HDIM.DEL/433/07
04 October 2007

Report on the Violations of Human Rights in the Conflict Zones

The human rights situation in the second half of 2006 was extremely grim in the conflict zones of Georgia, particularly in South Osetia and Abkhazia where the Central Government is unable to exercise its effective control. Occurrence of human rights violations and abuses are frequent in the areas densely populated with ethnic Georgians and territories under the control of CIS Peacekeeping Forces, indicating the gross negligence and inaction on the part of the peacekeeping forces.

According to International Laws, in an event of international or local conflict the rules stated under the International laws are applicable. Based on the principle and responsibility to "secure observance of human rights and norms of the International humanitarian law" The peacekeeping forces are deployed on the territory of Georgia.

As much as these human rights issues pose as stumbling blocks to the peace in the region, it also provides an opportunity to create milestones in form of groundbreaking negotiations leading to peaceful resolutions. It is with this faith that the Government of Georgia is pursuing with all its efforts in the direction to resolve the conflicts.

To help achieve its objective of monitoring and evaluating of human rights abuses and freedom according to international Law, The Public Defender's Office deems it necessary to have its representative actively participating in peace negotiations, in particular its attendance in the four-sided weekly meetings in Chuburkhinji, Geneva process and working meetings of joint control commissions.

Permanent and active participation at the above meetings would strengthen the Office of The Public Defender in obtaining first hand information and facts at the ground level, facilitating to proper and adequate reaction when necessary. False Propaganda of the current situation in the conflict zones does not support or lead to complete and peaceful resolution of the conflicts.

With this in mind, the Public Defender appealed to the State Minister on Conflict Resolution as well as the international organizations involved in the process. The State Minister's position is still not known to the Public Defender.

It must be noted that it is easier for the Public Defender to learn about the situation in Tskhinvali region. The Public Defender has contacts in Kokoiti and Sanakoev administrations. He also has contacts with the international organizations carrying out their missions in the conflict zone. The cooperation is especially effective with UN Human Rights Office in Sukhumi.

It must be also noted that the de facto government often neglect the recommendations of the international and non-governmental organizations in regard to prevention of human rights violations. Other human rights democratic institutions don't exist in these regions.

The Public Defender expresses its appreciation to the residents of the conflict zones, The Ministry of Internal Affairs, The Office of the State Minister on Conflict Resolution, Human Rights Office of the Internally Displaced from Abkhazia, Mr. Dimitri Sanakoev and the many that provide the Public Defender's Office with vital information about the instances of violations of human rights and freedoms in Abkhazia and South Osetia as well as in the entire peace-keeping zone.

In this report, The Public Defender has attempted to give as precise a legal evaluation to the incidents mentioned below according to the norms of the international law, but since the existing situation is so complex that there are cases where a single human right abuse is in violation of numerous fundamental rights, making it difficult to come to the conclusion as to which political or civil right has been violated. For example, often inhumane treatment of an arrested person is continuation of discrimination and illegal arrests.

The Public Defender made a number of statements and appeals in regard to these facts.

Incidents of Human Rights Violations in Abkhazia.

Instances of inhumane treatment, discrimination and trafficking, violations of civil freedoms and political rights and kidnappings are frequent on the territory of Abkhazia.

The feeling of discrimination and insecurity run high among the existing Georgian Population, compounded with the lack of proper infrastructure and the non-availability of basic amenities has created obstacles for the internally displaced that seek to return back to their homes, violating the right of voluntary return with guaranteed security and dignity.

Under such circumstances where the Government of Georgia is unable to carry out its responcibility of providing security and implementing the rule of law. The so called "law-enforcement agencies" on the territory of Abkhazia, which are in most cases filled with criminals or in nexus with criminals encourages and aggravates the lawlessness in the region

The so called active law "about the citizenship of the Republic of Abkhazia" on the territory of Abkhazia was adopted by the de facto parliament of Abkhazia in October 2005. The law defines the persons who have the right to get the "citizenship of Abkhazia", regulates the procedures of the adoption of the citizenship and lists the reasons according to which a person can be denied the citizenship. This law is directly affecting the ethnic Georgians who sporadically returned to the places of their original residence.

Despite the fact that the de facto government of Abkhazia unilaterally agreed about the return of the internally displaced to the Gali region in March of 1999, it did not bring about any substantive results. As for the territory beyond Gali, according to the statement issued by the top officials of the de facto government, the safe and dignified return of ethnic Georgians cannot be guaranteed.

Instances of Torture, Inhumane and Humiliating Treatment.

Torture and inhumane treatment is widespread and an established practice, which go unheeded and without any investigation.

On September 7, a group of 50 separatist law-enforcers headed by Otar Turanba, deputy head of Gali regional militia raided village Gumurishi in Gali region, Temur Tsaguria was arrested for avoiding obligatory military service and was moved to Gali militia premises.

Mid March of 2006 Temur Tsaguria's father Gurgen Tsaguria, was arrested. He was accused of robbery and liaison with Georgian partisans. Later G. Tsaguria was found hung in the cell. The family members are convinced that G. Tsaguria died as a result of torture.

On December 28 at 9 a.m. a group of 100 law-enforcers entered villages of first and second Otobaia. They forced into the homes of the ethnic Georgians, beat them, confiscated their mobile phones, and destroyed the doors, windows and the furniture of the houses Supposedly they were trying to arrest suspicious persons. They arrested Jumber and Kakha Tsaragbaia and brought them out of their home without clothes, beat them and took them to the building of the local school where other arrested persons were kept. Other villages of Gali region have not been raided so far.

Ethnic Discrimination

Ethnic Georgian Svetlana Chaladze-Britanova, resident of Gudauta region and her family members were discriminated on ethnic grounds. As a result of the discrimination S. Chaladze-Britanova had to leave her home. She currently lives in Tbilisi with her children.

December 7 morning, Abkhazians stopped 3 children on their way to school. They prohibited them to talk Georgian at gunpoint. The frightened children later were able to reach the school by taking the road around.

Respect to Human Rights and Instances of Illegal Arrest.

Illegal arrest, kidnapping and taking of hostages are frequent in Abkhazia. This makes the Georgian population of Abkhazia feel more insecure, causing further obstruction to the process of return of the displaced, which is a violation of the right of the voluntary return with guaranteed security and dignity.

During the so called call up for obligatory military service there is an undue pressure on the Georgian population forcing young Georgian men "to do the military service voluntarily in Abkhazia".

The situation gets extremely aggravated when harvesting hazelnuts and citruses.

Instances of insult, discrimination and human rights violations happen on daily basis on this territory; furthermore, Abkhazian "militia" regularly raids the villages.

On July 8, unidentified people attacked the family of Gugava in village Shesheleti, Gali region and kidnapped 4 persons with the purpose of money extortion. After the involvement of the local "militia" and criminals the kidnapped persons were released in 4 days.

On July 19, unidentified armed people robbed a transport bus in Gali region. Tagiloni Belkania a Resident of village was robbed. In the same village three masked armed men wounded 18 years old Romeo Shonia in the leg, a resident of village Akhali Abastumani, Zugdidi region. This issue was raised at Chuburkhinji four-sided meeting. Deputy Head of Gali militia O. Turanba arrested Badri Kobalia in the village of Lekhukona, Gali region. He was moved to the "security service of Gali regional department". The reason for arresting Kobalia is not known. Juma Kutelia, head of "security service of Gali regional department" requested certain amount of money from Kobalia's family in exchange to his freedom. Kobalia was released on August 3. As a result of the physical pressure his health condition deteriorated.

On July 26 a group of 10 militia representatives headed by Otar Turanba raided the village of Dikhazurga. As a result Paliko Gvalia and Omar Kharchilava were arrested. They were placed in the pre-trial detention isolator of Gali militia. They were released on August 27. In a separate incident Dzigua's family was robbed in the same village on August 21.

On August 30-31, representatives of the separatist ministry of internal affairs raided villages Tskhirshi, Rechkhi and lower Bargebi. Accusing of providing support to Georgian partisans they arrested the residents of village Tskhiri: Nodar Nakopia (65 years old), Merab Nakopia (40 years old), Koba Nakopia (28 years old), Geno Tsitava (50 years old), Goneli Rodonaia (65 years old) and Gela Shapanski (40 years old). They were taken towards Sukhumi.

On August 31, a group of 120 militia men of the ministry of internal affairs raided the village of lower Bargebi in Gali region for the reason of checking passports. They arrested about 10 individuals who did not have IDs. Among the arrested were: Zviad Kvirkvelia, Levan Butbaia and certain Lukava. They were taken towards Gali.

On October 10, Abkhazians kidnapped two police officers Kakha Gogokhia and Badri Bakarandze in village Rike, Zugdidi region, on the left bank of the river Enguri. After the involvement of Samegrelo-Zemo Svaneti regional police of the Ministry of Internal Affairs they were released.

On July 6, unidentified individuals attacked Zhora Ubilava's family in the city of Gali at Sabcho St.

On July 9, unidentified armed persons from Gali region hijacked and looted a transport bus at the administrative border with Abkhazia in village Khalaghali, Tsalenjikha region.

On July 11, two mines were discovered in the village of Kvishona in Gali region. The reserve group of the "Russian military forces" moved the mines to Gali militia premises.

On August 9, Achiko Mirtskhulava, a resident of village Tagiloni was robbed of his money and jewellery.

On August 20, Shota Gulordava was robbed of his money in the village of upper Bargebi.

On August 27, Omar Khasaia was robbed in village Nabakevi. The robbers took 700 kg of hazelnuts. The following day on August 28, nine residents of the village of Sida, Gali region, were looted. The looters took 1500 kg of hazelnut from them.

Otar Cherkhezia, Abkhazian from city Tkvarcheli illegally occupied the apartment of Raisa Tonia, a resident of Sukhumi. R. Tonia got in touch with O. Cherkezia to clear the matter. She presented him with the apartment certificate as a proof of ownership and asked him to vacate the apartment, in response O. Cherkezia insulted her and forcibly siezed from her the apartment certificate and other documents along with her ID. Later she was forced into a car and driven towards Enguri Bridge. She was brought to the other side of Enguri River by force where she was told she had no right to return back to Abkhazia and threatened if she did so, her passport would be confiscated and she wouldn't be allowed back into Abkhazia. The same day four armed individuals shot at a transport bus in village of upper Bargebi, Gali region. According to the explanation offered by the separatists, the case is under investigation. On the same day unidentified persons plundered a secondary school in the village of Tagiloni. 300 kg of hazelnut, other valuable materials including a joiner's machine were missing.

On September 11, unidentified individuals robbed Zaur Kiria in Gali region.

On September 14, Mitusha Bigvava, a resident of village Nabakevi, Gali region, was robbed at Engruri river bank close to village Khurcha, Zugdidi region.

On September 16, Bondo Khadzania, resident of village Chuburkhinji, Gali region was robbed. The robbers took 1700 kg of hazelnut.

On September 17, Iasha Todua a resident of village Otobaia was robbed near village Khumushkuri. The robbers took 700 kg of hazelnut.

On September 17, members of the Abkhazian guard post fired gun shots in the air near the villages of first and second Otobaia.

On September 27 and 30 member of the Abkhazian guard post fired gun shots in the air in village nabakevi. #209 guard post of the "Russian military forces" did not have any reaction to that.

Members of the Abkhazian guard post in village Chuburkhinji, who were located close to #201 guard post of the Russian military forces fired from grenade launcher "RPG-7" towards Zugdidi. The shell exploded in the river, 300 MT. away from the Georgian guard post.

On October 1, in the village of Nabakevi unidentified assailants attacked passengers of a bus on its way to attend a funeral service; they robbed them of their money and mobile phones.

On October 6, four armed and masked persons attacked the family of Griko Gitolendia in the village of upper Bargebi, Gali region. The robbers wounded the head of the family and his spouse.

On the same day, a group of unidentified persons robbed Zaza Mirstkhilava in village Tagiloni. The robbers took 780 GEL.

The above criminal incidents were raised at Chuburkhinji four-sided meetings in September but with no results.

On October 11 four women were robbed in village Nabakevi.

Three masked robbers attacked Maia Kolbaia in village Chuburkhinji and took 70 GEL.

On October 13, three robbers armed with machineguns attacked Ramin Gogokhia's family in the village of Dikhazurga, Gali region. The latter fired from the hunter' rifle and the robbers fled. The following day on October 14, three robbers armed with machine guns and driving a UAZ-type car and attempted to rob Arshalion Chkhapelia's family in the village of Dikhazurga.

On October 16, armed robbers attacked Chichiko Chkhetia's family in the village of first Tagiloni. The family resisted the robber's attempts to ransack, and in the process one family member was captured and handed over to the Abkhazian militia who came to their aid.

Three Abkhazian "border guards" from the village of Dikhazurga looted workers in village bordering with Tsalendjika and took mobile phones and 7 GEL.

On October 19, 30 meters of valuable cable was stolen from the transmitting guard post of Enguri hydropower plant in the village of Saberio, Gali region.

On October 23, Oner Dzigua's family was attacked by three masked criminals in the village of Dikhazurga, Gali region. They tied up Oner and his wife and took 1,5 tones of hazelnut.

The upper villages of Gali, fall under the administrative jurisdiction of Tkvarcheli region bringing them under direct supervision of Tkvarcheli militia. The deputy head of police is known to personally conduct raids in the villages, arresting and harassing the peaceful population for the sole intention to extort money.

On December 2 , "Military Komisariat" and the so called militia conducted a joint raid in the village of Dikhazurga and Saberio of Gali region. They arrested recruits and took them to Gali militia premises and then sent them to do the obligatory military service in Abkhazian army.

On December 3, a group of local militias entered the village of Tagiloni They approached the house of the local resident Vakhtang Okudjava and asked him to bring his son Joni Okujava to Gali militia, threatening to expel the entire family out of the Abkhazian Teritory if they failed to comply. The same militia is also responsible for having conducted several raids, including the one where Gela Tsulaia was extorted of 2500 Russian Roubles for taking hazelnut to Zugdidi.

On December 5, Guli Kardava, a resident of village Gudava was arrested on Enguri Bridge by the so called customs officials. He was taking humanitarian assistance-medicaments from Georgia to Abkhazia. The customs officials on the Abkhazian side seized his documents and confiscated the medical consignment labeling them as smuggled goods.

On December 5, Gali militia headed by Otar Turamba raided all the villages of lower Gali. They arrested two persons in village first Otobaia: Khvitia and Khalvashi who were taken to the isolator of Gali internal affairs department. Witnesses claim that the arrested individuals did not commit any crime and were illegally arrested.

On December 11, four armed assailants attacked Omar Abashia's family in the village of first Gali in the Gali region. Two of the robbers stayed in the yard while the other two entered the house and demanded money and valuables. One of the robbers wounded Omar Abashia in the chest before fleeing. He was in a critical condition and and taken to the Zugdidi hospital to be operated upon. Abkhazian militia did not react to this incident.

On December 11, Alik Khishba, the newly appointed head of Otobaia militia sub-office held a meeting in the village. A decision was taken to open up a farmstead book on each family and impose a fee of 1000 Russian rubles to each of them. The families were supposed to make the payment before the end of 2006.

On December 12, 24 years old Paata Kiria was arrested in the village of Otobaia, Gali region. His family was given an ultimatum to pay ransom of 1500USD for his release.

In the same village Gvaramias and his mother were severely beaten and the entire village population was deprived of their earning as the militia took the tangerine stock which was intended for sale.

Three Georgian citizens: Avtandil Kachibaia, a resident of Senaki (born 22/10/1956); Mirian Kikacheishvili, a resident of Kutaisi (born 13/07/1976) and Lasha Sichinava, a resident of Senaki (born 13/09/1978) were arrested on their way back to Georgia from the Russian Federation.

Acting upon the request made by The Public Defender, The Head of UN Human Rights Office in Sukhumi V. Stepanov visited the illegally detained prisoners and rendered assistance to them. According to the information provided by V. Stepanov, the detainees would be released by the end of March 2007.

On December 25, Otar Turnaba the deputy head of Gali along with two other occupants succumbed to severe injuries in a car explosion on the territory of village Megobroba, upon their arrival to the Sukhumi hospital Otar Turnaba was declared dead.

The same day Alika Khishba, the head of sub-office of Gali lower zone of internal affairs department and holder of two Abkhazian medals for heroism was killed at the same location. The attack happened between the villages Otobaia and Nabakevi when A. Khishba was examining the place of the explosion.

Otar Turanba was well known for his cruelty towards ethnic Georgians. He was collecting taxes and treating the population of lower and upper Gali mercilessly. In return the authorities promoted him to the rank of deputy head of the Gali militia. He was in total control of the hazelnut and citrus business in Gali, procuring them by force at a very cheap price from the local population.

According to our information Turanba's assassination is related to the conflict of interest and failed negotiations between two business rivals. There is a citrus processing factory in the village of Achigvara, Gali region. The owner of which is a Russian businessman. Prior to the incident, criminals came from Moscow to talk about dividing the share of business but they failed to reach an agreement.

The so called anti-terrorist group headed by Valmer Voumba entered the villages of the first and second Otobaia of Gali region. They arrested Khvicha, Paata and Gocha Chitaias, Onise Bigvava, Mamuka Korkelia and Tengiz Korkelia the residents of second Otobaia. The members of the Special Forces were using the arrested individuals as human shields, as they walked behind them along the streets and entered people's homes for the purpose of interrogations.

50 citizens were arrested in the village of Otobaia by 200 armed people headed by Eric Voumba and Vladimer Butba. The arrested were moved to Gali militia premises. Later 46 of them were released. Among the arrested citizens of village Otobaia were: Robert Parulava, Temur Tupuria, Gela Gergedava from village Sida, and one more citizen of Zugdidi who was visiting his father-in-law. They were released too but Temur Topuria was kept in prison and severely beaten. After being finally released T. Tupuria was admitted to Zugdidi hospital.

Local militia forces conduct frequent patrols in the streets of lower villages of Gali to check IDs. Russian peacekeeping forces did not react to any of these facts.

Trafficking and forced labor.

Forced Labor is widely prevalent in Abkhazia. In the beginning of August 2006, the Gali population was forced to dig trenches. This incident has been confirmed by Vladlen Stepanov, head of UN Human Rights office in Sukhumi.

Abkhazians forced the population of Achigvara village to work for free and for this reason six families left the village. They refused to return there until the restoration of jurisdiction of the

central government. This fact was raised at the four-sided meeting in Chuburkhinji without any outcome.

Right to free movement.

A citizen of Georgia can access the territory controlled by Abkhazian de facto government only with the permission of the de facto Government and its authorized agencies.

In order to go to Abkhazia, one needs a permit from the central office of Abkhazian de facto security service, which can only be obtained by a relative or an acquaintance of a person living in Abkhazia.

Georgian Guard post of the Ministry of Internal Affairs is located in the building of a former auto inspection post in village Rukhi before Enguri bridge, to facilitate crossing of the administrative border with Abkhazia.

Beyond which is traffic control barrier of Russian peacekeeping forces. They only check the vehicle.

After the Russian peacekeepers' post the Abkhazian border guards are deployed, they check the documents. Then there is the so called "quarantine service" followed by "customs" where the customs officers examine the transported goods and impose taxes**.**

And finally there is the so called Abkhazian security service. They register people who return to Abkhazia, check and issue passes to those coming from Abkhazia for a fee of 50 Russian rubles. The population often takes the paths across the river but they are also controlled by the Abkhazians.

For the Georgians living in Abkhazia and wishing to travel to Georgia the so called Abkhazian security service established new rules of issuing passes. In particular, a person wishing to travel to Georgia should fill out a special form in the local security service office and indicate demographic data of his family: where he is traveling, the purpose of the travel and even the activities of his/her close relatives during the armed conflict in Abkhazia. People who regularly travel to Georgia need to take an additional interview with the head of the security service. Despite these strict measures, certain number of people manage to avoid these formalities and get to the other side of Enguri.

In order to travel from Abkhazia to the other side of Georgia, a person needs to get a pass from the local office of Abkhazian security service, which one can obtain after undergoing some formal procedures including the interview. The cost of pass is 100 Russian rubles. Abkhazians charge 3 GEL or 50 Russian rubles for crossing Enguri Bridge depending on the load. If a person is carrying luggage then he/she pays 2 GEL or 30 Russian rubles per kg to the quarantine service. At the crossing places of lower zone of Gali region the charge is 2 GEL. The payment for taking the luggage across the border is defined through the negotiations with the customs people irrespective of the type of luggage. The determining factor is final destination of the goodst crossing the border. If the destination is Gali market the payment is less but if it is Psou then the payment is higher. This is an unofficial payment and the money goes to the pockets of the customs people and the border guards.

It must be noted that only Georgians living in Abkhazia need to obtain special passes amounting 50 Rubles to cross Psou towards Russian Federation. The rest are exempted and allowed to travel freely without any passes.

Accessing Abkhazia from the Russian Federation across Psou is restricted for people holding Georgian passports. There are Abkhazian security service people at every post. Russian border guards take 300-400 USD at Psou border line and crossing Abkhazian territory costs 400-500 USD. Traveling is a little bit easier for the Georgian citizens residing in the Gali Region.

Often the so called border guards of the self-declared republic close the administrative border at Enguri bridge as punitive measure, depriving the Gali population the the possibility to cross Enguri bridge, which is the violation of the right to free movement. In most cases Abkhazian border guards demand from 300 rubles to 1000USD for a single crossing.

On December 25, 2006 a tragic incident occurred as a direct consequence to the above restrictions, Gitolendias and his grandson, both residents of the village of Octobia left the village at 6am towards Zugdidi, they decided to cross the river to avoid harassment and the hefty illegal fee levied by the Abkhazian authorities. Unfortunately they were unable cross the river and drowned in the process.

On September 18 officials of Abkhazian guard post in village Tagiloni for the reason of not collecting enough hazelnut in Abkhazia did not let the transport loaded with hazelnut pass towards Zugdidi.

On September 27 Abkhazians in Chuburkhinji village refused to let a mission of the Georgian Eparchy travel towards the village of Ilori, Ochamchire region. The purpose of the mission was to take the icon there and pray for the reconciliation with Abkhaz people. The leadership of the "Russian military forces" also refused to let the mission pass.

On December 8 the representatives of Abkhazian side closed Enguri bridge. For this reason the schoolchildren of village Saberio, Gali region had to take a much longer route to reach the school in village of Chkhoushia, Tsalenjikha region.

On December 17 Abkhazians blocked the central bridge of Enguri. The members of Otar Turanba group in the upper villages of Gali dug up all the roads leading to Zugdidi. The Georgian schoolchildren had problems getting to school in villages of Tsalenjikha region.

Abkhazian police opened an additional guard post in the village of Saberio, imposing a fee of 300 rubles, which is approximately 18GEL to obtain the pass.

On December 18 in a major attempt to exort money, the upper villages of Gali region (Dikhazura, Saberio, Khalaghali) by the Abkhazians and the so called customs officials, with the help of the Russian peacekeepers' equipment blocked all the roads, constructed barbed wires, and also brought in additional forces to obstruct the movement of the population towards Zugdidi. They even limited the access to Gali region.

Restricting the right to education

The situation in Georgian schools of Gali region is far from good. The representatives of the Public Defender's Office met with the teachers of the villages in lower Gali zone. There are around 30 secondary schools in the Gali region, in contrast to 58 schools before the war. Currently 3 852 pupils attend schools. 657 teachers and 137 technical personnel are on the payrolls of the schools. The material-technical base of the school as well as the educational system and standards do not correspond to the general educational system in Georgia. There are no contemporary manuals at the schools.

Education at 16 schools is conducted in Georgian language. The rest of the schools have Russian as the primary language and Georgian as a foreign language with limited hours. Teaching Georgian geography and history are prohibited at the schools. The teachers have to teach Georgian language unofficially and often risk their lives by doing so. To avoid any undesirable situation, they often fake reading Russian book with the Georgian book hidden in the background and keeping a close vigil for any unexpected visitor

In 2005 by the decision of the so called Ministry of Education of Abkhazia (decision # 75, 03.06.05) education and working activity in Georgian language was prohibited in Gali region. Signs in Georgian language were removed from the schools and the classroom exercise books are filled out in Russian language.

The Abkhazian administration invites students of Gali schools to enter the Abkhazian University or Russian high schools in different cities without any entrance exams. The teachers are paid an equivalent of 60-65 GEL in rubles at Russian schools.

Unfortunately, the administrative staff and the teachers of the Georgian schools in Gali region are unhappy that during 2006 none of the school got any kind of compensation from the Georgian Government, although there were some schools that did receive some compensation only till the month of August.

On November 28, 2006 the teachers of several Georgian schools in Gali region held a protest action at the Abkhaz-Georgian border demanding the due compensation and an increase in their salaries from the Georgian government.

Protection of the right to ownership

In the existing situation where the displaced are unable to return back to their homes and claim their real estate, the right to ownership is severely effected and for those that did return to Abkhazia spontaneously, their ownership rights are not protected by the Law.

In the beginning of October 2006 Tsisana Mushkudiani-Shatirishvili and her husband Valiko Shatirishvili were expelled out of Abkhazia. When Abkhazia fell they took shelter with their Abkhaz relatives, later they returned to their home at the seaside and rented out the house for the season which brough in a certain amount of income.

On October 10 Valerian Shatirishvili (born 05/10/31, resident of Gagra, 157 Rustaveli St.) and Tsisana Mushkudiani-Shatirishvili (born 16.08.44. resident of Gagra, 16 Lenin St.) crossed Enguri central bridge and left Abkhazia after being held as hostages for 3 days. By their account, on October 7 two strangers, middle-aged Abkhazians forced entry into their apartment in Lenin Street during broad daylight, they physically assaulted the couple and took all their savings amounting to a sum of 100 000 Rubles, which they had gathered renting their house. The couple was then forced into a car and driven to Gudauta region, where they were held in captivity in an abandoned house for 2 days in a row guarded by 2 Abkhazians.
Following their captivity, the couple was forced to sign on a notary document indicating the transfer of their house to the stranger on lease. On October 10, the couple was driven to Sukhumi, their IDs were taken from them and they were left on the Enguri Bridge.

The kidnappers warned of dire consequences for their children living in Russia and Ukrain if the Shatirishvilis decided to report or utter a word about the incident. They also told them that their passports would be returned to their relatives living in Adler within 2 weeks. The Shatirishvilis had Russian passports and were registered in St. Petersburg at the address of their daughter. Currently the couple lives in Tbilisi at 1 Ikalto St with their relatives.

In a similar incident, Tariel Esartia and Galina Taganova were also forcefully evicted from their premises. Being an ethnic Georgian Tariel Esartia was expelled from work. While, Galina Taganova an ethnic Russian appealed to all in the Government hierarchy for help, including the President's office of the Russian Federation but never received any reply or assistance. Presently the case is under the consideration of The European Court of human rights following the ruling against the petitioners T. Esartia and G. Taganova by the Court of the Self proclaimed Abkhazia.

After the replacement of the Gagra Administration Chief, who happend to be a relative of the person trying to illegally aquire T. Esartia's house and also the one who influenced the court to pronounce its judgment against Esartia, a decision was made to vacate the house of its illegal occupants and be returned back to its rightful owner Tariel Esartia.
But in a strange twist of incident, the illegal occupant ransacked and put the house in flames before finally departing

The situation in the department of corrections

The Office of the Public Defender is not in a position to give a precise evaluation of the situation prevailing in the Prisons located in Abkhazia, due to the lack of proper information.
We are unaware about the exact number Ethinic Georgians held as prisoners and their respective condition within the boundaries of the Prison wall, though, there has been talks by representatives of the de facto authorities on the terrible conditions at the prisons and detention centers on the Teritory of Abkhazia.

Levan Mamasakhlisi was under illegal arrest for five years in Dranda prison, Abkhazia. He was in a critical medical condition but without any medical assistance. As a result of the maltreatment he lost his right hand (from the tip of the fingers till the wrist) and all four fingers on the left hand. His lungs were in a critical state and he had eczema. L. Mamasakhlisi was in dire condition and in urgent need of expensive medications. As a result of the Public Defender's involvement the illegal prisoner was regularly receiving medications from "Aversi Ltd." through International Red Cross Committee.

In his effort to provide L. Mamasakhlisi the proper medical treatment, The Public Defender personally appealed a number of times to the UN Observer Mission in Georgia and International Red Cross Committee for their support to have the relevant doctors visit the prisoner for proper diagnosis and follow up treatment. As a result the UN representatives visited Mamasakhlisi at the Dranda prison on a few occassions.

Freedom of press and expression

As a direct consequence of participating in a TV Interview and expressing her opinions, a student from Gali, Nino Kvekveskiri's parents were approached by the representatives of the Special Forces on October 24-25 demanding them to leave the Territory of Abkhazia

On December 4-5 the leadership of Abkhazian administration was actively preparing to take local Georgians for their participation in a meeting in Sukhumi. 4 buses were specially sent from Sukhumi. As a result of pressure and threats 250 people were taken to Sukhumi by force.

Democratic institutions

According to the information available to the Public Defender there are three active international non-governmental organizations in Gali region. They monitor human rights abuse and extend all possible support to the local population living under constant pressure threat in the conflict regions,

In most cases these organizations keep changing their names or close their offices because there is constant pressure on them from the separatist authorities.

Instances of human rights violation in Tskhinvali region

There are frequent instances of human rights violation of ethnic Georgians in Tskhinvali region. The local de facto authorities do not react to these facts and the cases of robbery and other criminal activities are not investigated. The situation is further aggravated by the acts of killing and illegal arrest committed by the de facto law-enforcers.

Discrimination on ethnic grounds

As a result of the propaganda spread by the separatist regime, the population of the republic was divided into two by ethnic groups: Osetians and Georgians. The Kokoiti authorities oppose all efforts taken towards the reconciliation of Osetian and Georgian people and try to kindle discord.

A special group was created from within the representatives of the so called state security committee at the end of April 2006. The sole purpose of the group was to coerce Georgians visiting their relatives. A typical example of the special group committee activities include, stabbing and wounding Gochashvili, a resident of village of upper Nikozi, beating the resident of the same village Galustashvili who was later admitted to the hospital and a failed attempt to hijack a Niva car from Mchedlishvili, although he was beaten up, his friend came to his rescue and saved him.

On June 12, 2006 Vania Gagloev and Mishik Tedeev, members of the so called division of the Ministry of Defense in Znauri region, under the influence of alcohol assaulted two Georgians visiting their relatives in village Znauri because they spoke Georgian in the shop.

The so called representatives of the Ministry of Defense asked the "militia" to put the Georgians in the pre-trial detention unit until further clarification of the matter. The de facto minister Mikheil Mindzaev refused to heed, fearing that the Georgians being in critical condition may succumb to injuries and in the event their death in custody, the responsibility would lie squarely on the ministry of internal affairs of Tskhinvali government.

A decision was brought into effect by E. Kokoiti, from June 2006 which prohibited taking wood from Tskhinvali to other regions of Georgia. The execution of the decision was entrusted to the respective "services" as well as the armed units. As a direct result of the decision, the local Georgian population can not get enough supply of wood for winter.

As a result of the pressure by Osetian side during 2006 few Georgian families left village Nedlati of Znauri region. If the situation remains aggravated the rest of the population may leave the village as well.

Guram Bestaev a resident of Tskhinvali, Dagvirisi settlement (territory of village Tamarasheni) resides in the house abandoned by a Georgian. He is married to a Georgian from Eredvi. G. Bestaev is under constant pressure to leave the place with his wife by the Osetians.
G. Bestaev is not a member of an armed unit and has never participated in an armed conflict, which he believes is the main reason for threat. Tskhinvali "militia" declares that it can not control armed groups.

Georgian population is forbidden to do any agricultural activity on the land close to the territories where Osetians have dug trenches.

The Georgian population is always ignored in any distribution of humanitarian assistance, while E. Kokoiti forbids the Georgian authorities to distribute humanitarian assistance.

By the decision of E. Kokoiti, from the beginning of 2006 sale of diary products from Georgian villages are prohibited in Tskhinvali

From November 2006 Osetian side introduced new "south Osetian" passports for internal use. The passports were given to the local Osetian population. Since the local Georgian population refused to accept these passports they do not have the right to participate in the so called elections and referendums including the one held on November 12, 2006.

Respect to the human rights/elimination of facts of illegal arrest/persecution for political reasons/torture, inhumane and other type of cruel treatment.

The representatives of the so called authorities neglect the respect to human rights. The Public Defender is concerned about the occurences of political and civil rights violations.

On November 10, 2006 Alan Parasteav, the former minister of internal affairs of South Osetia and the former chairman of the Supreme Court was arrested and tortured by the representatives of the state security committee. He was forced to testify that he had plotted to assassinate E. Kokoiti. The true reason behind his arrest was his opposition to Kokoiti, A. Parasteav tried to prove to him that the chosen course of integrating with the Russian Federation was not the right

political choice. He was also advising the so called "president" to hold talks with the representatives of the Georgian government. For this reason there were serious confrontations between them a on a few occasions. Following the initial confrontation E. Kokoiti expelled him from the position of the de facto minister of internal affairs.

In February 2005 A. Parastaev's son, Sergo Parastaev was arrested in Tskhinvali on a false charge of car hijacking. S. Parastaev was arrested on Kokoiti's instructions, which was related to his political confrontation with A. Parastaev. Kokoiti offered A. Parastaev to resign from the position of the chairman of the supreme court in exchange of his son's freedom, which was rejeceted by A. Parastaev

A. Parastaev kept his position as the Chairman of Supreme Court until July 2005 but had to resign later. This decision was a result of the blackmailing by Kokoiti and encroachment on Sergo Parastaev's life in prison.

Giorgi Basiev and Oleg Bagaev, representatives of the ministry of internal affairs of Northern Osetia tried to arrest Alan Chochiev in Vladikavkaz. A Chochiev declares that these persons came to his house and asked him to follow them for interrogation based on the document received from "south osetia" but the real reason was Chochiev's deportation to the "South osetia". A .Chochiev declares that this incident is related to the different opinion that he has in connection with the referendum. He declared that no one would recognize the results of the referendum and that the authorities were on purpose misleading the population.

After Dimitri Sanakoev decided to run for the alternative presidential elections repressive measures were taken against his family members and friends:

-the so called "government agencies "created problems for Sanakoev's relatives (expelled them from work, applied psychological pressure etc). E. Kokoiti initiated a meeting of Sanakoev families who condemned D. Sanakoev's activities and called him a traitor.
-As a result of the physical pressure D. Sanakoev's brother Tamerlan Sanakoev had to condemn his brother's actions.
-Members of the so called "security committee" went to the houses of the families who were loyal to the Georgian authorities. They visited the former head of "social welfare" service Elva Khetagurova and forbade her to have any contacts with the Georgian side. The committee members took preventive measures to ensure that such people don't join D. Sanakoev.
-Those individuals who were mainly employed in law-enforcement agencies and were in close relations with D. Sanakoev were expelled from their jobs in the name of job cuts and restructuring.
-According to the information from the so called general prosecutor Alexei Lipin, criminal proceedings were initiated against Uruzmag Karkusov, Vladimer Sanakoev and the"alternate" candidates for presidency. These people were accused of creating extremist organizations, high treason and an attempt of coup.
-Relatives of D. Sanakoev living in Vladikavkaz are under constant pressure by the law-enforcers of the northern Osetia.
-Former minister of health of the"alternative government" Nina Khetagurova was arrested at her residence by the law-enforcers of the "south Osetia" and forced to declare that she was appointed to her position without her consent.

In November 2006 under Kokoiti's instructions, the houses belonging to the members of the Karkusovs alternative government was burn in the village of Jvari .

On November 5-6, 2006, the Znauri administration took the population of the region by force to Tskhinvali and issued citizen's passports to them. They were asked to fill out special forms requesting independence of Tskhinvali region and its integration with the Russian Federation. Those who refused to accept the "passports" were threatened to be forced out of their homes. The people who threatened them are: Vazha Ikoev, member of the public army**,** Rostik Jagaev, chairman of Dzagini village council and Oleg Piliev, head of the agricultural department of Znauri region.

On July 11, 2006 close to village Dzara armed Osetians stopped and arrested two OSCE military observers.

On September 5, 2006 masked Osetians hijacked Georgian's truck, and robbed them of two electric saws and mobile phones. The Georgians were cutting wood. The robbers asked for 2 000 USD in exchange of their property.

On October 9, 2006 "militia" stopped a bus in Tskhinvali and asked residents of village Avnevi Palmiro Zedgenidze, Mzia Kvinikadze and the bus driver Shavlego Kapanadze to get off the bus. After an hour S. Kapanadze and P. Zedgenidze were released but Mzia Kvinikadze was still held in captivity and released only after she paid a ransom of 500USD

On September 27, 2006 at 9 a.m. unidentified masked people stopped Gori-Kekhvi shuttle bus in Tskhinvali and robbed the driver Tamaz Khetaguri.

On November 4, 2006 at Kokheti guard post a few armed persons stopped a truck loaded with wood. They beat the four Georgians, took the truck which was later returned to the owner without the wood.

On August 5, 2006 OSCE observers were arrested near village Tbeti, they were monitoring the construction of illegal fortification.

On December 4, 2006 two members of the Osetian battalion of the joint peacekeeping forces were arrested. They were private Giorgi Deopaev and Sgt. Robinzon Guzitaev. Under the instruction of their commander Soslan Koziev they were escorting the truck with smuggled goods to village of Tirdznisi.

On January 4, 2007 the law-enforcers of the self-declared republic arrested three Georgians: Ramin Lekishvili, Lukhum Mildiani and Sandro Bukhuri who had gone to Tskhinvali to buy a truck. They were accused of bringing forged 100 000USD currencies to Tskhinvali.

Situation at the prisons and detention centers

The information about the situation in prisons is not available to us. We do not know about the number of prisoners and their conditions in prisons. According to the information of the Public Defender there are about 7 ethnic Georgians in prison but we are unaware about the charges against them.

It must be noted that, it is extremely difficult to visit the prisoners in prisons and detention centers. A. Parastaev's lawyer was not allowed to visit the defendant in the prison.

Democratic institutions/freedom of press and expression

Under the totalitarian leadership of E. Kokoitit there is no democratic institution defending the public and its interests in Tskhinvali. The society is completely ignored from the political processes. Human rights institution of "President's" appointee is a mere formality.

E. Kokoiti excercises constant pressure on non-governmental sector and fully controls its activity. According to the information of the Public Defender there are representations of five active international non-governmental organizations there.

Due to difference of opinion E. Kokoiti declared the representatives of the non-governmental organizations Temur Tskhovrebov and Alan Jusoev as traitors.

In April 2006 the two winners of the amusement program of the independent TV "Alania" Luda Bestaeva and Albina Parastaeva were invited to Tbilisi by the TV company "Alania". When returning to Tskhinvali region the so called law-enforcers created serious problems to the girls. The de facto government considered their action as an insult to the Osetian people and declared the girls as traitors. It must be noted that Kokoiti authorities periodically block the transition of TV company "Alania" which is normally broadcasted to Tskhinvali region, especially when the news and analytical programs are being aired.

Irina Gagloeva, representative of "information and media committee" in the Kokoiti government makes her own decisions on the admission of journalists to Tskhinvali region and asks for accreditation. These rules only refer to the Georgian and international media representatives.

On May 10, 2006 during Kokoiti's meeting with the pensioners and students, two ethnic Osetian students, were expelled from the University for asking "incorrect" questions. The student at the meeting remarked that instead of spending 15 000USD to bring Russian singer Abram Ruso it would be better to spend this money on pensioners and kindergartens. The students were later arrested.

Children's and minor's rights

On December 29, 2006 Sanakoev administration held a holiday of festivity for the children in the village of Kurta. 200 children attended the festivity and revieved gifts. About 150 children from the villages of Akhalgori, Arnevi and Eredvi could not attend the festivity. Tskhinvali authorities barred them from participating and thus violated the agreement adopted on December 27 by the joint control commission. The children were freezing in buses at the guard post till 2:30 p.m. and later they were sent back home because of the refusal by the vice-premier Boris Chochiev. The Public Defender of Georgia attended this festivity. He condemned the fact of using the children as political weapon.

15 year old adults are regularly sent to Vladikavkaz for military training. There are frequent instances of minors joining the public army.

Right to live

On July 9 at 7:15 a.m. Oleg Alborov, chairman of the security council of the self-declared republic died at his residence as a result of an explosion.

On July 14, 2006 at 9 a.m. 2 adults died as a result of an explosion near the house of Bala Bestauti.

On July 15, 2006 at the peacekeepers' guard post "Pauk" Russian peacekeeper private Kondratiev was seriously injured as a result of a mine explosion.

On August 7, 2006 three Georgian law-enforcers were wounded near village Avnevi.

On August 13, 2006 Russian peacekeeper was wounded as a result of a mine explosion near the village of Kekhvi.

On September 3, 2006 Osetians from their controlled territory opened fire at a helicopter of the Georgian Ministry of Defense accompanying the Minister and several other individuals.

On September 8, 2006 armed Osetians opened fire at the Georgian law-enforcers. One Georgian policeman Vakhtang Komakhidze and three Osetians died, two Georgian policeman were wounded.

On September 24, 2006 Tamaz Khaduri, a resident of village Kveshi was shot. The criminals were Osetians from the village of Artsevi.

On September 25, 2006 Khvicha Nikorashvili got injured as a result of a mine explosion near the village of Prisi.

On October 1, 2006 Beso Elizbarashvili, a resident of village Kveshi was shot in the village of Artsevi.

On October 9, 2006 Zurab Bliadze, resident of village Kekhvi got wounded and lost an arm as a result of a mine explosion near his village while collecting wood..

On October 9, 2006 at 11 p.m. armed attack was launched at the police post in the village of Kekhvi. The criminals were firing from grenade launchers and machine guns. As a result Gocha Gogidze and Shadiman Kazarian were wounded.

On October 11, 2006 at 4 p.m. criminals opened fire towards the village of Achabeti., Didi Liakhvi region, the target was Achabeti secondary school and the Georgian peacekeepers' deployed. There were no casualties.

On October 11, 2006 at around 9 p.m. Osetian illegal armed unit attacked the village of Achabeti. 14 years old Vano Otiashvili was wounded.

On October 26, 2006 at 3 p.m. father and son Shadiman and Bichiko Bliadze exploded on the mine. Shadiman Bliadze later died.

On November 5, 2006 a group of seven armed militiamen of village Dmenisi attacked the family of Gasiev in the village of Vanati late in the evening. The group was headed by Nodar Bibilov

(chief of Dmenisi police). They physically assaulted the father and the son Gasievs and damaged their car.

On November 9, 2006 near village Minsateri 47 year old Avtandil Zoziashvili exploded on the mine.

On November 23, 2006 Deliza Shortava got injured and lost her arm as a result of an explosion in Tskhinvali.

On December 18, 2006 Osetian armed persons opened fire at the police office of village Avnevi, which is located near the Russian peacekeepers' post.

On January 15, 2007 the peacekeepers' car exploded on a mine. As a result Lt. Pavle Chastikov, head of Tsveriakho guard post and private Sergei Seriakov suffered injuries.

Socio-economic conditions of the internally displaced

Based on the data collected for the second half of 2006, the socio-economic conditions of the internally displaced have not improved. On the contrary, according to the information available to the Public Defender the conditions have deteriorated. The problems raised at the Public Defender's report on the first half of 2006 are still not resolved and none of the recommendations have been taken into consideration.

By the end of 2006, the project of "State strategy on the resolution of the problem of internally displaced people in Georgia" was drafted according to the decision #80 of February 23, 2006 and later approved on February 2, 2007 by the government through resolution #47. Unfortunately after a year's work on the strategy, no adequate action plans and program projects were presented. But we welcome the strategic views of the problem resolution in this sphere.

It must be noted that the absence of strategy and inefficiency of adequate legislation does not take the responsibility away from the government over its obligations in accordance with the national as well as international legislation.

The Georgian legislation regulates the situation with the rights of the internally displaced (IDPs) by two legal acts. In particular:

a) Legal acts and the scope of their activity refer solely to the internally displaced. These acts regulate legal and social issues based on the specific circumstances of the internally displaced. The Georgian law about the internally displaced and more than 200 by-law acts, normative as well as individual adopted since 1992 are meant under the acts.
b) Legal acts and the scope of their activities that are not limited by a group of people or displaced persons. These acts are applicable for the whole population of Georgia as well as internally displaced.

The principal legal act for the internally displaced was adopted in 1996, it defines the legal status of the internally displaced in Georgia, establishes their legal, economic and social guarantees, provides for the defense of their rights and lawful interests.. Amendments and addendums were made to this law in 06.04.2005 and 09.06.206. Despite the amendments the norms in the given law are in most cases vague and not concrete, which create problems for the efficient use of the legal norms of the law.

The given law does not include important principles such as ensuring equity between the local population and the internally displaced, and prevention of discrimination. Though these principles are contained within the Constitution of Georgia.

The UN "Guidance Principles on Internally Displaced" establishes a general principle about equity of internally displaced with the rest of the people in the country.

The UN Guidance Principles about the internally displaced is a document containing recommendations for the elaboration of internal legislation in countries where problems of internally displaced exist. The absence of this principle and prevention of discrimination in the given law creates obstacles for the human rights defense of the internally displaced. The State's attempt to include the internally displaced in the same unified social system with the rest of the population did not bring in the anticipated results, because the specific circumstances of the internally displaced were not taken into consideration. For example IDPs cannot avail the benefit of "increased tariff reimbursement voucher" issued by the Ministry of Labor, Health and Social Welfare and signed by the Ministers of Labor, Health and Social welfare and Energy, because IDP collective centers don't have individual meters for electricity. Many IDPs refuse to receive the assistance through the state program for socially vulnerable people (assistance program for the people below the poverty line) because they are not provided with complete information and explanation. They fear that if they can not get the IDP allowance they may loose the IDP status.

These and other facts indicate that despite the absence of discrimination between the IDPs and the local population, which is guaranteed by the Constitution, the IDPs cannot enjoy all the benefits and assistance like the rest of the population in the country.

Apart from the absence of any principle pertaining to the prevention of discrimination between the IDPs and the local population, The law of the internally displaced even falls short in providing principle for the prevention of discrimination within the IDPs itself.
In this context the UN 4th guidance principle related to the internally displaced is especially important. According to it: "these principles should be used without any discrimination despite race, color of the skin, language, religion or belief, political or other opinions, ethnic or social origin, legal or social status, age, ability, property, birth and other indicators".

This principle deals with the prevention of discrimination not only between the IDPs and the rest of the population but among the IDPs as well.

The law about the "internally displaced" does not prohibit discrimination thorough granting special rights and benefits to certain IDPs. Absence of such norm is legally inappropriate. In practice there are numerous cases of discrimination among IDPs. For example, unequal distribution of humanitarian assistance by the government agencies, violation of the principal of impartiality when granting benefits in the educational and health sector, unequal distribution of benefits (communal services, benefits on the use of electricity, water etc) among the IDPs of collective centers and private sector. The issuance of annual metro tickets in Tbilisi in 2004 was very discriminatory in nature.as tickets were not issued to the individuals above 80 years old.

As for the legislation related to privatization, apart from vague and ambigous it contains a number of flaws, According to the legislation, in the case of privatization of the collective accommodation center the rights of the IDPs may not be fully protected.
According to the article 4 of the Government's resolution #157 of 2005 about the "regulatory measures of IDP registration, social issues, allowances, humanitarian and other kinds of assistance" the Ministry of Economic Development of Georgia was given the task to "ensure that

during the sale of the IDP collective accommodation centers the article 5(4) of the Georgian Law on Internally Displaced about the guarantees granted to the IDPs by the State be taken into consideration and IDPs be moved out of the building according to the indicated norms and rules".

