living under increased threat¹⁰⁹⁵ for 210 families.¹⁰⁹⁶ Although the authority in charge of the resettlement of Eco-migrants requested from the National Environment Agency-LEPL geological conclusions issued since 2013, this has not had an impact on the number of the resettled families and only 30 families living under increased threat were resettled. Therefore, it is important to give priority to such families during the discussion about resettlement.

¹⁰⁹⁰ In 2017 there were 5,009 eco-migrant families registered, See 2017 Parliamentary Report, pg. 242; while in 2018 5,457 eco-migrants were registered, See 2018 Parliamentary Report, pg. 324.

¹⁰⁹¹ The Agency for IDPs and Eco-Migrants Letter №03/1362 dated January 21, 2020.

¹⁰⁹² According to the Agency for IDPs and Eco-Migrants Letter N03/1362 dated January 21, 2020, 164 families were resettled, while according to the Ministry of Health and Social Protection of the Adjara A/R Letter N05/112 dated January 21, 2020 117 families were resettled.

¹⁰⁹³ The Public Defender's 2013 Parliamentary Report, pg. 620.

¹⁰⁹⁴ The transfer into ownership: in 2016 to 311 families, in 2017 to 101 families, in 2018 to 117 families and 2019 to 20 families. See the Parliamentary Report of the Public Defender 2016 pg. 780, 2017 Parliamentary Report pg. 242, 2018 Parliamentary Report pg. 325, the Agency for IDPs and Eco-Migrants Letter N 03/1362 dated January 21, 2020.

¹⁰⁹⁵ According to the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia Order N 779 dated November 13, 2013, Annex №1, Article 3(3)(a), living under increased threat is a basis for resettlement without consideration of the scores system.

¹⁰⁹⁶ The National Environment Agency, LEPL Letter N 21/119 dated January 23, 2020.

28.2. Prevention of Eco-migration

The Public Defender has been stressing the importance of preventive activities for years. During the reporting period, the approach of local authorities in relation to Eco-migrants and the prevention of Eco-migration has been analyzed. It has been revealed that certain municipalities do not have information about Eco-migrant families¹⁰⁹⁷ living in their administrative units. Moreover, some municipalities do not have information about the territories where geological processes are underway.¹⁰⁹⁸ The analysis of the obtained information shows that the majority of local authorities do not work on preventing Eco migration and respond only after the damages occur¹⁰⁹⁹. Some of the municipalities do not have the funds envisaged in the budget in this direction.¹¹⁰⁰ Furthermore, some of the local self-government authorities try to fix the inflicted damage according to the social status of the family.¹¹⁰¹

To enable the implementation of relevant preventive activities by an administrative unit or the assessment of the risks of the implementation of projects on a specific area prior to the implementation of certain infrastructure projects,¹¹⁰² it is important that the local authorities are informed about geological processes underway in their administrative units. In case preventive activities are implemented duly, the necessity of resettlement of a family can be prevented and this, on the one hand, will save funds, and, on the other, will prevent the problems relating to emptying the settled territory and the integration of a family in a new place. Furthermore, the possibility of the use of the land plots later will be retained.

Recommendations

To the to the Agency for IDPs and Eco-Migrants, LEPL:

- Based on the analysis of geological conclusions received from NEA, LEPL, identify families living under high risk and use at least 30% of the funds allocated for resettlement for the resettlement of such families;
- The process of the transfer of the residential spaces to Eco migrants resettled in 2004-2012 into ownership to be completed in 2020.

To Kareli, Kharagauli, Abasha, Dedoplistskaro, Tsalka, Dmanisi and Khelvachauri Municipalities:

¹⁰⁹⁷ Gurjaani Municipality Town Hall.

¹⁰⁹⁸ Khelvachauri Municipality Town Hall, Kharagauli Municipality Town hall.

¹⁰⁹⁹ Signagi Municipality Town Hall provides one-off funding to the activities for liquidating the impact of the acts of nature, a commission established in the Tskaltubo Municipality Town Hall that studies the damage from the natural occurrences and helps the victims to the extent possible, Mestia Municipality Town Hall issues one-off financial assistance, etc.

¹¹⁰⁰ Chokhatauri Municipality Town Hall, Kareli Municipality Town Hall, Gurjaani Municipality Town Hall, etc.

¹¹⁰¹ Ozurgeti Municipality Town Hall, Chkhorotsku Municipality Town Hall.

¹¹⁰² The PDO has examined the case where the Khelvachauri Municipality Town Hall planned road works and partially implemented those on the territory where there were landslide processes underway.

- Mobilize relevant funds for geologically active territories identified by NEA in order to carry out preventive activities in the process of planning a budget;
- Prior to the implementation of infrastructure projects, examine the project territory in order to identify geological processes and carry out the activities set out by the NEA, LEPL.