According to the Law about Internally Displaced, Article 5(4): "housing disputes shall be settled through the proper judicial procedure, therefore until the restoration of the jurisdiction on the respective territory of Georgia the IDPs shall not be expelled from their places of temporary residence unless:

a) Written agreement has been reached with the IDPs;
b) Alternate residence space is allocated with improved living conditions.
c) Natural disaster or other accidents, which entails specific compensation and is regulated by the general rules;
d) The space is occupied illegally in violation of the law.

The mentioned norm on deterioration in living conditions is very general and broad based which can be interpreted in many different ways. For example, it does not explain what the worsening or improving of living conditions actually mean - are we talking about the size of the living space, its geographical location or are there other factors. The government may offer the IDP temporary living space in Tsalka or any other region in exchange to the space in the collective center in Tbilisi. This may be considered as compliance to the above norm (respectively the defense of the rights of IDPs). At the same time the context of this paragraph of the given decree practically confirms the possibility of privatization of the collective accommodation centers. According to the concluding part of the paragraph 4 the above rule does not apply to the facilities occupied by the IDPs illegally. If we are to supposes that under illegal occupation of space the legislator meant IDPs occupying the living space on their own without the government's consent or involvement, then most of the IDP collective centers today are occupied illegally. In most cases the reason for this is the Government and in particular the Ministry of Refugees and Accommodation did not have a clear policy in the area of IDP accommodation. This means that during the privatization of such collective accommodation centers, the rights of the IDPs are not protected.

The process of accommodation is developing chaotically and the particular government structures are in the role of observers despite the fact that there are normative acts of different power and hierarchy, which obligate the self-governance bodies and different state structures to submit empty facilities to the Ministry.

It must be noted that the majority of the current normative acts correspond neither to the international standards nor to the real requirements of IDPs. This is added by the poor use of the existing basis and often these legal acts are ignored. Till today there is lack of coordination between the state agencies responsible for IDP problems. In one particular case the Public Defender wanted to get information about the IDP collective accommodation centers which were to be privatized. K. Damenia, deputy minister of Economic Development advised the Public Defender in his reply to apply to the Ministry of Refugees and Accommodation with this question. I. Giorgadze, the deputy minister of Refugees and Accommodation in his place advised the Public Defender to turn to the Ministry of Economic Development with this question.

The Ministry of Refugees and Accommodation paid 18108976 GEL to the IDPs in the second half of 2006 as IDP monthly allowance. The Ministry also paid 7129685,59 GEL for electricity and water supply and sanitation service for the IDPs in collective accommodation centers. There was an additional payment of 597 919, 80GEL made for other expenses of IDPs in collective

accommodation centers. 166 300GEL was paid to the IDPs as one time annual allowance. Rehabilitation work was carried out at 60 collective accommodation centers and 5 collective accommodations center got gas supply. 79 Collective accommodation centers are equipped with electric meters. A pilot program was launched at one of the collective accommodation centers for the installation of individual electric meters for each IDP family and their registration. The Ministry accommodated 12 IDP families in the regions. In the framework of the pilot program the IDPs went through the registration process in Rustavi.

246 458 IDPs are registered in the data base of the Ministry, among which 102 683 IDPs live in the collective accommodation centers. The Ministry plans to conduct complete and full scale registration of IDPs in spring of 2007.

The Ministry of Refugees and Accommodation transfers' money from the above mentioned amounts to sanitation service and to the water supply company "Tskalkanali" for maintaining constant water supply to the collective accommodation centers and to clean the facilities. By the information of the Ministry of Refugees and Accommodation money is transferred to these services without any delay. The problem with water supply at IDP collective accommodation centers is more or less resolved and although in certain districts of Tbilisi the sanitation service carries out its duties there are collective accommodation centers of other districts where garbage have not been removed for over 2 years. The situation in this respect is critical in the regions. Although the Government does allocate funds for communal services, the Ministry of Refugees and accommodation does not have agreements in place with the sanitation services providers in the regions. In other cases the agreements are in place, but the sanitation service providers do not carry out its obligation for certain subjective or objective reasons.

As for the water supply and cleaning in the regions, more than 50% of the collective accommodation centers have not had water supply for years. One of the reasons for that is the old pipeline system or absence of pipelines altogether. The IDPs and in some cases the international organization dug wells. In certain regions the water from the wells were examined and found to be hazardous to health. The sanitation service provider in most cases has not carried out any cleaning work. This further deteriorates the sanitation situation in the buildings inadequate for living, making it a breeding ground and the spread of infectious diseases. (People at collective accommodation centers of Zugdidi suffer from frequent infections).

With the inefficiency of the system to maintain proper sanitation comes a spontaneous question as to, whom and what is the purpose of the enormous sum money spent on?

The same can be said about the payment of electricity at the collective accommodation centers. An amount 12.4GEL is paid for electricity per IDP in Tbilisi collective centers and 8GEL per IDP in the collective centers of the regions. Many collective centers in the regions are equipped with electricity meters. The same is true about Tbilisi collective accommodation centers but in this case it is not only the collective accommodation centers that are connected to these meters but also facilities of other businesses such as bakeries, policlinics, laundries, laboratories etc.. This increases the cost which eats into the fund allocated for the IDPs. As a result there are frequent power failures due to non payment of electricity charges. The IDPs may try to monitor the payment process but technically it's not possible.

The payment of fixed amount for the use of electricity in the collective accommodation centers of the regions is paid against the ruling of the constitutional court decision of 1/3/136 of December 30, 2002. According to the court decision and the resolution #15 of December 31, 2001 by the Georgian National Electricity Regulatory Commission about the rules of paying

fixed amount for the electricity was recognized as anti-constitutional and the “the rules of paying fixed amount for the used electricity” was annulled.

There is no designated agency responsible to resolve this problem. The attempt of the Public Defender to clarify this matter proved futile, as different agencies passed on the responsibility to one another.

The right to free movement and free choice of living place stipulated in the Georgian Legislation is equally applicable to all the citizens of Georgia including the IDPs. But according to the current legislation the IDPs enjoy special legal status and the common rules of residence registration system do not apply to the IDPs. There is a different registration system specially created for IDPs which is clearly not defined in the law. In certain cases this causes collision between the laws and is an impeding factor for the protection of human rights and freedoms. In one particular example, a citizen of Georgia deported from Russian Federation was granted IDP status only after the involvement of the Public Defender. The Ministry was refusing to grant IDP status for the simple reason that the person did not have a place of temporary accommodation. It must be noted that granting the IDP status should not be preceded by having the temporary accommodation place. The person can have the right to temporary accommodation place after receiving the IDP status.

The rules of annual registration of IDPs are very interesting from this point of view. These rules are defined by the resolution of the Ministry of Refugees and Accommodation. An IDP should personally visit the commission to obtain the certificate. The resolution does not mention anything about the IDPs living in a foreign country. These IDPs cannot obviously go through the registration process and according to the law their status is terminated.

It is possible though, to organize the annual registration and issue certificates for the IDPs who are temporarily in a foreign country for work or education purposes through the Georgian diplomatic missions and consulates. According to The Georgian Law about Georgian citizenship, article 44 (2) “Georgian diplomatic mission or consulate issues identification cards, registration certificates and passports for the Georgian citizens residing temporarily or permanently in the foreign country”.

By proper implementation of this mechanism IDPs living abroad can retain their status. and thus avoid the situation of losing the status due to his/her unavailability during the annual registration period which incidentally also causes an artificial decrease of real number of IDPs.
Under the current scenario, The IDP who wants to keep the status must be within the country during the registration process, if he/she is already in the foreign country they must return for the registration process. The Article 22 of the Georgian Constitution stipulates:” everyone legally living in Georgia has the right to free movement within its territory and free choice of residence place; everyone living legally in Georgia can freely leave the country”. Availing this fundamental freedom should not undermine or bring about any unwarranted changes in the legal status of a person

On one hand the law is incomplete and on the other hand is not adequately implemented. There was no mandatory registration held for the IDPs in 2006. Therefore the information available to the Ministry of Refugees and Accommodation is not up-to-date. It is not clear for the Public Defender why the Ministry chose not to register the IDPs who were evicted from the collective accommodation centers in Adjara. The Public Defender learned from the letter of the Ministry of Labor, Health and Social Welfare of Adjara Autonomous Republic that a number of IDP families were unhappy with the privatization process and the local authorities allocated them accommodation space in the facilities that belonged to the government. In a particular sanatoria

"Kobuleti"- 72 families and former center for treating drug abusers- 42 families. Despite this fact the IDPs are concerned that the Ministry of Refugees and Accommodation have not yet registered them at their current addresses.

The Ministry of Refugees and Accommodation neglects not only the specific legal and normative acts but also other laws. In particular, ignoring the requirements of the General Administrative Code of Georgia and the Organic Law about the Public Defender, in the form of violation of terms and procedures of obtaining the information by the request of IDPs and dealing with their cases, ignoring the recommendations of the Public Defender and unjustified refusal.

There are frequent instances of IDPs complaining about their human rights being violated by the Ministry of Refugees and Accommodation. The Ministry of Refugees and Accommodation is responsible to protect the rights of the IDPs.
In many cases the Ministry does not carry out the responsibilities obligated to it by the law.
In a written reply to the Public Defender by the people responsible in the Ministry, It was stated that the Ministry is not responsible for protecting all the rights of the IDPs and suggested the IDPs to go through the judicial process to address their concerns.

We are seriously concerned about the attitude for the Ministry of Refugees and Accommodation towards the problems of IDPs in Gali. The IDPs who returned to Gali spontaneously and those who go there seasonally have lived in difficult situation and these circumstances are not taken into consideration. The registration book clearly shows the manner in which the Ministry deals with the problems of IDPs in Gali.

The case of registration of IDPs in Gali

On July 27, 2006 65 year old Levter Jobava, an invalid of second category IDP from Abkhazia and currently living at the University hotel "Amirani", room 1010, Tbilisi sent an application to the Public Defender. According to him his mother Sasha Chekheria-Jobava born 14.03.1903 has a family with multiple children and her husband died in the Second World War. The applicant has a sister Shapiko Jobava, invalid born on 05.01.1937. The applicant claimed that his family members were registered as IDPs in Zugdidi and their permanent place of residence was village first Gali in Gali region.

During the IDP registration in 2004 they could not go to Zugdidi for health reasons and because of that L. Jobava applied personally to the representatives of the Ministry, filled out the forms and left them with the representatives of the Ministry. He did not receive any reply from them. As a result S. Chekheria-Jobava and S. Jobava were not receiving IDP allowance and pension since they did posses the IDP certificate.

The Public Defender addressed the Ministry of Refugees and Accommodation with a recommendation to study the circumstances of the above case and inform him about the measures taken within the time limits established by the law.

The Deputy Minister of Refugees and Accommodation replied back on October 19, 2006 stating that according to the rules of the Ministry, a person was supposed to come personally to the recommendation commission to get the status. But they took into consideration the age and health conditions of Shapiko and Sasha Jobava and applied to the Adjara and Samegrelo-upper Svaneti department to allocate a recommendation commission to study the case

The Public Defender conveyed this information to the applicant and the case was closed. But on February 13, 2007 L. Jobava applied to the Public Defender again and spoke how the senior officials of the Ministry of Refugees and Accommodation disregarded his requests. After 4 months of applying to the Ministry the problems is yet to be resolved.

The case of the IDPs living in "Bambis Narti"

On August 18, 2006 the Public Defender got a collective letter from the IDPs living in "Bambis Narti" facility at 3 Trikotazhi St, Tbilisi. They had problems with the owner of the facility. In particular, on August 12 early in the morning the roof of the facility caught fire. The fire brigade managed to extinguish the fire. When the facility was examined there was an assumption that the fire was deliberately set to the facility by the representatives of its administration.

With the purpose of studying the case, the Public Defender applied to Gia Kodalashvili, head of Gldani-Nadzaladevi district municipal service of special situations. He confirmed the information about the fire. According to him the information was forwarded to the Internal Affairs Department of Gldani-Nadzaladevi district.

The Public Defender applied to Levan Chabukiani, head of the Internal Affairs Department of Gldani-Nadzaladevi district to obtain information about the measures taken in connection with the incident.

D. Nikolaishvili, investigator of the 9th division of the Internal Affairs Department of Gldani-Nadzaladevi district explained in his letter that on August 12, 2006 a criminal proceeding was initiated at the 9th division of the Department of Internal Affairs of Gldani-Nadzaladevi district within the article 187, (2) of the Georgian Criminal Code. Technical expertise was scheduled and operational-investigative measures were undertaken to investigate the case and find and the guilty.

Nazi Margania's case

On July 27, 2006 Nazi Margania, an IDP from Abkhazia applied to the Public Defender with a letter. She lived in the children's clinical hospital in Tbilisi. The applicant explained that her child N. Margiani was infected with hepatitis and needed expensive medications, which she could not afford being a widow and unemployed.

The Public Defender applied to Dalila Khorava, the minister of labor, health and social welfare of Abkhazian autonomous republic and Mr. Maukla Kartsava, head of health and social welfare and municipal service at Tbilisi mayor's office.

Mamuka Kartsava, head of health, social welfare and municipal service at Tbilisi mayor's office advised in his letter that the information about the allowances and assistance for the IDPs can be found at the official web page of the municipal service. We learned from the web-page that the assistance programs of the current year are closed but presumably the budget of 2007 will finance again the programs of the health, social welfare and municipal service of Tbilisi for the benefit of the IDPs living in Tbilisi.

Dalila Khorava, the minister of labor, health and social welfare of Abkhazian autonomous republic wrote in her letter that the senior specialist of the ministry visited N. Margiani at her

home. We also found out from her letter that the necessary medications are not affordable because the Georgian Law "about Georgia's state budget for 2006" does not provide assistance on individual basis to its citizens. Although there are other programs, in particular: treatment of severe hepatitis at the hospital financed by the state and treatment of chronic hepatitis in the hospital on certain nozology within components is co-financed with 90 GEL and in case of the second hospitalization co- financing is 20% of the patient's part.

Case of IDPs living in collective accommodation in the center of Kutaisi

On November 10, 2006 internally displaced Vepkhia Mikautadze, Marina Papava, Medea Ratiani and Zinaida Rigvava applied to the Public Defender with a collective letter. They explained in their letter that they had been living at various temporary accommodation places in Kutaisi at different addresses since 1993. The IDPs applied to the main regional department of refugees and accommodation, Kutaisi office of self-governance for refugees and accommodation in regard to this issue but did not receive any reply. Because of the severe economic condition the IDPs decided to occupy the former facility of military procuracy at 20 Agmashenebeli St. in Kutaisi which is in a dilapidated condition. According to them they informed and requested permission from the local self-governance services: Acting President's Appointee in Imereti, Human Rights Office, local self-governance department of refugees and accommodation in Kutaisi, representation of Abkhazian government in Imereti, Kutaisi majoritarian deputy in order to get registration at the given address as IDPs in the collective accommodation center. Despite their pleas the local self-governance agencies did not take their request into consideration and sold the facility.

From the explanations provided by the applicants we found out that the citizens: Vepkhvia Mikautadze, Tamar Jalaghonia, Marina Papava, Medea Ratiani and Zinaida Rigvava applied to the Kutaisi city court with a petition to get registration as IDPs in collective accommodation centers.

On October 16, 2006 the complaint of Vepkhia Mikautadze, Marina Papava, Medea Ratiani and Zinaida Bestaeva was satisfactorily addressed by the court decision. As a result Kutaisi authorities, Ministry of Refugees and Accommodation of Georgia, Ministry of Economic Development of Georgia, Kutaisi property registration and privatization department were obligated to allocate living space for the above citizens. Despite this fact, the court decision was not implemented.

The representatives of the Regional Department of Public Defender's Office of Western Georgia applied to Kutaisi city court and asked for a copy of the execution writ in connection with the above court decision.

As a result the Public Defender's Office received a copy of the execution writ dated December 21, 2006 related to Kutaisi court decision adopted and signed by Judge Ana Gelekva.

On January 16, 2007 the applicants were informed that they could apply to the above court to receive a copy of the execution writ, following which they could address the Imereti enforcement bureau with an application attached to the execution writ for the implementation of the court decision.

Case of the Lezhavas

On November 21, 2006 Citizen Natela Makharoblidze applied to the Public Defender of Georgia. She mentioned in her letter that she was an IDP from Abkhazia and lived in Tbilisi at 5

Iumashev St. Her daughter Lali Lezhava with three children (Nato, Dato and Dimitri Lezhavas) lived in the same building. Tamara Manjavidze occupied their living space in exchange of 200 GEL. L. Lezhava had severed relations with her husband was unaware about his whereabouts. She and her three little children lived in a booth under difficult living conditions. Because of the difficult socio-economic situation the children didn't attend school; they didn't have clothes, books and could not maintain standards of private hygiene.

In her telephone conversation with the representative of the Public Defender T. Manjavidze mentioned that the building at 5 Iumashev St. was privatized and it belonged to her. As for the amount paid, it was not in exchange of real estate but as an act of goodwill and kindness with an intention to provide help.

For the purpose of clarifying the matter the Public Defender of Georgia applied with a letter to Irakli Gorgadze, the deputy minister of Refugees and Accommodation on November 30, 2006 and requested information confirming N. Makharoblidze's and L. Lezhava's registration at the collective center at 5 Iumashev St. (Georgian Cooperative Building).

In a separate letter on December 1, 2006 the Public Defender of Georgia addressed to Ilia Gotsiridze, the chief of privatization policy department of the Ministry of Economic Development and requested information about the circumstances in which the building at 5 Iumashev St. was privatized and whether the interests of IDPs were taken in to consideration in the privatization process.

Since the protection of the children's human rights could have been violated in the given circumstances the Public Defender of Georgia applied to Tamar Golubian, head of the children's care department for special needs of the Ministry of Education and Science on December 5, 2006. The copy of N. Makharoblidze's letter was sent to this office for further actions with a recommendation to assist the children in the circumstances of deinstitutionalization process through children's public and educational inclusion.

On December 5, 2006 the Public Defender applied to Giorgi Korkashvili, Isani-Samgori district Gamgebeli and asked to take respective measures within his competence to implement the children's right to education and resolve their social problems.

According to the reply of Giorgi Korkashvili, Isani-Samgori district Gamgebeli the district administration could not allocate living space for L. Lezhava family. The district administration did not consider other aspects of the case.

According to Berika Shukakidze, acting head of the national and regional programs department of the Ministry of Education and Science Tbilisi Social Service was obligated to study the case of L. Lezhava's family. The letter from Berika Shukakidze has attachments of letters from social workers Ana Bakashvili and Tea Tkemaladze. We learned from this document that Nato Lezhava currently lives with her grandmother Natela Makharoblidze. She does not go to school like her brothers though the grandmother plans to take her to school starting from the second semester. After studying the case, the social workers decided to continue their work with the family of Lezhava. In particular, recommend the inclusion of Nato Lezhava in the subprogram "children's deinstitutionalization and prevention of children's abandonment" of the Ministry of Education and Science. As for Dato and Dimitri Lezhavas, the recommendation is to remove them from the existing surrounding environment as fast as possible and offer them help within the competence of the Ministry.

On January 8, 2007 the Public Defender of Georgia applied with a reminding letter to Irakli Gorgadze, Deputy Minister of Refugees and Accommodation. From the reply received on 29.01.07 we found out that N. Makharoblidze and L. Lezhava are registered as IDPs in the data base of the Ministry of Refugees and Accommodation at 5 Iumashev St. in Samgori district.

On February 27, 2007 the Public Defender applied with a reminding letter to Kakha Damenia, the deputy minister of Economic Development. From the reply received on 01.03.07 we found out that the information about the privatization of the facility at 5 Iumashev St. is not in the archive of the Ministry.

The case is currently under the investigation.

The case of IDP traders in Delisi subway.

On December 12, 2006 Georgian citizens, IDPs from Abkhaiza applied to the Public Defender with a collective letter.

The applicants explained in their letter that during the period of their displacement they lived in Tbilisi at collective accommodation centers. Due to dire economic conditions and with the purpose of earning money to support their families some of the IDPs started looking for jobs. In 1996 they started trading outside metro station "Delisi". The same year based on the verbal agreement with the city authorities spaces were allocated for them in the underground of metro station "Delisi". They continue their trading activities till date.

On December 7 the IDPs received verbal warning from the administration of "Tbilisi metropolitan Ltd" to empty the territory within 3 days or they would be forced to vacate the place. The applicants explained that by doing so their families would be left without any income and that they needed stable jobs. Many of them had credits from banks which further aggravated their financial conditions.

The Public Defender accepted the application for action on December 18. The same day one of the applicant Laura Zhvania was asked to write a letter of explanation. From her letter we found out that there were 74 IDPs trading within the "Delisi" metro station.

On December 20, 2006 the Public Defender applied with a recommendation to Irakli Gorgadze, the deputy minister of Refugees and Accommodation. Protection of IDPs at the places of temporary accommodation is the responsibility of the Ministry of Refugees and Accommodation. The Ministry is responsible for the implementation of effective measures to resolve their problems. According to the Georgian Law about the "internally displaced" article 5, (2) sub-paragraph "a" the Ministry is responsible for providing temporary employment to every internally displaced individuals according to his/her qualification and profession."

According to the Article 8 of the same Law "the Ministry is responsible to resolve the issues of their employment and other social issues" together with the respective offices of executive bodies. Based on the circumstances the IDPs were at risk to be left unemployed and for this reason the Public Defender applied to Irakli Gorgadze, the deputy minister of Refugees and Accommodation to consider the issue of employment of the above applicants. The reply was received on 29.01.07. The Ministry forwarded the case materials to Mamuka Akhvlediani, Vice-mayor of Tbilisi with the purpose of allocating alternative place of trading for the IDPs. In connection with this the Public Defender requested information from the vice-mayor's office about the decisions adopted in this case and the implemented measures. The Public Defender's office has not received a reply yet from the vice-mayor's office.

On December 25, 2006 the Public Defender applied to Lasha Makatsaria, head of municipal supervision service. His office was requested to resolve the issue of temporary employment of the IDPs within its competence. Later on February 6, 2007 the municipal supervision service forwarded the Public Defender's letter in accordance to the subordination rule to Social and Cultural Municipal services office of Tbilisi.

On December 29, 2006 a warning (12/1131) notice by the General Director of "Tbilisi Metropoliten Ltd" was put up in the underground subway of Delisi metro station. By this document the IDPs were supposed to vacate the territory occupied by them by January 20, 2007. The IDPs were also told that after the expiration of the deadline the administration of "Tbilisi Metropoliten Ltd" would not be responsible for the possessions of the IDPs.

On January 12, 2007 the Public Defender applied to Tbilisi Mayor Gigi Ugulava. According to the resolution #2-6 adopted by the City Council on January 30, 2004 about restriction measures of outdoor trading the Mayor of Tbilisi was obligated to allocate alternative trading space for outdoor traders in the shortest period of time. The Public Defender stressed the point of timely resolution of the issue to avoid forceful eviction of IDPs from the territory of "Tbilisi Metropoliten Ltd.". The Public Defender addressed the Mayor of Tbilisi again on February 16, 2007 but has not received any reply yet.

On January 12, 2007 The Public Defender addressed Levan Koplatadze, Director General of "Tbilisi Metropoliten Ltd." with a request to postpone the measures of evicting the IDP traders from the territory until the competitive authorities resolved the issue of their employment.

On February 26, 2007 the Public Defender addressed Berdia Gvelebiani, the chairman of economic reforms and municipal thrift commission and asked for the normative acts, which regulate the activities of Tbilisi Metropolitan Ltd. and its administration. He also requested information about the competence of the latter, rules of election, accountability and a copy of the respective regulations.

On February 27, 2007 at 2 a.m. the representatives of the municipal supervision service and patrol police forced the IDPs out of "Delisi" underground and in the process damaged their property (another application of the IDPs).

The resolution #2-6 adopted by Tbilisi City Council on January 30, 2004 about "restriction measures of outdoor trading in Tbilisi" was annulled by the resolution #4-27 on December 29, 2007 even though it was in force for three years.

On February 26, 2007 the Public Defender addressed Tbilisi vice-mayor Mamuka Akhvlediani and requested information about the implemented measures for executing the resolution of the city authorities, the allocated alternative territory and detailed information about other related activities. The Public Defender addressed Zaza Begashvili, the chairman of the City Council with the similar letter since article 12 (1) of the Law about "the capital of Georgia-Tbilisi" stipulates that it is within the competence of the city council to keep "control over the activities of the officials of Tbilisi mayor's office and municipal authorities; hear reports of the mayor and make evaluations."

The Public Defender has not received replies from the above agencies.

The case of IDPs residing in overcrowded settlements in Lilo.

On September 19, 2006 the Public Defender received a collective letter from the IDPs residing in overcrowded settlement in Lilo.

According to the letter, IDPs residing at 21 Iumashev St. are not supplied with electricity from 2002 due to the poor management of electricity payment. The applicants indicated that they had addressed the President of Georgia and the Ministry of Refugees and Accommodation but they did not recieve any assistance, even though the premises is occupied by pensioners, war veterans, family with many children and 100 year old elderly. According to the applicants despite the fact that the Ministry of Refugees and Accommodation transferred 16000 GEL into the account of JSC "Telasi", the representative of JSC "Telasi" declared the given IDP collective residential facility as a "dead zone".

The Public Defender addressed with recommendations to Irakli Gorgadze, the First Deputy Minister of Refugees and Accommodation, Iuri Pimonov, Director General of JSC "Telasi" and David Mikautadze, Independent Defender of Customers' Interests at the Georgian National Energy Regulatory Commission.

David Mikautadze, Independent Defender of Customers' Interests at the Georgian National Energy Regulatary Commission confirmed in his written reply that the cost of the consumed electricity paid by the State on its part and additional payment made by the refugees do not cover even half of the accrued arrears. The Calculation is based on the data of one electricity meter. By the initiative of the Public Defender's office several hearings were held together with the representatives of JSC "Telasi" and the IDPs. An agreement was reached on certain issues, in particular, equipping the collective accommodation facility with individual electricity meter to enable the Ministry of Refuges and Accommodation pay for the electricity consumed by the IDPs.

On November 27, 2006 we received a letter from D. Kartvelishvili, Director General of JSC "Telasi" "Energogasagebi" that the representatives of JSC "Telasi" carried out research work at residential facility at 21 Iumashev St. which showed that supply of electricity to the facility is technically impossible because JSC "Telasi" electricity lines don't pass at the given address.

On December 13, 2006 we received a letter from Irakli Gorgadze, the First Deputy Minister of Refugees and Accommodation stating that supply of electricity to the mentioned facility was problematic due to its territorial isolation. The closest facility was located in 2 km. away from the IDP residential premises. The Ministry of Refugees and Accommodation addressed the closest functioning facility and in particular Giorgi Karbelashvili, Chairman of the Supervisory Board of "Georgian Air-navigation Ltd." with a request to connect electricity line of the IDP residential premises to the power system of "Georgian Air-navigation Ltd."

On September 22, 2006 G. Edisherashvili the director of "Georgian Air-navigation Ltd." sent a letter to the First Deputy Minister of Refugees and Accommodation Irakli Gorgadze informing that "Georgian Air-navigation Ltd." agreed to connect 0.4 k/w three phase electricity line to the 14th transformer sub-station on their account. It was necessary to create the project and obtain permission from the organizations whose territories would be involved in the laying of the electricity cable. Electricity should be supplied from the 14th transformer sub-station to the administrative building of sanatoria "Duzani" by the underground transmission cable (4X35 SQ/MM.). Besides that 0.4 k/w. distribution buckler and individual electricity meters should be installed at the IDP residential facility.

Based on the information provided by the "Georgian Air-navigation Ltd." it was not clear to us what the concrete plan of action of the Ministry of Refugees and Accommodation would be in order to supply the IDP residential facility at 21 Iumashev St. with electricity.

As stipulated in the Georgian Law "about the internally displaced" the exercise of IDPs rights at their temporary residence is guaranteed by the Ministry of Refugees and Accommodation along with other executive authorities and relevant self-governance bodies" (Article 5 (2)); According to the article 5 ($1^{1)}$ and Para.2, subparagraph "f" of the same Law the above authorities assists the IDPs to resolve their social and domestic problems.

Based on the above, the Public Defender applied again to the Ministry of Refugees and Accommodation inquiring about the Ministries concrete plan of actions for the supply of electricity to the IDP residential facility at 21 Iumashev St. The Public Defender also sought for information if the Ministry included the funds in the budget of 2007 for the resolution of the above problem.

The case is in the process.

Problem of electricity supply to the IDPs residing in the premises of #4 Clinical hospital

The Public Defender received a collective letter from the IDPs residing in the premises of #4 clinical hospital at 4 Gudamakari St. The IDPs informed that on November 28, 2006 power supply was disconnected to their facility without any prior notice. Following which JSC "Telsi" requested payment of 10,000GEL for the resumption of power supply.

According to the statement of the IDPs they have been dealing with this problem for two years. Electricity supplied to the IDPs was being plundered by the people living in the surrounding areas, including bakeries, shops, pharmacies and other judicial or private persons. In connection with this violation the IDPs applied to the energy supervision and fuel quality department, the "Telasi" district office, and the Didube-Chugureti district court. On December 30, 2004 Judge S. Kvaratskhelia took the decision to restore the supply of electricity to the IDP residential facility until the dispute over the past arrears was resolved. The IDPs took the court decision and the executive writ to the enforcement bureau. The supply of electricity to the premises resumed upon the presentation of the court documents, although till date JSC "Telasi" periodically disconnects power supply to the IDP residential facility

The Ministry of Refugees and Accommodation pays 5000GEL monthly to JSC "Telasi" to cover the electricity bill for the above facility which is not sufficiant because of the above reasons, the electricity bill for the month of October alone amounted to 10,000GEL and in November 21,000GEL.

For the resolution of this problem the IDPs applied to the Ministry of Refugees and Accommodation in September of the previous year. They were asking for solicitation on installation of second hand electricity meters in a corridor on their own expenses. The Ministry supported this suggestion but this initiative was not welcomed by the administration of JSC "Telasi".

Power outage for an indefinite period of time at IDP residential facilities may result in unforeseen incidents. According to the Georgian Law about "internally displaced" "the exercise of the rights of IDPs at their place of temporary residence is guaranteed by the Ministry of

Refugees and Accommodation together with other executive authorities and relevant self-governance bodies". (Article 5 (2)).

The Public Defender applied to the Minister of Refugees and Accommodation, the General Director of JSC "Telasi", the Chairman of Georgian National Energy Regulatory Commission and the Independent Defender of Comsumers' Interests at the Georgian National Energy Regulatory Commission.

Based on this application the representatives of the above agencies held a meeting. The representatives of the Ministry of Refugees and Accommodation did not express their opinion at the meeting. By the suggestion of JSC "Telasi" it was decided to create initiative groups at the IDP residential facilities which would decide together with the IDPs the time schedule for electricity supply. This would resolve the problem of over usage of electricity.

The case is in the process.

The case of IDPs residing at Bagebi hostel

The Public Defender received a collective letter from the IDPs residing at building #4 of Bagebi hostel; they were informing that from July 15, 2006, electricity is being supplied to their facility in a very tight schedule for only 2 hours per day and it was creating problems with water supply. According to them the bill for the used electricity was not paid. This facility shelters pensioners and students who are not IDPs. Until now the residents of the facility have not gone through any registration process, which creates problems in differentiating electricity bill of the IDPs and the rest of the residents. Another pressing problem of the facility is poor sanitary situation.

The Public Defender addressed D. Mikautadze, Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission and I. Gorgadze, Deputy Minister of Refugees and Accommodation.

From the reply of D. Mikautadze, Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission we learned that he had already addressed the Minister of Refugees and Accommodation G. Kheviashvili with the problem of equipping Bagebi hostel with individual electricity meters. It was also learned that with the participation of the Ministry of Refugees and Accommodation and JSC "Telasi a joint commission was created which would study the arrears of IDPs towards JSC "Telasi". The facts about the illegal use of electricity would be studied on location.

From the reply of I. Gorgadze, the Deputy Minister of Refugees and Accommodation we learned that the Ministry held consultations with the representatives of JSC "Telasi" in regard to the above issue with the participation of the representatives of the hostel administration and the concerned unregistered IDPs.

The administration of the hostel is willing to pay the electricity bills for the unregistered IDP residents of the hostel buildings #4 and #5, equivalent to the amount that was paid by the Ministry of Refugees and Accommodation. According to the requirement of JSC "Telasi" a letter of consent was signed in which the administration of the hostel and the IDPs agreed to pay the current arrear according to the established schedule and to prevent voluntary switching of electricity by the residents.

In regard to the poor sanitatary situation, it was found that the Ministry pays the respective service agengy an amount of 1970GEL monthly according to the established rules for cleaning Bagebi hostel.

In September 2006 the representatives of the Ministry, IDPs and the hostel administration conducted registration at buildings #4 and #5 which revealed that IDPs and the non IDP residents lived jointly on each floor sharing the same electricity meter.Due to this circumstance it was impossible to determine separate electricity bill for the IDPs.

The case of IDPs residing at "Specavtomeurneoba" facility at 15 S. Petepi St.

The Public Defender received a collective letter from IDPs residing at 15 Shandor Petepi St. "Specavtomeurneoba" facility. According to the letter Roland Akhalaia, Khatuna Shengelia, Suliko Kvekveskiri and Giorgi Sichinava together with their family members have been residing at 15 S. Petepi St. since 2003. They did not settle at the given facility on their own will but based on the agreement with the owner. They are registered as IDPs at the Ministry of Refugees and Accommodation.and duly receiving the allowances allocated for the IDPs including the payment of the electricity bill.

The IDPs were informing that they had installed the individual electricity meters and kept control over the use of electricity and consequently never had arrears towards JSC "Telasi". The Ministry of Refugees and Accommodation was regularly paying for electricity and other communal bills, apart from that the IDPs also paid certain bills on their own and have receipts for the payments.

Despite this the JSC "Telasi" disconnected power supply to the facility in October 2006 without any prior warning.

David Liluashvili, Chairman of the Union of Georgian Democratic Principles and Human Rights Protection addressed the Public Defender with a letter about this issue. He said that the Ministry of Refugees and Accommodation had indifferent and inadequate attitude towards this issue because of certain technical and documentation problems.

In connection to the above, the Public Defender addressed I. Pimonov, general director of JSC "Telasi", in addition a copy of the Public Defender's letter was forwarded to D. Mikautadze, the Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission.

From the information received from "Telasi" we found out that the facility does not have any arrears on the payment of electricity bills, but a case in which the Ministry of Refugees and Accommodation simply stopped paying the bills.

The Ministry of Refugees and Accommodation replied to the letter of the Public Defender on November 13, 2006 (01/01-171725) and explained that it had studied the information of the IDPs living at 15 S. Petepi St. but due to the lack of some required documents the Ministry had to stop paying communal bills for the IDPs living at the above address.

It has been a few months that the IDPs don't have power supply. There are elderly, children and war veterans living in the facility who cannot afford the alternate means of heating and because of the the disconnection of power supply they are in a devastated situation. The allowance paid to them by the government is not enough to purchase other means heating or food preparation..

Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation informed in his letter (#01/01-17-7420) that the Ministry stopped paying communal bills for the IDPs based on the letter from Giorgi Giaushvili, the owner of the facility at #15 Petepi St. G. Giuashvili claimed that the IDPs were living in the facility without his permission and written consent. According to I Gorgadze the Ministry studied the information of the six IDPs living at #15 Petepi St. and did not find the necessary documents supporting their cause. According to the Ministry the owner of the building appealed to the court.

The Ministry of Refugees and Accommodation sent a letter to G. Giuashvili (01/01/176729) confirming that based on the information collected by the respective departments of the Ministry it had stopped paying communal bills of the facility and the case was forwarded to the Prosecutor's office for investigation.

The Public Defender after studying the case found out that on October 7, 2003 the owner of the facility and the Ministry of Refugees and Accommodation signed a lease agreement according to which the leaser transferred to the leaseholder (the Ministry) the former "Specautomeurneoba Ltd." one-storied facility (320 sq./mt.) and the leaseholder took the responsibility of paying communal bills of the IDPs according to the established rules. The agreement was signed for a period of one year with the possiblility of extension. The agreement was not annulled and the provisions of the agreement were in force till October 2006.

The Public Defender addressed the Ministry of Refugees and Accommodation with a request to obtain a copy of the administrative-legal act according to which the Ministry was paying the communal bills for the IDPs living at the above address. The Public Defender also requested a copy of the resolution annulling this act and the documentation according to which the IDPs got registered at the above address in 2003.

According to the Law about "internally displaced" (article 9) "the rights of the internally displaced are protected by the State".

Additionally in the Article 5, (2) of the same Law "the exercise of the rights of IDPs at their temporary place of residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-governance bodies".

Important legal guarantees are stipulated in the Georgian Administrative Code Article 60^1
Para. 4: where it states "it is inadmissible to annul the administrative-legal act contradicting the law if the act itself is empowering and the interested party has legal confidence towards the administrative-legal act, unless the administrative-legal act violates state, public or person's rights or interests".

Taking into consideration the legal regulation of the country it is clear that the Ministry of Refugees and Accommodation violated the right of the IDPs residing at 15 Petepi St.

In particular:
According to the Article 5, (2) of the Georgian Law about the "internally displaced" the exercise of the rights of IDPs at their temporary place of residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-governance bodies. They provide for:

b) Monthly allowance during the period of displacement;
c) Assistance to IDPs in resolving social and domestic problems;
d) Temporary residence and food products within established norms.

The Ministry in contrary to fulfilling its obligations of protecting the rights of IDPs, neglected their rights and put the IDPs in a miserable situation.

The Ministry addressed the IDPs with a letter on November 13, 2006 (#01/01-171725) according to which the control department of internal affairs of the Ministry studied the information of the six IDPs registered at 15 Petepi St. and in the absence of the necessary documents for the registration at the given address the Ministry stopped paying for the communal expenses

When studying the case the Ministry did not take into consideration the general requirements of the Georgian Administrative Code. In particular: Article 13 (1) of the same Law: "the administrative body has the right to consider and take a decision on the issue only if the interested party, whose right or legal interest is being restricted by the administrative-legal act, is given the right to express its own opinion".

According to Para. 2 of the same article: "the person concerned in the first paragraph of this article should be notified about the administrative proceedings and his participation should be mandatory."

The Ministry took a decision and stopped paying for the communal expenses of the IDPs without their knowledge regarding the time and place of the proceedings of the case, in effect the IDPs were deprived of the possibility to participate in the process, which constitutes a violation of the IDPs rights on the part of the Ministry.

According to the Georgian General Administrative Code, Article 60^1 Part 1: "An administrative-legal act can be annulled only if it contradicts the law or if the legally established requirements on drafting and promulgation of such act are substantially violated" Para. 2 of the same article stipulates the legal definition of "substantial violation": "Violation of the rules on drafting and promulgation of the administrative-legal act is considered a legal offense, in absence of which different decision would have been taken on the given issue:" Had the IDPs given the possibility to participate in the process of decision making in their case, there could have been an altogether different outcome.

Besides that the Ministry is unable to specify the administrative act according to which the above decision was taken, and based on which it acted illegally. In particular, the Georgian General Administrative Code, Article 5 (3) stipulates that:"promulgation of administrative-legal act through excessive use of the official authority and also activities carried out by the administrative body without judicial power is annulled". According to the Para.1 of the same article "the administrative body does not have the authority to carry out any activity contradicting the legal requirements". The Ministry in the given situation did not take this into consideration and acted against the legal requirements.

In conclusion, the Ministry of the Refugees and Accommodation violated the legal rights of the IDPs, which was expressed in the following:

1. The Ministry illegally stopped paying electricity bills and as a result JSC "Telasi" disconnected the power supply;
2. The Ministry took this decision through substantial and serious violation of norms of administrative proceedings ruling out the possibility of the IDPs to participate in the decision making process in a case, which was of legal and vital interest to them. This incident once again points out to the lack of transparency in the work of the administrative bodies.

3. The Ministry issued the IDP certificate within the proper timeframe. The certificate includes the information about the address of the IDP's temporary residence on which the IDP has certain rights. The IDPs have the expectation that these rights would by all means and unconditionally be protected by the designated authorities. In the given case the IDP certificate raises its holder's confidence in the Ministry. Despite the applicable similar legal regulations the Ministry did not fulfill its obligations.
4. The Ministry's decision to stop payment for the electricity bill of the IDPs gives us an impression that the issue was not thoroughly studied and the decision was based more on assumptions than facts.

By acting so the Ministry violated the Georgian as well as International Laws.
Children, elderly and invalids are in depresing situation, which can become the reason an impending tragedy. It must be noted that after the Abkhazian armed conflict the internally displaced have become victims of new atrocity. The Ministry which is supposed to protect the IDP's rights on the contrary violates them. It is an unfortunate fact that the IDPs have to protect themselves from the Ministry of Refugees and Accommodation.

Based on the above arguments the IDPs appealed to the court. Currently the case is under consideration.

The case of Oleg Mishin, residing at the Republican Hospital.

On September 21, 2006 the Public Defender received a letter from Oleg Mishin, an internally displaced from Abkhazia and currently residing at the Republican hospital. From the initial stages of the armed conflict in Abkhazia O. Mishin was fighting in "Samurzakano" battalion. On July 5, 1992 during the liberation of village Mishveli in Gali region he was wounded in both his legs at the battlefield. He was rendered the first aid medical assistance in Gali and then admitted to the Tbilisi Republican hospital, where he was operated upon few consective times. Like other wounded people he was allocated accommodation space at the hospital. After the improvement of his health condition he joined battalion "Saturin" which was later abolished in 2005. At the battalion he was rendered qualified assistance as an invalid of the first category and was sent for medical treatment to the hospital. Upon return he found his accommodation space at the hospital occupied by another patient. Following which he lived in rented space for certain period of time until a room was allocated for him at the Republican hospital where he still resides currently.

On June 18, 2006 the IDPs residing at the Republican hospital went through registration process because it was planned to evict the IDPs out of the hospital in exchange of monetary compensations. O. Mishin was not at the place during the registration process and not included the list. For this reason the commission refused to pay him the compensation which violated his legal rights. He addressed several times to the commission as well as the Ministry of Refugees and Accommodation and requested correction of the list and payment of the compensation. The above administrative bodies did not take into consideration O. Mishin's legal requirements. As we already mentioned, the applicant was fighting during the armed conflict and as a result of injuries he was granted the status of the invalid of the first category. According to the decision taken by the commission, the IDPs residing at the hospital received compensations based on the number of occupied rooms (10000 USD per room), for the Abkhazian war invalids of the first category an extra 1000USD was assigned. The commission neglected its own decision and instead of paying the compensation it offered O. Mishin a space at the IDP residential facility, which O. Mishin had never seen and its address was not given to him either. This fact seriously violates the Law and the common legal principles. Which according to the article 4 of the

Georgian General Administrative Code: 1.everyone is equal towards the law and the administrative body. 2. it is inadmissible to restrict the legal rights, freedoms and legal interests or to impede with their implementation of one the party of the administrative-legal relations, also granting to them any privileges not provided for by the law or taking any discriminative measures against any of the party. 3. In the occasion of identical case circumstances it is inadmissible to take different decisions in regard to different persons.

O. Mishin still claims the compensation in exchange of his room failing which he will be left in the street. The above circumstances force him to stay in the building of the hospital until his issue is resolved. He has the legal grounds because according to the Law on "internally displaced" article 5 (4) "housing disputes shall be settled through the judicial procedure, therefore before the restoration of Georgia's jurisdiction on the respective territory of Georgia the IDPs shall not be expelled from their places of temporary residence unless:
a) A written agreement has been reached with the IDPs.
b) Respective space of residence is allocated where IDP's living conditions may not be worsening;
c) Force majeure or other disasters take place, which entails specific compensation and is regulated by the general rules;
d) Space is occupied voluntarily, in violation of the law.

According to the Article 9 of the same Law "the interests of the IDPs are protected by the State". According to the Article 5 (2) "the exercise of the IDP's rights is guaranteed by the Ministry of Refugee and Accommodation". The latter unfortunately does not guarantee the implementation of O.Mishin's rights.

O. Mishin appealed to the court with the above issue and currently the court is considering the case.

The case of IDPs residing in upper Ponichala

On November 6, 2006 the Public Defender received a collective letter from the IDPs residing in Tbilisi, Krstanisi district, in an unfinished building #21 on the upper Ponichala settlement. Having no other choice 74 IDP families settled in this building. According to the applicants they made certain repair works in the building but for the installation of electricity wires and creation of other domestic conditions it was necessary to get registered at the given address.

They addressed various official agencies a number of times. The Ministry of Economic Development of Georgia forwarded their letter to the Mayor's office because the building was the property of the municipality. According to the information of Tbilisi registration service of the National Agency of Public Registry, building #21 in upper Ponichala settlement is not registered with the right of ownership. By the information of Mtatsminda-Krtsanisi district administration the building at the given address was in the process of construction but a few years ago the construction work stopped and it is not registered on the account of the district administration.

The applicants noted that Levan Alapishvili, head of the local urban service of property management in the Mayor's office suggested to the vice-mayor of Tbilisi Giorgi Meladze to raise this issue at the city housing commission meeting. The IDPs haven't received any relevant information yet.

It must be noted that the IDPs addressed the Public Defender with the similar letter on August 23, 2006. With this regard the Public Defender sent a letter to the City Premier Temur Khurkhuli requesting to study the case within the established time limits.

According to the letter by Levan Alapishvili, head of the local urban service of property management in the Mayor's office (10.06. 2006) in connection to the local self-governance elections on October 5, the issue of the IDPs residing at building #21 in upper Ponichala would be raised after the empowering authorities of Tbilisi representative body and the formation of Tbilisi authorities the local property urban service

According of the letter (#3-05/3577) of January 10, 2007 by S. Kavtaradze, head of the local municipal service of property management in the Mayor's office, the IDPs addressed him with a collective letter in October 2005. The applicants were informing that they settled in the 9-storied unfinished building #21 in upper Ponichala and wanted to get legal registration at the given address. In November 2005 the local municipal service of property management in the Mayor's office did not satisfy this request. The local urban service of property management was guided by article 14 of the resolution #12-7 of Tbilisi City Council adopted on September 9, 2003 about "the rules of creation and management of housing fund in Tbilisi". According to this article "the citizens who have voluntarily occupied housing spaces and refuse to free them shall not receive accommodation space". S. Kavtaradze explained that despite this fact his office took into consideration the difficult socio-economic problems of the IDPs and took into consideration the second application of the IDPs received in March 2006. But since the applicants indicated #21 and #22 for the building address the other owner for the facility could not be identified. Respectively the office of the municipal service did not have the right to take any legal decision on this issue.

Based on the additional information, we found that in regard to this facility, Tbilisi urban planning municipal service issued a resolution #226 on October 3, 2006 about the project agreement on determining the boundaries of the plot of land of building #11 in Ponichala IV micro/reg., Mtatsminda-Krtsanisi district.

The territorial development agency "Tbilkalakproekti Ltd" completed the order #1119/06- of the determination of boundaries of the plot of land of the apartment block-"project of determination of boundaries of the plot of land of the apartment block #11 in Ponichala IV micro/reg." The IDPs paid 1,350 GEL (thousand three-hundred fifty GEL) for this project. The building occupied by the IDPs from Abkhazia is marked in the project.

According to the information of Tbilisi registration office of the national agency of public registry under the Ministry of Justice, "building #11 in Ponichala IV micro/reg. is not registered with the right of ownership". The information has the drawing of the place as an attachment.