29. Legal Status of Aliens in Georgia

Over the past years parliamentary reports of the Public Defender of Georgia contain special chapter on legal status of aliens in Georgia. The report describes the situation of the rights of asylum seekers and those with international protection, as well as the rights of those aliens and stateless individuals who would like to have a residency permit in Georgia. When exercising the authority as part of the mandate granted under the Georgia Legislation, the PDO also monitors border control related to the crossing of the state border of Georgia. Furthermore, the PDO, over the past years also examines the state of the rights of asylum seekers and individuals with international protection, under the joint project with UNHCR.

Although the number of applications of asylum seekers has increased¹¹⁰³ in 2019 in Georgia the number of individuals with international protection has not changed significantly, since the rate of granting the status remains low. According to the Public Defender, similar to previous year, the issues of low indicator of granting international protection, reasoning rejection based on security grounds and integration related problems remain main issue. High statistical indicator of decisions on refusing residency permit based on state security and/or public safety grounds is a problem in the area of obtaining the right of residency as well.

Several important issues have been highlighted during the current reporting period in the course of monitoring of border control of the crossing of the state border. These issues include awareness of authorized individuals about the mechanism and the tools of the referral of asylum seekers and general standards to be borne in mind when foreign citizens are delayed.

29.1. The State of the Rights of Asylum Seekers and Individuals with International Protection and Key Trends

In December, 2019, at the Global Refugee Forum¹¹⁰⁴ organized by the UNHCR and the Swiss Government the PDO presented voluntary obligations¹¹⁰⁵ about the implementation of monitoring of the state of the rights of asylum seekers and individuals with international protection for the first time.

In 2019, 1,237 individuals applied to the Ministry of Internal Affairs Migration Department with the request of asylum, which is an increased indicator, compared to prior year. Majority among asylum seekers are the citizens of Iran, Egypt, India, Russia and Turkey.

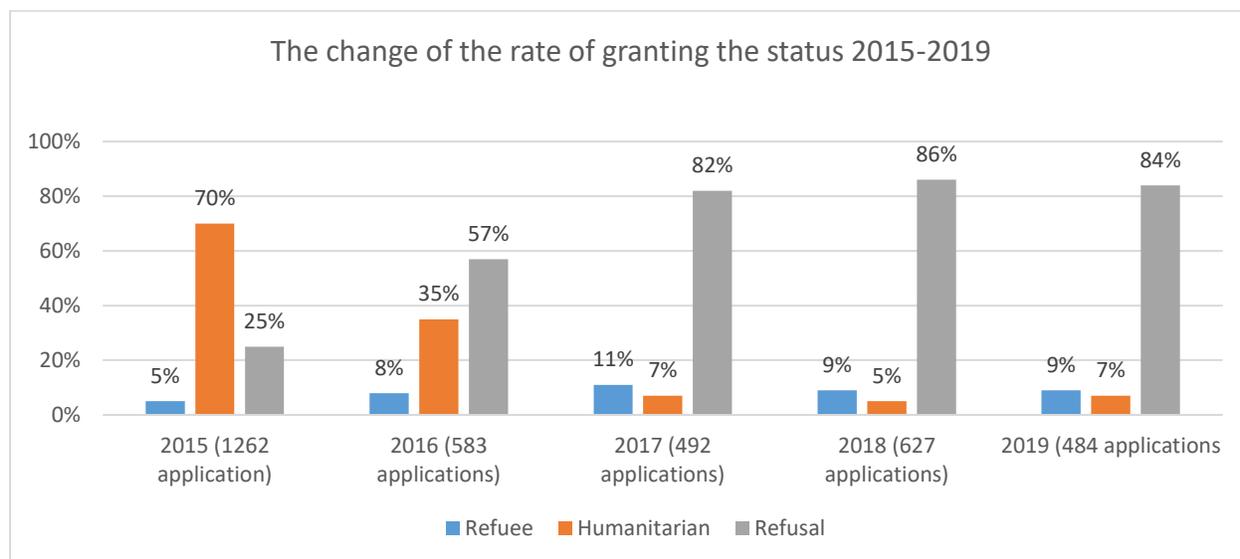
¹¹⁰³ In 2018, 959 applications (The Ministry of Internal Affairs, Migration Department Letter NMIA 9 19 00254940), while in 2019 -1237 asylum seekers' applications (The Administration of the Ministry of Internal Affairs Letter №MIA 92000336325, 7.02.2020).

¹¹⁰⁴ See <<https://www.unhcr.org/global-refugee-forum.html>>>[accessed 20.02.2020].

¹¹⁰⁵ See <<https://lop.by/PNO>>>[accessed 20.02.2020].