According to the Article 5 (3) of the Georgian Law about the "internally displaced" "the State provides for the temporary residential space for IDPs. The Ministry facilitates accommodation of IDPs at the temporary residential places allocated to them by the state and local self-governance bodies". According to the article 8 of the same Law "the Ministry together with the executive authorities and the local self-governance bodies provides for the resolution of IDP accommodation, registration, social and other issues within its competence".

Based on the above legal norms and the identified building number, the Public Defender addressed the Vice-Mayor of Tbilisi with a recommendation to resume the administrative proceeding in regard to the above issue in shortest time possible. The Public Defender has not

received a reply yet. Meanwhile the IDPs don't have adequate living conditions (electricity, water supply) because of absence of temporary registration.

The case of IDPs living in the premises of "Sportnatsarmi"

The Public Defender received a collective letter from the IDPs of Samachablo and Abkhazia residing at #36 Ksani St.

According to the applicants 10 IDP families have been living on the premises of "Sportnatsarmi" plant, at the facility at #36 Ksani St. (currently territory of JSC "Lelo") by the agreement of the its Director General Roman Rurua.

According to the applicants the owner of the facility has been asking them to vacate the building for long time. The IDPs are unable to leave the place because they don't have any other place to go.

The Public Defender addressed the Ministry of Refugees and Accommodation with a recommendation to take measures for the protection of the rights of the IDPs.

According to the Article 5 (3) of the Georgian Law "the State provides for the temporary residential space for IDPs. The Ministry facilitates accommodation of IDPs at the temporary residential places allocated to them by the state and local self-governance bodies".

According to the article 8 of the same Law "the Ministry in coordination with the executive authorities and the local self-governance bodies provides for the resolution of IDP's accommodation, registration, social and other issues within its competence".

According to the Article 9 of the same Law "the State protects the rights of the IDPs".

According to the requirements of the international document "UN Guidance Principles about the Internally Displaced" the State is responsible to provide adequate living space for internally displaced and assist with adaptation at the temporary place of residence.

Since the above Ministry neglected the recommendation of the Public Defender, the Public Defender addressed the administrative body once again and requested for detailed information about the decisions and implemented measures taken. Till date we have not receieved any reply from the Ministry.

The protection of human rights of refugees

The majority of the refugees in Georgia are from Chechnia. Most of them arrived in 1999. Part of them is Chechen by origin and and the rest Kisti. According to the statistical data of the Ministry of Refugees and Accommodation, the number of Chechen refugees in Georgia has decreased from 2860 in January 2004 to 1320 in September of 2006.

Compared to the previous year the incidents of restricting the Chechen refugees have decreased. Kidnapping Chechen refugees or any other offenses against them did not occur. But the recommendations of the Public Defender from the report of the first half of 2006 were not taken into consideration and therefore the problems raised in that report were not resolved. Furthermore, due to inflation and rising prices of consumable items in the country the social conditions of the refugees further deteriorated. The State does not fulfill its responsibility to assist and support the refugees with social integration; it does not carry out other responsibilities provided for by the international legislation to safeguard the human rights of the refugees.

The Georgian Law "about the refugees" has not been amended yet to bring it in compliance with the international legislation and create normal living conditions for the refugees in the country. This would have given the hope to the refugees of improving their living conditions and finding employment which would have changed the current situation of the refugees.

"Convention about the status of refugees" of 1951 and "protocol of status of refugees" of 1967 define the concept of refugees, their rights and the responsibilities of State. The Georgian Law "about the refugees" does not correspond with the international legislation, at the same time the Government of Georgia does not fulfill the responsibilities obligated to it by its own legislation.

It must be noted that the territory of Pankisi Gorge is the main placee of accommodation of Chechen refugees. The soci-economic situation in the gorge is very difficult, which is especially harsh for the refugees due to widespread unemployment, poor sanitary conditions and malnutrition. The refugees are willing to work but as they declare, the local population employs only their friends and relatives. The refugees take this fact as discrimination on ethnic grounds. Employment of refugees still remains a problem. The reason the refugees live in such harsh economic conditions rather than living and working in big cities like Tbilisi or Batumi is due to restrictions placed by The Ministry of Refugees and Accommodation demanding the refugees to remain in Pankisi gorge until attaining the citizenship of Georgia. According to the Georgian Law "about the refugees" Article 5, part 1 the Ministry should provide accommodation and jobs for the refugees but the administrative body seldom applies this Law. Article 17 of the Convention about the refugees stipulates that "signatory states should create the most favorable employment conditions for the refugees legally residing on their territory, the citizens of the foreign countries should get the same treatment in similar conditions".

Article 26 of the Convention about the Refugees stipulates: that each signatory country grant the refugees legally residing on its territory, the right to choose the place of residence and to free movement within its territory, the same conditions that are usually applicable for the foreigners.

The Georgian Government did not raise the issue of possible local integration of Chechen refugees living in Georgia, which can be considered as an alternative way of resolving the problem. Local integration means granting certain long-term legal status to refugees, which would give them the opportunity to get shelter in the country, to stay in the country for an indefinite period and to fully participate in the social, economic and cultural life of the local society. There are many Kisti refugees by origin related to Georgians and managed to socially

integrate in the society very well. They can present themselves as contributing members of the society if they are given the right to work and if favorable conditions are created for them such as by providing them professional training.

The refugees believe that their migration into a third country is the way out of the dead-end. The Georgian Government should take adequate steps for the integration of Kisti population in the Georgian society.

The Public Defender mentioned about the circumstance in his previous report, which points out to the inactivity of the Ministry of Refugees and Accommodation. Five families accommodated in Pankisi kindergarten faced the risk of being left without a shelter because the local population wanted the kindergarten to function again. Based on the information provided by the Ministry of Refugees and Accommodation an agreement was reached with the owner of the privatized kindergarten about temporarily giving the rights over the kindergarten to the Ministry. As a result, the refugees did not face the threat of eviction from the facility any more. But in December 2006 this issue was raised again. The Ministry chose not offer the Chechen refugees an alternative accommodation which deprived the local population of having its own functional kindergarten.As a consequence of the Ministry's inactivity the relation between the local population and the refugees are uncertain and restrained.

The Chechen refugees believe that repatriation to the Russian Federation will not take place in the near future. Presently they live in one of the settlements of Pankisi gorge. Unfortunately they don't have the capacity to return to their homes. Third countries in most cases refuse to their integration. Finding jobs for them in Georgia is a difficult process and getting Georgian citizenship is close to impossible. Majority of the refugees is traumatized after the war and still live in fear and uncertainty, hopeless about the future they fear being victimized in the the political tussle between Georgia and the Russian Federation.

At the same time the international organizations believe that the return of the Chechen refugees to the Russian Federation is still full of risk. The UN High Commissioner for Refugees does not advise the refugees to return since the situation will not improve in the near future.

The European Commission combating Racism and Intolerance made the statement about unfair deportations of Chechen refugees in the Russian Federation and other countries and reminded the Governments of the principle, that a person should not be deported or extradited to a country where he is tortured and treated inhumanly (see the second report about Georgia of the European Commission against Racism and Intolerance, paragraph 65, June 30, 2006).

The granting Georgian citizenship to the refugees would be a very good solution, especially for the Kisti population whose earlier generations were born in Georgia and presently live in Pansikis, but unfortunately this is a long-term process. In any case, the majority of the refugees do not wish to get the Georgian citizenship. According to them, when they initially arrived in Georgia they had an impression that getting the citizenship would be possible, but for years the Government did not take any actions in this respect and the refugees don't have any hopes that in the near future they may become the citizens of this country. Article 34 of the "convention about the status of refugees" stipulates that "the signatory countries should possibly ease assimilation and naturalization process of the refugees".

As for the migration of the refugees to the third countries, according to the information provided to us by the UN High Commissioner for Refugees, the number of refugees selected for expatriation decreased significantly after the terrorist attack of September 11, 2001. This was especially noticeable in the United States of America. In the circumstances of war against terror,

restriction measures are applied against the global movement of people. Despite the efforts of UNHCR this tendency effected Chechen refugees in Georgia: in 2006 the third countries received 19 refugees (all from Chechnia, Russian Federation) while in 2005 113 persons (the majority being Chechens with the exception of six Iranians) were expatriated and in 2004 -155 persons were expatriated (the majority being Chechens and three citizens of Yemen).

With the possible extension of the process of the voluntary repatriation of refugees there are people who cannot return home because of their past. It is slowly getting clear that refugees living for years in separated camps without any hope for future are susceptible in getting involved in criminal and anti-social activities. This may harm not only them but also the local population apart from endangering the national and the regional security.

It must be noted that the Chechen refugees are not happy with the representatives of the UN High Commissioner of Refugees. The Ministry of Foreign Affairs has been addressed by the Public Defender in this regard.

The Chechen refugees living in Pankisi gorge sent numerous applications to the Public Defender. According to them they were trying to address different countries of Europe and America through Tbilisi office of the UN High Commissioner for Refugees, but the office representatives were often neglecting their requests. The documents of the refugees were not forwarded to the respective countries and the refugees were frequently told the reason for that was incorrect drafting of the document, to which the applicants disagree. The Chechen refugees were also asking the UN High Commissioner for Refugees assistance towards the families of prisoners and little children.

The Public Defender indicated in the above letter that the significant number of Chechen refugees did not feel secure. Though they express their appreciation towards the Georgian Government and the Georgian people for providing them shelter and assistance they still think that they may become targets of Russian Special Services by being followed, restricted and persecuted. This is the main reason why the majority of them want to leave for the third country.

Since this issue required additional research beyond the scope of the Public Defender's competence, based on the Article 1 (1) of the regulations of the Ministry of Foreign Affairs of Georgia, which stipulates that: The Georgian Ministry of Foreign Affairs is a government body, which manages and coordinates the foreign relations of Georgia with the foreign states and international organizations", the Public Defender addressed the Ministry of Foreign Affairs to study the given circumstances.

The Ministry of Foreign Affairs in its place addressed the office of the UN High Commissioner for Refugees. The Ministry forwarded to us the information sent to them by the representative of the High Commissioner regarding this issue, according to which "the State according to the their established criteria may accept or deny the cases presented by the UN High Commissioner for Refugees. According to the statistics of 2005 among 191 UN member countries only 16 countries participated in determining the annual expatriation programs and refugee quotas of UNHCR".

The refugees as a rule cannot return to their homes, nor do they wish to do so as they fear their lives may be endangered or they may be persecuted. In such circumstances the UN High Commissioner for Refugees helps them find new homes in a country where they may find shelter or in the third country where they can live permanently. If the refugees come across special problems in the country granting them the primary shelter or their lives are threatened they can opt for the possibility of expatriation to the third country.

The UNHCR representative also mentioned in his letter that through expatriation the refugees get legal protection, resident status and later citizenship from the governments who, based on individual case studies, agree to receive new members in their society.

It was said in the letter that "the High Commissioner for Refugees declares that he would be happy to consider together with the national partners including the Ministry of Foreign Affairs and the Office of the Public Defender the possibilities of granting the refugees wide range of social, economic and civil rights, which are enjoyed by the other members of the society of the receiving countries, and which is unilaterally implied by the convention of 1951 about the status of the refugees"

The Public Defender finds it reasonable to pay attention to the circumstances indicated in the second report about Georgia by the European Commission Combating Racism and Intolerance. In Particular: "the law-enforcing bodies keep the Chechen refugees under special attention and surveillance in order to combat organized crime and terrorism".

Therefore the European Commission Combating Racism and Intolerance addressed the Government of Georgia with a recommendation to take necessary measures to prevent any voluntary and discriminative actions, to resolve all humanitarian issues and to carry out campaign to change the stereotypes about the Chechen refugees among the Georgian officials, especially the police (see the second report about Georgia by the European Commission Combating Racism and Intolerance, page 69, 70, 71. June 30, 2006).

The case of Iakha Dudaeva

Chechen refugee Iakha Dudaeva addressed the Public Defender with a letter. After the arrest of her husband Magomed Makhoev, she was not in a position to afford renting an apartment. By her explanation, she and her four children were temporarily sheltered in the apartment of a refugee family Bakharchiev who were living in difficult conditions themselves. The applicant mentioned that because of such circumstances her children regularly fell sick.

I. Dudaeva applied to the office of the UNHCR in Georgia on a number occasions for assistance to get housing space. She was offered an accommodation in Pankisi gorge. She requested security guarantees for her family because, according to the applicant she was receiving letters threatening her to pay a ransom or her family members would be in danger.

I.Dudaeva explained that she informed the UNHCR office representatives about these facts. Although she was offered a room the issue of guarantee for security was not addressed.

According to the Article 8 (1) of the Georgian Law "about the refugees" the State protects the rights of the refugees. According to the article 21 of the "Convention about the status of the refugees" the signatory states should create the most favorable conditions for the refugees legally living on their territory".

The Public Defender addressed the Ministry of Refugees and Accommodation to study the above circumstances and take adequate measures.

The case is in the process.

The case of Luisa Kiloeva

The Public Defender received a letter from Chechen refugee Luisa Kiloeva. Since 1999 she had been living in Georgia, Panskisi gorge. In September of the current year the UNHCR office evacuated Kiloeva's family in an urgent manner to Tbilisi. According to the applicant the family was paid 240 GEL and refused of any further assistance by UNHCR

L. Kiloeva declared that she addressed the UNHCR office in Georgia a number of times, she also appealed to the Ministry of Refugees and Accommodation of Georgia to assist her with accommodation and employment. It did not bring any results. Her problems still remain unresolved forcing her and her husband to be live on the street for 2 weeks, until a stranger came by and decided to provide them shelter. The refugees are living in the facility with no electricity, water and gas.

The applicant also indicated to the other facts of violation of her rights by the representatives of the UNHCR office in Georgia. Particularly,the incorrect procedures conducted for the family's expatriation to the third country.

According to the article 8 (1) of the Georgian Law "about the refugees" the State protects the rights of the refugees. According to the article 7, sub-paragraph "a" the respective executive and self-governance bodies are responsible "to present a list of accommodation places recommended by the Ministry, it should also provide information about the living and employment conditions in these places". According to the article 21 of the "international convention about the status of the refugees"the signatory states should create the most favorable conditions for the refugees legally living on their territory".

The Public Defender addressed the Ministry of Refugees and Accommodation to study the above circumstances and take adequate measures.

The case is in the process.

The Ministry of Refugees and Accommodation sent a single reply in response to the above two letters. According to the reply from the Ministry the fact that there were more than 200 000 refugees in the country, the Government of Georgia could not take the responsibility of providing financial assistance to all the refugees. "Assistance to Chechen refugees is rendered by UNHCR office in Georgia together with other international organizations". The Deputy Minister of Refugees and Accommodation I. Gorgadze also noted that Iakha Duaeva and Luisa Kiloeva were offered accommodation space in Tsalka on the ministry's account but the refugees refused to accept it.

By the declaration of Iakha Dudaeva and Lusia Kiloeva the Ministry never offered anything as such to them

The case of Vakhid Borchalov

Ucha Nanuashvili, Executive Director of "Human Rights Informational and Documentation Center" addressed the Public Defender with an application. Ucha Nanuashvili at his place received an application form Valiko Borchashvili (refugee certificate #014334-02) temporary place of residence-Georgia, village Jokolo, Akhmeta region.

By the declaration of V. Borchalov, his son Vakhid Borchalov was called up to do mandatory military service in Georgian Armed Forces despite the fact that he was a refugee and not a citizen of Georgia. V. Borchalov also explained that Vakhid Borchalov was born on May 14, 1988 in Kiev and was registered at 8 Kosirio St. apt. 93, city Grozno. He did not have foreigner's resident certificate in Georgia and from 1999 lived in Georgia as a refugee from Chechnia (refugee certificate #014334-01).

The Public Defender addressed the Ministry of Refugees and Accommodation and requested information and documents confirming the refugee status of Vakhid Borchalov.

By the information of the Ministry, Valiko Borchalov was not registered in the database of the Ministry with a refugee status. The above refugee certificate number 014334-01 was registered on the name of Vakhid Borchalov. He was granted the refugee status based on the documents presented by him, in particular, the documents of his parents confirming their citizenship of the Russian Federation and their residence in Chechnia. He also presented birth certificate issued in Ukraine.

Following the Ministry's protest, the local recruiting commission forwarded to the Ministry Vakhid Borchalov's biography and birth certificate issued in Georgia.

The police department initiated investigation on the fact of producing and using fake documents within article 362, Para.1of the Georgian Criminal Code. The case has two birth certificates of Vakhid Borchashvili issued in different countries.
By the explanation of I. Gorgadze, the Deputy Minister of Refugees and Accommodation in the case of confirmation of Vakhid Borchashvili's Georgian citizenship he would be deprived of the refugee status.

The case is under investigation.

Repatriation issues related to the exile of the population of the South Georgia by the Soviet regime in the 1940's

At the end of 1944 the population of Samtskhe-Javakheti was exiled in central Asia. On November 15, ninety thousand Turk Meskhetians, Khimshins, Tarakamels and Batumi Kurds were banished in a single day to the territory of Fergan in Uzbekistan, Tashkent and Samarkand, also to south Kazakhstan.

After the death of Stalin in 1953, there was a revival of hope among these people to return back home but unlike the other exiled people, the Turk Meskhetians were not given the opportunity to return home.

In June 1989 during the events in Feragan around 17 thousand Turk Meskhetians were deported to central Russia. In the 2 years to follow, around70 thousand Meskhetians moved to Azerbaijan, Ukraine, Kazakhstan and Russia.

According to current information the number of Turk Meskhetians is in between 400-450 thousand. The exiled people from Georgia are ethnic Georgians. They are residing densely in 8

countries: Uzbekistan, Kazakhstan, Kyrgyzstan, Russia, Ukraine, Azerbaijan, Turkey, Georgia and the United States. They are very well integrated in Kazakhstan and Kyrgyzstan among the population as well as in the society and the state bodies. After the Feragan events very few of them remained in Uzbekistan, they are not involved in the local economy and their rights are violated till date. The Meskhetians who settled in Ukraine 15 years ago are also well integrated within its society with an average economic status and the majority of them have Ukrainian citizenship. The same cannot be said about Meskhetians living in Russia The situation can be evaluated as positive only in the central part of Russia where the rights of Meskhetians' as an ethnic minority are not violated. In contrast the southern Russia, especially in Krasnodar area the Meskhetians and their rights are not protected. They often become the victims of chauvinism expressed by the local authorities and are pressured on ethnic grounds. 16000 Meskhetians live in this area. In the framework of the program of expatriation of the refugees to the United States 10 thousand people left Krasnodar area for the United States.

The difficult socio-economic situation and the repatriation issue of Turk Meskhetians exiled from Georgia in the 1940's by the Soviet Authorities are on the agenda again and it should be timely resolved. People exiled from Meskheti were torn apart from Georgia for decades, which estranged them from the people of Georgia. This supported to the creation of stereotypes and negative attitude towards the issue of the repatriation of Meskhetians.

The research of the European Center of Issues of Minorities revealed that 70% of the exiled Meskhetians wish to return to Georgia. Currently they are only asking for the right to return. By the same research presumably 8% of them will be returning, especially those who live in Uzbekistan and Krasnodar area where their situation is not favorable.

International Obligations

In 1999 Georgia assumed the following responsibilities in relation to the exiled population at the Council of Europe:

-Within two years of membership to elaborate legal basis defining repatriation and integration issues of the exiled people by the Soviet regime;
-Conduct consultations with the Council of Europe about elaboration of the legal basis;
-Within three years of membership start the repatriation and integration process and within twelve years of membership to complete the repatriation process of Meskhetians.

The above responsibility assumed by Georgia is mentioned in several documents adopted by the Parliamentary Assembly, among them 1257 (2001), 1415 (2005) resolutions and 1570 (2002) recommendation. The resolution 1415 (2005) determined the amended terms of fulfillment of this responsibility and 2011 was decided to be the final date for the completion of the repatriation process. This means that the legal and practical issues of the repatriation process should be handled immediately otherwise the process will not be completed by 2011.

Through the final resolution of the Parliamentary Assembly 1477 (2006) about "the implementation of the adopted resolution 1415 (2005) regarding the fulfillment of the requirements of the Council of Europe and the responsibilities assumed by Georgia" the Assembly appealed the Government of Georgia to do the following:

"…10.3 in relation with the population exiled from Meskheti: The State repatriation commission to continue its work; The Georgian government to actively look for the international assistance and speed up the adoption of the relevant legislation to create adequate conditions for the

completion of repatriation process by 2011; To fully implement the recommendations[1] in regard to the exiled people from Meskheti formulated in 1428 (2005) resolution by the Parliamentary Assembly;

The Commission studying repatriation issues

In regard to the responsibilities assumed at the European Council, the President of Georgia adopted a Decree #144 in 02.03.2005 on the creation of the Commission studying repatriation issues related to the exiled population from South Georgia by the Soviet regime in the 1940's. The Chairman of the commission was Giorgi Khaindrava, the State Minister on Conflict Resolution.

By the decision of the commission a special working group was formed, which studied the situation of the exiled Meskhetians at the place of their current residence. The group traveled to the south of the Russian Federation (Kabardo-Balkareti, Stavropol and Krasnodar areas, Rostov district), Azerbaijan (Baku, Saatli-Sabirabandi region), Kazakhstan, Kyrgyzstan and Uzbekistan. The group studied the opinions and attitudes in Azerbaijan and Russia in relation to the expatriation issues of exiled Meskhetians. By the report of 2005 the files of the exiled are still kept classified and without any intergovernmental agreement it is impossible to retrieve the personal files of the exiled people form the archives and arrange them to create a data base. Most of the personal cases are in Uzbekistan (more than 30.000) but it was impossible to travel there.

In the beginning of 2006, by the initiative of the commission and by the support of the European Center of Issues of Minorities, a working group was created, which resumed the work on the draft law created in 2000 about the repatriation of the exiled population from South Georgia by the Soviet regime in the 1940's. Consultations were held in 2001-2002 on the same issue. The efforts of the working group did not bring about any legal results. The commission stopped its work in 2006. The legal basis for the repatriation of the exiled population still does not exist, which raises serious doubts about the possibility of completing the process by 2011.

Draft law about "the repatriation of the exiled population from the south Georgia by the Soviet regime in the 40-ies of XX century".

In March 2001 the Official Delegation of Georgia in Strasburg presented the draft law prepared by the Young Lawyers Association. The UNHCR financially supported the elaboration of the draft law and assisted with active consultations.

The document from the day of its elaboration till date went through the expertise of the Council of Europe twice. The representatives of the Ministry of Refugees and Accommodation of Georgia, the Ministry of Foreign Affairs of Georgia, the Office of the State Minister on Conflict Resolution of Georgia and international non-governmental organizations were involved in the expertise work held in 2006. The Secretary General of the Council of Europe Terry Davis during his visit to Georgia in February 2007 noted that the presentation and discussion of the draft law on repatriation at the parliament was one of the main obligations of the country.

The remarks included in the conclusive report of April 25, 2006 by the experts of the Council of Europe should be taken into consideration during the discussions over the draft law.

Special attention should be paid to the Article 5 (2) sub-paragraph "b", according to which the repatriation status is granted based on the presentation of the documents proving the citizenship.

[1] Resolution 1477 (2006), Committee on the honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Parliamentary Assembly, Council of Europe.

The problem is only 5-10% of the exiled population have the citizenship of their respective country. As for Meskhetians in Russia and Krasnodar area they don' have the citizenships at all.

Despite this, the Article 5 (1) should be precisely formulated so that the people already living on the territory of Georgia could address the local competent bodies to get the status of repatriate.

It would be desirable to provide favorable conditions for the repatriates in acquiring Georgian citizenship.

In order for the State to regulate the repatriation process the article 10 of the draft law stipulates establishing annual repatriation quota. The need for the similar regulation is obvious to avoid economic problems caused by the massive influx of repatriates. It is also desirable to indicate the deadline of the repatriation process, which as we already mentioned is end 2011 and to establish annual quotes considering the deadline.

There are different opinions regarding the place of repatriation. The wish of the exiled population is to return to the places where they lived before the exile. But according to the draft law and the State policy the settlement of the repatriates will be within the entire territory of the country.

It is desirable to formulate the list of objective criteria needed in the selection of residence places for the repatriates. By making free choice between favorable and economically less interesting regions risk of corruption by the administration will be avoided.

It is important to define the financial part of the draft law. In particular, article 11 should stipulate that the Ministry of Refugees and Accommodation covers all the expenses related to the repatriation process within the fund allocated from the state budget. The issue of financing repatriation fund in article 12 needs to be clarified.

The above document, in case of its adoption will regulate legal aspects of repatriation process but it will not deal with the issues of the repatriates' social-economic integration. For carefully managing this process it would be wise for the Ministries of Refugees and Accommodation; Health, Labor and Social Welfare; Education and Science to elaborate long-term social-economic strategy for these people, which will later help central as well as the local authorities and administrative bodies to carry out coordinated activities and correctly define and implement the policy in regard to the repatriates. Elaboration of Georgian language educational programs can also be included in this strategy.

Negative attitude among the population of Georgia towards the repatriation of Meskhetians, is largely due to the lack of knowledge and information. In this case it would be desirable if the State could carry on informational campaign before the repatriation process, with the purpose of projecting the issue correctly and informing the population. The State commission had started the work on big media projects for forming public opinion, which was stopped at the end of 2006 with the dismissal of the commission. The restoration of this commission would help conduct the repatriation process smoothly.

Discrimination of ethnic Georgians by the Russian authorities

Deterioration of diplomatic relations should not be reflected on the restriction of human fundamental rights and freedoms and should not turn into discrimination. Unfortunately deterioration of relations between Georgia and Russia was followed by widespread violations of human rights and turned into xenophobia and racism. Persecution and restriction of Georgians was happening all over Russia. Ethnic Georgians living in Russia even with Russian citizenship did not dare go out into the street because their physical appearance could have served as a reason for the law-enforcers to interrogate them, arrest them illegally or for the aggressively inclined youngsters to insult or even kill them. Ethnic Georgians became the objects of deportation irrespective of their citizenship, age, profession or social status. Citizens of Russia who had ancestral links to Georgia were also not spared of being persecuted.

The deportation process was preceded by the extreme tension of Georgian-Russian relations. Russia imposed embargo in December 2005 on Georgian fruits and vegetables, in March 2006 on wine and in April 2006 on mineral waters. Russian authorities closed upper Larsi border crossing point in July 2006.

The situation got extremely tense when the Georgian law-enforcers arrested 4 Russian military intelligence officers on September 27, 2006 with espionage charges. (This is only one episode in the problematic relations between Georgia and Russia. These problems are deep-rooted) This incident was followed by recalling the Ambassador of the Russian Federation in Georgia and full economic blockade from October 2, 2006, Russia stopped all kinds of transport, communication and impeded with the postal and banking operations with Georgia.

There was pressure on small and medium scale business run by ethnic Georgians among them Russian citizens. Direct sanctions were given against ethnic Georgians and their businesses. Russian immigration service took a decision not to give any quotes to Georgians for living or working in Russia. This meant that employment of Georgian citizens on the territory of Russia was officially forbidden. Police sealed many enterprises, restaurants and shops belonging to the Georgians in different regions, among them in Moscow. The law-enforcers even checked the Georgian Orthodox Church in Moscow.

On October 4, 2006 Russian Duma adopted a special statement evaluating the actions of the Georgian Government in the conflict zones of Georgia as “state terrorism with respective conclusions and results”.

Russian Federation without any negotiations increased the price for gas from 110USD to 230 USD per 1000cubic/mt.

Full scale and all-embracing anti-Georgian campaign started. It was expressed through widespread searches, arrests, persecution and deportation of ethnic Georgians. This wave hit not only ethnic Georgians illegally residing in Russia but also ethnic Georgians with Russian citizenship.

One particular Georgian citizen from Cheliabinsk got in touch with the Public Defender of Georgia and informed him that he got warning from the local police like any other ethnic Georgian there. The police told him: “we have received instructions from Moscow to deport all of you from the country, but we know that the only fault about you is your origin and we are not

going to punish you for that". But they added that they would abstain from any actions until they did not have problems themselves.

This whole anti-Georgian campaign was developing by the active participation and coordination of the state agencies. This is confirmed through the order given by the Head of the Internal Affairs State Department of Saint Petersburg and Leningrad district. He instructed the internal offices (with the purpose of raising the effectiveness of implementing the order #02-15 30.09.2006 (6.1; 6.2, 7) ….. "through attraction of all the staff of the structural units to implement large-scale measures on the territory of Russia for identifying illegal Georgian citizens and for deporting them./ Initiation of only deportation at the court for violating rules of residence/. The implementation of the given measures is agreed with the Federal Department of Migration Service of Saint Petersburg and Leningrad district and the decision is also agreed with Saint Petersburg and Leningrad district court……Report daily to the Internal Affairs State Department starting from 01.10.2006 about the implemented measures according to the agreed resolution #0215 30.09.2006 (6.1; 6.2,7) form 078 with progressive results….."

This resolution deprives the right to fair court (European Convention, Article 6). Ethnic Georgians, among them those with legal status in the Russian Federation were arrested illegally and deported from the country. The arrested Georgians were restricted the right to lawyer, interpreter and the right to appeal. The court cases lasted very briefly and often without the attendance of the accused as they were kept in corridors or in cars transporting them to the court houses. There were cases when citizens legally arriving to Russian Federation were turned away from the airport.

Overall, the administrative court of the Russian Federation from October 1, 2006 to November 2006 made decisions on the deportation of 3297 ethnic Georgians with Georgian citizenship and Russian citizens with Georgian surnames. Among them more than 1500 deportations occurred before November 28, 2006. 440 deportees among them including minors were sent to Georgia by cargo planes without any seating arrangements.

Deported Georgians, including women and children had to return through the non-controlled Abkhazian territory. They became the victims of money extortion not to say anything about the security guarantees and satisfaction of the basic needs. Travel to the territory under Georgian jurisdiction cost 1000USD per person. The information was spread that on December 25, 2006 Georgian citizens Avtandil Kachibaia, Mirian Kikacheishvili and Lasha Sichinava deported from Russia were arrested. By our information these individuals are in Sukhuimi isolator, which is confirmed by the representative of UN Human Rights Office in Sukhumi.

48 years old Georgian citizen Tengiz Togonidze died in the bus traveling from Saint Petersburg to Moscow. He was under arrest for five days together with the other Georgian citizens; later he was transported on a crowded bus to Moscow. Being an asthma patient Togonidze requested for better treatment at the time of his arrest in Saint Petersburg but his request was denied. This incident can be acknowledged as inhumane treatment and murder.

52 years old Georgian citizen Manna Jabelia died in Moscow in #2 facility. She was not rendered medical assistance during the entire 2 months of imprisonment.

9 months pregnant Georgian citizen, after spending 2 days and nights in the streets, being in terrible condition for 2 weeks had a miscarriage after crossing the border by foot.

Internally displaced Georgian citizens got into similar situation. Their status was not taken into consideration. It must be noted that the IDPs holding old soviet passports were not persecuted but the ones holding legal Georgian passports were subject to deportation.

The wave of arrests and deportations hit the children as well. The administrations of many schools and high schools of the Russian Federation received instructions from the Ministry of Internal Affairs to forward them the information about the pupils with Georgian surnames, along with the information about the parents to determine their residence and work address.

On October 4, 2006 at 9 a.m. Georgian students were not admitted at the secondary school of the Russian Ministry of Defense in Tbilisi, Georgia. There were 80 students and 20 teachers. They were not provided with any explanation in connection to the action. The school administration did not make any comments either. A notice was put out on the gate stating that the "the citizens of Georgia are forbidden to trespass the school territory". According to the information available to the Public Defender's office the school administration received special instructions to expel all citizens of Georgia from the school.

Similar instructions were received by the Russian schools under Trans-Caucasus Russian Group in Tbilisi, Batumi and Akhalkalaki (see the chapter on children's rights).

Rights of ethnic Georgians guaranteed to them by the international legal documents were violated in the Russian Federation. In particular: right to freedom and security, fair court, respect to person and family; such requirements as prohibition of torture and discrimination, and misappropriation of rights etc. were violated.

- Human Rights Universal Declaration-Articles 2;3;5;6;7;9;12;13;15;17;18;and 23;
- International Pact on Economic, Social and Cultural Rights. Articles 2, Para.2; Article 6, Para. 1; Article 11.
- International Pact on Civil and Political Rights. Article 5, Para. 1; Articles 12; 13; 16; 17; Article 20, Para. 2; Article 24, Para. 1; Articles 26 and 27.
- European Convention on Protection of Human Rights and Fundamental Freedoms. Articles 3; 5; 6; 8; 14; 17;
- Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms, Article 1;
- Additional #1 Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms. Article 1;
- Additional #4 Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms. Articles 2; 4;
- Convention of the Commonwealth of Independent States (CIS). Articles 3; 5; 6; 7; 20 (2).

International Convention on Elimination of All Forms of Racial Discrimination was also violated.

International Organizations of Human Rights Protection and Monitoring expressed their concern in regard to the instances of human rights violations: illegal arrests of illegal migrants looking for shelter and deportations. These organizations are UN High Commissioner for Refugees, UN Special Reporter on the Protection of Migrants' Rights and Council of Europe.

The Human Rights Organizations advise the Governments to implement policy of returning the migrants (meaning arrests and deportations) which will be totally based on the respect and dignity of the citizens of the foreign countries.

The given document is based on the main principles which should be reflected in any of the acts concerning the return of foreign citizens and in all directives of the Council of Europe.

The standards of expelling foreign citizens should be common for the members of the Council of Europe as well as the so called transit countries, border zones and airport territories.

Voluntary return should always be the priority. It means adequate consultations and material assistance. For the return of the foreign citizens, voluntary return should be given the priority over forced deportation. A person should be given prior notice about the deportation and preparation time for departure to ensure safe return to the home country.

Helpless person should be protected from deportation. All actions should be carried out in accordance with the European Convention of Human Rights (article 5; no one is subject to torture or any other form of inhumane treatment or punishment), 1951 Geneva Convention about the Status of Refugees and its Protocol of 1967 (Convention about the Refugees) and with other requirements of International Legislation of Human Rights. All developed countries should avoid persecution of citizens and acknowledge that.

International Legislation prohibits widespread persecution. (International Convention about Civil and Political Rights, Article 13; #4 Protocol of European Convention n Human Rights, Article 4; Statute of the European Union about the Main Rights and Freedoms, Article 19;

Decision about returning the foreign citizens back to their home country should only be taken after all the international tools of the protection mechanism are applied, reflected in Articles 3 and 8 of the European Convention about Human Rights and UN Convention, which is based on protection of refugees from torture, inhumane and humiliating treatment and arrest.

According to the UN Convention, individuals below the age 18 are considered minors. It is forbidden to forcefully banish children from the country. According to the UN Convention of 1989 about the Children's Rights (children below 18 who are separated from their parents, home country or legal trustee, a trustee is assigned to them) the children should return to their home country based on their private interests and in secured conditions.

Persecution of persons with severe illnesses is categorically forbidden until the person can afford medical treatment upon the return to his country. ("really afford" is explained by #14 General Comment of UN Economic, Social and Cultural Rights Committee, Article 12; Medical service and items of basic necessity should be available for everyone without any discrimination under the jurisdiction of the State where the person is located. This regulation has four main and interrelated directives: every person has the right to access economic and any other information without discrimination).

Possibility of applying effective means should be given to the individuals subjected to proscription or deportation.
Any subject of proscription or deportation should not be deprived of the right to appeal against the court decision. This is clearly explained in Article 8 of the European Convention on Human Rights and the Convention Combating Torture. Therefore all possible legal tools should be explored and applied for the citizens to return to their country in secure conditions.

Arrest of a foreign citizen for further proscription is possible in extreme cases. According to the International Law about the Human Rights and Refugees the mechanism of arrest can be applied in extreme cases. This measure of punishment should not turn into a legal mechanism of policy for any given State. According to the European Convention on Human Rights, Article 5 (1) sub-

paragraph “f” this method can be applied in extreme cases only. A person can be arrested for short period of time based on a court decision. It is forbidden to arrest helpless individuals, such as orphan children, families with children, pregnant women, breastfeeding mothers, traumatized persons and victims of torture (Article 37 of the Convention about the Children’s Rights stipulates that arrest of children is categorically forbidden. The UN Human Rights latest recommendation about the relevant criteria and standards prohibits arrest of persons looking for shelter. February 1999). Part 6 of the recommendation-”Arrest of ethnic minorities looking for shelter is categorically prohibited”. Part 7-Any arrest order should have an alternative measure, especially for the following category of people:”helpless elderly, victims of traumas and disabled individuals”. Part 8-arrest of women:”Pregnant women and breastfeeding mothers should be strictly protected they need special care”.

According to the Para 5 of the same article state, the judge should ensure a fair trial process. The arrested person has the right to appeal against the court decision. In case of incorrect decision the arrested person should be freed immediately and the loss be reimbursed unconditionally. Persons looking for shelter unlike other accused (for criminal deeds) should be differentiated; men and women should be placed separately. But placement of couples together is possible. They should have the right to free judicial consultations, medical, psychological and social services, and right to meet family members, priest and the representatives of the non-governmental organizations at every detention facility. They also have the right to safe movement within the territory of the facility and satisfying basic hygienic needs.

It is inadmissible to deport one person from a family or separate the family members, (European Convention of Human Rights Protection and Main Freedoms, Article 8, right of respect to person and family). It is categorically forbidden to persecute children especially if a child has suffered serious physical or psychological trauma, has health related problems or if the child is in the educational process and the academic year is not finished yet.

Use of force for implementing punitive measures is possible only based on the permission from the Council of Europe. In regard to the deported persons the protection of dignity and the safety of the voluntarily returned citizens should be the priority. They should be transported to their country according to the 1957 Regulations of the Council of Europe, which means creating safe living conditions for the citizens, protecting their fundamental rights and freedoms, physical immunity, right to life and other basic rights.

If a person is not deported, then he/she should be granted a legal status in the country. If the decision on deportation or return is not implemented within the time frame established by the court then the ruling against a person is annulled and furthermore accommodation space is allocated for him/her with the possibility to enjoy all the rights like the other citizens of the country.

In regard to the facts of xenophobia and discrimination against ethnic Georgians in the Russian Federation the Public Defender made a number of statements and addressed Human Rights Organizations globally, including the UN High Commissioner for Human Rights, Human Rights Commissioner of the Council of Europe, OSCE, Ombudsmen and Public Defenders of all countries and members of European Network of Ombudsmen of Children’s Rights requesting to react to the incidents of discrimination and violation of the rights of ethnic Georgians in the Russian Federation and the Russian Authorities to stop the policy of xenophobia and racism.

This is “the” case when all the human rights defenders should voice their opinion against the policy of xenophobia and racism. Keeping silence today means that tomorrow we will have to live in a Europe where xenophobia, hatred and racism towards foreigners become the rule of life.

Whatever is happening to Georgians today, if it is not stoped soon it will happen to all other national monitories tomorrow"- said the Public Defender in his statement.

The Public Defender addressed the Human Rights Commissioner of the Russian Federation to protect within his competence the rights and freedoms of the ethnic Georgians on the territory of Russian Federation.

It must be noted that the policy of xenophobia and racism implemented against ethnic Georgians and other ethnic groups were condemned by a number of citizens and human rights organizations of the Russian Federation.

The Public Defender received a reply to his statement from an authorized official of UN Human Rights High Commissioner Maria-Franciska Ize-Charina that the UN Human Rights Commissioner's office was carefully monitoring the development of the events and was using all possible means to raise the human rights issues, especially of the unprotected persons, such as children and migrants. The UN Human Rights High Commissioner got in touch with all the sides involved in this matter with the purpose of easing the severe impact on the lives of ordinary people. The UN Human Rights High Commissioner held consultations with the participating sides to make sure that the people were protected from violence and insult and that the current dispute should be resolved through constructive dialogue. Mari-Franciska Ize-Charina also mentioned that the High Commissioner would personally watch the developing events with all due attention

These events were objectively and strictly reflected in the report about the Georgian-Russian relations by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe.

It must be specially noted that the deterioration of the diplomatic relations between the two countries were not followed by the incidents of human rights violations, discrimination and insult of the ethnic Russians neither by the Georgian authorities nor by the society in Georgia.

Assistance by the Georgian Authorities to the deported persons from the Russian Federation

The competence and the authority of the Public Defender of Georgia is effective within the territory of Georgia. Therefore the Public Defender does not have any other means but to make statements and appeals to protect the rights of the Georgian citizens in the Russian Federation. The Ministry of Justice of Georgia and the temporary parliamentary investigative commission studying the cases of the deported persons from the Russian Federation were collecting the materials for further actions. The Public Defender forwarded authorities, with the applications and explanation letters received from the deported persons from the Russian Federation.

On the request of the Public Defender, experts of "Empatia", psycho-rehabilitation center of victims of torture, violence and expressed stressful impact visited adults deported from Moscow in October 2006 and sent the results of the preliminary medical monitoring to the Public Defender. This information was also forwarded to the temporary investigative commission and the Ministry of Justice, which on its part was preparing an appeal to the Human Rights European Court.

Additionally, The Public Defender took a decision to keep a track over the verbally assumed responsibilities and implemented measures by the Georgian authorities towards the deported

people. Unfortunately, by the information available to the Public Defender, the State did not take any active measures to help the affected people.

It must be noted that every deported person was indicating in his/her application that they were in Russia for the sole purpose of improving their difficult socio-economic condition.

By the information available to the Public Defender, a group was formed at the national investment agency implementing the program for the deported persons from the Russian Federation. The Ministry of Refugees and Accommodation located additional financial sources and paid 100 GEL to every deported individual upon presentation of the deportation documents.

It must also be noted that the citizens of Georgia who lived away from the home country for many years were not aware about the specifics of the social protection mechanisms in Georgia and the procedures involved in addressing for assistance. There was no governing policy or any kind of coordination when providing explanation to the deportees.

In addition, they had problems at different administrative bodies. In particular a deported IDP was able to get an IDP certificate only after applying to the Public Defender. The same can be said about a deported IDP who got a one time allowance and a deported student who after the involvement of the Public Defender got information from the Ministry of Education and Science about the rules of transferring to a different educational establishment. In this case the deported IDP was a third year student, which means that she became a student before the Law “about high education” was passed. Therefore she is not entitled to pass the unified national exams to move from one educational establishment to the other.

There are cases when the applicable legislation assistance to the deported persons is impossible. In such cases the Public Defender is not responsible to assist the deported citizens or adders every administrative body with recommendations. It is also not known to the Public Defender the agency designated to handle the given case because the State did not take any special measures to assist the deportees

For example, how should the deported student move from one educational establishment to another if she became a student before the Law about “high education” came into effect. Who should assist the student with the preparation for the unified national exams, because in most cases such persons don’t have means to hire a tutor.

Who should help the deported citizen, 9 months pregnant with four children, who slept in the street for 2 days, spent two weeks in difficult conditions and crossed the border by foot and had a miscarriage. She was given one-time allowance of 50 GEL and was told that she could not benefit from the assistance to multi-children families because such assistance was given in Gurjaani region to the families with more than five children.

How can a car have proper registration, when a deported person had to cross the territory of Abkhazia by the car fleeing for his life and could not cancel the registration of his car at the Russian Federation fearing he would be arrested.

The Ministry of Refugees and Accommodation delays granting IDP status to a deportee because the deportee is unable to provide the address of his temporary residence as he/she does not have a shelter.

In such cases the Public Defender goes beyond the responsibilities assigned to him by the Law and frequently conducts consultations with the deported people about who to apply with an application and what to hope for.

It must be noted that through the report about the Georgian-Russian relations prepared by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, it is known that the Government of Georgia was given recommendations. Among them was the urgent recommendation to provide immediate moral, legal and financial assistance to the deportees, and Implemention of long term integration policy for the IDPs instead of one time, short-term immediate measures.

Employment

On February 1, 2007 the Public Defender addressed Irakli Giorgobiani, the deputy minister of Labor, Health and Social Welfare to provide him with precise information about the measures to be implemented and assistance to be rendered by the Ministry of Labor, Health and Social Welfare for 2007 for the deported people from the Russian Federation.

Respectively, on November 29, 2006, on December 19, 2006 and on January 11, 2007 the Public Defender addressed Levan Peradze, Director of the State Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Welfare and Merab Lomindaze, Head of the National Investment Agency and requested action from them in regard to employment of the deported persons from the Russian Federation. The Public Defender sent contact information of all the deported persons and information about their profession to the above agencies.

According to the reply by S. Beraia, deputy head of the National Investment Agency his agency within its competence was ready to contact the deported persons from the Russian Federation and provide assistance. Few deported persons confirmed in private conversations that they were contacted by the given agency. Although, by the information provided from the agency only one person was employed.

According to the reply from Levan Peradze, Director of the State Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Welfare a group was created at the National Investment Agency, which was responsible for implementing the program for the deported individuals from the Russian Federation. Even though, the Public Defender had mentioned in his letter to the Ministry that it had forwarded the similar letter to the National Investment Agency.

The same is confirmed by the letter of Vakhtang Tsetskhladze, head of the President's Correspondence Handling and Analysis Department. A deported person addressed him with an application. The letter from V. Tsetskhladze said: "The President's Administration does not have the information about the measures to be taken by the Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Welfare. The agency was sent relevant reminder about that".

The Public Defender has not received a reply from the Ministry of Labor, Health and Social Welfare.

The case of Tengiz Jgamadze

The Public Defender addressed Diana Zghenti, head of the Consular Department of the Ministry of Foreign Affairs to study the case and within her competence render assistance to Citizen T. Jgamadze.

Tengiz Jgamadze is a displaced person from Abkhazia and deported from the Russian Federation. He lived in Saint Petersburg with his family for the purpose of improving his difficult socio-economic condition. A taxi driver by profession, he was leasing the car and after certain period of time was able to make the full payment of the lease.

According to T. Jgamadze his son was arrested without any explanation and he was able to free him only after paying a considerable amount of money. On the third day of this incident his wife and he got arrested. Vyborg district court of Saint Petersburg ruled administrative deportation for T. Jgamadze and his family from the Russian Federation. He was given 15 days to leave the country.

T. Jgamadze explains that he returned to Georgia with the help of ethnic Abkhazian living in Russia. He crossed the border at Psou paying certain amount of money before arriving at Zugdidi.

According to T. Jgamadze he did not cancel the registration of his own car in Russia on the advice of the above person because there was a possibility the car would be confiscated at the Russian border post. T. Jgamadze does not have accommodation place in Georgia and found temporary shelter for his family at the house of Indiko Kiria from Zugdidi region.

The deported person requests for assistance to get registration for his car in Georgia.

The Public Defender addressed Giorgi Grigalashvili, Chief of Georgian Patrol Police to assist deported T. Jgamadze within the jurisdiction of the Law.

The Chief of the Patrol Police indicated in his reply that T. Jgamadze's car "Gaz-322132" was registered by the Russian Registration Service. For the registration of this car in Georgia it's registration in Russia should be canceled. Following which, the car is subject to customs clearance and it is only then that the mentioned vehicle can be registered at the Patrol Police Registration Service in Georgia.

Since the Vyborg district court in Saint Petersburg ordered deportation for the family of T. Jgamadze, he will not be able to return to Russia with his car to cancel the registration.

We have not received a reply from the Ministry of Foreign Affairs yet.

The Case of L. Nachkebia-financial assistance to the IDP

On December 7, 2006 Liana Nachkebia, IDP from Abkhazia sent an application to the Public Defender. According to the applicant, she lived and worked in Russian Federation for the past 10 years to improve her socio-economic situation. She was working as a sales person. On October 3, 2006 she was arrested by the policemen of 43rd police office in Moscow, they physically assaulted her and took her to the police office. On October 17 she was deprted from the Country.