As for the individuals with a status, as of December, 2019, there are¹¹⁰⁶ 1,360 individuals with international protection in Georgia. Of those, 504 have refugee status, and 856 – humanitarian status. Majority of those are the citizens of Iraq, Ukraine, Russia and Egypt.

The rate of status denial has been increasing over years. If in 2015 negative indicator of granting a status was 25% of examined cases, during the following years this indicator increases considerably and reaches on average 84%.



As for the reasons for rejection of the status, according to the grounds provided by the State Security Service, a total of 32 individuals (about 8%) were rejected. Among them, 16 – Syrian and 5 – are Yemeni citizens. It is important for the state to get interested in the subsequent legal status of the citizens of these countries, considering the situation in their country. According to the Human Rights Watch report,¹¹⁰⁷ although the situation with the conflict in Syria has partially eased and Russia and Syria are calling on the refugees to return, government forces continue breaching human rights and international humanitarian law, arbitrary detention, ill-treatment, as well as there are the restrictions imposed on free movement. In relation to other reasons for refusal, it should be noted that out of 484 considered cases, 373 individuals were refused due to the absence of reasons, since the individuals did not meet relevant requirements for granting a status, while the rejection in case of 2 individuals was based on the grounds that they were able to move within the country of origin.

The repeated examination of the cases returned to the Migration Department from court should also be noted here. In 2019, like 2018, none of the returned decisions were changed in favor of asylum seekers.¹¹⁰⁸ Therefore, the Public Defender is of the opinion that asylum seekers should be maximally protected against return to such country where their life and health may be jeopardized.

¹¹⁰⁶ See the Administration of the Ministry of Internal Affairs of Georgia Letter N^oMIA 92000336325, 7.02.2020.

¹¹⁰⁷ See <<https://lop.by/PNQ>> [accessed 20.02.2020].

¹¹⁰⁸ See the Administration of the MIA Letter N^oMIA 92000336325, 7.02.2020.

The Access to the Asylum Procedure

To assess the access to territory and asylum procedure for asylum seekers, realization of confidentiality, exemption from criminal liability, non-refoulement and non-discrimination principles, the PDO carried out monitoring at the state border of Georgia, as well as in penitentiary institutions.

It has been revealed as part of monitoring that the representatives of the Ministry of the Internal Affairs (MIA) are informed about the asylum legislation and responsible authority. At the same time, it should be noted that the bilateral Order of the former Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia and the Minister of Internal Affairs of Georgia governs the cooperation in the field of identification of asylum seekers, their reception at the state border, their transfer and the field of exchange of information. Considering that presently these procedures fully fall under the MIA competence, it is important to enact a new order to stipulate relevant response to these matters within the single agency.

In addition to the above-mentioned, according to the monitoring by the PDO and the information received from the MIA¹¹⁰⁹ it has been revealed that during the reporting period, in cases of the illegal crossing of the land border, MIA sub agency – Border Police transferred 4 foreign citizens to the Migration Department of the Ministry due to asylum request. Although, based on the information received from 2 asylum seekers placed in penitentiary establishments¹¹¹⁰ and based on information provided by the MIA, criminal case was instituted against these individuals for illegal crossing of the border. The above-mentioned explicitly indicates to the problems with the detection of asylum seekers in case of illegal border crossing, breaching the exemption for criminal liability stipulated by the legislation of Georgia¹¹¹¹ when asylum seeker illegally crosses the border.

At the same time, although according to the information obtained from the Agency the above-mentioned is not confirmed, during the reporting period several foreigners¹¹¹² stated that their asylum application did not reach an addressee from the penitentiary facility, which has delayed their access to the asylum procedure.

Furthermore, according to the information received from beneficiaries, illegal crossing of the state border of Georgia and language barrier in penitentiary institutions are among the challenges.

¹¹⁰⁹ See the Administration of the MIA Letter №MIA 22000781955, 30.03.2020.

¹¹¹⁰ In 2019, in 2 cases the PDO detected the mentioned problem based on the meeting/interview with foreign citizens placed in penitentiary establishment and based on information received thereof.

¹¹¹¹ See the note to the Criminal Code of Georgia, Article 344; as well as the Law of Georgia on International Protection, Article 7(1).

¹¹¹² See The PDO cases №704-04-6 (6.02.2019), 13174/19 (18.10.2019) and 5792/19 (2.05.2019).