By the applicant's statement, upon her arrival to Georgia she applied to the Ministry of Refugees and Accommodation to receive social assistance. The Ministry did not react to her application. Finally L. Nachkebia addressed the Public Defender for solicitation to get financial assistance.

After the widespread deportations of the Georgian citizens from the Russian Federation the Public Defender applied to Irakli Gorgadze, Deputy Minister of Refugees and Accommodation to find out how the Ministry was going to assist the deported persons. From the reply of the Deputy Minister the Public Defender found out that the Ministry intended to use its fund for one-time annual assistance to help the deportees from Russia.

According to the General Administrative Code of Georgia, Article 12, Part 2 the Ministry of Refugees and Accommodation as an administrative body was responsible to deal with the application regarding the issue of its competence. According to the Article 100, Part 1 the Ministry was supposed to take a decision within a month after receiving the application and reply to the applicant about its decision in the manner established by the law.

In line with the above mentioned, the Public Defender forwarded all the materials available to him to the Ministry of Refugees and Accommodation.

After the appeal of the Public Defender, the deported citizen L. Nachkebia received financial assistance. By the letter of Irakli Gorgadze, the deputy minister of Refugees and Accommodation the Ministry was able to locate additional financial resources and paid 100 GEL to every deported person form the Russian Federation upon presentation of the deportation documents.

The Case of Nugzar Jalagonia-IDP student

The Public Defender addressed the Minister of Education and Science of Georgia Aleksandre Lomaia in regard to the case of Nugzar Jalagonia, IDP from Abkhazia and deported from the Russian Federation, 3rd year student of Judicial Faculty at Moscow "State Open University",

N. Jalagonia finished the Georgian Lyceum "Kolkheti" in Moscow and continued studies at Moscow "State Open University" judicial faculty. He successfully managed to complete two academic years.

Deported Jalagonia has student's certificate of the above University along with student's examination book #1704897 and mark-sheets of the two completed academic years #9117.
The applicant requests that he be given the oppertunity to continue studies at the relevant educational establishment in Georgia.

It must be noted that the first letter and the available documents in this regard were forwarded to the Minister on November 24, 2006. The Public Defender was asking for the circumstances to be taken into consideration.

After sending the second letter on January 11, 2007 the Public Defender received a reply from the State Accreditation Service of the Educational Establishments of Georgia. N. Jalagonia was given detailed information about the transfer process to different educational establishment.

The case of Khatuna Dzadzamia-IDP student

The Public Defender addressed the Minister of Education and Science Aleksandre Lomaia regarding Khatuna Dzadzamia, IDP from Abkhazia and deported from Moscow, the fifth year student at the Institute of Foreign Languages of Moscow, faculty of philology.

Deported Dzadzamia has student's certificate #012 issued by the above institute on September 1, 2002 and the agreement signed on the same date about the training #112 specialist. The agreement is made between the parent of K. Dzadzamia N. Chaava and the Director of Moscow Institute of Foreign Languages. According to the agreement the Institute takes the responsibility to train the specialist and the parent takes the responsibility to pay the institute (an equivalent of 800 USD per semester in Russian rubles). Education period is defined as 2002-2207.

The applicant requests to be given the opportunity to complete her studies at the relevant educational establishment in Georgia.

The Public Defender sent the first letter to the Ministry on October 25, 2006 and the second letter on January 11, 2007 but has not received a reply yet.

The case of Nugzar Jalagonia-IDP status

The Public Defender addressed Irakli Gorgadze, Deputy Minister of Refugees and Accommodation regarding Nugzar Jalagonia, IDP from Abkhazia and deported from the Russian Federation.

By the explanation of the applicant, in July 2006 he applied to the Ministry of Refugees and Accommodation (application #11543) to get IDP status but has not received a reply to his request yet and therefore does not have an IDP status.

In regard to the above issue the Public Defender addressed the Ministry of Refugees and Accommodation on November 24 of the current year.

By the reply (#06/01-17/8258) of L. Bregvadze, Head of IDP Department of the Ministry of Refugees and Accommodation we receieved confirmation that N. Jalagonia did not take the mandatory registration process of IDPs in 2003 and his IDP status was terminated according to the Law. Although, it is possible to restore the status upon presenting the necessary documents.

It must be noted that the Public Defender in his letter (#3303/05-2/1843-06/1) did not ask for the explanation as to when and why the IDP status of N. Jalagonia.was terminated The Public Defender was only asking for clarification as to why N. Jalagonia did not receive a reply to his request about getting an IDP status. According to the Georgian Organic Law about the "Public Defender" N. Jalagonia was supposed to get a reply about the decision taken and the implemented measures by the Ministry.

According to the General Administrative Code, Article 12, Part 2 the Ministry of Refugees and Accommodation as an administrative body is responsible to deal with the applications on the issues within its competence and according to the Article 100, Part 1 within one month from receipt of the application take the relevant decision. The applicant should be notified about the decision in the manner established by the Law.

According to the resolution #127, Article 2 (11) of the Ministry of Refugees and Accommodation "a person addressing the Ministry about getting an IDP status should be interviewed within ten days form the receipt of the application according to the Law about "internally displaced" article 1".

According to the Article 2 (20) if the application of a person does not correspond to the requirements stipulated in the General Administrative Code and in the paragraphs 3; 4;5; and sub-paragraph "b" of the above article then the Department and the territorial body should inform the applicant within three days of the receipt of the application about the faults in the application. Time allocated for the correction of the fault should not be less than 5 days and no more than 10 days. If the applicant asks for the extension of the time limit then the department or the territorial body is authorized to extend it only once for up to 15 days. According to the article 23 "an IDP who does not attend the registration process in the established time frame should address the Ministry for the registration before the 10th day of every month. The Ministry conducts the registration within 10 days in the manner established by the law".

In the given case, the General Administrative Code as well as the requirement of the resolution #127 of the Ministery is neglected.

The Public Defender sent another letter to the Ministry, but the Ministry did not reply. The deported person confirmed in the private conversation that after the involvement of the Public Defender he received the IDPstatus. Later the Ministry confirmed the same that N. Jalagonia was granted an IDP status on December 12, 2006.

The case of David Kalandia

The Public Defender addressed the deputy minister of Refugees and Accommodation Irakli Gorgadze regarding David Kalandia, (born 14.06.1968) in Abkhazia, Gulripshi reg. village Babushara, an IDP from Abkhazia and deported from the Russian Federation.

By the explanation of the applicant he lived in Moscow from 1995. In October of the current year he was deported from the country. He returned to Georgia where he does not have friends or relatives.

D. Kalandia noted that on November 6 of the current year he applied to the Ministry of Refugees and Accommodation of Georgia (application #15232) to get an IDP status. He was asked for a document about his place of residence along with a notarized letter from the owner of the residence supporting his claim. He presented all required documents but was told at the Ministry that he would be able to get the status in one month.

Article 3, subparagraph 2 of the Georgian Law about the rules of registration of the citizens of Georgia and foreigners living in Georgia, the issuance of identification card (residence certificate) and passport of citizens of Georgia "the person's place of residence is considered the place chosen by the person". According to the Article 5, subparagraph 1 of the same Law "for the registration a person is supposed to present an application, identity card (residence certificate) and a document on the ownership of the dwelling place or a letter of consent from the owner of the dwelling place, which is a written consent from the owner of the dwelling place or from the tenant of the dwelling place under the state ownership, based on this letter present documents without notary registration certifying ownership or rental of the space". According to subparagraph 2 of the same article "a person without a dwelling place can undergo the registration process based on his/her current residential area without indicating dwelling address".

Article 1^1**,** subparagraph "c" of the Georgian Law about "the internally displaced" defines the term "IDP certificate" as "a document issued by the Ministry of Refugees and Accommodation to the internally displaced persons certifying that the person is internally displaced and has an IDP status". Subparagraph "f" defines the temporary dwelling place of an IDP as "a dwelling place chosen by an internally displaced during his/her displacement period or place of temporary accommodation". According to the Article 1 of the same Law, a displaced person is a citizen of Georgia or a person permanently residing in Georgia without the Georgian citizenship who was forced to abandon his permanent dwelling place and settle within the territory of Georgia because the lives, health and freedom of his family and himself were threatened as a result of an aggression from a foreign country, internal conflict or grave violations of human rights".

The resolution #127 (October 2, 2006) of the Ministry of Refugees and Accommodation defines the rules of recognition of an internally displaced person, granting IDP status and registration process. According to the Article 2 (6) of this resolution it is inadmissible to request any document or information, which is not related to "the circumstances described in the Article 1" of the Georgian Law about "internally displaced".

According to the Article 2 (11) of the same resolution "a person addressing the Ministry about getting an IDP status should be interviewed within ten days form the receipt of the application according to the Law about "internally displaced" article 1". According to the Article 2 (20) if the application of a person does not correspond to the requirements stipulated in the General Administrative Code and in the paragraphs 3;4;5; and sub-paragraph "b" of the above article then the Department and the territorial body should inform the applicant within three days from the receipt of the application about the faults in the application. Time allocated for the correction of the fault should not be less than 5 days and no more than 10 days. If the applicant asks for the extension of the time limit then the department or the territorial body is authorized to extend it only once up to 15 days. And according to the article 23 "an IDP who does not take the registration process in the established time limit should address the Ministry for the registration before the 10^{th} day of every month.The Ministry conducts the registration within 10 days in the manner established by the Law".

As for renting a dwelling place, the Georgian Civil Code does not prohibit verbal agreement about renting a dwelling place.

Concluding from above mentioned, it is illegal to imperatively require a notarized document of a temporary dwelling place for issuing IDP status. If the temporary dwelling place of an IDP is a facility under the State ownership, request for a written agreement is possible by presenting a document on ownership or on rental without notary registration. In other cases address indicated by a citizen in the application form can be considered as a document of the dwelling place. Time limits defined by the Law and by the resolution should not be violated, especially when dealing with the deported persons from the Russian Federation.

The Ministry did not inform the Public Defender about the outcome but the deported person confirmed in the private conversation that after the involvement of the Public Defender he got the IDP status.

Georgian Citizen Prisoners at the Detention Facilities Abroad

During the reporting period we requested information from all the consulates of Georgia in the foreign countries about the detained Georgian citizens. Unfortunately the responses were delayed and so far we have information from only six countries, which is not enough for making an analysis or draw conclusions. We hope that for the next report we will be able to collect more information.

Armenia

According to the situation of May 30, 2006, 18 citizens of Georgia were serving their sentences in the Republic of Armenia, among them 11 are between the age of 20-35 years old and seven prisoners are between 33-55. The citizens of Georgia who were tried on the territory of the Republic of Armenia are serving sentences for theft, robbery and violation of customs rules.

Azerbaijan

According to the situation of June 30, 2006, 38 citizens of Georgia were serving their sentences in the Republic of Azerbaijan. 14 among them are between the age of 20-35 years old and the rest are 35 to 55. Only one of them is a woman. The citizens of Georgia convicted in the Republic of Azerbaijan are serving the sentences for theft, robbery, drug abuse and murder.

Arab Republic of Egypt and Syria

According to the situation of April 19, 2006 Georgian citizens were not in the detention facilities of the Arab Republic of Egypt and Syria.

Ukraine

According to the situation of January 1, 2006, 254 Georgian citizens were serving sentences in the detention facilitates of Ukraine.

Russian Federation

By July 26, 2006 around 2000 Georgian citizens were serving sentences at the detention facilities in the Russian Federation. Among them 58% were between the ages of 18-40 years old and 21% 41-61 years old. The Georgian citizens tried by the courts of Russian Federation are serving sentences for robbery and theft, 18% is serving sentences for drug trafficking, 2% of the convicts serving sentences for murder and the rest for petty crimes.

Austria

According to the information of 2005, 2614 Georgian citizens were in the detention facilities of Austria. Among them 1610 convicts are men and 3 women, 996 men and 5 women are accused. 80 % of the arrested persons serve their sentences for theft and robbery. The majority of the arrested are drug and psychotropic substance abusers. By the Legislation of Austria, the use of drugs is not punishable and in case of admitting the use of drugs, a person is sent for rehabilitation.

Freedom of meeting and demonstration

Freedom of peaceful gathering and association with others is guaranteed by Article 11 of the European Convention, which is related to the political and social values of the democratic society.

The above right is guaranteed by the Constitution of Georgia, Article 25 and the Law of the Parliament of Georgia of 1997 "about meetings and expressions". The principle recognized by the Constitution is a possibility of the citizens to express their opinion and hear publicly together with other citizens. This principle also means respect to human dignity and personal freedom.

In the second half of the previous year, the authorities illegally interfered with the peaceful demonstrations on a few occasions.

Peaceful protest action of "Veterans' Darbazi"

On October 31, 2006 the members of the "Veterans' Darbazi" applied to the Public Defender. They were on hunger strike for the 5th day in a row, in front of the State Chancellery peacefully protesting against the abolishment of the benefits of the veterans.

According to the statement made by Chiora Tsiklauri, the chairperson of the organization, on October 31 of the current year the representatives of the patrol police came and demanded the protesters to call off the protest action. They took the blankets and posters from them and forced them into the cars of patrol police. The protesters abided in order to avoid any further deterioriotion of the situation. The patrol police brought them to district Didi Digomi and left them in the vicinity of supermarket "Goodwill".

The members of the protest action returned to the surrounding territory of the State Chancellery and continued their hunger strike.

The same day, the representatives of the Public Defender visited the protesters. The patrol police was again demanding to call off the protest action. The policemen denied the fact of pressure being applied and calling for the dispersal of the protest action during the conversation with the representatives of the Public Defender. The policemen also declared that they were unaware of anything about calling off the protest action and moving the protesters to the territory of the supermarket "Goodwill" the previous day. Later the protesters recognized the policeman heading the dispersal of the protest action and transferring them to the surrounding territory of the supermarket "Goodwill".

The lawful request of the representative of the Public Defender to the policeman to write an explanation letter about this issue was declined. He also refused to identify himself, but one of his colleagues was addressing him as Dato. The given person left the territory of the State Chancellery in the patrol police car bearing registration numberWKW-376 and side number 7116.

After the protest action was over on November 1, the patrol police took the protesters to the patrol police office with the purpose of inspecting them for drug abuse. When the protesters

questioned the police for their actions, they were told that the police had received information about people under the effect of drug in the vicinity of the State Chancellory.

According to the statements made by the participants of the protest action, the drug expert Tamuna Machitidze was refusing to carry out the procedure claiming this was the violation of the Law and was asking for certain procedual document. The procedure started after David Todua, chief of second section of Mtatsminda Patrol Police assured her that this document was in the preparation process.

The checkup revealed that the protesters were not under the drug effect. Five of them were allowed to leave the building after being detained for three and a half hours from the arrest and the remaining two left the building in four hours.

- According to the Article 247 of the Administrative Code of Infringements the administrative arrest of an administrative offender should not last more than three hours.

The arrested people during the check up on the use of drugs were asked to turn off their mobile phones and surrender their documents and IDs. Among the arrested people three of them were invalids of the second category; one was an invalid of the first category and one person a patient of epilepsy. According to them, three of the arrested felt bad and asked to have their blood pressure checked. Since there was no device for checking the blood pressure, they asked to call for an ambulance but were refused and told that they would be provided the necessary medications.

According to the protest action participants, the police did not fill up the administrative detention report and denied the protesters request for a lawyer, the police did not even provide any explanation to the arrested people the reason of their arrest. This is a case of deliberate illegal arrest and inhumane treatment on the part of the police.

- **By the Article 147 of the Georgian Criminal Code deliberate illegal arrest is punishable with restriction of freedom for up to two years or with imprisonment between five to ten years. If the illegal act results in severe consequences then the imprisonment increases between nine to twelve years.**
- **Inhumane treatment is punishable according to the Article 144, ($3^{1)}$ of the Georgian Criminal Code by imprisonment of 4 to 6 years.**

On November 2, 2006 The Public Defender forwarded the materials available to him to Giorgi Latsabadze, Deputy Prosecutor General, to the Head of Human Rights Department at the Prosecutor General's Office and to Giori Grigalashvili, Chief of Patrol Police of the Ministry of Internal Affairs for further reaction. We requested copies of the detention report of the members of the "Veterans' Darbazi", transcript of the record book of 022 about the incoming calls on November 1, 2006 from the State Chancellery informing about the persons under drug effect on the surrounding territory of the State Chancellery and the telephone number from where the call was made. We also asked to identify the representative of the patrol police who refused to give an explanation to the representatives of the Public Defender on October 31, 2006 and more so, refused to even share his name; disciplinary measures provided for by the law should have been implemented against him.

On November 8, 2006 the Prosecutor General's office sent a reply to us, stating that the materials sent by the Public Defender were forwarded to Tbilisi Prosecutor's office for studying the case. Tbilisi Prosecutor's office based on the letter of the Public Defender initiated an

investigation within article 333, Part 1 of the Georgian Criminal Code (excessive use of official authority).

We received a reply from Tbilisi Prosecutor General's Office on January 23, 2007 stating that the investigation was underway, at the same time we also found out that the policemen who moved the protesters to the territory of the supermarket "Goodwill" and the second time took them to check on the use of drugs were not identified. Identification of the policemen should not be a problem; it is enough to verify the information about which police car was patrolling on the given date in the surrounding territory of the State Chancellery. The explanation letters of the veterans forwarded to the Prosecutor General's office by the Public Defender indicated the name David Todua, as chief of second section of Mtatsminda Patrol Police. The Patrol Police Department of the Ministry of Internal Affairs has not replied to the Public Defender's letter of November 2, 2006, which violates time limits established by the Georgian Organic Law about "the Public Defender". On January 22, 2007 the Public Defender sent a reminder to the Patrol Police Department.

By the reply from the Prosecutor General's Office on January 23 we were informed that the representatives of the "Veterans' Darbazi" were interrogated inconnection to the investigation of the above case. In particular Chiora Tsiklauri, Mamuli Chachanidze and Tamaz Tevdorashvili, who confirmed the fact that they were moved to the territory of the supermarket "Goodwill" but they could not identify the policemen and didn't remember the license numbers of the police cars.

The representatives of the Public Defender got in touch with Chiora Tsiklauri. According to her she told the investigator about Todua's name, who was participating in the process of checking the veterans on the use of drugs. Chiora Tsiklauri also confirmed the fact mentioned in the letter from the Prosecutor General's Office, that interrogation of all the veterans was not possible since they were out of Tbilisi.

The investigation is still underway. Despite the fact that the name of the patrol police officer participating in the arrest of the protesters is known to the investigators, as well as the license number of the patrol car, the investigation is not being conducted properly and the relevant measures are not being implemented to punish the guilty. Five months have passed since the incident occurred and the investigation does not have suspects, which makes us think that the investigation is tendentious.

Assault on the members of "Veterans' Darbazi"

On November 3, 2006 the members of the movement of the war veterans Darbazi addressed the Public Defender again. According to them on November 3 at 12:30 p.m. Chiora Tsiklauri and David Gurieli were on their way towards the State Chancellery when they were attacked by two strangers, the men physically assaulted and insulted them. The assaulters were demanding them to stop protest actions: "stop protest actions or else things will get worse for you……". The assaulters then fled to the park of April 9. The witnesses, Tamaz Tevdorashvili and Megi Kochlamazashvili, Chiora Tsiklauri's spouse and the members of the same movement confirm the incident.

The same day the representatives of the Public Defender talked to the above four individuals and asked them to write explanation letters. As a result of the incident, Chiora Tsiklauri was slightly injured in the leg and David Tsiklauri suffered injuries on his elbow.

According to the applicants they related the incident to the patrol police and with their help they proceeded to Mtatsminda-Krtsanisi district court.

The Public Defender assumes, this incident was directly related to the events of October 31 and November 1, 2006, and was designed to apply pressure the members of the veterans' movement to stop their protest actions. On November 17, 2006 the explanation letters of the above persons were forwarded to the Prosecutor Generals' office, the Human Rights Department at the General Prosecutor's office and Tbilisi Prosecutor's office.

On December 5, 2006 we received a reply from Tbilisi Prosecutor's office informing that the materials were forwarded to Mtatsminda-Krtsanisi Internal Affairs Department, who on its part initiated an investigation of the criminal case #06063303, on the fact of deliberately causing physical injuries toAleksandre (Chiora) Tsiklauri and David Gurielidze. (Within Article 118, Part 1of the Georgian Criminal Code). The investigators were given instructions on conducting thorough investigation. Final result of the investigation is not known yet.

The Public Defender evaluated the incident and the demand made by the patrol police for the war veterans to stop protest action on October 31, 2006 as a violation of the right to meeting and expression.

The right to meeting and expression is one of the fundamental right guaranteed by the Constitution, in particular Article 25 stipulates: "everyone with the exception of representatives of military forces, police and security services has the right to public meetings and expressions indoors as well as outdoors without prior permission".

According to Part 3 of the same Article, the authorities can stop public meetings and demonstrations only if it turns into an illegal action.

- *According to the Article 161 of the Georgian Criminal Code illegal obstruction through misuse of power with the right to stage meeting or demonstration or to participation is punishable by penalty or by restriction of freedom for two years.*

The above actions of the patrol police can be evaluated as the violation of the fundamental human rigof restricting the expressing of opinion and the right to meeting. Its actions were aimed at threatening the participants and organisers to stop the protest action.

The important fact in the case of the veterans is that the patrol policemen refused to give any explanation to the representatives of the Public Defender. According to the Georgian Organic Law of about the "Public Defender", Article 18, subparagraph "c" "during the evaluation of a case the Public Defender has the right to receive explanation on the relevant issues from any official at any level". According to the Article 23, Part II of the same Law "during the evaluation of the case, the state body, ranking official or a judicial person whose actions or decisions are being scrutinized is obligated to provide explanation related to the issue as and when required by the Public Defender". According to the Article 27 "special appointees of the Public Defender exercise the above authorities." The representatives of the patrol police violated the Organic Law by refusing to identify themselves.

Recommendation:

To the Ministry of Internal Affairs:

- The investigation should identify the representatives of the patrol police who moved the members of the "Veterans' Darbazi" to the territory of the supermarket "Goodwill" and on the following occasion to the office of the patrol police for inspecting them on the use of drugs.
- The patrol police representative who refused to give explanation to the Public Defender's representative should be identified. His actions violated the Organic Law of Georgia about the "Public Defender". Disciplinary measures should be implemented towards him.

Action of the Equity Institute

On the evening September 27, 2006, three representatives of the "Equity Institute" (Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili) were arrested because they were inscribing "No to violence"on the asphalt and painting the figure of crucifix in front of the State Chancellery

The patrol police representatives without offering any explanation forced them into the cars and drove them initially to the clinic of drug addicts for a check up (which revealed that they were sober) and finally to the pre-trial detention isolator.

While conducting the check up at the clinic for drug abue the relatives of the arrested gathered in the yard (around 20-25 persons, among them Irakli Kakabadze) along with the media representatives. The relatives and friends of the arrested tried to stop the police cars since the policemen were trying to conceal the location where they were going to take the arrested, leading to a verbal confrontation. Irakli Kakabadze protested aloud and questioned the policemen: "why are you acting like soviet dogs?" Upon which he was also arrested. On September 28, 2006 Irakli Kakabadze together with his friends were tried by the Administrative Cases Panel of Tbilisi city Court.

Judge Tamar Shushiashvili within Article 173 of the Georgian Administrative Code of Infringements ruled 15 GEL penalties for Levan Gogichaishvili, Jaba Jishkariani, David Dalakishvili and Irakli Kakabdze and recognized them as offenders. Article 173 of the Georgian Administrative Code of Infringements stipulates:

- **Disobedience to legitimate orders or requirements of the law-enforcers or military servicemen while carrying out official duty is punishable by a penalty of paying 10 GEL or through community work between one and six months or by penalty equivalent to 20% of the offender's salary. If the punishment is found to be insufficient, taking into account the circumstances of the case and graveness of the offence, the penalty may be upgraded to 20 days of administrative arrest**

The court concluded that "Irakli Kakabadze, Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili together with other people gathered in front of the State Chancellery on September 27, 2006 and painted the driveway, which is confirmed by the testimonials of the offenders and by the police report submitted".

According to the lawyer of the "offenders" some facts are not true about this ruling. In particular, neither Irakli Kakabdze nor the "other people" were in front of the State Chancellery. Only

Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili were present. These three persons did not paint the driveway but inscribed an appeal "no to violence". This is confirmed by the police report.

The motivation part of the resolution reads: According to the Article 9 of the Georgian Law about "meetings and expressions", it is forbidden to hold meetings or demonstrations in the radius of 20 meters from the President's residence and other public organizations."

By the statement of I. Kakabadze's lawyer this sentence is completly absurd because:

1. Gathering of three people cannot be qualified as a meeting or demonstration;
2. No one measured the distance from the driveway (where they wrote the appeal) to the Chancellery, this issue was not researched at all;

During the court hearing the issue of measuring the prohibited distance was not raised, which is the main basis of prohibiting meetings and demonstrations. (Georgian Law about "meetings and expressions". Article 9).

Article 10 of the European Convention protects the right to expression of every person. The State has the right to interfere in the freedom of expression guaranteed by the international norms in case of the three following circumstances: the interference should be guided by the Law; the interference should be aimed at protecting national security, territorial integrity, public safety and other values; Interference should be based on the need of the democratic society.

According to the legal standards established by the European Court when taking decision on this issue, priority should be given to the freedom of expression and not to proving more important interests by the State. (Sunday Times v. The United Kingdom).

Irakli Kakabdze's arrest was based on what he told the policemen, which is an obvious violation of the "freedom of speech and expression" guaranteed by the Constitution, International Norms and the Georgian Law. The law enforcers did not have any legal basis to interfere with the demonstration of the right to expression. The practice of European Precedents Law establishes obligations for the politicians and statesmen to endure the criticism expressed towards them.

Theatric action staged by the Equity Institute and the Non-governmental Organizations

On October 20, 2006 the police dispersed the theatric action staged by the poets, artists and by the "Equity Institute" in collaboration with non-governmental organizations "for Democratic Georgia" in front of the State Chancellery.

It is important to note that the action was approved by the authorities and the information regarding its place and time was brodcast by media agencies the entire day. The permission of the City Municipality indicated that the organizers had the right to continue the musical action till 12 midnight. The participants brought the equipment to the place without any problems, prepared the stage and by their request the patrol policemen located along the perimeter and were observing the entire process. The event started peacefully. The participants started reciting the poems and it was followed by the rock-concert.

At 7 p.m. the patrol policemen approached the organizers and asked to stop the event, the reason being that the population was complaining it to be too noisy. The participants addressed the citizens on the microphone to come up to them if they were really bothered by the noise or the patrol police was asked to present a written complaint of the population of that district. The

police could not present such a document and neither did the so called unhappy population show up. The event participants did not want to leave but the patrol policemen went up to the stage, turned off the power and confiscated the microphones. Finally, with the intention of avoiding confrontation with the police the organizers asked the people to leave.

Article 19 (2) of the International Pact of the Civil and Political Rights protects the right of each individual to freedom of expression through any medium with the exception of the means established by the Law (radio, TV, electronic media, photography, music, graphics etc. according to the choice).

The requirement to dismiss the sanctioned action by the patrol police is an obvious and serious violation of the freedom of expression especially when the event participants did not violate public order and terms established by the Law. Such action should be evaluated as infringement of freedom of meetings and expression stipulated in the Article 161 of the Georgian Criminal Code.

Action at village Damia-Georarkh, Marneuli region

The Public Defender's report of the first half of 2006 included the incident which took place in village Damia-Georarkh, Marneuli region. In particular, by the testimonials provided by the journalists of Azerbaijan TV Companies "LIEDER TV" and "ANS" accredited in Georgia. On February 22, 2006 during the protest action by the village population the policemen took video tapes from the journalists by force. The videotapes had the recording of the facts of physical insult on the part of the law-enforcers and Special Forces when dispersing the protest action.

The Public Defender addressed S. Rekhviashvili, Kvemo Kartli Regional Prosecutor about initiating an investigation. Additionally, The Human Rights Department of the General Prosecutor's Office was informed about the incident.

According to the letter received from the prosecutor of Kvemo Kartli Regional Prosecutor's office On February 22, 2006 a preliminary investigation was launched on the criminal case #31068006 on the fact of excessive use of official authority by Marneuli Internal Affairs Department officials (within Article 333, Part 1 of the Georgian Criminal Code).

On January 16 of the current year we requested additional information from the regional prosecutor's office about the preliminary investigation. On February 2, 2007 we got the information that the representatives of Marneuli Internal Affairs Department, ethnic Azerbaijanians: Eldao Jalal Ogli Mamedov, Shirvan Anlar Aliev and Mamed Adil Ogli Mamedov were interrogated. According to their testammony, they did not know if the protest action was video taped in village Damia-Georarkh because they did not see any journalists or cameramen there. They also said that they personally knew some people there and had direct conversation with the Azerbaijan population in the local language. Therefore if the journalists were really deprived of video tapes and were beaten they would by all means know about it form the population, but it did not happen.

By the information provided by Marneuli regional prosecutor's office head of Marneuli Administration Amiran Shubitidze was interrogated as a witness, who confirmed that on February 22, 2006 he was in village Damia-Georarkh and met with the local population and talked with them. He also confirmed the presence of journalists, but he did not witness the confiscation of videotapes from the journalists neither the physical assault on them, furthermore

no one addressed him with this information. By the information of the prosecutor's office Lela Kharshiladze, operator of "Algeti TV", who was videotaping the events developing in the village, did not know anything about it. The investigation is underway.

The fact of confiscating videotapes from the journalists of Azerbaijan TV companies was not confirmed by the letter received from the Internal Affairs Regional Department. By the evaluation of the Public Defender the fact is far from reality. It is unbelievable that the local TV journalists were at the place to videotape the events and did not have tapes with them.

With the purpose of studying the facts of exercising the right to free meetings and expressions and their restriction by the authorities the Public Defender addressed the Prosecutor General's Office, Tbilisi City Court, and the Central Department of Patrol Police of the Ministry of Internal Affairs of Georgia requesting information about the number of cases of administrative infringements (hearings by the panel of administrative cases) in 2004-2006 of people participating in meetings and demonstrations.

In its response, The Panel of Administrative Cases of Tbilisi City Court stated that there were 26 court hearings held for the participants of meetings and demonstrations in 2005-2206.

According to European practice, the legal evaluation of the meetings and demonstrations of the citizens is based on the theme of the gathering. It means that the State may restrict the excercising of this right if the appeals of the protesters are aimed at infringing internationally guaranteed values.

The constitutional-legal basis of the restriction of freedom of meetings and demonstrations are provided for in the constitution, the State does not disperse meetings or demonstrations unless it turns into an "illegal action". Article 13 of the Georgian Law about "meetings and expressions" stipulates that meetings or demonstrations turn into an "illegal action" if there are appeals "to condemn the constitutional order or change it by force, to infringe the country's independence and territorial integrity.or if it promotes war, violence, discord on national, regional, religious or social grounds".

Freedom of speech and expression

Freedom of expression is a universal value because it has its own place in the system of human rights and freedoms.

On April 29, 1982 the Minister's Committee of the Council of Europe at the 70th session adopted a declaration about "freedom of expression and information". The declaration defines the

freedom of expression and information as main element of the principles, such as true democracy, supremacy of law and respect to human rights, which at the end is the important provision for person's social, political, economic and cultural development. The declaration obligates the States to implement such policy, which will protect the freedom of expression and information and promote independent media and plurality.

In regard to the right of expression the European Court of Human Rights established legal standard, which means giving priority to freedom of expression of a person at any verge of the activity compared to other more important interests of the State. Only in case of calling for violence the national competent bodies have more right to decide about the need for interference. The court demonstrates through its numerous decisions the protection of right to expression and media because this right, recognized by the international law is the precondition for the development of democracy: "In democratic States the government competent bodies should tolerate criticism even if it is insulting and provocative" (Ozgun Gundem v. Turkey). Article 10 (2) gives little possibility to establish restrictions on political views.

The fact of beating Vakhtang Komakhidze

The Public Defender's Parliamentary report of 2004 described the fact of beating Vakhtang Komakhidze. According to our information on March 5, 2004 V. Komakhidze was driving from Shuakhevi to Batumi. He was stopped at Khelvachauri post by the police. He was accompanied by the journalist from Batumi Mzia Amaglobeli. After Komakhidze stopped the car the Special Forces attacked him and severely beat him in front of the policemen. Among the assaulters only two persons did not wear the masks, the rest were masked and in uniforms. Komakhidze was forced out of the car and physically assaulted injuring his face, head and several concussions all over his body.

During the attack the journalists were deprived of their equipments, videotapes, mobile phones, watches and other items.

Komakhidze was transported by journalist Nana Instkirveli, "Rustavi 2" to Batumi hospital No. 1 and rendered first aid medical assistance.Within an hour after the incident the Member of Parliament Givi Targamadze visited Komakhidze with ambulance car and transported him to Tbilisi.

One of the policeman, present at the incident was identified as Revaz Gvarishvili from his uniform badge which came off during the scuffle with M. Amaglobeli. The policeman confirms the fact that the police was instructed to stop Komakhidze's car.

The Assault on Komakhidze was preceded by an incident the night before when the camera operator of "Rustavi 2" was deprived of his equipment.

V. Komakhidze appealed to the General Prosecutor's office about the incident and the investigation of criminal case was launched. The investigation identified V. Komakhidze and M. Amaglobeli as victims.

The case was forwarded to Batumi Prosecutor's Office for investigation where the victims were interrogated.

By the declaration of Vakhtang Komakhidze, in June the same year he recieved a call from the chief of police of Khelvachauri region Komakhidze was asked to meet him at his office. After the meeting Komakhidze recalls seeing the two unmasked assaulters in the corridor.
V. Komakhidze went to Batumi prosecutor's office and declared the above incident with the request to verify the information of the policeman Gvarishvili and others who did not deny the fact of assault.

After three years from this incident the case is still not properly studied. The investigation is very much delayed, policeman Gvarishvili and the two assaulters have not been officially interrogated and no relevant measures have been taken against them.

Broadcasting Company "Hereti" against the former parliament deputy

On October 13, 2006 Ramaz Samkharadze (Lagodekhi region), Director of broadcasting company "Hereti" appealed to the Public Defender. According to him, on October 1 The radio station broadcasted in its analytical program "the entire week" information about the candidates running for the local self-governance elections, former deputy David Kapanadze's name was also mentioned in the program. On October 9, 2006 David Kapanadze physically insulted Ramaz Samkharadze in Lagodekhi.

On October 12, 2006 the representatives of the Public Defender visited Lagodekhi Internal Affairs Department and held discussion with the investigator Gia Lomidze. By the declaration of the investigator, the preliminary investigation was already underway (within Article 118, (1) of the Georgian Criminal Code), experts were appointed and the persons named by the victim were interrogated.

The application by R. Samkharadze along with other relevant materials was forwarded from the office of the Public Defender to Lagodekhi Internal Affairs Department.

On December 11, 2006 we received a letter from Gurjaani regional Prosecutor's office mentioning that the preliminary investigation on the given case was terminated in the absence of complaint from the victim.

On January 9, 2007 the Public Defender addressed Malkhaz Ghughunishvili, chief of General Inspection of the General Prosecutor's office of Georgia indicating that by the information available to the Public Defender R. Samkharadze had appealed to Lagodekhi Internal Affairs Department, which is confirmed by the registration number at the chancellery. This document together with the resolution of Gurjaani Prosecutor was forwarded to M. Ghughunishvili. We sent a similar letter to Malkhaz Chikviladze, Chief of General Inspection of the Ministry of Internal Affairs and Shota Khizanishvili, Chief of Administration, Ministry of Internal Affairs.

On January 24, 2007 we received a reply from the General Inspection of the Prosecutor General's office informing that the resolution about terminating the preliminary investigation on the fact of physical assault of R. Samkharadze, director of broadcasting company "Hereti" adopted by Prosecutor Giorgi Kokiashvili was annulled and the investigation has been resumed. By the resolution of the Deputy Prosecutor General the case was transferred from Lagodekhi Internal Affairs Department to the Regional Internal Affairs Department of Kakheti.

According to the letter received from the General Prosecutor's office in response to the application of the Public Defender the possibility of imposing disciplinary measures against Prosecutor Giorgi Kokiashvili was not mentioned.

The journalists of "Open Padlock" against the representatives of the office of the President's Appointee

On December 5, 2006 Ilia Chachibaia, chief editor of newspaper "Open Padlock" appealed to the Public Defender informing about the facts of his of illegal arrest, threats, beating and pressure by the representatives of the office of the President's Appointee in Samegrelo-Zemo Svaneti in the office of the President' appointee.

According to the explanation report of I. Chachibaia, on December 4, 2006 journalist Ilia Chachibaia visited the chief of press service of the President's Appointee to verify particular information. Chief of Governor Zaza Gorozia's security Dima Markoidze called him on the phone and asked for the meeting. After the meeting the journalist was driven to the governor's office by the car of the press secretary, he was threatened and demanded to identify the source of the information or his newspaper would be closed and he would be killed. As the victim and the witnesses declare the officials conducted a number of illegal actions.

Article 11 of the Georgian Law about "freedom of speech and expression" provides for the right to protect professional secrets and its sources. Article 2 of the same Law defines the basis for interpretation, according to which "this Law should be interpreted according to the Constitution of Georgia and international legal obligations assumed by Georgia, among them European Convention on Human Rights and Basic Freedoms and Precedent Law of the European Court of Human Rights", not to mention anything about the relevant article of the International Pacts of European Convention on Human Rights and UN Civil and Political Rights about the freedom of expression. There are many examples of Precedent Law to prove that "protection of the a journalist's source of information is one of the main pre-condition for independent press as it is reflected in the legislations and professional action codes of the number of member countries and are guaranteed by several international documents about the sources of information for the journalists. Without such protection sources will not be able to assist press in informing masses on the issues of public importance. Strasburg Court made this statement on the case of Goodwin v. the United Kingdom, 1996. The court ruling on the case was followed by the recommendation of the Committee of the Ministers of the Council of Europe R (2000) 7, which called on the member States to include the principle of confidentiality of journalists' information sources in their legislations.

The materials available to the representatives of the Public Defender were forwarded for further reaction to the Deputy Prosecutor General and Human Rights Department at the Prosecutor General's office. We received a reply from them stating that Zugddi Internal Affairs Department of the Ministry of Internal Affairs initiated the preliminary investigation of the criminal case on the illegal arrest of I. Chachibaia and illegal obstruction to his professional activity. The investigation is underway.

About impede of obtaining public information by the journalist of "Open Padlock"

The confrontation between the representatives of the President's appointee and the newspaper "Open Padlock" continued after the above incident. In particular, on December 12, 2006 Ioseb Khoperia, Executive Director of the newspaper applied to the Public Defender informing him

about the representatives of the President's Appointee in Samegrelo-Zemo Svaneti hindering with the activities of the journalists. This time it was about the President's visit to Zugdidi for the inaugeration of #3 public school. The journalists of the above newspaper were not admitted to the school yard to record the President's speech, which according to the applicant was carried out under the instruction of Lali Gelenava, press secretary of Zaza Gorizia.

By the declaration of I. Khoperia, L. Gelenava was upset at the fact that the journalists applied to the Public Defender about the incident of December 4. She registered the attendance other journalists but not the journalists of the "Open Padlock". When questioned about t any restrictions set for media representatives, L. Gelenava replied "there were restrictions for print media. Five operators of TV companies had the right to enter the building; the representatives of the electronic media were allowed to stay in the school yard". It is legally inadmissible to classify the media representatives this manner, especially if it deals with obtaining public information. The President's security did not allow the journalist to video tape the event from outside the school yard. As a result the newspaper "Open Padlock" was left without any information.

The representatives of the Public Defender obtained the explanation reports from the victims and the witnesses in this incident. Giorgi Dagargulia, Specialist of the Regional Department of the Public Defender's office confirms the fact of threatning on the part of L. Gelenava on the phone to the journalists of the newspaper about blocking information for them and impeding with their professional activity. He personally witnessed the telephone conversation between I. Khoperia and L. Gelenava.

By the evaluation of the Public Defender, the provoking decision on the part of the press secretary of the President's appointee to obstruct the process of obtaining public information violates the articles 19; 24 of the Georgian Constitution and the Georgian Law about "freedom of speech and expression", it also infringes the right guaranteed by the international documents about the freedom of speech and opinion.

The above statement and the attached materials were forwarded to the General Prosecutor's office for the adequate reaction.

About kidnapping Ilia Chachibaia, the chief editor of newspaper "Open Padlock"

On January 17, 2007 Ioseb Khoperia, executive director of the newspaper "Open Padlock' called Bagrat Kiria, representative of the Public Defender's Office in Zugdidi the West of Georgia and informed him about kidnapping of Ilia Chachibaia.

By the explanation report of Ilia Chachibaia given to the representative of the Public Defender on December 17 between 11 and 12 in the morning Ilia Chachibaia was walking on his way to work in Zugdidi, along Rustaveli Ave, close to the public school #1. A black BMW without license plates stopped by and a stranger opened the door and asked hm to get into the car. Chachibaia refused, the stranger to get off and forced him to the back seat of the car.

Realizing that he was being kidnapped, I. Chachibaia managed to secretly send an SMS to I. Khoperia (help me, Ilia Chachibaia). Following which the stranger snatched the mobile phone from I. Chachibaia and checked the incoming calls.

Ilia Chachibaia was taken to the outskirts of the city at the remote wooden house. He tried to escape, but one of the kidnappers caught him and took him into the house by force. He was

psychologically pressured and threatened. The representatives of the Public Defender visited this place and talked with the local population who testfied that they did not see any suspicious activities neither did they see a car of the above description, which they would have noticed by all means had it been there. They refused to give to give anything in written.

By the declaration of Ioseb Khoperia, as soon as he received the SMS he called from the telephone of his colleague Mari Chkhetia to I. Chachibaia's number which was turned off. Afterwards I. Khoperia called B. Kiria, the representative of the Public Defender and told him about the incident.

Ioseb Khoperia called the patrol police hot line. According to him 2 patrol police cars arrived within 10-15 minutes together with the representatives of Zugdidi police and prosecutor's office.

In connection to the above incident, both I. Khoperia and I. Chachibaia were interrogated by the investigator of Zugdidi police P. Gvilia.

According to the explanation of I. Chachibaia, after the incomming call of B. Kiria on his mobile phone the kidnappers put him in the car and drove him a certain distance before letting him off.

The materials obtained by the Public Defender were forwarded to the office of the Prosecutor General for further reaction, which was then transferred to the office of the Prosecutor General to Zugdidi Regional Prosecutor's office. Zugdidi Internal Affairs Department started preliminary investigation on the case of illegal arrest of Ilia Chachibaia, chief editor of the newspaper.

Konstantine Kublashvili against Eka Beselia and others

On October 21, 2006 the Council of the Ethics Procedural Commission adopted a decision about initiating disciplinary proceedings against the members of the lawyers' association Eka Beselia, Shalva Shavgulidze and Zurab Rostiashvili based on the complaint lodged by Konstantine Kublashvili, Chairman of the Supreme Court. The complaint was based on the article published at "Georgian Times" which according to the opinion of the complainant was insulting for the court authorities and a direct and bold attack on the court system. K. Kublashvili was irritated by the statement made by the lawyers "the absolute majority of the judges execute the orders of the authorities", "above all the reason for unfair judgements is due their poor professionalism", "99% of the judges perform the orders of the authorities, some carry out the orders of the authorities and others of the Prosecutor's office".

It is obvious that Mr. Kublashvili was not trying to defend his rights and freedoms when he was filing the complaint. The purpose for filing the complaint was to protect the court authorities. It is clear that filing such a complaint in ethics commission is not a violation of any legal act and is the right of the author of the complaint. It must be said, that being in the rank of the chairman of the Supreme Court such actions directly affect and reflect the attitude and the approach of the court authorities towards disputes related to the freedom of expression. Especially when it deals issues related to independence and impartiality of the court, which is of much public interest.

The above complaint of the chairman of the supreme court resembles the complaint of the Ministry of Agriculture of Adjara Autonomous Republic filed to Batumi City Court against "Batumi press-club"" and Avtandil Gadaxabadze. The newspaper "Axali Versia" published an article in anonymity, which said: "Aslan Abashidze ruined the fishing industry with a tractor". Despite the fact that the article did not say anything about the Ministry of Agriculture of Adjara

or the minister himself, Batumi City court ruled 1000 GEL penalty for the defendant to reimburse the moral damage done by the article.

The Human Rights European Court unilaterally established that the statements about inefficiency of the court system, independence and impartiality of judges made in the context of debates are always important for the society and should not be kept away from the public discussions. The Human Rights European Court in the case of "Lingens v. Austria" for the first time underlined the function of the press as the society's watchdog. "Despite the fact that the press should not trespass the line established inter alia, to protect the reputations of others, it has the obligation to spread the information and opinions on political as well as on other issues of public interest".

In the case of "Thorgeirson v. Iceland" the court declared that there is no difference between the political discussion and the discussion on other issues of public interest in the Precedent Law. In the same case the court underlined that the evaluative discussion does not require confirmation. According to the Georgian Law "about freedom of speech and expression" evaluative discussion is protected by absolute privilege, which takes the responsibility away from the author of the evaluative discussion completely and unconditionally. Ethics Commission indicated in the motivation part of the decision to the Precedent Law of the Human Rights European Court: "the judges, as important figures in the society are criticized, which is not always pleasant to hear. Some of the remarks may be very interesting and others may mean nothing, but the judges are not tender flowers to fade by the severe criticism".

The Panel of the Ethics Commission of the Association of Georgian Lawyers referred to the articles 19 and 24 of the Georgian Constitution, Article 19 of the UN Human Rights Universal Declaration and articles 16, 20 and 23 of the "basic principles of the lawyers' role", article 19 of the International Pact of Civil and Political Rights, Human Rights European Court, Standards[2] established by the Precedent Law of the European Human Rights Court and did not satisfy the complaint of the chairman of the supreme court Konstantine Kublashvili.

In the context of public debates over the independence and impartiality of the court, the reaction of the chairman of the supreme court would have a negative impact in the first place on the the implementation of the standards established by the European Human Rights Court and secondly on the disputes over the formation of the court practice on freedom of expression. In particular, it will be difficult for the court to determine correlation**,** adequate to the Precedent Law of European Human Rights Court, between the freedom of expression and the interests of the impartial court taking the circumstances of case into consideration.

Situation with media in Georgia

Article 10 about freedom of expression and information inter alia, stipulates freedom of spreading and receiving information. In the ruling of the European Court of Human Rights on the case of *Goodwin v. the United Kingdom,* press is recognized as one of the main element of

[2] Hendiside v. the United Kingdom, 1976. Declaration 5493/72, Para.49; Sunday-Times v. the United Kingdom-declaration 6538/74; Skalka v. Poland #43425/98;Perna v. Italy #48898/99, Para. 39; Castel v. Spain, Lingens v. Austria.

the democratic society which is of special importance and subject to protection. In regard to media freedom, attention should be paid to three aspects, such as the fundamental role of the freedom of expression; importance of media providing information and opinions of general interest to the society, which has the right to receive the information and the opinions.

The vital integral part of the freedom of media is the protection of journalists' information sources, which is recognized as a precondition of freedom of press by the European Human Rights Court.

General Situation

It was mentioned in the Public Defender's report of the first half of 2006, with the purpose of studying the situation of media in Georgia the representatives of the Public Defender were regularly meeting with the representatives of public media in Tbilisi and the regions. Number of problems was raised at the meetings with the journalists in all the regions. The most important among them was the problem of receiving the information. As a rule the officials refuse to give public information or interview.

The report of the State Department about the human rights situation in Georgia indicated that apart from the absence of the adequate legislation, which determines freedom of speech and expression, the journalists have insufficient guarantees in regard to the protection of freedom of expression. The report dealt with the following facts:

On July 6, 2006 Eka Khoperia, anchor of the popular talk show "free topic" at TV Company Rustavi 2 made live announcement about leaving the company .The journalist's reason for such a decision was the interference and pressure from the representatives of the authorities in her professional activity. She refused to name those people who pressured her. This was followed by the resignation of the Director of Rustavi 2 Nika Tabatadze and six other journalists.

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The problem is unequal distribution of broadcasting frequencies. TV Company "satellite" is broadcasting in Kakheti region and covers Telavi and surrounding villages. By the declaration of the population it competes with the cable TV "Gorda", which has 22 channels in its broadcasting package. The local authorities use one of the company's channels "MUZ-TV" twice a week on Thursdays and Saturdays to broadcast information about the activities of the regional authorities. Cable TV "Gorda" does not include TV Company "Satelite" in its network and its viewership significantly decreased in Telavi. Currently the TV Company mainly broadcasts in the villages because the population does not have cable TV there.

By the statement issued by the director of TV Company "satellite" Enri Kobakhidze, the main problem of their business is the lack of office space. For nine months they have been occupying two rooms in the office of the non-governmental organization "constitutional defense center". Ever since the former director of the TV Company Zura Kumsiashvili and the 40% stake holder asked them to free the building the the Satellite TV company has been having problems in finding a suitable office space. By the declaration of E. Kobakhidze and the journalists the representatives of the local authorities threaten the owners of the facilities that wish to rent or lease their premises to Satellite TV Company The owners of the facilities did not confirm this information during the conversations with the representatives of the Public Defender.

The company stopped airing its informational-analytical program “dialogue” due to the lack of office space. By the declaration of Nato Megutnishvili, the author and the anchor of the program there were instances of pressure on the journalists from the authorities not to broadcast the program against their interests. “Satellite” journalists were refused the interviews by the authorities and there have been a number of times when the representatives of the municipality humiliated them. The press service of Telavi City Council did not furnish them the public information about the activities implemented by the authorities. The journalists of the company “satellite” declared that the representatives of the local administration openly threatened them and constantly misused their power.

Batumi local TV company TV-25 has the similar problems. On January 22, 2007 the Public Defender met with Merab Merkvilidze, the founder of the TV Company. According to him the problems with broadcasting started on June 28, 2006 when about 10 cable TV operators stopped airing TV-25 programes in Batumi.

Later five cable TV operators included TV-25 in their network but three major cable TV operators (XXI, “ERA” and “BNZ”) refused to do so.

In a private conversation with the leadership of TV-25 they mentioned commercial reasons and in particular being asked for payment in exchange of including TV-25 in their network. Based on the accepted practice when cable companies air the production of other TV companies they pay rayalty for the rights of airing their productions. The leadership of TV-25 explains this fact as result of the authorities applying preasure over Cable TV operators.

As for the availability of public information, by the explanation of TV-25 the representatives of the press service of the local authorities created more problems for them when trying to obtain information than the officials themselves. For example in the summer when the President arrived to Batumi for the innaguration of the movie theater “international” the former head of Adjara press service Tsetskhladze asked for accreditation only from the journalists of TV-25.

It must be noted that the dominance of cable TV operators in the regions creates serious problems for the local TV companies in the broadcasting sphere. The latter have very limited viewers, those who can not afford the cable TV. The lack of viewerships affects the market of commercial advertisements, which in turn causes financial problems for the regional broadcasting company. This may be followed by closure of local TV companies.

The development of cable networks should be followed by the adoption of adequate legal acts, which would regulate the broadcasting rights; the cable network when taking the decisions about airing programs should take into consideration technological, legislative, audience and other related factors.

In this regard, The Cable Communication Act passed in 1984 by the United States Congress is very significant. Its primary goal was to determine the obligation of issuing broadcasting license by the organizations to the cable operators. Later when the cable operators continued their activity from being the customer of the program to the provider of the program it was necessary to make the adequate amendments to the federal legislation. In the United States and Europe this sphere is regulated by the local self-governance bodies. Presently the federal law requires the cable operators to include the local broadcasting companies within the package of their programs.

The Communications Federal Commission created regulatory legal acts for cable TV operators

to protect broadcasting companies because there was a genuine threat that cable TV companies would take over the viewers of the locally licensed TV companies and decrease their income by including broadcasters of outside the market in the cable system.

The Law of 1984 about "the policy of cable communications" did not prove to be efficient in the opinion of many customers and the Congress. In 1992 the Congress passed an act about "cable television and protection of the rights of the customers and about competition", which defined the rules of obligatory inclusion of local broadcasting companies in the program packages of the cable TV operators. The Law of 1976 about the "intellectual property rights" regulated the inclusion of the local (regional) broadcasting companies in the network and the issue of paying the compensations. All these legislative acts determine the obligation of the cable system to include the local commercial and non-commercial TV companies in their system.

The relevant acts passed by the United States Congress about regulating broadcasting of cable companies and intellectual property rights of the cable systems obligate the cable systems to include the local commercial and non-commercial TV companies in their system or get permission from them for broadcasting. Thus the local TV companies are protected from immediate competition with cable operators. We think that a similar regulatory document should be passed in Georgia as well to ensure the protection of the local TV companies in the circumstances of strengthening of cable TV operators and increased competition.

After studying the problems of Kakheti TV company "satellite" and Batumi TV company TV-25 the Public Defender addressed the chairman of the National Regulatory Commission to study the issue related to the decrease of broadcasting area and viewership of the local TV companies so that the dominant market position of the cable operators do not interfere with the development and activity of the local broadcasting companies.

We received a reply from the above organization informing us that the broadcasters defined their broadcasting packages based on the agreements according to the Georgian Law. Therefore the Commission was not responsible to obligate the broadcaster to include the programs of the local TV companies in its package. The broadcasting zones of these companies were defined by their licenses.

The letter of the National Regulatory Commission did not show the good will of the Commission to revise and regulate the broadcasting issues related to the cable operators and regional TV companies.

The issues of economic independence

The two-year tax free privilege established for the press by the President's initiative expired on December 31, 2006. The press was tax exempted on income, property and on the revenue from the commercials until 2007. The property on the account of the persons, directly used for the business of priting news papers and magazines were tax exempted too.
The parliamentary majority refused to extend this privilege.

As for the regions, funding new media means by the authorities creates serious problems to the newspapers-they are not developing to independently exist on the local market, on the contrary in most cases they go bankrupt and close. Independent media in this regard faces real threat.

Legislative basis, issues of journalist ethics

The legislative basis in the country, which regulates this sphere, corresponds to the basic European requirements; broadcasting form, time and interval are defined.

The draft project of Broadcasters' Ethics Code presented by the National Communications Commission caused big interest and difference of opinions. Unlike the Georgian Law about "freedom of speech and expression", which is acceptable and liberal, the draft project of the broadcasters' ethics and its particular articles were unacceptable and incomprehensible for many representatives of the media.

By the declaration of the National Communications Commission the deadline of discussing the ethics code was postponed till April. According to the information of mass media the National Communications Commission elaborated new version of Broadcasters' Ethics Code, which is a much smaller document and is different from the previous document in its context and essence.

It is important to determine norms of general ethics to ensure equal competition terms for all TV companies. The unified code of conduct is acceptable because it will regulate this issue. The licensed organizations should create internal regulation system. The current draft law in general by its context is not acceptable because it is impossible to work out the unified system of ethics, though the draft law includes such norms, which can be applicable for important aspects.

In regard to the project presented as legislative initiative by the Parliamentary Committee on Legal Issues and faction "New Rights" about amendments and addendums to the Georgian Law about "broadcasting" the Public Defender made remarks. On December 29 the Parliament by #4319 Law adopted the amendments initiated only by the deputy chairman of the Committee on Legal Issues Giga Bokeria in a speedy procedure.

According to the amendments and addendums to the Law about "broadcasting" the Article 14 (2) subparagraph "w[13]" stipulates the following: "Code of conduct is the normative act adopted by the commission, which defines the rules of service of the license holders". According to the presented legislative initiative the broadcaster is obligated with one sole obligation-create an effective mechanism of self-regulation based on the normative act of "code of conduct", which will ensure complaints handling and responding to them in the timely manner.

According to the Article 59[1] of the above draft law the reaction to the violations of articles 52, 54, 56 and 59 of the Law about "broadcasting" and the requirements of the code of conduct can be given within the internal mechanism of the broadcaster. "Article 52 of the Law about the "broadcasting" is about the obligation of making a statement in response to the incorrect or incomplete information aired by the broadcaster; Article 54 is about maximum revealing of different opinions without any discrimination; Article 59 deals with the obligation of airing the news and public-political programs at the best broadcasting times.

It is acceptable to locate the broadcaster's activity within its self-regulation mechanism but we are concerned that the disputes arising from the relations described in the article 56 can be resolved by the media internal regulation mechanism without the involvement of the State. Article 56 prohibits any form of war propaganda (Article 56.1), programs provoking racial, ethnic, religious or other types of discord or discrimination on these grounds, (Articles 2 and 3) prohibits pornography and protects the children from harmful influence. Freedom of expression in regard to protection of minor from harmful influence is an issue of big interest for the State. The State is obliged to provide normal physical and intellectual development for minor. This obligation means determining effective legal procedures and in case of necessity imposing

sanctions on those who create serious threat to the normal development of the minor through propaganda of war and violence and spread of pornography material.

Human Rights European Court in regard to the case "Muller and others v. Switzerland" declared" paintings reflecting sexual relations…….society can easily access it because the organizers did not establish entrance fee or age limit". (Para 36). Relatively the Human Rights European Court did not consider the ruling of the courts of Switzerland as violation of Article 10 on the case of the organizer of the exhibition.

The State should also care about the protection of the ethnic, religious or other monitories under its jurisdiction. The obligation of prevention of any form of discrimination is the general principle of the International Public Law recognized by the civilized society. Article 14 of the Georgian Constitution and Article 14 of the European Convention about Human Rights and basic Freedoms prohibit any form of discrimination. Article 10 of the European Convention about Human Rights does not protect Nazi type of statements, opinions and propaganda, which promotes to racial discrimination. Clear example to this is Strasburg Court ruling on the case of "Kuhnen v. the Federal Republic of Germany" in which Germany initiated criminal proceedings against Kuhnen for publishing an article containing ideas of destruction of Zionists and foreign workers, opposing the German superior racial pride. Strasburg court indicated to the Article 17 of the Convention, which prohibits any actions aimed at destruction of the rights and freedoms provided for by the Convention. By the court explanation Nazism and discriminative appeals contradict the preamble requirement of the Convention about the basic freedoms strengthening effective democratic policy. The author of the second statement against Germany was a person whose form of expression was milder and academic. The author of the scientific publication doubted the existence of Holcaust and justified his claim with certain arguments. The Government of Germany imposed penalty of 16 billion German Marks to the author of the publication. The court could not determine the violation of the article 10 of the Convention in the actions of the State.

The above practice clearly demonstrates that the obligation of Georgia as the participant country of the European Convention on Human Rights and Basic Freedoms is to take effective and among them legislative measures to prohibit propaganda of violence and any form of discrimination and to protect the minor from the negative influence. Achieving this goal is effective through the media internal regulation mechanism. According to the Article 53 (2) of the Georgian Law about "broadcasting" the "code of conduct" defines the criteria for categorizing films with negative influence on children." Without the code of conduct legal sanctions would be used against those subjects who are negatively influencing the children.

We believe that the relations regulated by the code of conduct should be precisely defined and in case of their poor implementation, sanctions provided for by the law should be imposed on the broadcaster. We also think that the Article 2, Para. "w[13]" of the Georgian Law about "broadcasting" should be formulated the following way:

"w[13]) code of conduct-normative act is adopted by the commission based on this law, which defines the rules of service by the license holders to protect the minor from the negative influence, to prevent propaganda of war and violence, racial, ethnic, religious or other type of discord or/and discrimination on these grounds, spread of pornographic material."

The issue of licensing

The issue of the use of licensed products is defined by Bern Convention of 1986 about the protection of literature and work of art, which determines the rules of showing fiction films. Georgia joined this convention on May 15, 1995. According to the report of the UN Economic and Social Issues Commission the system of protection of intellectual property corresponds to the main multi-lateral agreements in this sphere, among them the most important is the so called "TRIPs" agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights). Article 9, Part 2, Para.1 of this document defines the rules of intellectual property rights on video production and together with Articles 1-21 of Bern Convention determines relevant measures for violation of this right.

In the television sphere the above issue is legally regulated. The first precedent on the reaction to violation of rules of licensing is a civil lawsuit of TV Company "Imedi" against the TV Companies "Rustavi 2" and "Mze", which dealt with the illegal showing of fiction films.

TV Company "Imedi" against TV Company "Mze"

TV Company "Mze" for a long time was showing the films purchased by TV Company "Imedi without its permission. On December 16, 2004 the TV Company 'Imedi" filed a complaint to Tbilisi district court and demanded reimbursement of loss (2500 USD) caused by the violation of intellectual property rights. This was about the film "tin drum" showed by TV company "Mze" on November 5, 2004 at 23:45.

By the declaration of "Imedi" the exclusive right of public showing of this film on the territory of Georgia belonged to TV company Imedi. They bought this right from the company "OU CP Studio" on June 25, 2003 based on the licensing agreement. According to this agreement TV Company Imedi has the right to prohibit the use of the production by others (Article 37 (1) of the Law about "intellectual property and adjacent rights).

By the declaration of the complainant TV Company "Mze" violated Article 18 (2) sub-paragraph "f" o the Law about "intellectual property and adjacent rights" (property rights of the author of the production), Article 37 (1) (special license), Article 46 (2) (violation of intellectual property, adjacent and data base creator's rights). Article 59 (3) sub-paragraph "e" of the law about "intellectual property and adjacent rights" and TV company "Imedi" demanded from the defendant payment of compensation of 2500USD according to the article 59 (3).

On March 28, 2005 the district court satisfied the claim of TV Company "Imedi" and imposed on company "Mze" the payment at the above amount. Company "Mze" appealed to the Supreme Court against the sentence ruled by the district court. The Supreme Court shared some of the concerns of company "Mze". (Company "Mze" tried to prove that though it had that film listed in its program in reality it showed a different film). The Supreme Court annulled the ruling of the district court and returned the case to Tbilisi City Court for determining the factual circumstances and taking new decision. Until now there has not been a court hearing on the given case.

TV Company "Imedi" against TV Company "Rustavi 2"

On November 15, 2004 TV Company "Imedi" filed a complaint to Tbilisi district court and demanded reimbursement of the loss by the violation of intellectual property rights. TV company

"Imedi" claimed that "Rustavi 2" for a long time was showing films whose rights were purchased by company "Imedi".

Company "Imedi" claimed that by showing the film illegally on "Rustavi 2" it did not get the anticipated income. TV Company Imedi had to postpone showing this film for as long period of time because airing the film recently shown by "Rustavi 2" would lower its rating. Low ratings would immediately result in decrease of income through commercial advertisements.

The district court satisfied the claim of company "Imedi" in apsentia ("Rustavi 2" did not attend the court hearing) and imposed "Rustavi 2" payment of 2500USD. The defendant did not appeal the sentence but did not make the payment either. TV Company "Imedi" appealed to the enforcement department and as a result "Rustavi 2" fully paid the compensation amount.

Statement of TV Company Imedi at the National Communications Commission about imposing administrative payment to "Rustavi 2"

TV company "Imedi" applied to the National Communications Commission in 2004 in order to impose administrative payment to "Rustavi 2" for transmiting without permission the television products legally purchased by TV company "Imedi".

The commission noted in its decision that the exclusive right of public transmission of the film two times was granted to TV Company "Imedi, Ltd. based on the agreement signed with company "EATB-Film". "Rustavi 2" violated the Law about "communication and post", article 45 [10] Para.1, also the Law about "intellectual property and adjacent rights", article 46, Para.2.

According to the chapter 6 of the "regulatory rules of the activities of the National Communications Commission" (rules of monitoring and checking by the commission, proceedings of offenses) the commission started administrative proceeding in connection with the above fact against TV Company "Rustavi 2".

The National Communications Commission satisfied the claim of company "Imedi" and imposed administrative penalty to "Rustavi 2" within Article 144 [1] of the Administrative Code of Infringements "in the sphere of communication and post {…} violation of license terms is subject to penalty at 5.000 GEL". After certain period of time "Rustavi 2" paid the administrative penalty.

Public Information

According to the Georgian General Administrative Code the citizens of Georgia, foreigners and judicial persons have the right to request information at the public organizations if it is not state, commercial, professional or private classified information. A person is not supposed to indicate the reason or the motivation for requesting the information.

Requirement for the information to be available concerns any public organization, also judicial persons of private law funded from the state or local budgets within the framework of funding.

The public has the requirement to have the rights to open information protected at maximum. The society is very much keen in the activities of the administrative bodies, budget funds spent by them and other measures implemented by them etc. Most of the citizens are knowledgable

about the time limits of giving out public information and they often have justified claims when the public organizations violate norms established by the Law.

As we already mentioned any information at the public organizations if it is not classified according to the established rules, is public and should be available for anyone.

The Georgian General Administrative Code establishes specific rules and time limits on giving out the public information. A person needs to present a written application to the relevant public organization to receive the information. According to the Article 40 of the General Administrative Code the public organization is supposed to give out public information immediately or in case of special circumstances within 10 days. One of the important components of contemporary life is quick exchange and flow of information. That's why the public organizations should give out public information at the earliest.

The Public Defender's office studied a number of cases related to violation of the above time limits and ungrounded delay in this process.

It must be noted that the leader among administrative bodies in this aspect is the mayor's office and its municipal services.

The case of Zviad Kekelidze

Citizen Zviad Kekelidze applied to the Public Defender. As a veteran of the armed forces he had applied to the Mayor's office and the city council based on the Presidential Resolution #493, article 49 (November 5, 2004) about giving him gratuitous plot of land. The above offices forwarded Kekelidze's letter according to the competence to the urban planning service of Tbilisi. Kekelidze's case file includes a letter from the urban planning serrvice, which explains that based on the above Presidential resolution he has the right to get plot of land for free which could be used for individual housing or agricultural activity in the urban type of settlement up to 0.1 hectare for each family member and in rural settlement up to 0.25 hectare. But the capital Tbilisi is not categorized as urban type of settlement.

Kekelidze applied to the urban planning service the second time on June 28, 2006 requesting explanation of this response. His letter was registered at the chancellery of this service on June 29, 2006 by #k-264. Zviad Kekelidze was asking for written explanation whether the Presidential Resolution of November 5, 2004 #493 inluded Tbilisi and if not where was he supposed to get the piece of land. He did not receive a reply in the timely manner established by the Law, thus article 37 of the General Administrative Code was violated "everyone has the right to request public information irrespective of its physical form and manner of keeping and everyone has the right to get to know the information in the original". The time limit established by the same Code was also violated.

Deriving from the above mentioned according to the article 21, subparagraph "b" of the Georgian Organic Law about the "Public Defender", the Public Defender applied to the chief of urban planning service with the recommendation to send a reply to Z. Kekelidze based on article 40 of the General Administrative Code. The letter also requested to consider the responsibility of the persons who could not provide the applicant with the public information within the specified time frame based on the subparagraph "d" of the same article and the same law and the articles 78 and 79 of the Law about the "public service".

By the letter #3093 of December 9, 2006 we found out that to the requested public information by Zviad Tsetskhladze through his letter of August 25, 2006 the urban planning service had prepared the reply in the established time limits. The same letter said that the citizen was supposed to come personally to the urban planning service to collect the written reply since the urban office does not provide for postal service. The Public Defender thinks that this is not correct and that's why he applied to the urban planning service indicating that according to the article 40 of the General Administrative Code the administrative body is responsible to provide the applicant with the public information. The Public Defender asked to correct this fault.

The case of Tengiz Mikadze

Citizen Tengiz Mikadze sent a letter to the Public Defender indicating that on October 19, 2006 he addressed the office of organization of public services and amenities of the mayor's office. The letter was registered the same day at the chancellery with the number 2806-01/6. The applicant was requesting for public information about whether the piece of land at #3 Javakheti St. in Tbilisi belonging to the apartment building was part of the "green line". According to the applicant he did not receive a reply for an extended period time and thus the time limits on giving out public information established by the Law was violated. Tengiz Mikadze also indicated in his letter to the Public Defender that he had applied to the service of organization of public services and amenities with the administrative appeal to restore his rights. This appeal was registered at the chancellery with the same registration number as the letter of October 19. The administrative body violated the norm established by the above code, article 79, Part 1 "the administrative body is supposed to register the incoming application according to the established rules on the day of its receipt and indicate the registration date and number on it". Tengiz Mikadze did not receive any response whatsoever indicating that his request was under consideration neither was he informed about the time frame needed to process his application This indicates to gross negligence by the service of organization of public services and amenities within Article 85 of the General Administrative Code, according to which" the administrative body is responsible to explain to the applicant about his rights and obligations, to enlighten him with the procedures of managing application, its meathod and time limits and also the necessary requirements to file the application or appeal. The authority is also obligated to indicate and inform the applicant if any correction is needed in the application

In connection with the above, The Public Defender addressed Tbilisi service of organization of public services and amenities with a recommendation to provide Tengiz Mikadze with the public information requested by him and also provide him with the obligatory legal assistance. The Public Defender in his letter also asked the authorities to look into the negligence of the people in carrying out their responcibility to provide public information within the time limit based on the articles 78 and 79 of the Georgian Law about "public service".

By the response received from the service of organization of public services and amenities we found out that the above organization does not have technical documents of the "green lines" within district administrative boundaries of the capital and that citizens should apply to the relevant district administrations to obtain this information.

It must be noted that in this particular case, the city service of organization of public services and amenities was obligated to send a written explanation to the applicant and it failed to do so.

The case of Giorgi Mkurnaladze

Giorgi Mkurnaladze, Director of Impeachment Initiation Center sent an application to the Public Defender informing him that on September 28, 2006 he applied to the mayor's office with an application #0101, which was registered at the chancellery the same day with the registration number 11/15305. According to this letter the applicant was requesting information regarding the number and the location of walls the city municipality had allocated for putting up posters for the local self-governance elections. According to the applicant he did not receive a reply.

The requested information is public and anyone has the right to obtain it. The requirements and time limits for giving out public information established by the Law were violated; this action violated the rights of Giori Mkurtnaladze. According to the Georgian Organic Law about the "Public Defender", Article 21, subparagraph "b", the Public Defender applied to the mayor's office with a recommendation to immediately give out the public information requested by Giorgi Mkurnaladze according to the article 40 of the General Administrative Code.

In his second application to the Public Defender, Giorgi Mkurnaladze indicated that he had applied to the city municipality numereous times for obtaining public information but to no avail. Thus the legal rights of the citizen were violated. For example:

1. Through his letter of September 19, 2006 11/4463 registered #078 19.09.06 he requested information regarding the application deadlines of the employment program "start business with the help of the mayor's office" of the city municipality, whereabouts of the "business information center", he also sought information about its legitimate hierarchy and the source of funding

2. Through the letter #079 of September 19, 2006 registered at the chancellery the same day with the number 11/14465 G. Mkurnaladze requested information about the amount of money spent from the city budget for issueing 100 GEL Gas vouchers to proffessors and teachers He also requested information if the Mayor's office had implemented similer programes in the past and there were plans to introduce the same programe in the future.

3. Through the letter of September 19, 2006 #080 the applicant requested information about social, sport and cultural activities held in Tbilisi from August 25 to October 25, 2006, what were the planned activities for the future and the amount of funds allocated and spent for these purposes. This letter was received in the chancellery of the Mayor's office on September 19, 2006 #11/14468.

4. Through the letter of September 19, 2006 #081 G. Mkurnaladze requested information from the Mayor's office for the names of the companies providing car parking services in the capital, what type of contracts were signed with them and the justification for setting an hourly fee of 50 tetri. This letter was registered at the chancellery of the mayor's office with the number 11/44465 on September 19, 2006.

5. Through the letter of September 19, 2006 #083 the Impeachment Initiation Center requested information about companies that paved the road on Perovskaia Street, details of the work order issued and the amount paid for the services. The letter was registered at the chancellery of the Mayor's office the same day with the registration number 11/14470.

6. Through the letter of September 19, 2006 #085 which was registered at the mayor's chancellery with the number 11/14471 G. Mkurnaladze requested detailed information about the purchase of yellow buses, when, how many and at what cost they were purchased, whether the documents on their technical parameters were available and whether the air conditioners in them functioned, what funds were allocated for handling this issue and which office and which official was in charge of purchase of the transport means.

According to the applicant he did not receive replies to any of the above letters. The leading specialist of managing office correspondences at the mayor's office Eka Kvelidze explained in the telephone conversation that the letters of the Impeachment Initiation Center based on the context of the requested information were forwarded to the offices of respective departments including public services and amenities, sport, culture and transport at the mayor's office. After forwarding the letters to the above offices the correspondence handling office had no control over their fulfillment and the addresed departments were responsible to provide the applicant with the reqested information. In this particular case the mayor's office violated time limits established by the Law about giving out public information. In particular the requirement of part 1 of the Article 40 of the General Administrative Code that "the public organization is responsible to give out public information immediately or within 10 days unless the reply to the requested of the public information requires:

a) Obtaining and processing information from its subdivision or from another public organization in different location;
b) Finding and processing inter-related documents in big volume;
c) Consultation with its subdivision or different public organization.

Article 26, Part 3 of the Georgian Law about the "the capital of Georgia-Tbilisi" stipulates that "the head of the municipal service is responsible to report to the mayor, premier and the head of the city council". Based on that the Mayor's office was supposed to request the information from the services reporting to him/her and provide G. Mkurnaladze with the public information that he requested according to the sub-paragraphs "a" and "b" of the above article and the above Code.

Thus based on the Georgian Organic Law about the "Public Defender", article 21, sub-paragraph "b" and "d" the Public Defender addressed the Mayor with the recommendation to immediately provide the director of the Impeachment Initiative Center G. Mkurnaladze with the public information that he requested according to the article 40 of the General Administrative Code and to deal with the persons neglecting their responcibility to provide G. Mkurnaladze the requested public information in a timely manner according to the Georgian Law about "public service", articles 78 and 79

The mayor's office took the Public Defender's recommendation into consideration. After the complete study of the case the citizen was provided with the requested information and the person responsible for giving out public information was expelled.

The case of Murad Burchuladze

Citizen Murad Burchuladze addressed the Public Defender with an application informing him that he had appealed to Mtatsminda-Krtsanisi district administration a few times for the permission to obtain the copies of personal files of the civil servants (members of the public administration)

The district administration refused the applicant's request through the letter #b-1047 of June 2 based on the article 27^1 of the General Administrative Code.

According to the article 27, sub-paragraph "h" of the above Code "personal data is public information for the identification of a person". According to the article $27^{1,}$ "personal information not is considered classified, with the exception of the circumstances provided for by the law or by the decision of the person concerned." Moreover, according to the Article 44 of the same Code a public organization is responsible to keep the confidentiality of the information which is regarded as private and classified, it cannot release the classified without the permission of the person concerned or the circumstances provided for by the Law and without the court decision., with the exception of the personal information of ranking officials

In the given case the district administration did not ask from the applicant if he had the written permission of the persons concerned. The administration did not apply to its staff members and did not obtain the decision of any administration member, which indicates the fact that the administration took the decision on its own initiative to consider personal information of the colleagues as classified.

In a similar case, Gela Kvitaia applied to Vake-Saburtalo district administration with an application to provide him with the registered addresses of the administration staff. The district administration refused the applicant's request through the letter #k-2787 of August 3, 2006 based on the article 37 (2) of the General Administrative Code, according to which "a person is supposed to provide written application to obtain public information. It is not required to indicate the reason or motivation in the application for requesting the public information. When applying for obtaining personal or commercial classified information the applicant with the exception of the circumstance provided for by the law, should present a notarized consent of the person concerned or a letter of consent approved by the administrative body."

But as we noted above, article 43, sub-paragraph "h" of the same Code the public organization is responsible "to immediately notify the person concerned at his current address about his personal information being requested by a third person or public organization". Vake-Saburtalo district administration did not fulfill this requirement of the Law.

Coming from the above-said according to the article 21, sub-paragraph "b" of the Georgian Organic Law about the "Public Defender", the Public Defender applied to the Vake-Saburtalo and Krtsanisi district administrations with the recommendation to inform their colleagues in accordance with the rules established by the General Administrative Code about their personal information being requested and based on their replies implement measures established by the Law.

In regard to the recommendation by the Public Defender in the case of Murad Burchuladze, we received a reply from Mtsatsminda-Krtsanisi district administration informing us that the administration met with the citizen and provided him the written explanation, as for G. Kvitaia's case, based on the recommendation, the administration of Vake-Saburtalo district applied to its colleagues to get their written consent or refusal about giving out the information about their residence addresses. The members of the administration refused to give out this information,

which is their legal right. The above citizen was informed about it and was given an explanation that he would not be able to obtain the requested information.

The case of the center for strategic research and development

On October 30, 2006 the center for strategic research and development applied to the Public Defender informing him that it had addressed the cleaning service of the Mayor's office of Tbilisi on October 10, 2006 bearing reference #1-257 to obtain public information. The letter was registered at the chancellery of the mayor's office on October 11, 2006 bearing #228/1-03. The author of the letter was requesting for copies of the agreements signed with enterprises responsible for removing garbage in Tbilisi and the providers of containers and other equipments needed for the process of garbage removal. The applicant also requested for the information about the amount spent to purchase the equipment by the mayor's office and the balance cost of the equipment. According to the applicant he did not receive a reply to the requested public information for an extended period of time.

The Public Defender considered the above as a violation of the requirements and the norms established by the Law, which in its place violated the rights of the center for strategic research and development. The Public Defender appealed to the cleaning service with a recommendation to provide the applicant with the public information in a timely manner and to take necessary disciplinary action action against the person who was unable to carry out the responsibility and obligation of giving out public information in a timely manner.

The municipal cleaning service sent a reply according to which the recommendation was taken into consideration and the citizen was immediately provided with the public information, it also mentioned that after studying the case appropriate action would be taken against individual responcible for the delay in giving out public information.

The case of "Adati Ltd."

On August 17, 2006, The Public Defender recieved a letter from M. Otarashvili, the chairman of the association of "shareholder's rights and corporative management". (refer this case in the chapter of right to ownership).

From the attached materials the following circumstances were revealed: K. Nikatsadze, Prosecutor of Mtatsminda-Krtsanisi applied with the letter #01/18-1/6-1154 on May 5, 2006 to N. Bakhtadze, head of the national agency of public registry of the Ministry of Justice. The prosecutor was informing through the letter that criminal proceedings of the case #0605924 were underway and in the interest of the investigation, the property at #103 Agmashenebli Ave. in Tbilisi should not be sold.

Following the issuance of above letter the general director of "Adati Ltd" applied the national agency of public registry with the purpose of obtaining extracts from the files of the above real estate from the registry, to which he was refused. According to the applicant the officials of the registry justified their refusal based on the letter received from the prosecutor of Mtsatminda-Ksrtanisi district on May 5, 2006.

Chapter 24 of the Criminal Procedure Code defines the rules about Sequestration of property, which forbids the owner to manage its property and in case of need to use it. Sequestration is possible based on the decision of the judge to any complaint filed in the court, including criminal

procedure forced measure, possible confiscation of property or by the decision of the prosecutor in the circumstances of urgent necessity.

The letter of May 5, 2006 #01/18-1/6-1154 did not have the legal grounds to place restrictions on the property. Therefore it was illegal. Based on the content of the letter and the actions of the officials of the national agency of the public registry the human rights of the applicable Law were violated.

According to the article 311 of the Civil Code of Georgia, "Public Registry is accessible for any interested person".

According to the article 37 of the General Administrative Code of Georgia "every person has the right to request public information despite its physical form or the condition of storing it and to choose the form of receiving the public information, if it does not exist in any other form to get the information in the original".

According toArticle 2, Para.l of the General Administrative Code of Georgia, public information is "an official document in the form of, model, plan, photo, electronic information, video and audio recordings maintained at the public registry, received, processed, created or sent by the official of the public registry".

According to the article 28 "public information is open to all with the exception of the circumstances provided for by the Law and the established rules considering it as a state, commercial or personal classified information".

The national agency of the public registry had no right to refuse giving out documents on the real estate to its owner because according to the then prevelent legislation, the information was not classified by the State bodies.

In response to the above mentioned and according to the article 21, Para. "b" of the Georgian Organic Law about the "public defender", the Public Defender appealed to the national agency of public registry with a recommendation to study the above case and to give out the public information as requested by the applicant, The Public Defender also asked the auhtorities to consider disciplinary action against individuals responcible.

According to the reply received from the public registry we found out that the recommendation was taken onto consideration. The chairman of the public registry instructed the relevant persons to give out the information indicated in the recommendation.

The case of Paata Gegelia

Citizen Paata Gegelia sent an application to the Public Defender. In his letter he was informing the Public Defender that despite a number of applications sent to the city council and the office of the organization of public services and amenities he did not receive the public information about the administrative act, according to which temporary stalls of Coca-Cola and Borjomi carried out outdoor commercial activities in Tbilisi.

The requested information was public and it should have been available for anyone, in regard to this issue the Public Defender applied to the Mayor's office.

According to the letter received from the administration of the Mayor's office "it did not have any information about the legal grounds for the commercial activities carried out by the temporary stalls of Coca-Cola and Borjomi in the streets of Tbilisi".

Once again it should be noted that the administrative body is responsible to reply to the applicant with a letter on the issue of his interest.

The case of Irakli Kandiashvili

On November 28, 2006 Irakli Kandiashvili, the lawyer of the firm "Andronikashvili, Saxsen-Altenburg, Miurat and Partners" applied to the Public Defender with a letter. According to the lawyer, Aleksandre Baramidze and he applied to the Mayor's office with the letter #11/14597 on September 20, 2006 to obtain public information. They were asking information regarding the agreement signed between "D and G Technology" and Tbilisi Mayor's office for the civic work of carrying out internal repairs to the roads along the right side of the river banks, including the streets of Kostava, Melikishvili, Kerchi, Kaloubani, Irakli Abashidze, the road leading to the children's town and Varketili (upper Plato). The applicants also wanted to get the information about the selection criteria involved according to which company was awarded the contract through the tender process and requested the copies of all the documents related to the case. According to them, once their letter was forwarded for action to the office of organization of public services and amenities they applied with a letter to this office on October13, 2006. The application was registered with the number 3275-07/7 on the same day. The office did not give out the requested public information. Irakli Kandiashvili and Aleksander Beridze applied to the general inspection of the mayor's office with a complaint. The complaint was delivered to the addressee on October 23, 2006 and was registered with the number 840 but the inspection department did not react to this complaint and neither to the one sent to them on November 8, 2006 about ignoring the previous complaint.

According to the article 37 of the General Administrative Code of Georgia ""every person has the right to request public information despite its physical form or the condition of storing it and to choose the form of receiving the public information, if it does not exist in other form to get the information in the original. If there is a danger of damaging the original copy, the public registry is responsible to ensure the possibility for the applicant to be read from the original under supervision or provide a certified copy." According to the part 1 of the article 40 of the same Code "the public registry is obligated to give out information immediately or within 10 days unless the reply to the requested public information requires:

d) Obtaining and processing information from its subdivision or from different public organization in another location;
e) Finding and processing non inter-related documents in big volume;
f) Consultation with its subdivision or different public organization.

Article 26, part 3 of then applicable Georgian Law about "the capital of Georgia-Tbilisi" stipulated that "the head of the municipal service reports and is responsible towards the Mayor, premier and the city council". Based on Para. "a" and "b" of the above article and Code, the Tbilisi mayor's office was supposed to request the public information from its subordinate services reporting to him and hand it over to the applicants.

Concluding from the above, the mayor's office once again violated the requirements and time limits in regard to giving out public information, which in its place violated the rights of the citizens. According to the article 21, Para. "b" of the Georgian Organic Law about the "public defender", the Public Defender appealed to Tbilisi mayor's office with a recommendation to

immediately give out public information and copies of the requested documents to the applicants based on articles 37, 38 and 40 of the General Administrative Code of Georgia and also to consider the administrative complaint, the letter also requested action against the individuals who according to the article 78 and 79 of the Georgian Law about "public service" did not provide public information in the timely manner to the applicants and did not fulfill the requirements for considering the administrative complaint.

The case of Guria News

Nato Gelashvili, journalist of Guria news sent a letter to the Public Defender on July 13, 2006 related to the problems in obtaining public information. According to the journalist on April 17, 2006 she requested public information from the central department of Internal Affairs of Guria region she received neither the information within the time limit nor the refusal.

The journalist was interested in:

-Amount allocated to the central department of Internal Affairs of Guria region in 2005 and the expenditure pattern;
-Number of registered drug abusers at the central department of Internal Affairs of Guria region (Lanchkhuti, Chokhatauri, Ozurgeti district offices) and number of arrested drug abusers and drug dealers;
- Statutes of the central department of Internal Affairs of Guria region, and internal affairs district offices of Lanchkhuri, Chokhatauri and Ozurgeti;
-Information if the special operations department was functional in Guria region and the person In-charge

The requested information is not classified and should be accessible for anyone. For this reason the Public Defender applied to the central department of Internal Affairs of Guria and was asked to provide the public information to the applicant.

The central department of Internal Affairs of Guria sent a reply informing that after the involvement of the Public Defender, the law-enforcers were provided explanations on the legal rights of getting public information (with the indication to the relevant articles of the General Administrative Code), the journalist was provided with the requested public information pertaining to drug related crimes, funds allocated from the state budget and the statute of the central department of Internal Affairs of Guria.

In order to avoid problems related to access of public information it is necessary to add an article to the General Administrative Code imposing penalty on ranking officials for unjustified refusal of releasing public information, for blocking information or for discriminatively obstructing even a single journalist on obtaining public information and also for the violation of time limits.

Freedom of Religion and Tolerant Environment

During the reporting period, in regards to ensuring religious freedom and instilling tolerance have seen some progress, but in some areas substantial complications were evident. (See Reports 2004, 2005, 2006 Part I).

Although in comparison to the previous reporting period, the number of incidents of street violence based on religion remained nearly the same, it should be mentioned that the law enforcers responded more adequately; however in some cases the response to violence committed on religious grounds was initiated only after the involvement of the representatives of the Public Defender. Thus, it is difficult to positively evaluate the activity of low- and middle-level staff members of the law enforcement bodies.

The state took some steps to establish positive cooperation with religious minorities. The meetings of the Religious Council were held with the attendance of the Deputy Prosecutor General of Georgia and the Deputy Minister of Internal Affairs. At the meetings discussed the problematic issues and noted the need to strengthen the collaboration. The Religious Council also met with the Deputy Chairman of the Penitentiary Department. Following these meetings at the Public Defender's Office, the Chairman of the Penitentiary Department and the representatives of the Religious Council signed the Memorandum of Understanding.

Violence on Religious Grounds

In the second half of 2006, several cases of violence on religious grounds were recorded. Out of this, 7 cases were connected with the public propoganda practice of the religios sect Jehovah's Witnesses and in one particular case an attack on the premises that belonged to Jehovah's Witnesses occurred.

1. On October 21, in Varketili 3 at the entrance of Building 301 Vakhtang Sokhadze physically and verbally abused Jehovah's Witnesses sect members,K. Tsilosani and N. Khutsishvili when they were distributing religious pamphlets. The complaint was filed with the Isani-Samgori District Internal Affairs Department. The investigation is under way.

2. On October 26, in village Kveda Sakara, Zestaponi District, Gia Peradze physically and verbally abused Jehovah's Witnesses sect members Murman Ediberidze and Zaza Bochoidze when they were distributing religious pamphlets; as a result M. Ediberidze was inflicted minor injury. The investigation of the case is under way.

3. On November 3, in Kharagauli District village Khidari Kh. Tsikolia and Kh. Buachidze were offering religious pamphlets to interested individuals. Resident of the same village S. Dvali, who was aware that the former were members of Jehovah's Witnese, searched their handbags to find the religious literature. Following which, he abused them physically and verbally, including the threat to rape. Kh. Buachidze was diagnosed suffering concussion of the brain and and in need relevant medical treatment. S. Dvali was arrested. as suspect and charged with the crime of oppressing on religious grounds implied by the Georgian Criminal Code, Article 156, Part 2, Paragraphs A and D and as a measure of restraint, on the basis of Prosecutor's petition, in November 2006 was sentenced to imprisonment. The investigation is under way.

4. On December 7, in Kharagauli three persons met Jehovah's Witness Eduard Pelikyan in downtown Kharagauli, Giorgi Tabatadze among them. They abused E. Pelikyan physically and verbally since person was a member of Jehovah's Witnesses confession. A suit was filed with

the local police, but since the assailants pleaded pardon from both the police and the victim, and were willing to pay the compensatin for any material damage, the case concluded with reconciliation.

5. On November 2, 2006, An estimated 50 people, including the teachers and students of the neighboring school gathered in front of the Royal Hall being constructed by the Jehovah's Witnesses, During the rally the school students hurled stones into the Hall. The Patrol Police were called to the site of incident. The gathering was organized by Gogita Melikidze, a resident of Rustavi

It should be taken into account that on November 21, 2006, the Investigation Section of Georgian MoIA Rustavi City Department instituted a preliminary investigation on the criminal case involving the incident of Jehovah's Witnesses sect members David Mskhiladze's and Shalva Khutsishvili's physical abuse by Gogita Melikidze. Since in both cases Giorgi Melikidze was the person involved, both cases were unified into one. On December 4, 2006, G. Melikidze was indicted for committing the crime implied by the Georgian Criminal Code, Article 156, Part 2, Paragraph A, and on December 5, 2006, by the Rustavi City Court Decision and as a measure of restraint imprisonment was selected.

6. On November 16, 2006, at about 10:00 or 11:00 PM, K. Ninikuri, G. Alasania, N. Tsikhelashvili, Sh. Mosiashvili and one more person unidentified by the investigation contacted each other for the purpose of carrying out criminal activity with the intention to assault, plunder and steal property from the office of Jehovah's Witnesses under-construction in Rustavi. They broke into shed's wooden door, when confronted by the night watchman of the premises of Jehovah's Witness, G. Ninashvili The assailants first hurled stones, and then physically assalted him on the head using their hands and legs; they damaged the kitchenware in the shed and took a mobile phone. As the assailants aware that Ninashvili was a member of Jehovah's Witness, they forced him to insribe on himself with a sign of the cross.

The Public Defender's representative was contacted by a Jehovah's Witness within a few minutes of the assault notifying about the rampage and and also indicated that the Patrol Police were called for help, but upon arrival the Patrol Police members hesitated to react on the night watchman's statement that the assailants couldn't have traveled far and could be easily detained.

The situation changed when the representative of The Public Defender's Office communicated this information to the senior officials of the law enforcement bodies. The four above mentioned persons were detained within one hour after the assault.

On November 16, 2006, the Investigation Section of Georgian MoIA Rustavi City Department initiated preliminary investigation on the criminal case in connection to the incident of the of robbery and physical assault on Jehovah's Witness G. Ninashvili, the crime implied by the Georgian Criminal Code, Article 178, Part 2, Paragraphs A and B, Part 3, Paragraph A and Article 156, Part 2, Paragraph A. Upon the Rustavi City Court Decision, as a measure of restraint for the assailants, pretrial imprisonment was selected.

7. On December 19, 2006, Giorgi Didberidze and Levan Chubinidze applied in written to the Public Defender of Georgia. As indicated, they are the members of the religious organization Jehovah's Witnesses. On December 19, when they were distributing religious pamphlets in the street, they were abused physically and verbally on the basis of their religious belief by an individual. When G. Didberidze and L. Chubinidze came to the First Unit of the Tbilisi Isani-Samgori District Police Department to inquire about the assailant, they encountered this

individual in the police station. The incident was recurrent: they were again physically and verbally abused.

The police members explained to G. Didberidze and L. Chubinidze that the individual was Shalva Sanikidze, a chief of the "OUR" criminal investigation unit, and nobody attempted to stop the illegal action of this person. The police officers displayed disregard to the fact of violation of the rights of the members of the religious minority and did not react to the delinquent actions even though the incident took place in front of them. The police officers did not offer any assistance to the citizens. On December 28, 2006, representatives of the Public Defender's Office Beka Mindiashvili, Giorgi Gotsiridze and Tatuli Todua visited the First Unit of the Tbilisi Isani-Samgori District Police Department (address: 50, Trialeti Street, Tbilisi) regarding the case of Giorgi Didberidze and Levan Chubinidze. They met and spoke to Deputy Chief of the Department Gela Abesadze. In the beginning of the conversation G. Abesadze noted that he was unaware and ruled out the possibility of such an incident taking place. He also mentioned that he never met Shalva Sanikidze.

The Public Defender's representatives inquired about the list of officers on duty in the first half of December 19 and requested their contact details for further clarification of the matter. According to the official record, during the day two individuals stayed in the building (reception area): an officer and a private. They were deployed in the reception room. The room is located in the entrance of the building next to the stairway. Besides the two that were mentioned, there were also other staff members in the building to attend to phone calls. The time of call and the officer's departure to the site are indicated in a special register. In the register the identity the police officer visiting the site is also indicated. On December 19, in the reception room Badri Kvitsiani and Gela Gurlikashvili were on duty, and Giorgi Tabatadze, Pridon Chichua, David Kupriashvili, Lasha Chkhitunidze, Gela Gelashvili and Martin Kazarian (in all 6 persons) were there in the morning of the same day.

The Public Defender's representative spoke to Lasha Chkhitunidze, who denied the facts and insisted that the incident never occured. He claimed that on December 19 he was in the building as he left the staff meeting. However he also added that on various occasions officers from other Departments also visited this Department. Therefore it was possible that these persons witnessed the incident.

G. Didberidze and L. Chubinidze in their statement had indicated the "passport service", as they thought the mentioned word "OUR" could be this body. The Samgori Service of the Civil Registry Agency (the passport service) is located next to the police department. The Public Defender's representatives met with Chief of the Service Mamuka Butsureishvili to find out about Shalva Sanikidze's personality. M. Butsureishvili had worked as the Chief of the Service since 2005 and had never had such a named staff member. All the more, he had never met a person with this identity. Mr. Mamuka Butsureishvili also denied having any knowledge about any incidents that might happened on December 19.

The victims later found out that the investigative unit of the police department is often referred to the term "OUR" in slang. Merab Kaspelashvili was the Chief of the Investigation Section of the First Unit of the Tbilisi Isani-Samgori District Police Department. Since it was beyond the jurisdiction of the Public Defender's representative, M. Kaspelashvili was not introduced to the victims to identify the personality. One thing is clear that "Shalva Sanikidze" is a fictitious and

fabricated name and such a person had never worked in the mentioned body. In the conversation with the Public Defender's representatives victim Levan Chubinidze mentioned that he lived in

the same neighborhood where the police department is located and he was well aware of the address of one of the police officers that witnessed the incident; however he did not know his name.

Victim Levan Chubinidze also indicated in the conversation with the Public Defender's representatives that after the incident he and his friend Giorgi Didberidze were stopped and warned by an individual driving an Opel vehicle who gave them a "friendly advise" not to apply to any organization with a complaint otherwise they would face problems.