The use of measures of alternative to the detention of aliens and placing them in the Temporary Accommodation Center

Article 64 of the Law of Georgia on Legal Status of Foreigners and Stateless individuals stipulates the matter of the detention of a aliens and placement in a temporary detention isolator or at the temporary accommodation Center with the purpose of removal from Georgia. While Article 65 of the same law prescribes alternative measures to the placement in the temporary accommodation center. Article 21⁴² of the Administrative Procedure Code of Georgia is related to the procedural exercising of the above-mentioned material-legal provisions, the first paragraph of the Article states that a district (city) court judge, based on a motion of an authorized entity of the MIA of Georgia issues an order about the placement of a foreigner in a temporary accommodation center or about the extension of the term of placement of a aliens in the temporary placement center for his/her removal from Georgia. While Paragraph 4 of the same Article states that a judge is authorized to, based on a reasoned motion of the MIA of Georgia authorized entity, issue an order about the application of an alternative measure to the placement in the temporary accommodation center in relation to a alien.

The PDO, having examined the pending applications about removal, has determined that the Migration Department does not apply to court with a motion about the application of an alternative measure as stipulated by the legislation. In particular, in 2018, for the purpose of removal from Georgia 87 aliens were detained and placed in the temporary accommodation center, in 2019 – 88 aliens, of those, the court applied an alternative measure to detention in 4 cases in 2018, while in one case in 2019.¹¹¹³

Thus, the court applies less stringent measure to the deprivation of liberty in relation to migrants in strictly limited cases. Despite attempt, the PDO was unable to obtain information about specific obstacles/reasons based on which the MIA does not apply to court about the application of an alternative measure to the placement of a foreigner in a temporary accommodation center.¹¹¹⁴

International Human rights law focuses on the importance of the tight to liberty and personal integrity right and notes that the detention and the deprivation of liberty of an individual should be used on an exceptional basis, allowable based on the law only and in case of relevant justification.¹¹¹⁵ The UN Special Rapporteur on Migrants' Rights notes that relevant authorities are required to always consider the alternative to detention (non-custody measures) before using the custody. Detailed instructions shall be provided and relevant trainings be developed for judges and other public officials, such as police, border

¹¹¹³ The MIA Letter №MIA 2 20 00199006 dated January 24, 2020.

¹¹¹⁴ The MIA Letter №MIA 9 20 00692285 dated March 16, 2020.

¹¹¹⁵ The International Covenant on Civil and Political Rights, Article 9(1); the International Convention about The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW), Art. 16(4); The Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5.

and migration officers, in order to apply non-custodial measures in a systemic manner.¹¹¹⁶ According to the Council of Europe guidelines on forced return, the deprivation of liberty shall be applied only when the authorities, following a careful examination of the necessity of the deprivation of liberty conclude that the legitimate objective of the removal of a foreigner cannot be ensured as effectively by resorting to non-custodial alternative measures.¹¹¹⁷

Based on the afore-mentioned, the state, and in the given case, the MIA Migration Department, has positive obligation, at the time of the commencement of removal proceedings in relation to a foreigner, to assess, first of all, the matter of application of detention and placement in the temporary accommodation center and only after those measures are deemed ineffective, make a decision about their detention and placing in the temporary accommodation center, as the strictest measure of the restriction of liberty. It is worth noting that the Migration Department holds and processes significant information about a foreigner subject to removal (identity, place of residence, financial status, and etc.)¹¹¹⁸ that can be used for the fulfillment of the aforementioned positive obligation as well. Therefore, it is crucial for the MIA of Georgia to bring its practice in conformity with the regulation stipulated by the Georgia legislation.

29.2. The Situation of the Rights of the Migrants

Similar to prior years¹¹¹⁹, in 2019 the PDO of Georgia has accepted into proceedings numerous applications on the lawfulness of the refusal to the admission to Georgia to foreigners.¹¹²⁰ It can be observed as a result of the examination of these cases that the MIA of Georgia refuses aliens the admission to Georgia on the grounds of "Other cases stipulated by Georgia legislation"¹¹²¹ and does not refer to another legal provision. The Public Defender of Georgia once again specially notes that the listed provision is referential and does not give rise to legal consequences on its own. Thus, in order to apply this provision, there should be a law-prescribed specific case for subjecting a foreigner to the restriction to cross the border.

The absence of full-fledged databases is problematic in relation to crossing the border. According to the Ministry of Internal Affairs of Georgia,¹¹²² in 2019 25,548¹¹²³ foreigners had their entry to Georgia restricted,

¹¹¹⁶ The report of the Special Rapporteur on Migrants' Rights, report about Migrants' Rights, Para. 53, April 2, 2012, A/HRC/20/24.

¹¹¹⁷ The Council of Europe Committee of Ministers twenty guidelines on forced return, guideline 6 § 1, 2005.

¹¹¹⁸ See the Minister of Internal Affairs of Georgia Order N 631 dated August 19, 2014, Article 4(2).

¹¹¹⁹ See the Public Defender's 2017 and 2018 reports about the Situation of the Protection of Human Rights and Freedoms in Georgia, Chapter: The Situation of the Rights of Migrants.