For relevant action, the statements of G. Didberidze and L. Chubinidze and the notes of the meeting with the Chief of the Samgori Service of the Civil Registry Agency were forwarded to A. Giorgadze, Acting Chief of the Human Rights Department of the Prosecutor General's Office.

As Tbilisi Prosecutor G. Gviniashvili noted in his response to the Public Defender, control was established over the case, investigation is under way and if evidences were found, legal action would be taken against concerned individuals.

The campaign against the construction of the Assyrian Cultural Center

In 2006, the Union of David the Builder Orthodox Congregation was rather active.Between September 15-18, 2006, A protest rally was held under their guidance against the construction of the Assyrian Cultural Center on Kavtaradze Street in Tbilisi. The reason for the protest rally was the the assumption of the protesters that since the construction was headed by the Catholic Assyrian priest Binyamin, a functional Catholic Church was bound to be located within the Cultural Centre. The protestors demanded the construction be be stopped, or be given an assurance by the priest Binyamin that the completed centre would only be utilized for civil purposes and not religious.

For the given purpose they started gathering the signatures of Saburtalo residents. On September 17, an estimated 150 individuals gathered in front of the construction site on Kavtaradze Street demanding to halt the construction works. The rally members believed the construction of the Catholic temple was an attempt of aggressive proselytism and converting the individuals into another belief, which, in their words, was violation of the international principles.

Prior to this incident, leaflets wer distributed in the population. The residents of the building neighboring the Cultural Center being constructed received the leaflets with the following text:

Keep off! Catholic aggression!

Dear fellow countrymen! Saburtalo residents! The Vatican is strengthening in Georgia the policy of aggressive proselytism and religious enticement and widening more and more the spheres of its influence at the expense of the Orthodox parish. A clear evidence of that is a construction of the huge Catholic temple on Kavtaradze Street. The local residents have no need or requirement for having such a huge temple in the neighborhood. It is not intended for the Vatican's local personnel, but for a new congregation made up of enticed former Orthodox parishioners. The Vatican Envoy verbally denies the proselytism activity as proselytism is violating the international principles, though opening new temples, educational institutions and the open objective of the Vatican to achieve a greater influence than the Orthodox Church in Georgia are evidences of the contrary. The Mother Church teaches us that Catholicism, popism in essence, is a sinful teaching that has always been hostile to Orthodoxy. The Catholics have

ruined the Georgian monasteries, killed monks and nuns, with false promises "made French" the Orthodox believers. Today along with spreading the anti-Orthodox teaching, they are introducing absolutely unacceptable for us homosexual families, religious services offered for animals, etc. Our patriotic duty is to defend ourselves from Vatican's spiritual expansion to safeguard the future generations from spiritual death, moral and physical degeneration. Let us demand the authorities: stop the construction of this Catholic temple, turn it into a civil non-proselytizing building not to escalate the relations between the representatives of two religions as it happened in Serbia and Croatia, Western Ukraine and Northern Ireland. Let us perform our duty before the Mother Church and homeland.

On September 18, 2006, the temple construction was protested also by the Patriarch's Office:

Statement of the Patriarch's Office:

As media reported, a building of religious natureis being constructed on Kavataradze Street . Padre Binyamin is in charge of the construction, Catholic Church's Assyrian clergyman. Therefore, it is logical that this building belongs to the Catholic Church, though, notwithstanding who is the owner of the building, it is unlawful as there are no legal bases to regulate the operation of the religious organization and the construction of the religious building. It would interesting to know the issuer of the permit, as the Orthodox Church, even having the legal rights, faces problems sometimes. We would note also that not every Assyrian residing in Georgia is a follower of the Catholic Church. They have resided in our country for centuries and their substantial part is Orthodox. Thus, constructing the Assyrian Cultural Center by the Catholics and in other words presenting Assyrian culture as Catholic is groundless.

The statement made by the David the Builder Society is full of aggressive anti-Catholic stereotypes and is a classic example of the discord language usage. It also contained the elements of threats: if the construction proceeded, Georgia could find itself in a Serbia-Croatia-type religious conflict.

The statement made by the Patriarch's Office did not contain such phrases, but there were some errors related to the legislation. In particular, the Georgian legislation does not provide for any type of legal restrictions for constructing the buildings for religious purposes. A great majority of the Assyrians residing in Georgia are truely Orthodox, though this does not mean that the Catholic Assyrians have no right to construct their own cultural center, even if a part of this building is used as a church.

The protest rallies against the construction of the Assyrian Cultural center were organized also in the middle of December. On that occasion several Orthodox Church clergymen joined the protest action. The rally members called upon the individuals employed in construction to cease their cooperation with the Catholic priest since it meant betrayal of the homeland and the Church, as the protester believed.

It should be noted that the construction of the Assyrian Cultural Center was not opposed by the state. On the contaray, all necessary permits were issued and therefore this was a fully legitimate construction.

"The disputed churches", intolerance, appeals containing hatred

The topic of the so-called disputed churches has been repeated for years in the Public Defender's Reports, but the issue remains unresolved. In general, restitution of the church properties still remains a problem in Georgia.

The properties of churches were seized during the Soviet era. In 1991 the state issued a decree, which authorized the handover of the Orthodox Churches on the territory of Georgia to the Georgian Patriarchy. The Supreme Council indicated in its decree the list of temples, and although they were retained as the property of the state, the Patriarchy was empowered to use the listed churches for religious purposes. During the period of the handover, the status of the church remained unclear, making it impossible to transfer the property with a certain type of legitimate status. In parallel, the property status of other religious unions remained unchanged. A part of the property forfeited in the Soviet era still belongs to the state and it is problematic for the Armenian Apostolic Church and the Catholic Church to make use of this property.

In the 1990's arose a conflict between the churches. In Kutaisi, Batumi, Akhaltsikhe District and Gori Catholic churches currently function as Orthodox churches. Although in Kutaisi the Catholic congregation complained about the misuse of the church, the Supreme Court did not approve the suit and found the Catholic Congregation as an unauthorized party (refer the Public Defender's Report for 2004).

The process of the disputed churches is related to illegal handling of historic heritage. For instance, in village Ivlita the church interior was changed, in Gori the frescos were taken out of the walls, etc. In fact, this is an abuse and destruction of cultural heritage which has recieved very little or no response from the Stae

Further more in the Report for the First Half 2006, we indicated the fact that in Akhaltsikhe District, village Tskaltbila an Armenian church was built within the boundaries of the Georgian church, which contradicted the Constitutional Agreement; nevertheless this fact recieved no reactions from the local or central authorities.

The status of the property of the religious unions is unclear even at the legislative level. According to the Agreement concluded by the Georgian state and the Georgian Orthodox Church, a specialized commission should be set up, which would be tasked to create a list of Orthodox churches and related properties on the territory of Georgia which historically belonged to the Georgian Orthodox Church, following which the listed properties would be returnd to the Church. Nothing has been done so far on the issue, what is the volume and particular property to be returned to the Orthodox Church.

The situation with other religious organizations shares the same uncertainty. No authoritative joint commission has been formed to make expert conclusions on the origin of the churches and elaborate recommendations to solve this and other related problems. The Commission on the Catholic-Orthodox Dialogues formed in 2004 never launched its activity. The Commission members managed to gather only once at the time of its formation.

In the second half of 2006, in Akhaltsikhe District village Ivlita relations between a local Catholic priest and the Orthodox population escalated a number of times. The basis of tension was Ivlita's former Catholic Church, where the Orthodox priest served. In 1991, the Ivlita residents made a decision at a public gathering to temporarily allow the Georgian Orthodox clergyman to serve in the church as those days the Catholic congregation had no priest to conduct the church services in Georgian. As the locals decided at the meeting, the Orthodox

priest was allowed to serve until the Catholic Church would commission a Georgian-speaking Catholic clergyman.

The relations between the Orthodox and Catholic communities strained after Georgian Catholic priest Zurab Kakachashvili was commissioned. For the Orthodox congregation, it turned unacceptable that the clergymen of both confessions were allowed to conduct the services in the temple.

In 2004, the Catholic community of the village along with the Catholic clergymen together with,the Georgian Patriarchy's Akhaltsikhe Eparchy Arch-Bishop Teodore Chuadze reached a verbal agreement on the Ivlita church and its territory, they agreed no construction of any kind would take place, the façade and interior would remain untouched. This agreement was concluded after the action of Orthodox priest Ioane, who, along with the village residents cemented the Catholic graves in the church and displaced the icons and ritualistic items from the Catholic church.

In 2006, Ivlita Catholic community accused the priest Ioane of breaching the agreement: they claimed he initially started the construction of a chapel within the fence, before extending the construction beyond to an outer fence. Angered with this fact, the members of the village Catholic community addressed the Public Defender for help. The Public Defender's representative studied the situation in Ivlita and concluded that Priest Ioane was actually constructing the outer fence with the intention of building a restroom in the churchyard

The Public Defender's representative communicated with Akhaltsikhe Arch-Bishop. The Arch-Bishop asserted that any construction beyond the inner fence would be stopped. The construction did stop, but for only two months. After a period of two months, Father Ioane built a intended restroom on the church fence sparking renewed confrontation in the village.

In parallel to these events, on October 25, 2006, the TSU Akhaltsikhe Branch held a presentation of the book "The Truth about the Ivlita Church" by priest Gabriele Bragantini and Nugzar Papuashvili. The book is contentious by nature and contains critical comments on the work of historian Tina Ivliashvili, who claimed the Orthodox origin of the Ivlita church.

Within minutes of the presentation, deacon David Isakadze, preceptor of the St. Marina Church in village Dighomi, and members of the David the Builder Congregation Union entered thehall and tried to disrupt the meeting with insulting words. According to the witnesses, deacon David Isakadze demanded in an aggressive tone that the Catholic priest renounce their Catholic belief and ebmrace the truthfulness of Orthodoxy, he also remarked "Inquisition, immolation and many other shameful deeds is Catholicism... Do you accept that you are heretic? If you do not wish to be called by that name, here and rightaway in our presence, accept the Holy Spirit that comes solely from the Holy Father", the deacon addressed to the Catholic priest.

This group revisited the branch the next day. They distributed leaflets among the students, in which the Chairman of the David the Builder Congregation Union appealed to the population: "Dear fellow countrymen, Orthodox! Let us not allow the spread of Papism aggression against the Georgian Orthodox Church. Do not be deceived by the Papists' promises of prosperity and political patronage. Do not trade your souls for 30 pieces of silver, otherwise our country and the Georgian nation will not be able to avoid God's wrath."

On November 25, a similar incident occurred during the presentation of the book held at the conference hall of the Ilia Chavchavadze National Library. Even on that occasion members of David the Builder Congregation Union entered the hall with the intention to disrupt the

presentation. Some of them verbally insulted priest Gabriel Bragantini. They again demanded the priest to recognize the truthfulness of the Orthodox belief. The representatives of the David the Builder Congregation Union tried to out voice the speakers and get the microphones without permission. They attempted to escalate the situation to an extreme level of physical confrontation.

* * *

Xenophobic and extremist type actions and statements containing hatred are not punishable by the Georgian legislation. The extremist and insulting utterances of the members of the David the Builder Congregation Union are within the boundaries of freedom of expression, in accordance with the existing legislation.

Nevertheless, European Commission against Racism and Intolerance (ECRI) in its second report on Georgia (2006) recommended the Georgian authorities to reckon the publication or distribution of materials containing racial insult and racist statements.as criminal offence

Supporting tolerance

For the purpose of promoting tolerance and integration, The Center for Tolerance with the support of UNDP and the Norwegian Government is engaged in multiple activities
The Center facilitates socio-cultural events which would serve as the basis for the process of integration within ethnic and religious minorities, apart from promoting activities raising of civil awareness.
The Centre is also credited for the formation of the Religious Council (founded on June 16, 2005) and the Ethnic Minorities Council (founded in December 2005).

The activities of the Center for Tolerance in 2006

1. In 2006, the Center for Tolerance conducted a series of three-day seminar on the theme of *Integration and Tolerance*, in which the young representatives of different religious and ethnic groups participated.

During the seminars discussions were held on:

- The Georgian Constitution. A special focus was on articles such as the citizenship issues, basic rights and liberties.
- Major related UN documents, the European Convention on Human Rights, significant decisions of the European Court and Framework Convention for the Protection of Minorities.
- Culture of tolerance based on case studies. The participants also touched on the issues of tolerance, discrimination and ethnic and religious stereotypes.

The seminar representatives had meetings with the clergymen representing the Catholic and Armenian Churches, as well as Islam and Judaism.

The seminar allowed us to start working on the creation of the inter-confessional and inter-ethnic youth network, which will help unite the active members of the ethnic and religious minorities in Georgia.

Similar seminars are planned for the year 2007.

2. The following events organized by the the Public Defender and the Center for tolerance can be easily termed as successful in tolerance development, they are:

1) The arts competitions organized in Tbilisi schools on the tolerance theme; and
2) The competition for the best printed publication in the Georgian media on tolerance and integration issues.

3. A good initiative for bringing the youth of different confessions closer was the mini-football Tolerance Cup organized on November 12-17, 2006.

The tournament consisted of participant teams from the Orthodox, Catholic, Armenian, Baptist, Lutheran, Evangelical-Pentecostal Churches, as well as the teams of the Muslim, Yezid and Jewish communities.

It is worth noting that due credit should be given to the students of the Religious Seminary and Academy which addressed the Center for Tolerance with the initiative to arrange such a competition, Following which the Center in collaboration with the Tbilisi Mayor's Office, Georgian Football Federation and the Youth Movement for Peace and Democracy organized the football tournament.

The inter-religious football tournament was an unprecedented case in the world's history.

4. The Center for Tolerance at the Public Defender's Office publishes the monthly magazine Solidarity. The magazine covers the activities of religious and ethnic groups in Georgia, issues of tolerance, inter-cultural dialogue, pluralism, problems of the most vulnerable groups of the society are also highlighted

5. The Center for Tolerance conducted monitoring of the Georgian printed media "Negative Stereotypes in the Printed Media Pertaining to the Religious Minorities". The results of the monitoring are given in a separate chapter.

6. The Religious Council at the Public Defender's Office

The Religious Council to this date unifies 24 confessions. The core principle of the Council's functioning is the efficient protection human rights, promoting tolerant spirit, active participation in the civil processes and coordination of social, humanitarian and environmental activities. The Religious Council has Cultural-Educational and Socio-Humanitarian Committees, which are active in relevant fields. At the meetings of the religious Council held regularly, as a rule, current actual events in the socio-cultural spheres are discussed. The Council members consider and submit recommendations and suggestions to relevant bodies regarding the existing problems. The Council makes public the joint statements (see attachments).

On the activity of the Religious Council in the second half of 2006

In the educational sphere: The Cultural-Educational Committee had a meeting, at which the members discussed the issue of teaching religion and related problems at schools; a

questionnaire was developed to identify the meathod of teaching religion at schools and the cases of discrimination on the religious grounds. The Council made a public statement in support of the reforms in the educational system.

In the social sphere: The Socio-Humanitarian Committee adopted an action plan to support the libraries in the penitentiary system; books were collected for the penitentiary institutions.

As we noted, on September 28, 2006, the Religious Council and the Penitentiary Department signed a Memorandum of Understanding aimed at the protection of the rights of religious minorities in the penitentiary system. The meetings were held with the Deputy Prosecutor General of Georgia and the Deputy Minister of Internal Affairs.

The Information-Analytical Committee held a meeting that considered an encyclopedia project on the Religious Diversity in Georgia. It was decided that by the end of 2007 a reference type encyclopedia in two volumes would be released. The first volume would describe the activities of all the religions existing in Georgia, while the second woulf focus on the activities of the national minorities.

The Religious Council went public in 2006 with an appeal to the leaders of Russia and world religions, which gave a critical evaluation of the persecution and discrimination of the people of Georgian origin in Russia.

The State of National Minorities

In comparison to the reporting period of the First Half of 2006, no special initiatives were noticed in terms of improving the situation with the national minority rights, civil integration, and employment at the state bodies and the quality of teaching the state language. In general, the same situation was retained.

National minorities in the Georgian educational system

The educational problems in the areas mostly populated by national minorities were linked to teaching quality the state language, non availability of school books, lack of material and technical base and other issues.

Despite the fact that much was done to improve the quality of teaching Georgian languages in the Samtskhe-Javakheti and Kvemo Kartli schools, the high school graduates and residents of these regions are unable to communicate in literary Georgian, and simply speak using basic words. This naturally hinders the full participation of the youth from these regions in the country's public, economic and political life.

According to the information submitted by the organizations representing national minorities, in Kvemo Kartli and Samtskhe-Javakheti the Georgian language was often taught by the individuals that did not speak Georgian or, on the contrary, the language was taught by ethnic Georgians that could not speak the language that students communicated in. As an effect, in one particular case the children were unable understand the curriculum given by their teacher only in Georgian, and in other case they were not taught Georgian at all as the teachers did not speak Georgian. In Kvemo Kartli and Samtskhe-Javakheti there were schools, which offered Georgian language classes at the relevant level, but the number of these schools was insigificant.

Among the positive steps taken to improve the educational level of the national minorities, was the translation and publication of textbooks in Russian, Azerbaijani and Armenian languages developed in accordance with the unified national plan of the secondary educational system. Although this was a pilot project and it was not yet possible to translate, publish and adapt new textbooks for every grade, it would significantly promote the formation of the unified educational area in the country. It is also welcomed that the project was implemented with the support of the Georgian businesses, the Georgian Industrial Group and Republic Bank.

As a positive result, a certain number of young persons representing the national minorities were trained and prepared for the Unified National Examinations funded by the State.

Employment of the national minorities in the Georgian state bodies

A rate of employment of the national minorities in the public service was still low. The national minorities were employed in the areas of their local settlement, but were insufficiently represented in the central authorities and the bodies in other regions of Georgia. This issue undoubtedly should be solved.

On qualified translation of the cases for the national minorities into their native languages during the court processes

Representatives of the national minorities and their defenders often complained about the violations of the procedural norms by the representatives of the law enforcement bodies and courts during the court proceedings and investigation. In particular, the relevant legal documents were incompetently translated for representatives of the national minorities at the stage of investigation and court hearings (sometimes the Azerbaijani and Armenian translators were not available at all). This often caused the violation of their civil rights and mistrust towards the Georgian law enforcement bodies and judicial system, which negatively affected the process of civil integration and created a favorable environment for kindling internal tension. The courts were staffed with Russian translators, but some Kvemo Kartli and Javakheti residents could not speak Russian at that level. It is necessary to offer them Armenian and Azerbaijani translation of the investigation and court documentation.

The state of Dukhobor community residing in Ninotsminda District

In the 2006 First Half Report we noted the Dukhobors issue residing in Ninotsminda District. The Public Defender addressed with recommendations to different state bodies regarding the issues of Dukhobor community's security, land ownership and the protection of cultural heritage monuments.

The representatives of the Public Defender traveled a number of times to Ninotsminda to study the situation. On November 27, 2006, a meeting regarding the problems that the Dukhobor community faced was held in the Public Defender's Office,with the participation of President's Representative in Samtskhe-Javakheti Region Goga Khachidze, Chief of the Tax Department Kakha Baidurashvili, representatives of the GYLA and European Center for Minorities and the Dukhobor community leaders. At the meeting the attendees discussed the problems that the Dukhobor community faced, including the land ownership issue and the legitimacy of origin of the 4-million-lari tax liabilities of the Cooperative Dukhoborets that belonged to the Dukhobor community from village Gorelovka.

To study in detail the Dukhobors' land issues it was agreed to set up a working group consisting of representatives of the state bodies and NGOs, with relevant joint activities preplanned. It was found out that at the time of Cooperative Dukhoborets some errors were made and that the responsible organization for the 4-million-lari tax liabilities was not the Cooperative Dukhoborets (as it was claimed by the Ninotsminda Tax Office) but the Soviet farm Dukhoborets, whose liabilities had been periodically paid by the Cooperative Dukhoborets and which was absolutely a different organization and not a legal successor of the Soviet farm.

A second meeting of the working group was held at the Public Defender's Office, in which the representatives of the Justice Ministry, Tax Department, Ministry of Culture and European Center for Minorities participated. With the joint efforts of the state bodies' representatives it was possible to solve the dispute in favor of the citizens. We should mention that it was the joint efforts of the Tax Department, Justice Ministry, Regional Administration, GYLA, European Center for Minorities and Public Defender which resulted in the solution of the liabilities issues levied on the Cooperative Dukhoborets and promotion of the land rights retention by the Dukhobor community.

Meeting with the Central Election Commission (CEC)

On July 25 at the Georgian Public Defender's Office, representatives of the Ethnic Council met with the CEC Chairman and Kvemo Kartli local election commission members.

The Council members and Commission members had a debate. The meeting was also attended by the National Minority Council representatives from Akhalkalaki, Ninotsminda, Marneuli and Gardabani.

At the meeting, members of the National Minority Council and the CEC Chairman raised the issue pertaining to the need of translating the election materials (voter lists, legislation, etc) into the minorities' native languages in the regions of local settlement of national minorities. As a result, for the 2006 local elections the representatives of the National Minorities Council at the Public Defender translated the voter lists and the Election Commission Member's Guidebook (with UNDP support) into Armenian, Russian and Azerbaijani and handed it over to the CEC for publication and distribution.

Regarding the Greeks residing in Tsalka District

In comparison with previous years, the criminogenic situation substantially improved in Tsalka District, though, as it seemed, on the part of the ecological migrants resettled in Tsalka District there were periodic threats and insults to the Greek senior citizens living in different villages. As the Greeks explained, they did not apply to the police fearing revenge. This issue is being studied and its results will be reflected in a special report.

Complaints on possible discrimination and different treatment on the ethnic grounds

The Arnold Stepanyan Case

On September 18, 2006, Arnold Stepanyan, Director of the Multinational Civil Movement in Georgia, addressed the Georgian Public Defender. As he noted, Mtatsminda-Krtsanisi Internal Affairs Department investigated the incident of theft in the office of the above mentioned organization (crime implied by the Georgian Criminal Code, Article 177, Part 3, Criminal case No. 06061883), investigated by investigator L. Baduashvili. According to Arnold Stepanyan, during the interrogation related to the incident of theft conducted by L. Baduashvili and other staff members of the department, he was forcefully demanded disclose and indicate his ethnic origin in his testimony, in ways and means prohibitated by the law
On September 19, 2006, the General Inspectorate of the Georgian MoIA and the Human Rights Office of the Georgian Prosecutor General's Office were notified about this fact and requested to take the measures defined by the law.

On October 2, 2006, we were notified from the General Inspectorate of the MoIA that Arnold Stepanyan's request was forwarded to Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office for further action.

On October 23, 2006, Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office notified through its response that as a result of their study of the mentioned incident, the fact of discrimination was not proved. As they noted, the investigator in this case acted on the basis of the Georgian Criminal Code, Article 297, which defines that "the investigator should determine whether the person being questioned can speak the language for legal office recording or determine the language he/she prefers and wishes to testify in".

On November 14, 2006, the applicant was forwarded the responses received from the General Inspectorate of the MoIA and Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office and notified that considering the above we have concluded the study of the fact.

The Romeo Muradyan Case

On October 26, 2006, the Georgian Public Defender was contacted by Romeo Muradyan.As he stated, on the above day he was driving a vehicle near the Avlabari Subway Station and stopped by the Patrol Police officers. One of the officers insulted him verbally and physically on ethnic grounds.

The representatives of the Public Defender immediately rushed to the site. Since the applicant was transferred for medical examination, it was impossible to obtain his explanatory note on the given day. One of the witnesses, Giorgi Terzhanyan, who was accompanying Romeo Muradyan at the time of incident, submitted the explanatory note.

On October 27, Romeo Muradyan stated that he was questioned as a witness by the staff members of the Tbilisi Prosecutor's Office.

On December 6, 2006, the Public Defender addressed the Tbilisi Prosecutor's Office in written requesting information regarding the measures taken.

On December 18, 2006, we were notified through a response that on October 26, 2006, the Tbilisi Investigation Section of the Tbilisi Prosecutor's Office initiated preliminary investigation, Criminal Case No. 10068212 on the fact of abusing power by the Patrol Police officers at the time of R. Muradyan's administrative detention, the crime defined by the Georgian Criminal Code, Article 333, Part 1. In the response it was also noted that R. Muradyan, the patrol police officers and incident witnesses were questioned and the investigation was under way.

The Georgian Public Defender addressed the Tbilisi Prosecutor in written on January 22, 2007, requesting information on the recent results of the investigation on the case.

No response has been received yet.

The Albina Zotovas Case

On June 5, 2006, Albina Zotova addressed the Georgian Public Defender with a complaint (No. 0830-06). As she noted, the Administration of Foreign Languages Faculty of the Ilia Chavchavadze State University starting from February 2006 without any justification terminated her special student scholarship on the ethnic ground.

In June 2006, representatives of the Public Defender visited the Ilia Chavchavadze State University in order to study the case and held a discussion with the University lawyer Inga Sekhniashvili during which, they also read the documentation and legal acts pertaining to the above issue.

On August 18 and October 18, 2006, the Georgian Public Defender addressed the University in written requesting the above mentioned documentation. The Public Defender's corrospondence included the letter from T. Kakuchia, Chief of the General Inspectorate of the Ministry of Education and Science, by which he forwarded Zotova's letter to the Ilia Chavchavadze State University for consideration and further action.

On November 22, 2006, we received the documentation and normative acts from the University. We were also notified that the University Administration considered Zotova's complaint as baseless. From the response and attached documentation it was revealed that honors students do not automatically qualify for special scholarships. The candidacies were considered on

individual basis during the Scholarship Commission sessions, and according to the provision, the student was required to submit a written application to the dean to be considered in the process of selection. As the University Administration clarified, since Albina Zotova did not submit any such application, she was not considered for special scholarship.

In her complaint, Albina Zotova noted, she knew nothing about the selection process and accordingly she did not find the need write an application. According to the University Administration, a notice on the selection process was put up in front of the Dean's Office.

The fact about the notice being put up cannot be verified at this point, although, after studying the documentation and normative acts, we can conclude that there were violations of complainant's rights.

On February 2, 2007, the Public Defender forwarded Albina Zotova the response received from the Ilia Chavchavadze State University and informed in written that the Public Defender's Office concluded the study of the fact.

It is a complicated task to prove a fact of insult on the ethnic ground and negative treatment of the individual because of his/her non-Georgian origin on the part of staff members of the public or private organizations. The fact that the investigation cannot often prove the facts of insult on the ethnic grounds should not be considered as an indication that such cases do not take place. This doubt is supported by the claims of the national minority representatives, which note abuses on the grounds of national minority origin.

Recommendations elaborated by the National Minority Council at the Public Defender

There are four functional Commissions in the Council; these are the Media and Information, Education and Science, Regional Integration and Legal Commissions. The commissions performed demanding tasks between October-December 2006. The Commissions elaborated a package of recommendations for the implementation of the Framework for the Convention on National Minorities. These recommendations will be soon submitted to various public bodies for their consideration.

Week of the Georgian-Jewish friendship

On the initiative of Rabi Abram Mikhelashvili, Chief Rabi of the Georgian Jews, it is planned to organize a unique program, which will be held during the Jewish holiday of Hanukkah. The Public Defender's Office is actively participating in the preparatory activities for this event. Considering the history of the Georgian-Jewish relationships and the significance of this week, it is desirable to engage the public bodies in the implementation of the "Georgian-Jewish Friendship Week".

Recommendation:

To the Ministry of Justice and the Supreme Council of Justice: Introduction of licensing and certification system applicable to the translators and interpreters involved in investigations and the judiciary

The Situation with the Gypsies in Georgia

The Georgian Public Defender's Office initiated the study of the situation of the Gypsies in Georgia and elaborated relevant recommendations.

Background

The Gypsies' history is a history of constant struggle and oppression. The first Gypsies emerged around one thousand years ago in the Indian subcontinent. It is yet unknown why the Gypsies decided travel and scatter all over the world. In Europe for centuries they were outlawed, they were enslaved, hunted, tortured and killed. Since1856 and the abolishment of Gypsy slavery, they have struggled for the protection of social rights and wish to uncover their intolerable state to a world that is indifferent to their needs.

The Gypsies historically have remained one of the most oppressed national minorities, which have been treated badly in almost every Country of the world on the basis of their ethnic, religious and linguistic origin. The Gypsies appeared in Georgia after the unification with the Russian Empire. Their main activities were trade, fortune telling and selling horses. The Georgian authorities paid attention to their problems in 1921: special residential areas were assigned, the Gypsies ensembles created, which represented their national culture and life. One of the most important facts was that the Gypsies were given the oppertunity to obtain education at the same level as the representatives of other nationalities. Their education was in Russian. After the break up of the Soviet Union and the independence of Georgia, the Gypsies found themselves in a rather difficult situation. According to the data of the Georgian State Statistics Department, by 1989, in total there were 1,744 Gypsies registered in Georgia . Out of which only 53 were registered in Tbilisi, 412 in Abkhazia, 126 in the Adjara Autonomous Republic, 251 in Kutaisi, and 32 in Rustavi. However these figures do not correspond to reality: there were more Gypsies in Georgia. The Statistics Department did not offer the census data for the Gypsies in 2002.

Gypsies are socially isolated; they distrust outside help and have their own arguments to support. They form the economic, social and political isolation in all societal spheres. Being scattered around the world, the Gypsies lack even those basic necessities that majority of other nationalities have: they do not have their own state, formal history, national army, language (the languages the Gypsies speak are the dialects); usually the Gypsies convert into the religion of the country where they live. The reason for all this is their way of nomadic life. A study showed that most of the Gypsies in Tbilisi by their belief were Muslims, though in recent times the tendency of converting to Christianity was noticed.

Hence, the Gypsies are separated from the society and are not officially recognized as a minority. As the interviews during our study showed, each family residing in Tbilisi strove to pass the national traditions on to next generations and by doing so, preserve their ethnic and cultural ideals.

Legal protection mechanisms

In terms of human rights protection, for the international community the Gypsies issue is currently one of the most serious and urgent problems. On May 20, 1999, Georgia ratified the European Convention of Human Rights and Fundamental Freedoms; on April 27, 1999, Georgia became the European Council member and made a commitment to protect national minorities, including Gypsies. On June 30, 2000, Georgia signed the European Social Charter, which was ratified on August 8, 2005. On October 13, 2005, the Georgian Parliament ratified the

Framework Convention for the Protection of Minorities. The Framework Convention is the first European multilateral tool aimed at the protection of national minority rights and creation of a tolerant environment in the society. In spite of Georgia's commitments and ratification of the major documents in the sphere, the state so far has not developed a specific policy to fulfill these commitments and protect the Gypsies' rights.

Lack of special measures, mechanisms and information regarding Gypsies

The 2003 report on the Gypsies, developed by NGO the Center for Human Rights Information and Documentation, is the only report available on the community of Gypsies in Georgia. There is no state policy for the protection of their rights: from the above report it is clear that the most critical problem of homelessness and extreme poverty is in Tbilisi, particularly Samgori District. The Gypsies live in damaged houses. Poverty is a characteristic of the entire Gypsy community. Most of the families live in cramped condions with 8-10 people in one small room. Their housing conditions are unbearable. Nothing has been done to protect the Gypsies' rights to life and health. Most of the Gypsies cannot afford health care services because of financial hardship.

They apply for medical services only in extreme conditions. The Gypsies are often the victims of illegal detention and subjected to inhuman treatment. There have been occasions when the police officers have consciously turned a blind eye on the Gypsies in the pre-trial detention cells, without providing them the basic food or water. It should be noted that in most cases the Gypsies avoid any kind of communication with the law enforcers.

A major problem concerning the Gypsies is that the childbearing deliver at home without any medical assistance. Thus, the newborns are not registered or given a civil status, and it is also the cause of Gypsy newborns not being granted the Georgian citizenship. The Gypsies cannot vote because they have no IDs. For the same reason they cannot participate in social and political life of the society and cannot legally cross the Georgian borders. In fact, there are no Gypsy folklores, as their traditional ensembles that contributed to the cultural life of the Gypsy society have ceased to function.

The Gypsies' complicated social situation is predetermined by their unemployment. The Gypsies do not work formally as employees. They are mainly engaged in trade to support their families with multiple children. Unemployment is the core problem for the Gypsies. Almost every interviewed respondent voiced the desire to work; in addition, they have the problem of education. Only senior Gypsies and an insignificant number of young Gypsies received elementary educations (1-4 grades). Absolute majority of the Gypsies cannot converse in the state language, the Georgian language, let alone writing and reading in Georgian. Out of 50 interviewed Gypsies only 5 could write and read elementary Russian, which is 10 percent of the interviewed group which reflects the low level of Gypsies' education. Due to severe hardships parents have to make their children drop out of schools and make them work to support the families financially. The Gypsies also note that they are forced make their children drop out of school because they cannot afford to purchase school books and other related items.

As a result of the survey and interviews conducted it is clear that in Tbilisi there are no mechanisms for the protection of the Gypsies. The interviews show that the Gypsies do not trust the Georgian state bodies. Most of them believe that nobody can change their intolerable life. Maybe this is a reason why the Gypsies do not establish relations with the Georgian population and instead choose to live as a closed community. Most of Tbilisi residents are not aware of the problems of the Gypsies and nobody is trying to somehow improve their situation. The information received makes it clear that the majority of the Gypsies wish to live, study, work and

be valuable and equal members of the society. However, due to the hostile attitude towards the Gypsies, their situation remains unchanged.

The survey also reveals that the majority of those who are thought to be Gypsies are not Gypsies. Many of those who are registered are listed as the Moldavians and belong to the Moldovan nationality with the remaining being Kurds.

The research evaluated and analyzed lack of a state policy regarding the Gypsies. In 2003, the Center for Human Rights Information and Documentation set up the Gypsies Protection Center. During 2003-2005 this was the only existing program for the Gypsies in Tbilisi (free legal consultation). The interviews we conducted in Tbilisi (Lotkini Settlement, Samgori District) showed that none of the Gypsy respondents knew about the legal consultation available.

Social isolation, extreme form of poverty, the highest level of unemployment and the problems related to housing are hindering the process of Gypsies social integration.

The problems of Gypsies residing in Kutaisi

According to the data of the Kutaisi local self-governance, 5 Gypsy households (some 50 persons) have lived for three years in tents installed near the Ilia Chavchavadze Bridge. These people have no basic housing conditions and live in situation devoid of proper sanitation, which may result in different diseases. A majority of them including children are engaged in the practice begging and support themselves with the funds received. These individuals cannot afford basic medical examination and care. Hence, there is a big risk and the possibility that these individuals are carriers of different infectious diseases.

The Gypsies start sexual life rather early which causes various psychological and health problems. Almost every childbearing woman delivers at home (in tents) and there is a great risk involved that confinement in these conditions may result in tragedy. Newborns are not registered by the relevant bodies. Eventually the statistics of both births and deaths is unknown.

Chemical substances abuse (toxicomania) is massively widespread among children; minors and teenagers, they often use different chemical substances (e.g. glue) as narcotics. For these reasons there is a great risk that their physical state is unstable and in need of medical assistance.

Almost none of them has any kind of ID or registered with the relevant agencies; making an identification of a person impossible.

Because of their life style and conditions, the children have no opportunity to get education (elementary education). None of them can speak proper Georgian or Russian, and the official bodies find it difficult to communicate with them when needed.

There is a high probability that minors and juveniles without proper attention from their parents can be used by others as tools for committing crime (this may be done even by their camp members).

Conclusion and recommendations

The state has no elaborate policy to ensure Gypsies' security and integration. The Georgian authorities should study the Gypsies problems by promoting this group's development and integration within the society. The Georgian Public Defender deems that a monitoring group should be formed with the participation of both governmental and non-governmental organization members, which can facilitate the Gypsies' security. The participation ofGypsies is required in this process. The state should take care of Gypsies' education, medical care and social protection. An organization should be set up that would provide counseling and assistance. To ensure that Gypsies' rights are upheld, their registration, issuance of birth and ID certificates are necessary. It is important to establish special programs for Gypsies employment and reduction of poverty.

Children's Rights

Introduction

The Convention on the Rights of the Child is based on four core principles:
L I F E – the children have the right to life and survival, the right to medical care and the safe use of water and sanitation system;
E D U C A T I O N – the children have the right to education and the protectection from any type of discrimination and exploitation, war and poverty;
P A R T I C I P A T I O N – the children have the right to have their thought, freely express their views, and receive required information.

Every country that has ratified the Convention on the Right of the Child abides by these principles and is required to protect the children's fundamental rights at the national level.

The rights defined by the Convention on the Rights of the Child equally apply to all children without any exception. The state is required to protect the child from any form of discrimination and take every measure to uphold the child's rights. According to the Part 1, Article 1 of the UN Convention, "the child" means every human being below the age of eighteen until adulthood, or according to the national law applicable to the child, where the adulthood is attained earlier.

In a number of countries the priority of the right of the child is supported by the specific measures in the legislative, administrative and executive bodies. The Convention on the Right of the Child reconfirms inherent truth that ensuring the right of the child is the way to ensuring the development of the family, society and nation, and their better future.

Despite the fact that the Georgian legislation should imply the protection of the rights indicated in the Convention, there are issues that need to be immediately reflected upon at the legislative level;

It is also necessary to improve the role of the executive structures: their duties must be defined in detail.

The public awareness should be raised regarding this issue, since they can and should play a significant role in ensuring the rights of the child. Each of us should feel responsible for the children who, for various reasons, have to live in extreme conditions.

The facts involving the violation of the rights of the children, even if they are well-known, are often left without response on the part of the state. Occasionaly this is caused by the inadequacy of the legislative basis, and sometimes due the executive branch unwillingness to fulfill the duties it is required to by law.

The results of the activity performed by the Center of the Rights of the Child at the Office of the Georgian Public Defender revealed the facts of children rights violations, the analysis of which indicate certain tendencies.

“Street Children”

“Children’s Social Adaptation Center” Ltd was founded by the Tbilisi Mayor’s Office upon the recommendation and with the support of the Georgian Public Defender. The Center has been functioning since June 1, 2005. The Center of the Rights of the Children has been closely cooperating with the“Children’s Social Adaptation Center”.

The children and juveniles of various categories live at the Adaptation Center: children without care, orphans, tramps, difficult children, victims of physical and sexual abuse, children in conflict with the law, drug addicts (using chemical substances), and alcohol addicts. Most of them have been diagnosed with the symptoms characteristic for post-trauma stresses, nervous tension, disturbance of sleep pattern, educational retardation, inability to pay attention and apply concentration, conflict style of relationship, antisocial behavior, etc.

The Center is an open institution and it often happens when the children that have come to the Center in extreme conditions return to the street after partial recovery. This is true especially in the case of drug (chemical substances) and alcohol addicts.

According to the structure, the patient should undergo a 6-months rehabilitation period before being transfered to another specialized children’s institution. However in practice this does not happen.

The right to education

The studies of the Social Adaptation Center and other similar institutions revealed the problems, which are caused by insufficiant protection of the street children on the part of the state. The children of this category have mostly similar backgrounds and their problems have originated from their families. It is clear to everybody that the emergence of the street children as a new social phenomenon is a negative result of the transformations taking place in the country. Most of the street children have escaped various social abnormalities in the families caused by extreme poverty. Examination of individual cases displays that the families of these children do not or cannot realize their responsibility towards their children; these parents view their children as the sources of income. The more children they have, the more the income generated for the household. The biggest problem here is that the child’s personality develops in an unhealthy social environment, while their parents do not have even basic knowledge of the social conditions necessary for the children’s upbringing and development; these parents as children were often raised in similar conditions and families.

In these families numerous problems are noticed in terms of violation of the children’s fundamental rights. One of the biggest problems is related to exercising the right of the child to education. Most of these children’s parents did not receive any education. Some 14-15-year children that are brought to the Center are illiterate, and this, along with other problems, is one of the hindering obstacles for taking them to school. The children spend their entire time in the streets and bringing their life back to normal course is an extremely complicated task: the children brought to the Center cannot stay for long without street life as the values (or lack of values, better said) and the behavioral forms instilled very early in their childhood are the strongest social models. It seems unfortunately that these children are doomed to live in the street as they find the extremely vicious micro-culture of the streets the only social environment acceptable and suitable for them.

The violations of the rights of the street children brought to the Social Adaptation Center indicates that:

1. **B.A.** Born on 17/01/1990; mother – Z.A.; BA. did not attend school, for years inhaled glue; lived in a territory adjoining the Dighomi Massive bazaar. B's family resides in Gldani Massive. His father is currently convicted. He has brother M. 10 years old, though he attends school, he often begs in the subway during the night. Z.A. gives shelter at home to other homeless children who bring money and items obtained through various means. They sniff glue there. The local police are aware of the situation. The Center of the Rights of the Child at the Office of the Georgian Public Defender forwarded for further reaction this case to the Gldani-Nadzaladevi District Educational Resource Center.

2. **Brother and sister L.A., 12, and M.A., 15,** have their mother S.I. who made them drop out the school. L. has been noticed in pickpocketing and begging. He snatches purses out of passer-bys , kicking and insulting the relatively weaker ones. The mother pays no attention to the children. She appeared at the Social Adaptation Center before Christmas and wanted to take L. for some time; she said she wanted to transfer the child to another children's institution. The next day L. was noticed begging on the street in front of restaurants with his mother walking nearby holding an infant in her arms

In these cases, along other rights, the child's right to education is breached, which is ensured by the Georgian Constitution, the Law on General Education and other international acts. The information brought about such cases to the attention of the Public Defender's Office is forwarded to relevant bodies, though the response from the respective bodies often takes too much time.

Besides the heartless attitude of the parents, the attitude of the responcibile Government agencies by not responding adequately only add to the woes of the street children. During any time of the day at every step, one encounters begging, idly tramping children but these facts are not paid due attention by the public and governmental bodies. Education is the right of the child that should be ensured either by his/her parent or any other responsible individual. Education is the only decisive factor in the process of these children's reintegration.

Educational retardation of these children and lack of basic social behavioral skills separates them from their peers, makeing their rehabilitation a difficult process.

A responsible person that takes the child brought up in such conditions to an ordinary schools faces serious complications. An absolute necessity is to create special programs with trained professionals working primarily with this category of children.

The number of such problems is caused by the fact that there are no conditions for making activating the legislative mechanisms. Besides that the level of public awareness is inadequate.

Although there is no doubt that extreme poverty increases the number of the households, where the potential street children are raised, any highly developed country faces this problem. The problem should be solved at the source of its origin: family. The incorrect way of life of the family is the cause for the children leaving schools and going to the street. As one student's mother noted she did not go to school and neither saw the need for her child to do so

The right to education is ensured by the Convention of the Rights of the Child, Articles 27, 28 and 31. The children have the rights to education, individual development, and fully demonstrate mental and physical capabilities.

According to the Georgian Civil Code, "the parents are entitled and responsible to raise their children, take care of their physical, mental, spiritual and social development, raise them up to become worthy members of the society with prior consideration of their interests. The parents are responsible for upholding the rights and interests of their minor children. The parents' rights shall not be used against the interests of their children."

This provision makes clear that the parent is both entitled and responsible to take care of child's physical, mental and spiritual development. This is a primary responsibility of the parent. This provision is closely connected to state's responsibility to provide each individual with elementary and basic education. This responsibility has been set by the state not only to itself but it also deems mandatory for everybody to get primary and basic education (according to the Georgian Constitution, Article 35, "primary and basic education are mandatory"). The provision applies to each and every citizen with no exception and it should be construed as the same fundamental responsibility as the state's defense or fulfillment of other commitments set by the legislation.

The parents are responsible to take care of children's education to fulfill the state's commitments. The failure of the parent to fulfill this commitment should be construed as an attempt to evading the parent's responsibility, which, according to the Georgian Civil Code, may be the basis for depriving the parent's rights.

The Georgian Administrative Offences Code, Article 172, refers to failure of fulfilling the commitment to bring up and educate the children: "malicious nonfeasance of the responsibilities to bring up and educate the children by the parents or their substitute individuals, as well as abuse of narcotic materials without medical prescription by the children or commiting of felony (being present under the influence of alcohol in public places, also drinking alcoholic beverages) will result in parents' or their substitute individuals' warning or fining with the amount of 20 to 30 minimum wages".

It should be noted that the body that should impose fines on the parents or their substitute individuals for the noted activity is not clarified in the law. However from the above mentioned examples it is clear that one may often notice such behavior in the children's life. The presence of such deficiencies indicates that the applicable legislative norms are not comprehensive and require improvement to ensure their realistic application and implementation in real life.

Summarizing the above mentioned laws and facts, we may suppose that some rights guaranteed by the law are not upheld in reality as there are no appropriate implementation tools. Improving this situation would solve a number of problems starting at the time of its origin and would not be necessary to combat the problems that are already unsolvable. In other words, when we discuss the ways to solve the problems of children tramping and begging, naturally, we should first consider the factors causing and facilitating these phenomena. Ensuring the school attendance of the street children would allow us to integrate them socially, which is rather easier in the early years. For the children of this category it is very important for them to communicate with other children. As it is already known, the risk group children communicate only with each other and differ from other peers by their life style and development capabilities. The school allows these categories to come closer; besides that the hours spent at school reduces the time for street life thus decreesing the risks they are exposed to in the streets. With the assistance of teachers and social workers the risk group households will be better controlled. A qualified teacher will easily identify a child victim of family violence. The children will have internal mode, acquire basic skills that they cannot acquire in their families and moreover from the street. Some aspects should be taken into account that may potentially be faced in this process. For

instance, when bringing about such changes, the level of preparedness of the society to accept this category of children to the school should necessarily be determined. Training of the school personnel, students and their parents will be necessary to correctly integrate such children in the educational process. However if the below mentioned practice, direct requirement of the law, is instilled, the issue will not be so sensitive. Along with ensuring the legislative requirements, it is necessary to raise the public awareness. Each individual should realize his/her responsibility towards these children, which constitute the so-called risk group. As the facts confirm, currently the public is cold-hearted towards this issue.

It should be noted here that the majority of the children that have lived in the street for an extended period of time, tramped or begged constantly face a serious problem: they have no elementary education and knowledge, something that will complicate their education by the ordinary school curriculum. In most of the cases it will be impossible to attach these children to the grades according their age since their knowledge does not correspond to the school requirements for the given age. Most of these children are substantially lagging behind the educational level of their peers at school. Bringing them to schools will be justified if there are special programs helping these children with such retardation.

In spite of the fact that this category for some reason lacks the opportunity to get education and ensuring their school attendance cause numerous problems, the priority rights should be taken into account, which imperatively imply that each child is equal before the law and each of them has the right to education, while the state is responsible to ensure this right.

Today there are no special programs facilitating the education for these children. The state has nothing to offer to these children who have spent most of their lives in the street, and to help them develop into valuable members of the society in future. For sure, the way of child's rehabilitation and salvation is connected to such issues. It is necessary to help these children realize what they lacked living in the street and spending the entire day in begging.

Along with special programs, the teachers selected to supervise these children should be retrained.

The state should elaborate a specific policy regarding these issues, which has not been seen till today. The non-fulfillment of the responsibilities and commitments set by the law leads us to irremediable consequences that are related to the lives of children, while in the future they will produce the layer with greater criminal risk; as it is known, the majority of such children frequently find themselves involved in various criminal activities and are imprisoned, where their condition is further complicated.

These issues require the reorganization and change of a number of existing laws and executive bodies. Leaving the problem unattened without providing solution should be considered the violation of the right of the children to education on the part of the state, contradicting the Georgian Constitution and the Convention on the Rights of the Child and eventually will be negatively reflected on the prospect for the progressive development of not only the vulnerable social group but the entire society.