¹¹²⁰ In 2019 the PDO accepted 5 applications into proceedings.

¹¹²¹ See the Law of Georgia on Legal Status of Aliens and Stateless Individuals, Article 11(1)(i).

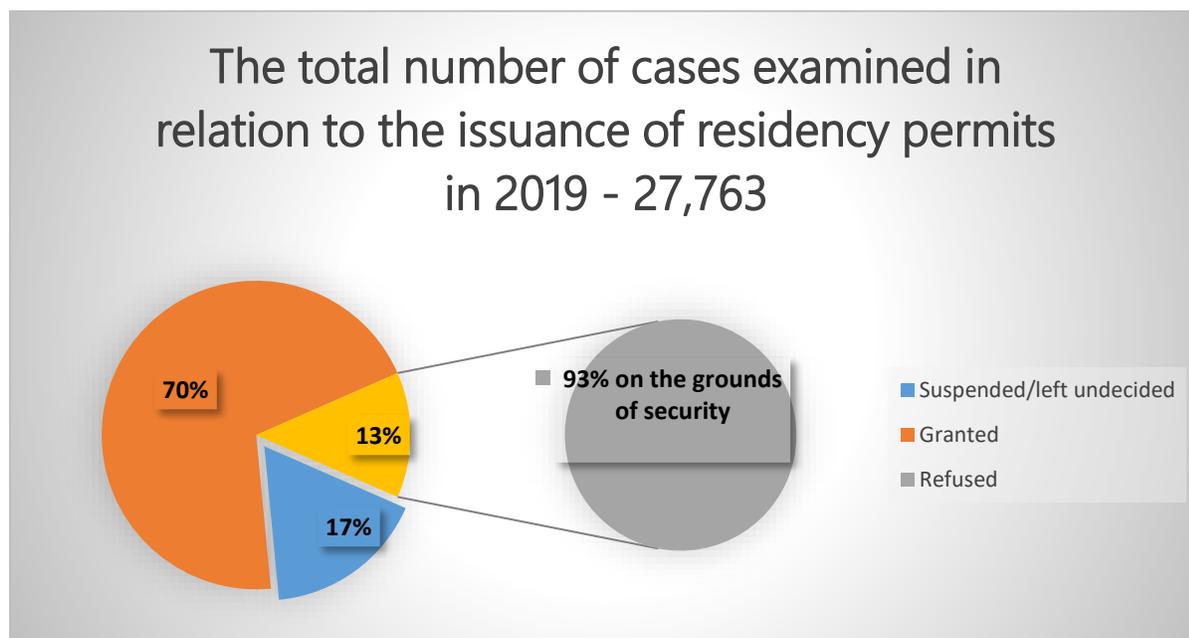
¹¹²² See the Ministry of Internal Affairs of Georgia Letter N^oMIA 2 20 00199006 dated January 24, 2020.

¹¹²³ Ibid., in the mentioned data the margin of error is +/-2,4%.

although the MIA lacks data about citizenship of these individuals and specific legal grounds for refusal, including how many individuals were rejected based on the above-mentioned problematic grounds.

In the given situation it is effectively impossible to assess the scale of the refusal to entry to foreign citizens based on the above-mentioned provision and whether there is a possible discriminatory treatment based on citizenship. Keeping complete statistical data, in turn, is important based on the principle of the transparency of the work of an administrative body, since suspicions or questions arising in relation to the justification of decisions related to the restriction of border crossing can be refuted in the presence of data.

In 2019¹¹²⁴ too, the applications were filed by foreigners to the PDO¹¹²⁵ concerning the lawfulness of refusal to residency permit by the State Services Development Agency based on the argument of state security and/or the protection of public order¹¹²⁶. For every application the Public Defender of Georgia has solicited from the State Security Service of Georgia state secret information and as a result of the examination of the obtained data, the fact of the breach of the rights of a foreigner has not been established in any of the cases. The statistical information for 2019 provided by the State Services Development Agency about issuing residency permits, citizenship of foreigners and the application of state and/or public security grounds is presented below.¹¹²⁷