Recommendations

- It is necessary for the Ministry of Education and Science, Parliamentary Committees for Education, Science, Culture and Sports and Legal Issues to fulfill the commitments defined by the Law on Elementary and Basic education and to achieve that purpose, strengthen the available mechanisms, activate and develop additional tools.
- Local governments, the Ministry of Labor, Health and Social Affairs, Ministry of Education and Science and Ministry of Internal Affairs should start registering the risk group families and study their condition to avoid the estrangement of the child from the educational processes as an effect of his/her family condition.
- The terms of response of the governmental bodies should be strictly defined in the event of such facts. To ensure the normal development of the child the response should be to a maximum extent, prompt and effective.
- A governmental body (police, resource centers) should be tasked with ensuring the school attendance when the child is idle in the street or begging and tramping; later the causes should be investigated.
- The Ministry of Education and Science and school administrations should establish control over the school attendance of the children that belong to the risk group category and/or face risks.
- The Ministry of Education should elaborate special programs allowing the risk group children to get elementary and basic education.

Begging

Without studying the parents situation, it is very difficult to solve the problem of the risk group children. The process of correction of the child that are in the Center is rather complicated and linked to a number of problems. The children of these category are often addicted to toxic drugs and alcohol. The recovery of health damaged by sniffing glue takes time, but sometimes there are irremediable cases that have fatal results.

The children acquire bad habits in the street to escape suffering and starvation. Despite the harsh conditions in the street, the street children are inclined to run away from the Center; their majority prefers to live in the street, especially in the summertime. It is very difficult to offer an alternate activity to these children which would be of some interest. Keeping them in the shelter or other custodial facility is a very difficult task. For the “street child” the street is home, where he/she finds shelter, food and entertainment; this is enough for the child and more acceptable than the care offered by the public, which also means putting him/her into some moral frames.

Most of these children have parents, though they are the ones the children often escape from, which later turns into the reason why these children ultimately become the street children. Very often the parents of the street children also belong to the risk group, as they are beggars, alcoholics, prostitutes, etc.

The so-called “street children” may be divided into two groups: 1. the children that spend almost their entire time in the street either working or begging, but have shelter, home, parents and therefore do not have to live in the street; 2. the children whose only habitat is the street. This life style prompts them to commit crime and engage in prostitution. The risk is also higher for these children to become victims of violence.

Very often, as monitoring of the shelters for these children indicates, their parents are partly to be blamed. One may encounter these children at every step; special efforts are needed to protect them from violent parents. We may say that this practice, especially institutionally formed, cannot be found in reality. The parents force the children to beg and later take money obtained. These are the parents who are interested in taking back the children from the state institutions as the child is a source of their income. Despite maximum efforts of these institutions, the law prohibits the right to deny the right to take back the child, which further prolongs the process of the children's rehabilitation and sometimes make it impossible.

1. M.N.'s case

Born on 07/03/1989; 18 years old M. is addicted to toxic drugs. Was raised in the village "Kachreti" orphanage, which he abandoned without completing his schooling. Since then he has been in the street practically all the time where he started pick-pocketing and begging; he has a mother who resides in Bagebi Settlement and makes her living with begging; she forces his sister N to beg., who has never attended school; the family even goes to the extreme extent of forcing M.s elder brother's 1-year-old child to beg. M. stays at the Children's Adaptation Center, he returns from the street at 1 or 2 AM. M. lost his teeth because of toxic drugs and on several occasions he was admitted with severe intoxication at the intensive therapy unit of Ivane Javakhishvili TSU Clinical Hospital (former Mikhailov Hospital).

2. L.'s case

14 years old L has mother L.M., who is a chronic alcoholic and constantly demands the children to bring money. L. and her sister N. were in reality raised in the open air. They have never attended school. L does not return home at nights frequently as men of suspicious behavior gather at her mother's place. Other street children and juveniles also gather at her home. There they sniff glue and share the "loot". L. is often seen near the Akhmeteli Theater subway station. The local police precinct and patrol police are well informed.

3. G.G.'s case

7-years-old G., his 11-years-old sister and 16-years-old brother G. Has alcoholic father who beats the children and sends them to beg in the street. Mother L.N. does not take adequate care of the children either. The children have never attended school. G. and G. are mentally retarded. The police patrol often bring these children to the Center during the day or night time. According to the police, the children feed from the trash dump; no IDs were found with them. Their mother does not remember the birth dates of her children and their names, as it turned out that she gave birth not to 5 but 11 children. One of her children, 15 years old, is currently convicted, her daughter is married and the fate of others are unknown. G. and G. were transferred to the Public Boarding School No. 200, and G. to the Saguramo Children's House. In this particular case the problem is that the IDs needs to be issued for G. and G., which should necessarily be requested by their mother, who, on her part, has no ID. The Center for the Right of the Child forwarded this case to the Gldani-Nadzaladevi Educational Resource Center.

The above examples show that in Georgia it still is a problem to reveal such facts and apply to the mechanisms responcible of providing solution. According to the Georgian Civil Code, both citizens and legal entities, who are aware of the facts of violation of the rights and legal interests of the minors, are required to notify the guardian bodies, while the state itself is required to take

measures provided for by the Georgian legislation. These measures are described in detail in the Georgian Civil Code, in particular: "the guardian body is entitled to address the court with the request of deprivation of the parental rights (of the parent) or the child (without the deprivation of the right of the parent), if the person is evading the performance of the parental duties".

Although the duty of the citizens and legal entities is to notify the guardian bodies regarding the facts of violation of the rights and legal interests of the child, is guaranteed by the law, it would be better if the legislation also determines the relevant administrative punishment for non-performance of the duty.

According to the Civil Code, the only primary responsibility set for the parents is to take care of the child. This provision includes the parent's responsibility to take maximum care of the child's moral development, his/her development into valuable members of the society.

Unfortunately, the Georgian legislative acts do not define the term anti-social activity; this is the prerogative right of the body while considering the case in each particular incident to determine what is an anti-social activity based on the case materials and circumstances. In a given case the considering body may find tramping an anti-social activity, and in another case it may decide that a homeless person living in the streets is not performing an anti-social activity. In other words, for the proper decision on the issue, it is important to analyse a number of subjective and objective circumstances

As the existing practice shows, the parents (or legal gaurdians) often force their children to beg or work. This requirement often arises from the severe hardship faced by the parents and sometimes because the parents are alcoholics,and drug addicts, forcing the children take care of their subsistence themselves.

The facts confirm that the state bodies have so far not responded adequately to the facts of violation of the rights of the children on the part of the parents. **The information submitted by the Ministry of Education and Science confirms that although this procedure is regulated by the Georgian Civil Code, for years its provisions have not been fulfilled.** When one of the parents filed a suit in the court regarding the deprivation of other of the parental right, the territorial guardian bodies issued conclusions based on the relevant materials studied the arguments of the complainant against the respondent parent were considered groundless and insufficient. This is the only case when the Ministry could provide information to the Center of the Right of the Child. In other cases they could not provide the statistical data on the procedures provided for by the Georgian Civil Code, 1198 prime, 1205 and 1210 Articles; this means that the relevant bodies neither addressed the court regarding the facts of violation of the right of the child requesting the punishment of the parent nor did they considered such cases themselves; nevertheless this is directly reflected on the child's life. Of course, the parent does not realize that he/she violated the universally recognized rights of the child and cannot see the signs of the crime in it, doing that openly and without any secrets.

Based on the statistical data of the Ministry of Internal Affairs, during the last 5 years criminal proceedings were instituted on 36 criminal cases, which were investigated and later resolved on the basis of the Criminal Code Article 171 "Involving minors in anti-social activity". Out of this 6 criminal cases were dealt with in 2006 on these charges.

A state policy is formed in this regard. The mechanisms the Parliament adopted defining the legislative acts are not applied in practice, and that is a precondition for the violation of the right of the child; the executive bodies factually do nothing to solve this problem and the above mentioned facts are evidences of that.

It is often noted that the Georgian legislation does not offer the mechanisms to find and punish the individuals that force the minors to engage in the anti-social activities; in this regard it should be noted that, despite its shortcomings, the existing legislation actually allows the relevant bodies to take effective measures for eradicating the bad practice. Although the problem will not be solved only by depriving the parental (or other legal representative's) right or punishing the parent, but by putting these measures into effect, the conditions of the minors will definitely improve.

It is necessary to improve the legislative basis: prohibit the child's begging in the street. Besides that we deem necessary to raise the level of public awareness: each of us should realize that the money given to the child in the street does not serve any good purposes and it will ultimately be used by the child's asocial parent or other street groupings; but for the child this is a direct psychological message to remain in the street and continue this unacceptable activity. The steps taken in this regard to improve public education and legislation would definitely slow down the process of recruiting new "personnel" into the army of the risk group children.

It is desirable for the Ministry of Education and Science to ensure the public campaign and other effective mechanisms to avert the children from begging in the streets.

Leaving this problem without proper reaction predetermined the fact that Tbilisi is full of begging children; their rehabilitation and protection is becoming an even more complicated task with every passing time.

According to the Convention on the Rights of the Child, Article 3, "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be of primary consideration."
"2. States Parties undertake to ensure the child the protection and care as necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."
"3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by the competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Violence

The Georgian Parliament adopted the Law on the Protection from Family Violence. Taking into account the practice we may claim that the mechanisms for the implementation of the law have not yet been activated. The bodies that are tasked by this law to protect the individual from family violence should better realize their role in the implementation of this law.

It is not difficult to obtain information with the assistance of the above mentioned Centers on the facts of family violence. Most children that are brought to these Centers are the victims of family violence. However, in none of the cases, as we know, the violent family members were brought to justice.

1. M.P.'s case

Born on 09/04/1992; the family lives in Zahesi in the hut-type ruins. He has a brother (12 years old) and sister (2 years old). His father under the influence of alcohol beats his wife and children; M. has been diagnosed as mentally and educationally retarded, he practically did not attend school. He is involved in criminal activity, which is confirmed by the Zahesi police precinct. Similarly, his brother G. is in extremely grave situation. They need immediate transfer to the closed type institution since the children face a physical threat; the case for study was forwarded to the Gldani-Nadzaladevi Educational Resource Center and the Internal Affairs Department of this district.

2. S.B.'s case

13 years old, did not attend school. Has mother I.B. and an infant sister. The child regularly runs away from home. She was raised in different shelters (Beghurebi, the Adaptation Center, the Home of Future). The reason for leaving the house was her mother's outrageous behavior. I.B. is diseased with alcoholism and, as the child notes, beats the children severely under the influence of alcohol. S. sells flowers and icons in the street. When the child escapes the house she tries to hide from the mother; she regularly runs away from the shelter and returns back only in extreme condition. S.'s mother often takes the child from the Center promising the administration to take care of her child; however after a while S. is back on the street. Currently the child is placed in one of the shelters, where she is under the control of the Public Defender's representative and her mother is unaware of her whereabouts.

Although, as a rule, the neighbors of the family and the local police precinct are aware about this and many other cases of family violence, there have been no cases so far in the Center for the Rights of the Child to see any reaction on the part of a relevant body regarding the above mentioned issues.

"Internet Cafes"

Presently, combating to reduce the number of the street children is almost impossible. The above mentioned laws are not enforced, which being put into effect would more or less ensure the right of the child to education and protect him/her from begging, tramping and family violence; it may be claimed that by not taking the decisive measures on the part of the state the conditions are created for these children to spend their entire life in the street.

"The street children" collect money by begging, then spend it for glue or back home to the alcoholic parents.

The children that do not wish to return home easily find the places to stay in the street. Recently the cases are more frequent with the Internet cafe owners allowing the children to stay overnight on their premises for a certain amount (5 lari). Several Internet café owners confirmed that in the conversation with the representative of the Center for the Rights of the Child.

Smoking cigarettes is not prohibited in the Internet cafes and the administration is not required to control whether a child is under influence of toxic drugs; this is a reason why these children often prefer the Internet cafes over the state shelters.

This type of institution cannot ensure the security and health of the child and it is not responsible for it either. The Internet cafes are simply ready to give shelter for a certain amount to the

children as they are not prohibited to do so by law. That is why they did not think about any responsibility.

To increase the level of the child's protection and allow the state to ensure security of the risk group children, it should be specified which agencies have the right to give overnight shelter to the minors. Not any institution operating on the 24-hour basis should be responsible or allowed to do so, as it only adds to the heightening of the risk level. In a country, where the issue of care and responsibility is not organized even in the shelters, despite constant control and evaluation, not any round-the-clock institution should task itself with that. The number of "Internet cafes" is very high, but so far there are no mechanisms of control over their activity.

The Georgian Law on the Protection of the Minor from Negative Influences, along with other restrictions, restricts the minors access to restaurants, bars and night clubs and forbids their work;

Article 15. Restriction of minors access to restaurants, bars and night clubs and forbidding of their work

Forbidden:

a) allowing the minors access to bars and night clubs from 11 PM to 8 AM;
b) work of the minors at restaurants, bars and night clubs.

Article 16. The right of the bar and night club managers
The bar and night clubs managers have the right to check the age of the bar and night club entrants with the full guarantees of the human rights.

As the study undertaken on this issue showed, these restrictions are insufficient for the protection of the minors health and security: the law should be more specific in determining the precise and strict measures allowing us to fulfill the commitments undertaken by the state to the minors without guardianship and care. The law should specify the institutions allowed to give overnight lodging to the minors without parents' (also guardians) approval. Otherwise the problem of the minors security problem will be further complicated and hinder the process of the children's rehabilitation. The bodies controlling this process should also be specified.

It is clear that the Law on the Protection of the Minors from Negative Influences is not implemented today due to the non-existence of the relevent body responcible for the effective implementation of the law.

Recommendations

- Task the Georgian Government to put into effect the mechanisms implied by the law, which are protecting the children from the negative influence of their parents and violence of different types; the mechanisms of reaction should be improved;
- The Ministry of Internal Affairs should specifically define the mechanisms of reaction and the bodies, which are responsible for the protection of the children from violent parents. Also, the shortest possible terms of response should be set when the felony is obvious or/and there are grounds to believe its presence;
- The Parliamentary Committee for Legal Issues and the Committee for Education, Science and Sports should consider the issue of the necessity of effective regulation of the protection of the children from begging: the norms determined by the existing legislation are not sufficient for their protection.

- The Parliament should determine and approve the institutions entitled to provide overnight lodging for the minors without the permission of the parent or other guardian, and establish strict sanctions for its violation both in the Administrative Offences Code and the Criminal Code. Also, the body should be determined with the task to control the functions of these norms.

The Analysis of the Complaints Submitted to the Public Defender

The complaints submitted to the Public Defender for his attention allow us to note some tendencies, which were also reflected in the 2006 First Half Report; according to the complaints of the citizens, the most difficult problem noticed is severe economic hardship of the individual.

N.U.s case

N.U. addressed the Georgian Public Defender and noted that she was raising two minor grandchildren; her daughter, the mother of one of her grandchildren, had serious health problems; the children had no father.

After the study of the case, it was determined that the grandmother raising the children was an invalid of the first catogory; the children had serious health problems; the family was below the poverty line and did not receive any assistance from the state. According to N.U's. information, the Gamgeoba advised her to transfer her grandchildren to an orphanage; the grandmother wished to take care of her grandchildren herself but also realized that it was impossible due extreme poverty.

The Center for the Protection of the Rights of the Child at the Public Defender's Office on November 11, 2006, addressed the Ministry of Education and Science requesting the Ministry social workers to study the condition of the above mentioned family and take a decision on the approval of welfare assistance for the children, within the process of deinstitutionalization which is in the making and the Ministry's Program on the Deinstitutionalization and Prevention of Abandoning the Children without Care.

According to the response sent by the Ministry of Education and Science, the first assessment of the family revealed the following: children's mother N.U. had problems with mental health, but there was no confirming documentation to prove ailment; the identity of the biological parents of elder daughter Kh.U. was unclear: as it was found out, Kh.U. stayed 5 days of the week with this family.

The Ministry of Education and Science deemed that the case needed a more detailed study and only after that the decision would be made on establishing assistance to the children. Later the Center for the Rights of the Child received a notification stating that N.U.'s grandchild was provided with social assistance.

The children of the mentally diseased parents

The issue of children by brought up by the mentally retarded parents was raised for the third time at the Public Defender's Office. On some occasions the situation in these cases is grave and may have a negative affect on the child to an extreme level and later become irremediable.

Parent(s) mental illness poses a significant risk for the children in the family. In comparison to other children, the probability of these children aquiring mental illness or disorder is much higher. In case of both parents suffering from mental illness, the risk is doubled. It is especially alarming in case of the following diseases: ravings syndrome, ADHD, schizophrenia and alcoholism.

Along with the risk of genetic transfer of the disease, a serious risk is posed by the factor of social behavior, which implies the child imitating the parents' behavior as a social model. In psychology it is known that the child almost fully imitates the parents and other close relatives until the age of 12. The behavior of mentally or neurotically diseased parent is the closest model example (to be imitated); the child usually perceives such patterns of behavior as normal. For instance, in the case of father's (or mother's) alcoholism, there is a high probability that the child may imitate the model behavior of the parent and become alcoholic himself. The other problem being, the unbalanced state of the parent suffering mental disorder making it impossible to forecast his/her behavior. The unstable family condition may also become the reason for the child's personal problems and mental disorder. Mental illness of one (or both) parents may affect the couple's matrimony and parental capability, which, in its turn, is damaging for the child.

The situation is more complicated when the child has no other individuals taking care of him/her apart from the mentally diseased parent. In such circumstances the State needs to provide special care to the child along with the parent.

The child's healthy development would be ensured by individual or family psychiatric treatment. Besides that it is desirable to have a psychologist work with the child and assist the family in strengthening the positive elements present at home and child's natural abilities. This is possible through both the individual sessions with the child and applying the family therapy method. In such families the psychologist should work on developeing the child's positive self-evaluation, instil strong motivation for education and focus on success at school, as well as ensuring support of the child by other family members, assist the child in developing constructive interests and facilitate in establishing and maintaining positive relations and friendly ties with the peers.

By applying these specialized approaches it is absolutely possible to reduce the influence of the parent's mental condition.

Unfortunately, the professionals and public pay very little attention to both the retarded parent and the victimized child; very often the fundamental interests of the child in such families are ignored.

Currently in Georgia the state does not take care of addressing this problem; the older system is not functioning and the new one is not in place yet; there is no specialized program to solve this particular problem.

The Center of the Rights of the Child at the Public Defender's Office detected 4 such cases in the last 6 months where the minors were being raised by the mentally disabled parents. The fact that the state does not focus its attention on the disabled parent, causes a number of problems:

- it is difficult to persuade the ailing mother (or father) that his/her medical treatment is beneficial not only for him/her but also for the child.
- it is often necessary to separate the parent from the child and it is a difficult task to assure the parent or gaurdian with mental disorder that his or her child is not being taken away for good..

Recommendation

It is desirable if the Ministry of Labor, Health and Social Affairs deals with these problems:

- a special program should be elaborated, which would meet the requirements of both the ailing individual and his/her child.
- the program should envisage the formation of an emergency group of social workers dealing with these problems and offer specialized training to them.
- database should be set up to solve this problem: the statistical data on these type cases should be registered from the psycho-neurological centers.

M.Ch.'s case

The Public Defender was addressed by M.Ch. The children of M. Ch.'s daughter, 5-years-old A.K. and 2-years-old Z.Ch. were taken to the St. Barbare's Zestaponi Orphanage by their father Z.K.. M.Ch. noted that her daughter was in Ukraine when Z.K. took her grandchildren to the orphanage, she also mentioned neither she nor her daughter were aware of this incident. As it was noted in the complaint, even though it was the grandmother that raised and took care of the children from their births, she was not allowed to see the children by the orphanage administration. The grandmother explained that she had conditions for taking care of the children and wished to raise the grandchildren in a family environment which was contradicted by their father.

For the purpose of studying the case, the complaint was resent to the Ministry of Education and Science. In the response received from the Ministry of Education and Science, it was noted that the case study required time as the children were in an orphanage under the auspices of the Patriarch's Office, where the Ministry social workers had limited access which was causing hindrance in the study of the case.

On February 20, in the response received from the Ministry of Education and Science indicated that the parents of A.K. and Z.Ch. rejoined and had a desire to return them. Accordingly, the social workers already made the primary assessment of the family based on which at the February 2007 Board Meeting the decision would be made on the inclusion of the children as a reintegration case in the Subprogram on the Deinstitutionalization and Prevention of Abandoning the Children without Care.

In the Public Defender's Report on the First Half of 2006 the issue of the difficulties with exercising state control and mechanisms in the orphanage under the auspices of the Patriarch's Office was raised. Unfortunately, monitoring of these orphanages or even meeting the children is often impossible; which complicates and delays the study of the concrete cases and the reaction on the part of the state. The state is responsible to the children with special needs and therefore we consider it unacceptable for the state to have problems in this regard; the state should exercise its control over institutions taking care of the children.

In the above mentioned case the only body that could have solved the dispute related to the children's asistance was the Ministry of Education and Science. No other body has the right to consider the case without the conclusion of the social workers; such hindrances indicate the shortcomings of the legislative and executive mechanisms, which are clearly reflected on the child's well being.

The case of the school no. 197

A.M. addressed the Public Defender's Office, in which she noted the violation of the right of her 12-years-old child D.B. by the school authorities. A.M. indicated that school principal Nino Kipiani and school chaplain Ioseb Gogoladze forced her child D.B. to cut his long hair. A.M. associated this fact with her signature on the letter sent by the parents the previous year to the Inspectorate General of the Ministry of Education and Science, in which the parents requested the study of the contributions made to the school.

According to A.M., the main argument for requesting the hair cut by principal Nino Kakhiani was the school regulations prohibited the male students from having long hair and the female students from wearing pants.

The parent mentioned in the letter that the child was dismissed from the lessons and demanded to cut his hair, besides that the child was taken out of the classroom and held either in the teachers' room or library and not allowed to return to the classroom.

In connection with the facts laid out in the complaint, the Center for the Rights of the Child at the Public Defender addressed acting principal of the School No.197 Nino Kakhiani and, according to the Law on the Public Defender, requested the explanation.

In her explanation, the acting principal of the School No. 197 Nino Kakhiani noted that the regulations of the Ilia the Righteous Public School No. 197 were based on the principles of raising the children in accordance with the Christian traditions, which meant the student in his/her behavior, way of conversation and outward appearance should not flout the school's authority.

The principal also noted that upon her request, all male students studying in grades from 5 to 11 inclusively cut hair without any problem. On November 28, 2006, the sanitary check revealed the fact of D.B.'s lousing among other students.

The acting principal explained that she did not consider the fact of taking student D.B. to the library as a form of punishment but it was done only with the purpose of discussing with the student the issue of haircut.

Nino Kakhiani mentioned during her conversation with the Public Defender's representatives that though the reason for demanding haircut was student's lousing, she personally deemed that the male student with the long hair did not correspond to the image of their school as the school is a carrier of Christian values. It should be noted that the female students were not demanded to cut hair despite the facts of lousing.

The Ilia the Righteous Gymnasium was founded in 1992. On September 15, 2005, the school was attached the status of the Public School No. 197. As the principal said, in future it is planned to change the status and it would function as "the Ltd Ilia the Righteous School at the Patriarch's Office".

It should be noted that currently the school has the status of the public school, and accordingly its functioning is based on the Law on General Education. In spite of this, the requirements of the school regulations presented by the principal contradicted the governing law. The demand of the principal to cut hair may be considered the violation of the Georgian Constitution, Article 38, and the rights and freedoms guaranteed by the international law (the UN Convention of the

Rights of the Child, Article 2, Part 2). Also, in the Law on General Education it is directly indicated that use of the educational process in the public school for the purposes of the religious indoctrination, proselytism or forceful assimilation is unacceptable. The regulations of the Public School No. 197 contain such requirements, for instance, the mandatory morning prayer; besides that if the student disregards basic norms of the Christian life and behavior then the school terminates the agreement with the student.

Hence, the school with a public school status may not have the rules aimed at the limitation of the students' personal freedom and discriminatory against separate students.

Abib Mekhtiev's case

The Public Defender was addressed with a letter by Abib Mekhtiev, a convict of Kutaisi Prison No. 2, the Institution of High Security, , who requested the information on his child. Mekhtiev noted that he had been convicted for 13 years.His child was abandoned by the mother at the age of 6 months. Abib Mekhtiev did not know the whereabouts and the living conditions of his child.

The representatives of the Center of the Rights of the Child obtained the information on Mekhtiev's child and after finding out that the child could be in the village of Tabakent, Marneuli District, visited and met with Tura Mekhtiev. As it was found out, Abib Mekhtiev's child Tura Mekhtiev lived with Abib Mekhtiev's brother's family and was fine. The applicant was sent the information on his child's whereabouts and living conditions with the photo enclosed.

S.I.'s case

The Center for the Rights of the Child at the Public Defender received an information that G.I., born on July 25, 2005, required immediate medical treatment and the child's mother S.I refused to transfer the child to the clinic; the representatives of the Center for the Rights of the Child at the Public Defender called upon and spoke with the child's mother, who claimed that the child was admitted to Tbilisi Hospital No.3 but she decided to bring the child back home

S.I. lives in the Mukhiani dachas settlement and the house is a very small with shaky walls, without proper sanitation and no basic living conditions. The house does not have any heating systems and neither electricity. Living under these conditions would only do more harm to the child's health who is already ill.

The representative of the Center for the Rights of the Child at the Public Defender's Office tried to explain to S.I. that the child's health was threatened and it was better to hospitalize the child to the clinic; S.I. agreed and both the mother and the child were transferred to the hospital.

G.I. went though a 10-day in-patient treatment and the child's health condition improved substantially, but since the child's and mother's return to their home would only aggravate the child's condition, for the benefit of the infant's health, they were transferred to the shelter where they would stay for 3 months.

In cases, where the child requires medical treatment and is being opposed by the parents, or when the parents fail to perform their duties, it is necessary to to have the opportunity to provide the needed assistance to the child even without the consent of the parents or guardians.

In such case, the legislation determines the solution through the following mechanisms: “according to the Georgian Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence, Article 3, the action shall be considered violence: “ family violence means the violation by one family member on another family member’s Constitutional rights and freedoms through physical, psychological, economic, sexual violence or force.”

According to the Georgian Constitution, Article 39, “The Georgian Constitution does not deny human and other universally recognized rights, freedoms and guarantees of the citizen and individual, which are not described here, but derive naturally from the principles of the Constitution”.

This article implies that the Constitution accepts those rights and freedoms that are determined by numerous international agreements, to which Georgia is a party.

According to the Convention on the Rights of the Child, Article 23:
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Hence, according to the Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence, such cases should be the subject of consideration by the law enforcement bodies.

Is’ case

The Center for the Rights of the Child at the Public Defender’s Office received an information that in the village of Giorgitsminda, Gldani District, a mother abandoned three infant children. After the on-site inspection and study of the situation, it was found out that the children were left without any basic attention and care with the bedridden great grandmother in a booth type construction It was found out that it was the second time the mother abandoned the children , which propmpted the locals to inform the police.

the Public Defender’s Office and Resource Center staffers transferred the children to the orphanage and according to the Georgian Civil Code, Article 11981, Paragraph 2, we addressed the guardian body (Gldani-Nadzaladevi District Educational Resource Center),
The children’s great grandmother also required the transfer to the senior citizens home, though there were no accommodation available in any smilar institutions in Tbilisi. Finally, we addressed the Mother Teresa’s Sisters organization for assistance, which obliged to give refuge to the great grandmother, but unfortunately when we came to transfer the lady, neighbors informed us that she passed away the previous night.

M.M.'s case

The Center for the Rights of the Child at the Public Defender's Office received an information about M.M, an orphan juvenile,residing in Varketili 3 micro region,. M.M. lived at the indicated address with his bedridden elder brother who was ailing with TB and in extremely critical condition. The staff members of the Public Defender's Office went and saw the conditions of the children. No basic conveniences were available in the apartment, the window panes were broken, the water tap out of order, no heating; the child did not attend school for years and had no ID nor a guardian.

Regarding this, we addressed the Isani-Samgori District Gamgeoba and the Educational Resource Center of the same district. Presently, we are aware that the child is allowed eat at the cafeteria for the vulnerable group. The Center for the Rights of the Child expects from the above mentioned bodies the information on further measures to be taken for solving the problem.

The Gldani-Nadzaladevi Educational Resource Center staff members timely performed their task and transferred the children that same day to the orphanage; it should be noted that this occurred upon the insisting request of the staff members of the Center for the Rights of the Child. However the process in case of M.M. is delayed, the child still has to live in unbearable conditions without a guardian; his condition is known to every relevant structure; this passivity is caused by the fact that the law does not specify terms and the means of response which add to the delay in the process..

The Public Defender has noted several times that specifying the terms of response is crucial in providing the required needs of the child in time, by not doing so the results are often tragic or a an irrecoverable situation without any remedies.

Complaints of the deportees

The anti-Georgian hysteria and widespread oppression and discrimination of the Georgian citizens in the Russian Federation was followed by the massive deportation of the ethnic Georgians from Russia. Among the deportees were juvenilesand children including infants. The deportation of the Georgian citizens from Russia was a gross violation of the international laws. The human rights guaranteed by the international norms were violated.

During the study of some of the cases, the tendency of ignoring the international standards and rules against children was found. The Ministry of Interior of the Russian Federation under the motive of combating terrorism officially demanded from the Russian school administrations the lists of the ethnic Georgian children studying in their schools. One of the well known cases, which clearly reflected the xenophobic and discriminatory attitude towards the ethnically Georgian children, was forbidding the attendance of all the children with the Georgian passports in the Russian Ministry of Defense secondary schools located in Tbilisi, Akhalkalaki and Batumi. Depriving the children of the right to study on the basis of their ethnic or national origin breaches a number of international norms, and primarily, in the context of the protection of the rights of the children were breached, including the norms of the UN Convention of the Rights of the Child and the UN Convention against Discrimination in the Educational System.
According to the Convention of the Rights of the Child, Article 2, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Some reports was made made public by the media and official bodies, which clearly highlighted the cynical and humiliating approach of the Russian official structures towards the Georgians. In one of such cases, thirteen Georgian citizens were deported from Moscow. Most of them were women and children. The deportation was taking place live in a despicable humiliating manner in front of TV cameras and media representatives where the women were transferred to hospitals to publicly to check them for STDs (sexually transmitted diseases). The children were left alone in different hospitals without parents for extended period of time.

The European Convention of Human rights and Fundamental Freedoms in its Article 8 guarantees the right to protection of the personal and family life. In the democratic nations it is unimaginable to deport a single family member or separate from other family members. It is unacceptable to oppress the children, also when the child is in the process of recieving education, it is prohibited to isolate him/her from the educational process until the end of the scholastic year. Each particular case of the return of the child to the country of origin should be decided by the official bodies with the consideration of the child's personal interests and the return to the country of origin should occur in secured conditions.

The Center for the Rights of the Child at the Public Defender's Office was addressed by the citizens deported with infant children. In all four cases the major request was the assistance on the part of the state. However during the study of the cases it was found out how humiliating and degrading was the nature of their exile from Russia.

Lia Shioshvili's case[3]

The Public Defender's Office was addressed by Georgian citizen Lia Shioshvili. She has 4 infant children. For eight years L. Shioshvili had lived in Podmoskovie, Russia. Her children used attend the Russian school. Because of the number of the children, the family received some social assistance which included some free food and medical services.

The Russian Federation deported the mother with her children, but her husband's whereabouts are unknown till today. It should be noted that Lia Shioshvili was on the ninth month of pregnancy at the time of deportation. She was refused assistance at the women's consultation center because of her ethnic background. After the deportation order, she decided to return with her own resources to Georgia, but the representatives of the Russian authorities got her off the bus in Dagestan. She spent that night with her children at the bus station. Later they found a room for overnight lodging for a certain amount. Because of lack of money the children were half-starved for two weeks. Eventually, Lia Shioshvili managed to cross the border by foot. The children caught cold en route. In several days upon return to Georgia, Lia Shioshvili delivered a child but the fetus was dead for several days before the admitted to the nursing home. The mother's health was also exposed to risk. Currently the family lives in Gurjaani District. The Gurjaani Gamgeoba allocated 50 lari as one time assistance. The house the family possessed before leaving for Russia is in hazardous condition.

[3] The citizen did not request the guarantees of anonymity

Gvishiani case[4]

The Public Defender's Office was addressed by Nato Kajaia who was deported with her minor grandchild from Russia. In Dagestan the grandmother was allowed to return to Georgia but her 12-years-old granddaughter was left in Dagestan, where she spent almost one month in absolutely unbearable conditions. It was only after the involvement of Georgian Consul Zurab Chapidze in Azerbaijan that it was possible for the child to return back to Georgia. The 12-years-old child had to stay with unfamiliar individuals and in an unknown environment. As the grandmother says, this period negatively affected the child's mentality; because of what the child had to undergo, he is still in a stressful condition and often behaves inadequately.

Nato Kajaia and her 12-years-old grandchild Gia Gvishiani are in extreme hardship today having no basic living conditions and no shelter.

Besides the above cases, 2 other citizens Giorgi Omanidze and Inga Esebua, who have minor children, addressed the Public Defender requesting assistance.

Lia Shioshvili and Nato Kajaia addressed the local administrations for support, but so far have not received any adequate assistance.

Monitoring

The staff members of the Center for the Rights of the Child at the Public Defender's Office in the reporting period carried out monitoring of 4 orphanages:

Sanatorium Gazapkhuli

On January 17-18, 2007, the representatives of the Center for the Rights of the Child at the Public Defender's Office called upon the children's Sanatorium Gazapkhuli to carry out its regular monitoring.

They met with the director of the institution Laura Bichikashvili and other responsible individuals; checked the cafeteria, the children's bedrooms, isolator and medical wards.

The sanatorium consisted of two separate buildings; the cafeteria and playground are located within its territory .

The following problems were found after the two day monitoring:

The first building, which was designated for the children with different diseases of the respiratory tract, was in need of overhaul; the living conditions of the children were extremely bad; all sanitary arrangements were in deplorable condition, the lavatory pans and sinks were broken and out of order, no hot water and heating were provided, furniture was obsolete and broken, the bedrooms were not arranged correctly: the beds were obsolete and bed-covers were of poor quality;

[4] The citizen did not request the guarantees of anonymity

In the medical room very small quantities of first aid medicine were found; in the registration journal of the ailing children the last note was dated on 2005; in 2007 only one note was made; the medicines prescribed were not found in the medical room; the shock equipment was not in the medical room, no infectious diseases registration journal was found, the case histories were incomplete and without analysis; no annual journal was present where the children's recovery should be indicated; the isolator at the medical room was turned into a warehouse.

No sufficient kitchen utensils and other necessary items were found in the cafeteria; the sanitary condition was not satisfactory because the repair works to the cafeteria were not performed for ages; the warehouse was not arranged properly; they did not register in the journal the condition of stale food; the sanatorium did not receive milk powder and other dairy products.

The building was supposed to accommodate 50 children; during the monitoring process 4 children were in the building. During the time of monitoring the number of personnel (teachers, caregivers, nannies, nurses) exceeded the number of the children. The orphanage personnel needed basic training. The children had no toys and books. The building was not functioning as it was supposed to, it performed more the functions of a kindergarten for the impoverished families.

It should be noted that this was the situation found when the new director Laura Bichikashvili was appointed; due to her efforts the general situation in the sanatorium improved more or less; for instance, before her appointment the sanatorium accepted the children on the basis of the Form No. 27 issued by precinct polyclinics. Therefore the majority of the children were not ailing with illnesses the sanatorium was designed for. The director changed this rule and requested the Ministry of Education and Science to issue the authorizations; this substantially reduced the number of unauthorized children in the sanatorium.

Therefore the status of the building is to be decided; it does not correspond to its original purpose and preserving it in this condition is impractical.

The second in-patient building was designed for the children with different osseous-articular diseases and is the only available in Georgia; therefore its value cannot be underestimated.

The building was relatively new but also needed repair. The furniture was to be completely changed and the rehabilitation gymnasium did not function due to the lack of equipment. The swimming pool was not operational. The children had no necessary medical and rehabilitation equipment: the number of crutches was insufficient and used in turns, the wheelchairs were obsolete; the medicines were purchased by the patients whenever possible.

The monitoring members talked with the chief of the educational programs; the lessons were conducted; some lessons, according to the internal regulations, were offered to the different age children together;

The educational process required serious support: the children needed new textbooks and other school items; the teachers requested specialized training as they had to deal with the special needs children; the in-patient children required psychologist's assistance helping them in rehabilitation and reintegration;

According to the Organic Law on the Georgian Public Defender, Article 21, the Public Defender addressed with the recommendation to the Minister of Education and Science, Mr. Aleksandre Lomaia, to study the situation in the Sanatorium Gazapkhuli and take appropriate measures.

In the recommendation it is noted that the Sanatorium requires radical changes: the management reform is necessary, which, in its turn, would identify the correct ways for solving the problems there.

The Children's Psycho-rehabilitation Center Beghurebi at the NGO the Child and Environment

On January 8, 2007, the staff members of the Center for the Rights of the Child at the Public Defender's Office carried out monitoring of the Children's Center Beghurebi.

The Center is an open-type institution funded by the NGOs Save the Children and Cordaid.

The Center has the capacity to provide overnight lodging for 25 children. During the monitoring only 5 children were at the Center because of the quarantine.The Beghurebi center provides assistance mainly to the street children.

The Center has 28 staff members; out of them 7 are caregivers, 5 teachers of informal education, 3 duty nurses, and the medical personnel: one doctor serving all Centers of the NGO "the Child and Environment". Twice a year medical examinations are conducted at the Children's Second Hospital. The Center is provided with medicines as much as their budget allows . The Gamgeoba provides the Center with humanitarian assistance.

Education: the children attend the Public School No. 42. The UNICEF presented the Center with a vehicle, which is used to transport the children. At the Center, the children are taught drawing, singing, computer literacy, they also have the drama group and stage performances.

The Center has two psychologists. They work with the children using the psycho-social rehabilitation program and the individual development plan (the teachers attended special training sessions).

The children are examined through the psycho-diagnostic method; the perception functions are checked by Vexler, Koos, Lourie and Raven tests; they determine age; the employment program is implemented; 5 children are already employed; they work together as waiters.

The Children's Psycho-rehabilitation Center Begurebi has two social workers; one collecting information on the children (family, background) and the other studying the families.

Along with other programs functioning in the Center, a Parents Employment program funded by the Cordaid is implemented, the realization of which showed one general tendency: the employer does not wish to give jobs to this social groups representatives.

The psychologist noted major problems in the children of the Center : educational retardation, a high level of aggressiveness, difficulties to switch to a system of acceptable values, low self-confidence of the children.

One fact should be particularly noted: at the Public School No. 42 there are no problems with the integration of the Center children with other school students. No single fact of violence was noticed. This is an exceptional case against the backdrop of general violence in schools and indicates the dedication and the professionalism of the staff members in both the School 42 and Center.

The report on monitoring Tbilisi School No. 202 for the Blind Children

On November 13, 2006, the staff members of the Center for the Rights of the Child monitored Tbilisi School No. 202 for the Blind Children:

At the time of the monitoring, 55 children attended the school which was divided into 14 groups One of the group was for the students were are blind and mentally retarded.

1. In the daytime the number of the children at school was between 45-55, at night between 20-25.
2. The school belonged to the category of the blind children.
3. Personnel: 27 teachers, 1 medical nurse, 1 Ophthalmologist (part-timer), the positions of the pediatrician, dentist and administrator (3 in all) were removed.
4. The technical personnel was 40,5 - staff members: nurses, janitors, cooks.
5. Medical personnel: part-timer Ophthalmologist, who came once a week; one medical nurse who was also supervising the cafeteria.
6. Medical examinations: Insurance Company BCI conducted free complex medical examinations of the children in May.
7. Isolated room: a room for 2 girls and room for 2 boys were unoccupied. As we were told, these rooms were used only if needed.
8. A sufficient reserve of medicines was available and besides that the children had the Red Polices issued by the Mayor's Office, which included the examination by the pediatrician and neuropathologist.
9. Humanitarian assistance: the PSP company provided the school with medicines. In May the Lithuanian charity foundation Soko presented the centre with 7 Personal Computers, 1 printer, electric guitars and other instruments for the musical band functioning at the school.
10. There was No fixed position for psychologist at the school. The intern psychologists worked at school.
11. Menu: they were allowed to spend 3 to 4 lari per child everyday.
12. They had medical therapy centre and worked on correction. 11-12 graders were taught to massage. The school had a singing choir, 2 English language groups, the children are taught music.
13. Sanitary condition: unsatisfactory – restrooms need immediate repair, no hot water, the laundry was arranged in an unprofessional manner, the sanitary equipment was in extremely bad shape.
14. Heating: the school had central heating radiators but there was no boiler; the room for the boiler was built and the school staff expected assistance. However, as the school administration said, the school budget would not be sufficient to purchase the diesel to run the boilers.

The most noticeable problem was the physical condition of the school. The building had not been repaired for long and in a dilapitated; the sanitary arrangements were in terrible condition; no hot water; heating – the building was old with large rooms and windows; the laundry was not arranged well.

1. The report on monitoring of the Public School No. 200

On November 16, 2006, staff members of the of the Center for the Rights of the Child monitored the Tbilisi School No. 200. The school was designed as a boarding school for the children with mental retardation.

An estimated 230 children attended the school, they were divided into 20 groups by the age and grades. The studies were until the ninth grade (basic education). The school also had educational groups for the children starting from age 4.

In the daytime 230 students studied at the school and 135 stayed at night (designed for 135). The personnel: principal Marina Ujmajuridze, 33 teachers, 60 general staff members. Medical personnel: 2 doctors, 2 medical nurses, 1 sanitary assistant.

Medical examination was conducted once every year by a pre-planned program at the Pediatric Institute. The medicines were purchased by the school budget. The principal deemed that the increase of funding would be desirable. The school employed two psychologists, one full-timer and one part-timer.

Menu: up to 3 lari was spent per child; they produced themselves.

Education: 9 grades of mandatory education. According to the principal, they had knitting and labor groups, music choir, but during our visit nothing could be seen.

The sanitary situation was satisfactory: the WCs were clean but obsolete and with rank smell. The rank smell was also in the children's bed-rooms, which was explained by the principal that the problem was due to children's night enuresis.

In the bed-rooms, the same problem was seen everywhere: the rooms were overcrowded with beds, the norms of distance between the beds were violated and in most of the cases the beds were adjoining each other; in the girls' bed-rooms we found the beds for two persons. The principal explained saying that an organization donated these beds in the form of humanitarian assistance.

The process of deinstitutionalization was ongoing. 18 children returned to their biological families last year.

For various reasons 7 children left the institution (from October to November). They were the children with mental capabilities within the norm.

Conclusion:
There are three problems that should be noted:
1. The building is in need of overhaul (especially sanitary equipment);

2. There is no heating in the entire school apart from the smaller natural gas heaters installed in the classrooms which is not compliant with the norms set forth for the children's institutions: the gas exhaust remains in the room polluting the environment; in the rooms the gas smell was noticed;

3. **The children's psycho-diagnosing and determining the level of their retardation. Often happens when the child with normal mental potential is placed in the school. This issue is**

solved independently by the school principal. The Ministry of Education and Science and the Ministry of Labor, Health and Social Affairs should pay attention to this issue.

On the deficit of the psychologists

In most of the orphanages monitored by the Center representatives, the staff lists does not specify the positions of the psychologists and social workers.

From our perspective, this is a shortcoming negatively affecting the quality of the care-giving institution; the orphanages are meant for children with special needs and care, which includes the children of impoverished families, children with physical and mental problems, children who are abandoned by their parents and those who have never seen their parents.

All of the above, represent the children whose life does not proceed in a normal way and whose only care-giver and refuge is the state. As these children lack parental warmth and care, it is the state's duty to fill this vacuum through the services and expertise of the professionals in the field of children's care: psychologists, social workers and teachers of particular specialtiy.

The presence of the psychologists and social workers at the orphanages should not be a rare sight. The cases we studied directly indicates the lack of professionals involved in the process, for example, most of the instiurtions do not have the services of psychologists and social workers , working with the children and studying the families. The authorities running the orphanages do not seek the true reasons of the child's placement into the institution, which is posing a threat to the children's psychic, physical health and his/her future in general.

Recommendations

- The Ministry of Education and Science and the Parliamentary Committee for Education, Science and Sports and the Committee for Legal Issues should ensure the implementation of the legislative commitments on elementary and basic education and for its implementation, the relevant mechanisms should be more strict more active and develop additional resources.

- The local self-governments, the Ministry of Labor, Health and Social Affairs, the Ministry of Education and Science and the Ministry of Internal Affairs should start the registration of the risk group families and the study of their condition to prevent the alienation of the child from the educational process when the reason is the family situation.

- Determine the definite terms of the response on the part of the governmental bodies when the facts of begging by the children are revealed. To ensure the child's normal development the response should be to a maximum extent fast and effective.

- One of the governmental bodies (police, resource centers) should be tasked to ensure the child's school attendance in cases when the child is in the street begging or tramping during the school hours; later the causes should be identified.

- The Ministry of Education and Science and the school administrations should establish control over the school attendance of those children who belong to the risk group category and/or are under risk.

- The Ministry of Education and Science should elaborate special programs that would allow the risk group children to get elementary and basic education.

- The Georgian Government should be tasked to activate the mechanisms that are already provided for by the legislation for protecting the children from the negative influence of their parents and various other types of violence; it is also necessary to improve the response mechanisms.

- The Ministry of Internal Affairs should specifically define the mechanisms of the response and bodies responsible for the protection of the children from violent parents. The shortest possible terms should also be established when the crime is obvious and/or there is a reasonable suspicion;

- The Parliamentary Committee for Legal Issues and the Committee for Education, Science, Culture and Sports should discuss the issue of the effective regulation for the protection of the children from begging: the norms provided for by the legislation are not sufficient for their protection.

- The Ministry of Education and Science should ensure the public campaign and other effective mechanisms to avert the children from begging in the street;

- The Parliament should define and enforce legislatively the body entitled to provide the minor with the night lodging without the permission of the parent or guardian; strict sanctions in both the Administrative Offences Code and Criminal Code should be established for its violation. The body should also be defined responsible for the control over these norms.

- It is desirable if the Ministry of Labor, Health and Social Affairs takes care of those children that are raised by the mentally ailing parents; in particular:
  1. A special program should be prepared, which would consider both the needs of the ailing person and the interests of his/her child;
  2. The program should consider the creation of a special group of social workers dealing with these issues and offering specialized trainings to them;
  3. Database should be created to monitor this problem: the psycho-neurological centers should register the cases of such type.

1. The Change Violating the Principle of the Individualization of the Criminal Liability

On December 29, 2006, the Georgian Criminal Code was amended and as a result "if the convict is a minor and insolvent, the parent, guardian or care-giver will be responsible for the payment if any fine is imposed on him/her " [5].

In criminal law only the court may pronounce the verdict of guilty if it finds the individual as an offender. When making a decision, the court will necessarily assess the kind of unlawful action committed by the individual and whether the individual acted illegally, upon which it will accordingly make the decision. Along with finding guilty, the court determines the punishment for the individual. The punishment is established only for the individual who committed the unlawful action and acted illegally. This principle of criminal law is known as the principle of individualized punishment.

1. The principle of individualized punishment in the European and international law

The principle of individualized punishment is enshrined in the constitution of numerous European countries.

The Italian Constitution, Article 27, Paragraph 1, says that "the responsibility for the criminal offence is individualized".