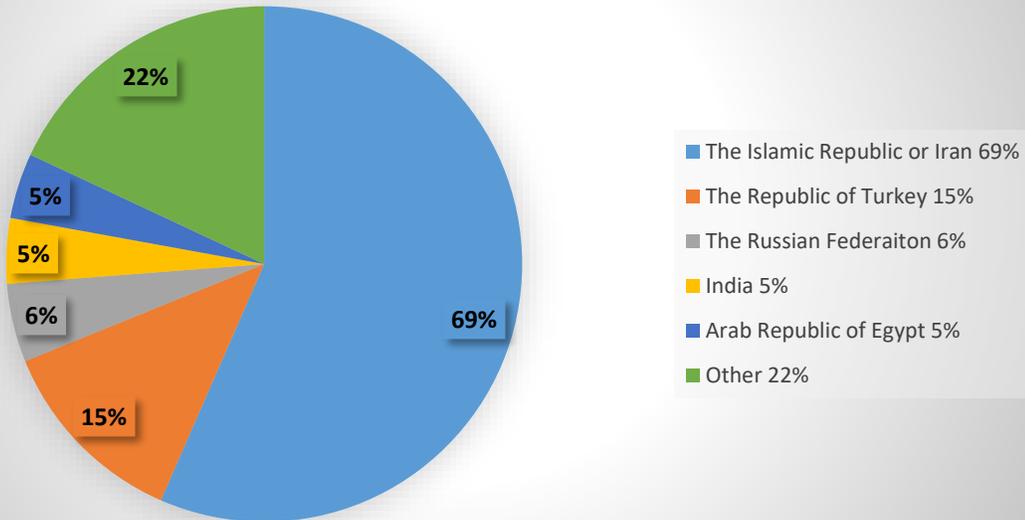
¹¹²⁴ See the Public Defender's 2017 and 2018 reports about the Situation of the Protection of Human Rights and Freedoms in Georgia, Chapter: The Situation of the Rights of Migrants.

¹¹²⁵ In 2019 the PDO accepted 13 applications into proceedings.

¹¹²⁶ The Law of Georgia on Legal Status of Aliens and Stateless Individuals, Article 18(1)(a) and (c).

¹¹²⁷ The State Services Development Agency Letter № 01/22116 dated January 28, 2020.

The statistics of negative decision based on state security grounds in 2019 by citizenship



It can be established based on the present statistical data that 93% of the decisions taken about status rejection are related to the grounds of state security and/or the protection of public order. Naturally, the protection of a listed legitimate objective by the state is especially high public good although it should be mentioned that the presence of a legitimate objective should be justified in each case so that the legitimate interests of aliens are not unjustifiably and disproportionately restricted due to public interests.

29.3. The Monitoring of the State Border

For the assessment the state of the rights of aliens in Georgia, the PDO has conducted active monitoring of the state border. During the reporting period monitoring was performed in the following border-migration control departments: Sarpi, Batumi Airport, Kutaisi Airport, Dariali (Kazbegi), Vale, Sameba (Ninotsminda), Tsiteli Khidi (Red Bridge), Geguti, Sadakhlo, moreover, during the year the monitoring of more than 25 flights was conducted at the Tbilisi Shota Rustaveli International Airport. Visits were made in structural units of the MIA Sub-agency – The Border Police of Georgia, including the sectors. During the visits meetings were held and the information was exchanged about the detection/identification of asylum seekers at borders, cases of refusal to entry to the country and reasons thereof, as well as the responsibility of the relevant agencies.

During monitoring, attention was focused on the delay of citizens of various countries at the border and additional passport control examination. It has been revealed that the Patrol Police representatives are aware of the asylum legislation and responsible authority, although the application of the tools of the bilateral order (of the former Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees and the MIA) needs to be improved, that govern the important rule of identification of asylum seekers, admission to the state border, their transfer and the cooperation in the information exchange. Furthermore, it has been identified as a result of monitoring that during the reporting period none of the cases of the transfer of an asylum seeker from any of the sectors of the Border Police have been identified, while, as has already been mentioned, asylum seekers placed in penitentiary institutions informed the PDO in 2 cases that their asylum request was disregarded at the Border and criminal case was instituted against them due to the illegal crossing of the border.

During the initial stage of monitoring it has been revealed that the foreigners who were rejected the entry to Georgia, prior to their return from Georgia were provided food and drinking water by the MIA Patrol Police Department employees, at their good will, with their own funds or at respective foreigners' expenses. Hence, the foreigners did not receive state protection with minimal safeguards for subsistence during the period of delay until return. The approval in 2019 by the MIA of the rule for provision of food to foreigners should be assessed positively¹¹²⁸; it relates to foreigners who were rejected the entry to Georgia following inspection and are placed at the dedicated space in the border control zone for the return. According to the MIA,¹¹²⁹ the new regulation about the provision of meals to foreigners at this stage is implemented at the Tbilisi Airport only and the work is underway with Kutaisi and Batumi International Airports to expand this practice there as well. The implementation of the afore-mentioned rule is related to the obligation of the protection of such fundamental rights in relation to foreigners as human dignity and honor. Hence, we hope that the MIA of Georgia will utilize the legitimate mechanisms available thereof and next year it will introduce the new rule of provision of food at all international airports of the country.

The matter of furnishing of the Patrol Police checkpoints and the Border Police sectors remains a significant challenge. Only several border checkpoints are in conformity with modern standards. The checkpoints are not equipped with special interview rooms. Oftentimes, interview is conducted at the conference or a shift head room where confidential setting is not ensured. The room to hold the passengers delayed during the border crossing for various reasons is another issue. As has been revealed during the monitoring, isolated detention room is available only in several border buildings and they often are not in conformity with modern standards. Along with ensuring the rights of foreign passengers, it is important to improve infrastructure for the provision of relevant working conditions for patrol-inspectors working at border checkpoints. For example, the construction of the building of Sameba – for the Patrol Police Border-Migration Control Unit has been underway for several years and still has not

¹¹²⁸ The Minister of Internal Affairs Order №1/404 dated August 26, 2019.

¹¹²⁹ The Ministry of Internal Affairs Letter №MIA 2 20 00199006 dated January 24, 2020.

been completed. The construction of this building would significantly improve quite dire working conditions of patrol inspectors considering harsh natural conditions.

Recommendations

To the Minister of Internal Affairs of Georgia:

- Pass a new order that will replace the joint order of the Ministry of Internal Affairs and the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia and with the new order to clearly set forth the rights and duties and obligations of the Patrol and Border Police about the admission to the border and the transfer of asylum seekers
- During the year plan the training of border police officers and train the number of officers that will ensure the improvement of the practice of clarifying asylum seekers' requests in each relevant unit
- Using the software, start the processing of statistical data about rejection to the entry to Georgia by reference to citizenship of aliens and the specific legal grounds for refusal to entry.

To the Minister of Justice of Georgia:

- Ensure the improvement of access to the asylum procedure, by providing the copies of special asylum application to foreign citizens and stateless individuals placed in penitentiary institution;
- Consider the matters related to the asylum procedure in the programs for the professional development of the Social Service employees.

30. The State of the Rights of Stateless Individuals

A separated chapter about the state of the rights of stateless individuals was included in 2018 Parliamentary Report for the first time. This year the PDO continued to work in this direction and despite very low number of applications,¹¹³⁰ it conducted analytical and proactive monitoring. As of January 15, 2020, there are 559 stateless individuals registered in Georgia.¹¹³¹

In case a decision on the removal from Georgia is made, stateless individuals still face the problems of the prohibition to request status determination,¹¹³² restriction of appealing citizenship related decisions,¹¹³³ restriction of registration in the unified database of socially vulnerable families,¹¹³⁴ as well as removal of homeless stateless individuals from those municipal programs that are aimed at the provision of shelter to the homeless.¹¹³⁵ There is a detailed overview of the mentioned matters provided in the Public Defender's 2018 Parliamentary Report¹¹³⁶, although, unfortunately, situation has not changed and improved in either of these directions.

¹¹³⁰ Only one application was submitted to the PDO in 2019.

¹¹³¹ The Agency of State Services Development, LEPL Letter №01/22116 dated January 28, 2020.

¹¹³² According to Article 2(2) of the Government of Georgia Decree N523 dated September 1, 2014 about the Approval of the Rule for the Determination of a Stateless Person's Status in Georgia: "Any individual present in Georgia has a right to demand status determination irrespective of the legality of their stay in Georgia, in relation to whom a decision about the removal from Georgia has not been rendered".

¹¹³³ According to Article 29(1) of the Organic Law of Georgia on the Citizenship of Georgia: "Decision made by the President of Georgia concerning the citizenship of Georgia, with the exception of the decision about the termination of Georgia citizenship, may not be appealed in court".

¹¹³⁴ According to Article 11(4)(a) of the Order N225/n of the Minister of Labor, Health and Social Affairs of Georgia dated August 22, 2006 about the Appointment and Granting of Targeted Social Assistance, a permanent residency permit is required for eligibility for the subsistence allowance. According to the Law of Georgia on the Legal Status of Aliens and Stateless Persons, Article 16(2), "A residence permit to a stateless person shall be issued for a 3-year period. A residency permit with the right of permanent residence shall be granted to a stateless person whose citizenship of Georgia had been terminated by reason of renunciation of the Georgian citizenship, or who has permanently lived in Georgia as of March 31, 1993, has not been considered a Georgian citizen and has not been removed from permanent registration in Georgia after March 31, 1993".

¹¹³⁵ For example, according to Article 3(1)(a) of Annex N 1 to the Tbilisi Municipality City Assembly February 12, 2019 Decree N 37-14 about the Approval of the Registration as homeless in the Tbilisi Municipality territory and the provision of shelter/housing, only Georgian citizens are eligible to register as homeless and temporary housing. Furthermore, pursuant to Annex N 1 Article 1 of the Ordinance N 18.813.1186 dated October 2, 2018 of the Tbilisi Municipality Government on the Approval of the form of Tbilisi Municipality NCLE Tbilisi Municipal Shelter (TIN 406153111) Operating Instructions, the form of a written statement of a homeless person and the application form for the registration at the Shelter for the Homeless Only Georgian citizens will be allowed to use the so-called Lilo Shelter services.

¹¹³⁶ The 2018 Report of the Public Defender of Georgia about the Situation of the Protection of Human Rights and Freedoms in Georgia, Chapter: The State of the Rights of Stateless Persons", pg. 333.

In October, 2019, at the UNHCR Executive Committee session, in order to reduce the number of stateless persons and to improve protection of their rights, Georgian authorities presented voluntary pledges. The taken commitments included the issues covered by the Public Defender in 2018 Parliamentary Report¹¹³⁷ for resolving of which specific recommendations were provided to the respective public authorities. In particular, the document includes such important obligations as supporting stateless persons in obtaining Georgian citizenship via naturalization, and cutting the 10-year term prescribed by law for this purpose by half,¹¹³⁸ reducing the fee for the stateless status determination service by half,¹¹³⁹ as well as provision of free legal service at the administrative body and common courts in the process of status determination.¹¹⁴⁰ The Public Defender of Georgia assesses the aforementioned activity positively and hopes that the government will fulfill the taken commitments.

The Government Commission on Migration has a statelessness working group and main directions of its work are designing legal mechanisms and the provision of relevant recommendations to the commission for the reduction of statelessness in Georgia. Unfortunately, only one meeting of the working group was held in 2019, and during the meeting issues included in the Public Defender of Georgia 2018 Parliamentary Report related to the state of the rights of stateless individuals were discussed.¹¹⁴¹ The work of the working group may have significant impact on the improvement of the state of the rights of stateless individuals; hence, it is extremely important for the group to have a pre-determined work plan, be active and be oriented at the achievement of actual results, in close coordination with relevant government authorities.

Another problem is that despite the expiration of the term of 2018-2019 Action Plan on statelessness¹¹⁴², a new plan still has not been developed. Given this situation, state vision is unclear, as to which activities will be implemented on the one hand in 2020 and/or in subsequent years to respond to the objectives set out in the Global Action Plan¹¹⁴³, and secondly, for the improvement of the state of the rights of stateless individuals in Georgia.

¹¹³⁷ Ibid.

¹¹³⁸ Pursuant to Article 12(1)(a) of the Organic Law of Georgia on the Citizenship of Georgia, in order to be granted Georgian citizenship an individual shall meet the precondition of living legally and continuously in Georgia for the past 10 years. This provision does not envisage any exemption in relation to stateless individuals.

¹¹³⁹ According to Article 2(45) of the Government of Georgia Decree N508 dated December 29, 2011 about the Approval of the timeframes of services provided by the Ministry of Justice LEPL – State Services Development Agency, and within the delegated authority -- a consular official as part of the delegated powers, fees of such services and the rule of payment of the fee: "service fee for the determination of a stateless status is GEL 50". According to Article 8(6¹) of the same Decree, stateless individuals are exempted from service fee only in case "the basis for the consideration of the application is the application of the Care and Custodianship Agency in relation to the individual placed under the custody/care of this body".

¹¹⁴⁰ An individual seeking stateless status does not meet insolvency criteria set forth under Article 2 of the Government of Georgia Decree N424 dated June 30, 2014 about The Rule for Proving Insolvency of an Individual, because of no access to the registration in the unified database of socially vulnerable families.

¹¹⁴¹ The meeting was held on May 28, 2019.

¹¹⁴² Has been approved The Minutes of December 28, 2017 Meeting of the Migration Government Commission.

¹¹⁴³ The UN Global Action Plan to End Statelessness, 2014-2024.

Recommendations

To the Parliament of Georgia

- To support obtaining citizenship of Georgia via naturalization for individuals with stateless person's status in Georgia, reduce the requirement of the 10-year stay in Georgia set forth under the Organic Law of Georgia on the Citizenship of Georgia, Article 12(1)(a) by half;
- Discuss amending Article 29(1) of the Organic Law of Georgia on the Citizenship of Georgia that prohibits the appealing of a decision taken by the president about citizenship in court.

Recommendations

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

- Explicitly indicate a stateless individual as a beneficiary, irrespective of the type of residency permit, in Order N225/6 of the Minister of Labor, Health and Social Affairs about the Approval of Appointing and the rule of issuance of Targeted Social Assistance, Of the August 22, 2006.

To the Government Commission on Migration:

- Approve the Action Plan on ending of Statelessness for 2020 and subsequent years that would include a broad range of activities in relation to the issues with the state of the rights of stateless individuals.