In France they related this principle to the Human Rights Declaration of 1789, which is of a higher rank than the Constitution in the hierarchy of the country's normative acts. Besides that the French Criminal Code, Article 121, codifies the principle of individual responsibility. According to this disposition, "the criminal liability may exist only for one's actions."

The Swiss Federal Court attaches to the principle of individualized punishment to the status of the criminal public principle.

Paragraph 4 of **The Austrian C**riminal Code is related to this principle and says: "Only the offender shall be punished."

In the verdict of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia of July 15 1999, Prosecutor v. Dusko Tadics, 186, is said:

"The basic assumption must be, that in international law as much as in national systems, the basis of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally been engaged or participated in some other way (*nulla poena sine culpa*). In national legal systems this principle is laid down in Constitutions, laws, or judicial decisions. In the international criminal law the principle is laid down as *inter alia,* in Article 7(1) of the Statute of the International Tribunal which states that:
A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be the *individually responsible* for the crime."

[5] GCC, Article 42, Part 5^1

According to the court, this principle is often implicit, though there are cases when it is clearly voiced. For example, in **Great Britain,** the verdict R v **Dalloway (1847) 2 Cox CC 273[6]; the Belgian** Cassational Court verdict of October 6, 1952.

A number of decisions of the **German** Constitutional Court is based on the principle of individualized punishment, e.g. BverfGE 6, 389 (439) and 125 (133). Some decisions of the German federal Court particularly note that principle, e.g. BGHSt 2, 194 (200).

According to the **Statute of the Permanent International Criminal Court,** Article 25, Part 2[7], "A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute."

From the decision of the **Court of the European Union** C-210/00 Kaserei Champignon, it is clear that the indictment should be in compliance with the principle of *nulla poena sine culpa.* The defense subject was the norm setting the sanction despite culpability. The court claimed that the punishment set forth by this norm would be incommensurate with the principle of *nulla poena sine culpa* only in case if it is the punishment for criminal offence. In this concrete case the case was the administrative fine and in that case the principle of punishment individualization did not work. However it should be noted that currently serious discussion is under way regarding the extension of this principle to the administrative punishments.

According to the **Doctrine,** the same principle is being established by the European Convention, Article 6, Paragraph 2[8].

2. The principle of individualized punishment in the Georgian legal system

Although the principle of individualized punishment is not declared in the Georgian Constitution, according to Article 39, "The Georgian Constitution does not deny other universally recognized rights, freedoms and guarantees of the individual and citizen, which are not specifically stated, but naturally derive from the principles contained within the Constitution".

Besides that the Georgian Constitution, Article 40, Paragraph 1, recognizes the presumption of innocence, "Every individual is considered innocent until proven guilty through the proper procedures of law".

Taking into account the above, **the Board of the Georgian Constitutional Court by its Decision No. 1/51 of July 21, 1997,** recognized the individualization of punishment as one of the major principles and found the unconstitutional confiscation of the property as an additional punishment. In particular, the Court noted that "property confiscation by its results does not correspond to the main principle of individualize punishment as it is usually directed not only against the offender but also his/her innocent family members." As the court believed, the principle of the individualized punishment is one of the main Constitutional principles that

[6] *According to this verdict, the defendant is guilty only if his activity or inactivity caused the felony. As the causal relation was not determined in riding the horse by Dalloway without bridles and the death of a three-years-old child, Dalloway was announced not guilty.*

[7] *Rome Statute of the International Criminal Court, July 17, 1998*

[8] Jurgen Schwartze, professor of the national law, Department of International and European Law at the Freiburg University and Director of the Freiburg Europa-Institute, in the article "Legal Discussion of the European Administrative Procedures."

derives from the Constitutional provisions. The Georgian Constitution is setting high standard of the fundamental human rights and freedoms and undoubtedly the principle of individualized punishment derives from its principles.

According to the Georgian Criminal Code, Article 40, the fine is a form of punishment that can be applied as both the primary and additional punishments.

According to the GCC, Article 40, the purpose of the punishment is to restore justice, prevent a new crime and reinstate the offender in the society. Accordingly, the punishment should affect only the offender, without causing any harm to to other individuals However, the existing Criminal Code, Article 42, Part 5^1, the punishment may be levied on the individual who is not criminally liable and respectively will not facilitate the fulfillment of the purposes of the punishment: levying the fines on the parents, guardians and care-givers will in no way restore justice, and neither can it prevent a new crime nor facilitate the process of reinstating the offender in the society. On the contrary, it causes punishment to other individuals, contradicting the principle of individualized punishment.

Hence, we believe the Article 42, Part 5^1 of the Georgian Criminal Code, is unconstitutional as it contradicts Article 39 of the Georgian Constitution and the principle of individualized punishment included by the Constitutional Court into the rank of Constitutional Principles.

Gender Equality

The Georgian legislation recognizes equality of women and men when exercising civil or political rights. However, despite the declared principle of equality, the level of women's participation in the decision making process is still low. Women's participation in politics is one of the significant indicators of country's democratization. Studying the level of women's participation in local self-governances displays a particularly interesting picture.

As a result of the 2006 local elections, the women's participation decreased in the local self-governmental bodies. Out of 1,734 Sakrebulo mandates nationwide, 197 are won by women, which is 11,47% (after the 1998 elections this figure was 14%, and after the 2002 elections 11,9%).

	Region	Number of Sakrebulo members	Women	Majoritarians	Proportionally elected
1	Tbilisi	37	4 (10,8%)	3	1
2	Kakheti	209	26 (12,4%)	6	20
3	Kvemo Kartli	197	18 (9,1%)	9	9
4	Mtskheta-Mtianeti	110	16 (14,6%)	7	9
5	Shida Kartli	122	12 (9,8%)	6	6
6	Samtskhe-Javakheti	148	13 (8,8%)	5	8
7	Racha-Lechkhumi and Lower Svaneti	101	18 (17,8%)	6	12
8	Imereti	299	26 (8,7%)	15	11
9	Guria	98	10 (11,2%)	4	6
10	Samegrelo and Zemo Svaneti	242	28 (11,6%)	18	10
11	Adjara	129	11 (8,5%)	3	8
12	Liakhvi Election District	28	6 (21,4%)	1	5
13	Upper Abkhazia Election District	14	9 (64,3%)	2	7
	Total	1734	197 (11,47%)	85	112

Proportionally, out of 692 elected Sakrebulo members 112 are women, which is 16%, while out of 1,042 Sakrebulo majoritarian members only 85 are women, which is only 8,2%.

The level of women's participation in the local governments varies from one region to another. The women elected as majoritarian members exceed the number of those elected by party lists in Samegrelo (out of 28 elected women 18 are elected as majoritarians), in Imereti (out of 26 elected women 15 are majoritarians), in Kvemo Kartli (out of 18 elected women 9 are majoritarians). Through party lists most of women were elected in Kakheti (20 out of 26 members of self-governance are women), Racha-Lechkhumi and Kvemo Svaneti (12 out of 19 members of self-governance are women).

Going by the numbers, the highest number of women (28) were elected in Samegrelo-Zemo Svaneti, in Imereti and Kakheti the figure was 26 women elected, but the lowest number of woman was in Tbilisi (4). It should also be noted that the total number of Sakrebulo members in Samegrelo is 224, in Imereti 299, in Kakheti 209 and in Tbilisi 37.

In each of the 69 Sakrebulos in the country on an average there are 3 women, though in Batumi city, Gurjaani, Kareli, Vani, Samtredia, Akhalkalaki District Sakrebulos no women were elected. In Kutaisi and Poti city, Marneuli, Bolnisi, Dmanisi, Kazbegi, Aspindza, Lentekhi, Chiatura, Mestia, Khelvachauri and Khulo District Sakrebulos, one woman representative elected in each.

By percentage, most of women were elected in Upper Abkhazia Election District, 9 out of 14 (64,28%), next are Kvareli District, 5 out of 21 (23,8%), Tetritskaro District, 7 out of 30 (23,33%). From the city Sakrebulos, Rustavi had the highest percentage of women, where one every fifth is a woman, 3 out of 15 or 20%.

In the regions the highest percentage of women elected in Sakrebulo are in Racha-Lechkhumi and Kvemo Svaneti (17,82%), in Mtskheta-Mtianeti (14,55%) , in Kakheti (12,44%) and the lowest percentages were in Samtskhe-Javakheti (8,78%), Imereti (8,70%) and Adjara (8,53%).

It should be noted that there is almost no participation of the woman representating the country's minorities in the process of decision making (out of 199 women Sakrebulo members only a few are ethnic minority representatives).

Taking into account the above figures, we may conclude that the women's voice is not heard adequatly in the decision making process in our country and we have still to go a long way to democracy.

It should be noted that when we discuss the issue of self-governance and the role of women, one should not forget that till date Georgia has never had an effective self-governance in fact and the role of this institute in country's existance has been insignificant. Which is why the public is not in a position to put into one context the issues of gender and self-governance.

In these circumstances a great deal of importance is attached to the political parties as the key subjects of the political process in making women's political participation more active.

The majority of Sakrebulo women members (176 or 89,34%) were either the National Movement members or were nominated by this party, as regards remaining 21 women (10,65%) 7 of them were Labor Party members, 6 - members of the Davitashvili, Khidasheli, Berdzenishvili block, 3 – Topadze, Industrialists, 1 – Salome Zurabishvili – Georgia's Way, and 4 were proposed by the initiative groups.

In Tbilisi local elections of October 5, 2006, 6 parties participated. In Tbilisi out of 130 majoritarian candidates 29 were women. In the party lists their distribution was the following:

	Party	**Number of Women**	**Percentage**
1	National Movement	11 women out of 50 members main -10, reserve- 1	22% 50 - 10 (20%)
2	Labor	12 women out of 50 members main-7, reserve- 5	24% 50 - 7 (14%)
3	Georgia's Way	23 women out of 50 members main -9, reserve – 14	46% 50 - 9 (18%)
4	Election Block - `Davitashvili, Khidasheli, Berdzenishvili~	14 women out of 50 members main -7, reserve – 7	28 % 50 - 7 (14%)
5	Topadze, Industrialists	12 women out of 33 members main - 9, reserve – 3	36% 33 - 9 (27%)
6	Georgia's National Ideology Party	1 woman out of 7 members	14%

It is also important to view the same information by the ranking number of women in the party election lists. As it is obvious, the Salome Zurabishvili Party is leading in this aspect, with 4 being women among the the first 12 candidates, in the Election Block of Davitashvili, Khidasheli and Berdzenishvili 3 were women and in other parties between 1and 2

National Movement – 50 members	Labor Party - 50 members	Zurabishvili– Georgia's Way – 50 members	Election Block - `Davitashvili, Khidasheli, Berdzenishvili~ – 50 members	Topadze, Industrialists – 33 members
5	8	2	2	8
12	14	4	4	13
14	15	7	12	14
16	19	12	14	15
17	29	13	15	18
18	33	17	17	21
24	37	20	19	22
26	38	22	20	26
45	39	25	23	27
48	40	27	26	28
	43	28	35	29
	49	31	37	33
		33	40	
		34	4	
		35		
		36		
		37		
		40		
		41		
		42		
		45		

		47		
		49		

The study of the Georgian political parties shows that the women in the political parties that are actively involved in country's political life are not strong enough to influence the formation of the party's priorities.

30% of political party members are women but most of them are ordinary party members whose potential is used only in the election preparation or performing other "unskilled laborer" tasks. On very rare occasions they are included among the first ten candidates in the party lists.

The public attitude should also be noted which is more critical and focusing on women politicians than the men politicians.

So far the number of women sensitive to the gender issues and motivated to work on the women's issues by raising the the problems of women and gender in the Georgian political debate is negligible, The participation of women would make the Georgian politics more flexible and more compromising by promoting the culture of debate and raising the level of dialogue

On July 24, 2006, the Georgian Parliament adopted the State Concept of Gender Equality elaborated by a special working group, which included the members of the Gender Equality Board, the Chairperson of the Parliament of Georgia, Governmental Commission on Gender Equality and representatives of various Ministries. The plan was coordinated with all the Ministries involved in the process and was submitted to the Georgian Government. The Group working on the Concept was assisted by UNDP, the Gender and Politics in the South Caucasus Project, UNIFEM, UNFPA and international experts.

The Concept is aimed at promoting the equal and effective exercise of the rights and use of potentials of the women and men. It recognizes the gender equality principle in all spheres of state and public life and identifies the appropriate measures for the prevention and eradication of all forms of discrimination on the basis of sex, and also to achieve gender equality.

It should be noted that in the Decision of the Georgian Parliament on the approval of the State Concept of Gender Equality, the Georgian Parliament states: ".... in a period of 6 months after putting this Decision into effect, the Georgian Government shall elaborate and adopt the Action Plan for the Implementation of the State Concept of Gender Equality". Unfortunately, the Decision of the Parliament has not been yet implemented, which reflects the attitude of the state towards the problem.

Recommendations:

1. The Government should approve and wage the state policy (action plan) to achieve gender equality in all spheres of public life. For achieving the plan financial resources should be allocated and a system of its implementation should be instilled;

2. The political parties should elaborate a certain procedure for selecting women candidates ensuring proportionally balanced participation of the men and women in the elections.

Family Violence

The Georgian legislation on the prevention of family violence, protection and assistance to the victims of family violence is based on the Georgian Constitution, international agreements, treaties and the Georgian Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence that was passed by the Georgian Parliament on May 25, 2006, which was a significant step forward in the direction of addressing the problem.

According to the Law, Article 21, Paragraph 4, "requests the Georgian Government to approve a special plan within a period of 4 months since the publication of this Law, which would determine the specific measures for preventing family violence and protecting and assisting the victims of family violence.

This action plan, which should be in effect from 2006-2008, was developed by a group of experts that included both the members of the governmental and non-governmental organizations. The action plan is mainly aimed at the performance of the following tasks: adopting the improved legislation and closing the existing gaps for the protection and assistance to the victims of family violence; raising the level of public awareness; victims protection and assistance; creation and improvement of the database on the cases of family violence.

Although the period of four months expired on October 9, the action plan not only was not approved but was not even considered. This means that the Parliamentary Law was breached and there was no political will to solve this problem. Consequently no funding was included into the 2007 state budget for the prevention, protection and ensuring the rehabilitation of the victims of family violence. As a result, even if this plan is approved, it will be again an another ineffective document, which, will only hinder the implementation of the adopted law.

The Public Defender's Office and NGO Counseling Center (Sakhli) jointly conducted the survey of the patrol police officers and Mtatsminda-Krtsanisi IF Department's precinct police officers. The objective of the survey was to find out whether there were effective mechanisms in place, after the adoption of the law, for the protection of the victims of family violence, reveal the factors facilitating the increase of the efficiency in the police activity and the implementation of the adopted law. The material obtained through conversations and questionnaires, allowed us to see the real picture and problems. In particular,

1. The problem of the execution of the court decision implying the control over the protection orders or the restriction orders for the victim from the violent family member.

**The restriction order* is issued by the police officers after detecting the fact of violence. The separation of the parties is a temporary measure for protecting the victim of violence. However the violator does not bear any responsibility when breaching this order.

**The protection order* is issued by the court determining the period the violator is forbidden to get close to the victim. According to the law, breaching the court decision entails criminal liability. However the detection and reaction to this breach is not often possible. There are cases also when the victim (mostly because of unawareness) does not mind to continue having family relations with the violator.

2. The situation is further complicated by the fact that each precinct police officer is responsible for up to 5,000 residents, making it impossible for a police officer to individually serve and protect such a vast number of people

3. The victim faces the problem by being uncertain of his/her right and status on the property. The principle of equality recognized by the adopted law implies in its very beginning the right to material equality. However the victim is usually financially dependent on the violator and has to stay in the family to retain shelter.

4. Currently no asylums are available to accommodate the victims and offer assistance on temporary basis. The establishment of the rehabilitation center for the violators is also needed, where they could be treated.

5. The adopted law does not provide the actual tools to solve the conflict, as no real mechanisms are available to protect the victim from violator's threats, retaliation or repeated violence.

6. There is practically no social workers institution dealing with the issue. According to the law, the provision defining the social workers institution should be effected from July 1, 2008.

7. One of the main reaons for the problem going undetected and unresolved is the cost of medical expertise needed to determine the effect of such violence, although external injuries are treated free of csot once the matter is reported to the police, internal or psychological damage requires thorough analysis which the state is unable to ensure.

8. The low level of public awareness of the adopted law implying that the level of awareness of the public, justices, prosecutors and police officers, medical personnel and media representatives should be heightened.

9. Till today it has not been possible to adopt the Action Plan for 2006-2008 on the Measures for the Prevention of Family Violence.

The following recommendations are developed regarding the implementation of the law:

- Comprehensive database should be created, which includes the information on the cases of family violence; the data on the law enforcers trained in the issues related to family violence; information on the organizations tackling the problems of family violence and their activity;

- A group of experts dealing with the family violence issues should be formed to facilitate the comprehensive effectivness of the law;

- A special coordination board should be established ensuring the collection of the data on the shortcomings found in the process of the implementation of the law; performing the mediator function between the population and the law enforcement bodies and working on the further improvement of the law. It should also monitor the state plan implementation and reveal the shortcomings found in the process of court regulation of the family violence cases.

According to the information submitted by the Ministry of Internal Affairs, in 2005 the patrol police officers detected 3,254 facts (in the first half 1,785, and in the second half 1,469), and 3,665 cases (in the first half 1,910, and in the second half 1,755) in 2006.

The facts detected nationwide by the patrol police in the second half of 2006.

	VII	VIII	IX	X	XI	XII	Total
Tbilisi	212	250	214	280	129	46	1,131

Imereti	18	8	7	12	15	23	83
Kakheti	25	-	17	6	3	3	54
Shida Kartli	15	12	10	32	18	13	100
Kvemo Kartli	68	41	48	50	35	38	280
Adjara	5	3	9	3	11	12	43
Samegrelo-Zemo Svaneti	10	17	13	12	8	4	64
Total	353	331	318	395	219	139	1,755

The statistical data of the Tbilisi Patrol Police Main Department sorted by districts on the basis of the conflict materials drawn up by the patrol police and precinct officers on site after receiving notification.

District	
Gldani-Nadzaladevi	250
Vake-Saburtalo	136
Didube-Chughureti	199
Isani-Samgori	438
Mtatsminda-Krtsanisi	108
Total	1,131

The figures indicated do not depict the real picture as family violence is generally perceived by the public to be a personal and family problem and not an acute social problem. This picture requires a thorough study in the regions of Georgia and the districts of Tbilisi.

We believe that finding the ways to introducing statistics is necessary to show the problem in the society and the need to solve it.

Only in 28 cases were instituted preliminary criminal proceedings in Tbilisi City Court out of the detected 1,755 facts of violence in the second half of 2006 and only 11 of the 28 cases received Court decisions The Tbilisi City Administrative Cases Board received only 7 applications to issue the protection orders and only on 4 applications the orders were issued, while on the other 3 applications the proceeding were dropped.

The Tbilisi City Court of Civil Cases in 2006 heard no cases involving the compensation of damage as a result of family violence. The victim often does not realize that he/she has the right to demand the compensation for damage.

Recommendations:

- According to the law, Article 9, Part 2, "the criminal proceedings mechanism is used in the cases involving family violence with the signs of criminal offences". Till date there is no special provision included in the Criminal Code It should be included to criminalize this phenomenon.

- The mandatory methodical training/education of the members of the police, prosecutor's office and courts should be ensured. The provisions of the Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence" should be included in the training course curriculum.

- Article 21, Paragraph 4 of the Law should be effected and the Government should approve the special plan identifying specific measures for the prevention of family violence and the protection and assistance to the victims of family violence.

- The Government in the budget 2007 should at least partly allocate the funds for the prevention, protection and rehabilitation of the victims, which are impossible without the funds.

Women's Penitentiary Institutions

The Georgian Public Defender's Office actively cooperates with the administration of the Penitentiary Institution No. 5 of the Ministry of Justice for the purpose of studying and improving its situation.

In October 2006 the Georgian Public defender was addressed with a complaint by 40 convicted women from the Penitentiary Institution No. 5 of the Ministry of Justice. They complained about termination of the parole release procedure from March 2006.

According to the Georgian Criminal Code, Article 72, the convict "may be released on parole if the court deems that serving the entire sentence pronounced for his/her correction is not necessary." Accordingly, if the convict's behavior complies with all the requirements set forth by the legislation, the state should exercise the right given by the Georgian Criminal Code, Article 72, and the Georgian Law on the Confinement, Article 68, not to allow the one-sided performance by the convicts of the mutual responsibilities existing between the convict and the state. It is important that the state also performs the positive duties it is liable to, ensuring the rights and privileges of the convicts set forth by the law.

In 2006 no female convict was pardoned. 6 women. were released on parole

The Penitentiary Institution No. 5 of the Ministry of Justice was designed for 220 convicts, while in reality there are more than 500 female convicts. The administration uses the lounges and warehouses as bed-rooms; the cells cannot be ventilated. This situation makes the state of the convicts placed in this institution very difficult.

The following factor should be taken into account that numerous convicts are serving their sentences in the penitentiary institutions, they are imprisoned because they are punished, but not to be punished there: confinement is the punishment itself. Therefore the conditions in penitentiary institution should not turn into an additional form of punishment. Any unnecessary inconvieniance caused by the confinement should be minimized.

In the modern world, when dealing with the convicts the focus is on helping them, developing their personal potential and enabling them to smoothly return to the society. This idea is based on the conception that today's convict is tomorrow's free citizen.

We mean those changes that were made to the law, which abolished the long-term meetings; in our opinion, this means the destruction of those "loose ties" that connected the inmate with the society, in which he has to live after the release from prison.

The problem of emplyment for the convicts still remains unsolved, even though there are means available in the form of a well refurbished kintting workshop, felt workshop and horticultural greenhouse within the confines of the institution. The reason of unemployment is lack of funding and orders placed on the goods made by the convicts. Most of the female convicts come from vulnerable families and solving this issue would allow them to earn some income and purchase the items of essential need

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Labor is a valuable tool to gain useful experience and an addition to the qualification which would help the inmates to find suitable employment and work honestly after their release. When teaching useful skills special attention should be given on women's employment as the

women are the only bread winners for the families. The penitentiary institution should facilitate the adaptation and later the inclusion of the former convict into normal life.

Another problem that needs to be addressed is the employment and the integration of former convicts within the society, which would facilitate the reduction of the recurrent crimes

The UN principle of the minimum standards rule for the treatment of the convicts imply the minimization of despair specific for the convicts, encouragement of the convicts to be law abiding and financially independent individuals after their release, making easier the gradual return to the society, etc.

Recommendations:

- The situation in the penitentiary institutions should be considered and in cases when the convict meets the requirements set by law, ensure his/her right to exercise the right to privileges provided for by law.

The problem of trafficking in Georgia

Trafficking of human is a serious problem for the international community. The number of the trafficking victims increases annually worldwide. The measures of the international community to combat trafficking are based on the three main areas: prevention of the trafficking crime, protection of the victims of trafficking and criminal prosecution of the persons committing the trafficking (traffickers). In recent years the Georgian Government has taken huge steps forward in all three directions, which was reflected positively in the U.S. State Department Report.

On December 29, 2004, the Georgian President approved the action plan for combating trafficking in 2005-2006 and for its effective implementation, the Temporary Inter-Agency Commission for Combating Trafficking was formed at the Georgian National Security Council.

On September 1, 2006, the Georgian President by the Decree No. 534 approved the regulations and composition of the Temporary Inter-Agency Commission for Combating Trafficking, which would coordinate the anti-trafficking measures with the collaboration of Governmental structures, international organizations and local NGOs.

The study of the performance of duties implied by the action plan in 2005-2006 showed that despite its efficiency there were suggestions regarding the plan related to both its comprehensive fulfillment, as well as the correct and purposeful distribution of functions among the implementers.

For the effective measures to combat trafficking it is significant to improve and close the gaps in the existing legislation, which implies the creation of the comprehensive legislation for fighting against trafficking of human . In addition to the Law on Combating Trafficking of human which corresponds to the international standards, on July 25, 2006, the legislative package developed by the Ministry of Justice was submitted, which implied relevant amendments and changes to different existing laws, including the Criminal Code, Civil Code and Labor Laws Code and Law on Immigration and Emigration. The main objective of the changes was to create the legal mechanisms for the protection of the victims of trafficking which would be efficient, facilitate the detection of this crime in Georgia and fight against it, as well as the protection of the Georgian citizens abroad.

Unfortunately, to uphold the rights of the consumers, the package which implied the amendments and changes to the existing regulating legislative acts ensuring the rights and protection guarantees of the consumers by various companies offering employment, dating, tourism, education, and mediator services. was not adopted,

In regard to the development and introduction of the norms of behavior for the staff members of the MoIA and Prosecutor's Office during the investigation of the crimes related to trafficking, taking into account the international standards in this sphere, it can be noted that the Code of Police Ethics and the Code of the Georgian Prosecutor's Office staff members developed respectively by the Ministry of Internal Affairs and the Georgian General Prosecutor's Office, define the general principles regulating the relations among the staff member of the above mentioned bodies and the norms of behavior. The Code of Police Ethics defines the police members relations with individuals and organizations determining the responsibility for violating the norms of the Code. Both these Codes are general in nature and do not extend to special aspects that may arise during the crime of trafficking of people or may be related to this crime.

On December 22, 2006, the Georgian Parliament ratified the European Council Convention on Action against Trafficking of Human Beings.

Georgia has signed the agreements upon readmission with Italy (1997), Bulgaria (2002), Ukraine (2004), Switzerland (2005). The work is under way on signing the agreements with the governments of the Federal Republic of Germany, Benelux countries, Czech Republic, Slovenian Republic, Lithuania, Latvia, Estonia, Romania, Russian Federation and Turkey

In connection with the agreements with the recipient countries and the creation of legal guarantees of labor and granting the quotas of workplaces, it turns out that this process is going on with difficulties as the majority of these countries do not express their interest in concluding these agreements. Italy was the only recipient country with whom the agreement successfully concluded on the creation of legal guarantees of labor and granting the quotas for workplace to the Georgian citizens. The Ministry of Labor, Health and Social Affairs was responsible among others for these issues and developed a sample draft of the international agreement for the Purpose of the Creation of Legal Guarantees of Labor for the Georgian Citizens in the Recipient Countries.

For the purpose of providing timely notification and information to the public on the labor migration and trafficking issues, "hot lines" were installed and functioned in all the responcible Ministries and trainings were imparted to the hot line operators with the assistance of NGO's

The Ministry of Foreign Affairs was the only body to conduct some activities which included the planning and conducting informational and educational activities, including the notification on the legal tools avaiable for studying and working abroad In particular, in August 2006 the order No. 209 designating the persons working on the issues of trafficking of human beings at the Georgian Diplomatic Missions and Consulates Abroad was issued, which obliged the persons working at the consulate departments on the trafficking issues to distribute to the public the relevant information in the host countries. Besides that, the Georgian diplomatic missions and consulates abroad and the Ministry of Foreign Affairs are prepared to offer consultation to the Georgian citizens on the issues of their legal employment abroad .

As for other bodies, according to the Ministry of Internal Affairs, as of yet they have only declared about their readiness to cooperate with the Ministry of Education and Science and the Ministry of Labor, Health and Social Affairs for pursuing the strategy. However it should be noted that neither the Ministry of Labor, Health and Social Affairs, nor the Ministry of Education and Science provided us with the information on their activity aimed at applying that strategy.

For the purpose of raising the level of public awareness on the issues of illegal migration of labor and trafficking, matelials on the legal employment abroad and prevention of trafficking was distributed to the Georgian Visa and Passport Service, Border Control Checkpoints and Consulate Departments In addition, Different international and non-governmental organizations conducted special trainings to judges, members of the Georgian General Prosecutor's Office, MoIA, Ministry of Labor, Health and Social Affairs, State Department of Border Guards and the Georgian Public Defender's Office.

When we discuss the issues of reducing the migration of illegal labors, the risk of trafficking and carrying out related informational and educational activities, we should emphasize the integration of trafficking related issues into the school curricula, training/retraining of the teachers of the relevant subjects and also the promotion of awareness raising programs for the general public.

In 2005-2006, the Ministry of Education and Science selected 100 pilot schools, where in 1st, 7th and 10th grades the educational process was carried out with a new educational curriculum. In parallel, training was conducted for all teachers including the teachers of civil integration.

Starting from 2006-2007 educational year, this program would be introduced to all public schools in Georgia, additionally according to the national educational plan, the issues related trafficking are more clearly reflected in the 8th grade subjects (history and geographic), 9th grade subjects (geographic standards) and 10-11th grades subjects (civil education standard).

According to the information we have, to evaluate the scale of illegal labor immigration and the problem of trafficking no unified database (information service) on the people engaged in organizing and facilitaing illegal labor immigration and the crimes of trafficking of people has been created till date. The rules and conditions for the creation and use of the database based on the requirements of the Georgian legislation are not yet completed; this indicates insufficient efforts of the bodies responsible for this task.

Taking into consideration the trans-national character of trafficking, it is extremely important to develop the system of information exchange with the transit and destination countries, strengthen regular contacts and collaboration with these countries for the purpose of preventing the facts of trafficking along with the return of the victims to the countries of their origin and ensuring their safety.

The Georgian consulates abroad regularly organize meetings with the relevant bodies of the host countries (in most cases with the Ministries of Interior) with the purpose of exchanging information and accordingly the information is forwarded to the Georgian Ministry of Foreign Affairs.

Despite these steps taken the work in this direction should be continued.

The Law on Combating Trafficking implies the creation of the Fund for protecting and assisting the victims/affected, which would be aimed at ensuring the victims of trafficking with compensation and funding their protection, assistance and rehabilitation.

On July 18, 2006, the President approved by the Order No. 437 the Regulations of the State Fund. The State Fund activity is supervised by the Ministry of Labor, Health and Social Affairs, which has already allocated 100,000 lari towards the Fund for the current year. Since July 20, 2006, the asylum in Batumi has been functioning; its functioning was made possible by financial assistance of the USAID and GYLA in collaboration with the State Fund.

the Coordination Board at its first meeting on November 20, 2006, approved the National Referral Mechanism ensuring effective partnership of the relevant subjects both at the national and international levels.

The National Referral Mechanism is made up of three sections:

1. Identify the victim of trafficking and give the relevant status.
2. Assist and protect the victims of trafficking.
3. Reintegrate and rehabilitate the victims of trafficking.

In the second half of 2006 the Ministry of Labor, Health and Social Affairs launched the program of psycho-medical assistance to the victims of trafficking aimed at providing with medical and psychological assistance the identified victims of trafficking. The program budget

amounts to 20,000 lari. The limit established for medical diagnostics and medicines necessary for treatment per beneficiary is 300 lari, which can also be spent through co-funding.

The victim of trafficking who has been granted the victim status and who has been harmed and morally financially as a result of the trafficking is entitled to the compensation (in the amount of 1,000 lari) from the State Fund. The compensation pay-out does not depend on the cooperation of the victim with the law enforcement bodies.

The grave offence of trafficking of minors remains one of the most serious problems for the world. There is one category of children that are victims of trafficking and the other is the children having the potential to become the victims of trafficking. The other category consists of orphans, children without parental care, children of the parents with many children and single parents; the children whose parents are working abroad also become the victims of trafficking along with the children from extremely impoverished and vulnerable families. The data of the organizations working on the children's rights show that these are the children that become the victims of the growing trafficking trade domestically or internationally. They are engaged in begging, trading of small items, production of the pornographic material and prostitution, domestic service, illegal trading of narcotics and other criminal and anti-social activities. Despite the above mentioned, apart from being left without any protection provided on the part of the State, there is not even a roughly estimated statistics about them issued officially. The study of the cause and the scale of trafficking is necessary along with some appropriate measures which should be taken to protect specifically the interests of the children.

Being the principle guardian and caring body, the Ministry of Education and Science is in charge of deinstitutionalization of the children without parental care and prevention of children abandonment; the social workers are immediate implementers and to strengthen this institution the social workers should be offered special training. Additionally, the Ministry of Education and Science, which coordinates the procedures of international adoption, should actively collaborate with the Trafficking Service of the Ministry of Internal Affairs. This close collaboration would lead to a more effective control over the departure of children without parental care from the country for adoption purposes. The close collaboration would also help in detecting unscrupulous individuals engaged in the trade of trafficking

In 2007-2008 The Action Plan for Combating Trafficking was developed. In a meeting of The Coordination Board held on December 22, 2006, the draft Plan was approved. The Plan was further submitted to the President for his approval.

We would also like to note that the Coordination Board should establish strict control over the fulfillment of the Action Plan for Combating Trafficking of people, to detect and analyze the problems in the area and develop appropriate recommendations. There should be a stronger coordination between the responcible bodies in the implementation of the Action Plan.

It is necessary to establish close cooperation with the NGOs working with the victims, enabling a more precise evaluation of the situation

Taking into account all the above mentioned, it is necessary for the Inter-Agency Coordination Board on the Measures against Trafficking of humans to regularly (once every 3 months) review the Action Plan based on the measures taken and with the purpose of its optimization.

Recommendations:

1. It is important for the state to develop its economic and social policy aimed at eradicating the causes of trafficking. The emphasis should be laid on developing the policy of employment aimed at securing the domestic labor market and limiting the number of foreign jobseekers;

2. Ensure accessibility of the documents adopted by the Inter-Agency Coordination Board on the Measures against Trafficking of humans for the governmental and non-governmental organizations dealing with the trafficking problem. Particular emphasis should be laid on the distribution of information to the regions of Georgia;

3. The Coordination Board and the State Fund for the Protection and Assistance to the Victims of/affected by Trafficking should jointly develop the methods of monitoring and define the criteria for evaluation;

4. The coordination Board should put greater emphasis on the cooperation with the NGOs and their engagement in the process of monitoring.

G.G.'s and O.Sh.'s case

On January 8, 2007, the Public Defender's Office was contacted by an individual who notified that in Sighnagi District, village Milori (Alazani valley) his friend and the spouse with their spouse became the victims of trafficking. As the individual noted, with his help on January 4, 2007, they managed to escape from village Milori and stayed in Lagodekhi at a rented apartment. The Public Defender's representatives traveled to Lagodekhi and brought back the victims.

The victims were identified in compliance with the general rules (questionnaire) for the identification of the victims of trafficking. The information obtained was submitted to the Permanent Group within the Inter-Agency Coordination Board, which made a decision on granting the status to the victims.

After the status was granted, the victims were transferred to the asylum, given safe shelter, food and clothing. They were provided with medical, psychological and legal assistance.

On January 9, 2001, in accordance with the Georgian Organic Law on Public Defender, Article 21, Subparagraph (c) , the related materials that the Public Defender possessed were forwarded to the Georgian General Prosecutor's Office and the Ministry of Internal Affairs for further action.

On January 11, 2007, the Special Operations Department launched preliminary criminal proceedings on criminal case no. 090070041 regarding the fact of trafficking against citizens G.G. and O.Sh, the offence implied by the Georgian Criminal Code, Article 143^{1}, Part 1, Subparagraph B.

Statistics for 2006 on the crimes involving trafficking in persons

143^{1} and 143^{2}	2006
investigation initiated	on 27 criminal cases

indicted	15 persons on 13 criminal cases
measure of restraint selected	for 15 persons on 13 criminal cases
submitted to the court	13 criminal cases against 16 persons
verdict pronounced	on 16 criminal cases against 19 persons

The criminal cases related to trafficking of humans on which the decision was made in 2006:

1. On May 19, 2005, Investigative Section of the No. 1 Regional Subdivision of the MoIA Border Guards Department launched investigation on the fact of trafficking of people of L.K.

The preliminary investigation determined that Tamar Karchava offered unemployed L.K. to work as a waiter in the Turkish Republic and transferred her across the border with a fake ID ; upon her arrival in Trabzon T. Karchava explained to L.K. that he paid 1,000 USD to the landlord as a rent for the partment (L.K. lived at Nino Gabiskiria's as a tenant) Following which, T. Karchava took away L.K.'s fake passport and exploited her sexually. L.K. was detained by the Turkish authorities for not possessing a valid passport and later deported to Georgia.

T. Karchava was indicted as charged offender and on May 16, 2006, Tbilisi City Court sentenced T. Karchava to 8 years of confinement.

2. On January 11, 2005, Telavi District Prosecutor's Office initiated investigation on criminal case involving the alleged sale of R.B by Umuzukhrat Blusihvili. Later the case was forwarded to the Georgian MoIA Telavi Department for investigation.

The preliminary investigation on the case determined that Umuzakhrat Bruishvili and Saida Ataeva brought R.B under the false pretext. to the Turkish Republic, sold her as prostitute to a Turkish citizen and by subjecting RB to severe psychological pressure, forced her to have sex with men for ten days. With help of one of the hotel's owner she managed to return to Georgia.

U. Bruishvili was indicted as offender on March 29, 2006, Tbilisi City Court sentenced him to 8 years of confinement and the Supreme Court rejected the appeal made by the offender.

3. On January 8, 2005, the Adjara Main Department of the MoIA initiated investigation on the criminal case involving the fact of trafficking by Tamila Lapachi and Merab Baladze.

The preliminary investigation of the case determined that M. Baladze sent E.G., M.G., L.Ch., and N.Sh. under the false pretext of providing employment to the city of Gebze, the Turkish Republic, where they were met by T. Lapachi. T. Lapachi took their passports and sold them for a certain amount to a citizen of the Turkish Republic, with whom she forced E.G, M.G, L.Ch. and N.Sh. to have sexual intercourse with different individuals. One of the victims informed her friend of this fact and with the friend's assistance managed to return to Georgia. After some time the remaining individuals were given back their passports and allowed to return back to Georgia.

T. Lapachi was detained at the time of illegal crossing of the border and was indicted as charged offender. In the absence of M. Baladze, a separate individual criminal case was lodged against the fugitive and placed accordingly in the wanted list

On November 15, 2005, Khelvachauri District Court sentenced T.Lapachi to 8 years in confinement, though on the basis of GCC, Article 55, the Court later reduced the term to 4 years in confinement. In particular, the Court considered the fact that T. Lapachi was not convicted previously and is a young person who reconciled with the victims and compensated the damage. However after the appeal against the verdict, Kutaisi Court of Appeals considered the T.Lapachi case and made a decision on July 7, 2006, leaving the District Court decision unchanged.

4. On January 6, 2006, the Special Operations Department of the Georgian MoIA launched the investigation of the case involving the fact of trafficking of S.B.

The preliminary investigation of the case determined that S.B. was in the city of Agchagoja, Turkish Republic, when after a deal, unknown to the investigation, Nazira Gojaeva took her to a cottage located in the resort area, where she locked S.B., took away the passport, restricted the opportunity of free movement and for 16 days forced her to have sexual intercourse with men.

N. Gojaeva was indicted as charged offender and was found guilty by the Tbilisi City Court sentencing her to 6 years in confinement.

5. On September, 2005, the Fifth Division of the Special Operations Department of the Georgian MoIA initiated the investigation on criminal case involving the fact of Mariam Alpaidze trafficking T.G. and N.D. On October 6, 2006, Adjara Office of the Special Operations Department of the Georgian MoIA launched the investigation on the criminal case for the fact of trafficking Ts.J. Later, due to subordination procedures, the case was forwarded to the Fifth Division of the Special Operations Department of the Georgian MoIA.

The preliminary investigation on the case determined that M. Alpaidze with false promises took the above mentioned individuals to the Turkish Republic on separate occasions and sold them to a Turkish citizen for the purpose of their sexual exploitation.

M. Alpaidze was indicted as charged offender and on July 29 the Tbilisi City Court sentenced her to 9 years of confinement.

6. On April, 2006, Vake-Saburtalo Department of the Georgian MoIA launched the investigation on the criminal case involving Zaza Metreveli.

The preliminary investigation on the case determined that Z. Metreveli decided to support the family by sexually exploiting his spouse N.K. He forced his spouse to have sex with men by the threats of taking away the children. At the same time, he regularly abused his spouse verbally and physically. Z.Metreveli accompanied his spouse as “pander” and pocketed the income received from his spouse’s sexual exploitation.

Z.Metreveli was indicted as charged offender and on August 10, 2006, the Tbilisi City Court sentenced him to 6 years of confinement.

7. On August 19, 2004, the Bolnisi district Prosecutor's Office instituted criminal proceedings on the fact of trafficking of humans.

The preliminary investigation on the case determined that Elnara Khasmamedova and her sister Gulnara Iskandarova on the basis of the deal took R.A., and minors A.P. and G.M. to the Turkish Republic fraudulently and forced them to have sexual intercourse with men. R.A., A.P. and G.M. managed to return to Georgia with the assistance of the law enforcement bodies.

E. Khasmamedova and G.Iskandarova were indicted in absence and as a measure of restraint imprisonment was selected; they were put on the wanted list.

Due to E. Khasmamedova's unknown location, the case against her was separated into an individual criminal case, while G. Iskanderova was arrested as a suspect and later indicted.

On June 20, 2006, the Bolnisi District Court sentenced G. Iskanderova to 15 years of confinement. After the appeal, the Tbilisi Circuit Court made a decision to leave the Bolnisi District Court's decision unchanged.

8. On May 18, 2004, the Second Subdivision of the Counter-Intelligence Department of the State Security Ministry of Georgia instituted criminal proceedings involving the fact of trafficking of people, production of fake passports and illegal crossing of the Georgian border by Zoya Aloyan and Marina Khatiashvili.

The preliminary investigation on the case determined that Z. Aloyan, M.Khatiashvili and Maya Aloeva created an organized group with the purpose of trafficking people. With the help of fake passports they took N.Kh. and T.P. to Yerevan, the Armenian Republic, and later to Dubai, UAE. In the Dubai airport their fake passports were detected and N.Kh. and T.P. were deported to Georgia.

Z. Aloyan and M. Khatiashvili were indicted as charged offenders. In addition, the criminal case on fugitive M. Khatiashvili was separated and she was put on the wanted list.

On June 12, 2006, the Tbilisi Circuit Court found Z. Aloyan guilty and sentenced her to 12 years of confinement. After the appeal, the Supreme Court left the verdict unchanged.

9. On June 10, 2004, the Tbilisi Department of the Georgian MoIA instituted legal proceedings on the fact of the selling of T.K. and I.B. by Khvicha Kirimeli.

The preliminary investigation on the case determined that Kh. Kirimeli and some Turkish Citizens together created an organized group with the purpose of trafficking in people. Kh. Kirimeli took 3,000 USD from his accomplices in exchange to deliver several young women for the purpose of sexual exploitation. Kh. Kirimeli promising to find jobs, took T.K. and I.B. to the Turkish Republic, where their passports were taken away and they were forced to have sexual intercourse with men. After two weeks T.K. and I.B. managed to escape, contact the law enforcers and return to Georgia.

Kh. Kirimeli was arrested within ten days and indicted as charged offender, and as a measure of restraint imprisonment selected.

On October 31, 2005, the Tbilisi Circuit Court found Kh. Kirimeli guilty and sentenced to 8 years and 6 months in confinement . After the appeal, the Supreme court left the decision unchanged.

10. On June 23, 2004, the Criminal Investigation Unit of the Adjara Autonomous Republic Department of the MoIA instituted criminal proceedings against Mamuka Mikeladze.

The preliminary investigation on the case determined that M. MIkealdze and Zinaida Darchidze took I.A. ailing with cardiac disease to the Turkish Republic allegedly for the medical operation. They took away I.A.'s passport and sold her for the purpose of sexual exploitation to a Turkish man. Within one month I.A. managed to escape and return to Georgia.

Z. Darchidze's case was separated from the case as the separate criminal case, Z. Darchidze was arrested and the preliminary investigation against him was resumed.

On October 10, 2006, the Batumi City Court found M. Mikeladze and Z. Darchidze guilty. M. Mikelaadze was sentenced to 11 years and Z. Darchidze to 10 years in confinement respectively.

11. On June 26, 2006, the Telavi Department of the Georgian MoIA institued criminal proceedings against Lali Dzamukashvili.

The preliminary investigation determined that L.Dzamukashvili fraudulently took A.D. from the neighborhood of the Tbilisi Railway Station, to Telavi promising her to pay a certain amount of money for some office-type job. After the arrival in Telavi, she forced her to have sexual intercourse with the so-called "clients" and pocketed the income received. A.D. managed to escape and addressed the police for assistance.

L. Dzamukashvili was indicted and the Telavi District Court selected imprisonment as a measure of restraint.

On November 10, 2006, the Telavi District Court sentenced L. Dzamukashvili to 9 years in confinement.

12. On July 14, 2005, the Gori District Department of the MoIA instituted criminal proceedings against Nana Tskhadadze.

The preliminary investigation on the case determined that N. Tskhadadze contacted Natela Markizashvili and asked for help in selling her newborn child. N. Markizashvili gave the child to Natela Bibilashvili, former staff member of the Tbilisi Hospital No.1 for the sum of 850 USD. Out of this amount she gave 800 USD to N. Tskhadadze.

On July 14, 2005, N. Tskhadadze appeared at the law enforcement bodies acknowledging her crime. She was arrested the same day, indicted and as a measure of restraint imprisonment was selected.

In two months N. Markizashvili was arrested and as a measure of restraint for her imprisonment was selected.

On November 20, 2006, the Gori District Court sentenced to N. Tskhadadze 11 years in confinement, and N. Markizashvili and Bibilashvili were sentenced to12 years in confinement respectively.

13. On November 19, 2005, the Fifths Subdivision of the Special Operations Department of the Georgian MoIA launched the investigation on the criminal case for the fact of trafficking of A.L. and B.G.

The preliminary investigation on the case determined that Inga Maisuradze took A.L. and B.G. to Ankara, the Turkish Republic, where they were locked in a one-room apartment unfit for living. I. Maisuradze used force and sexually exploited for her personal benifit . I. Maisuradze used to regularly cross the Georgian border illegally using fake passport.

I. Maisuradze was indicted and as a measure of restraint imprisonment was selected.

The Gori District Court found I. Maisuradze guilty and sentenced her to 11 years in confinement. This verdict was appealed in the Court of Appeals but on December 8, 2006, the Tbilisi Court of Appeals retained the verdict of the District Court.

14. On May, 2006, the Special Operations Department of the Georgian MoIA launched the investigation on the fact of trafficking of citizen D.R of Uzbekistan.

The preliminary investigation on the case determined that D.R. met with "Nargiza"in Uzbekistan, who promised her to find a hair stylist's job at a barbers shop in Dubai, UAE. D.R. arrived in Tbilisi, Georgia, and was met by "Marina". In two weeks, "Marina"'s spouse took D.R. together with other two young women to the airport and boarded them on a Dubai plane, where an unknown person took away their original passports and gave back in return fake Georgian passports.

D.R. was met in Dubai by Marina and an unknown woman who took her to "Samira"'s place; "Samira" took her to an apartment located in Sharjah and for the next18 months exploited her sexually. D.R. had no possiblity to move freely or communicate with her friends and relatives. D.R. managed to escape the ordeal with the support of Yasir Malik. Within two months the police detained her for not having a valid passport; D.R. was deported to Georgia. The investigation revealed that "Marina" is Marina Oganesyan, and not Marina Chkhikvadze as she was known to her victim

On December 12, 2006, the Tbilisi City Court found M Oganesyan alias M. Chkhikvadze guilty and selected as a measure of punishment 11 years in confinement.

15. On February 17, 2005, the Counter-Intelligence Department of the Georgian Ministry of State Security launched the investigation on the criminal case against Nana Verdzadze.

The preliminary investigation on the case determined that N. Verdzadze promising to find a job took T.D. to the Turkish Republic and sold her for 1,200 USD to a Turkish man for the purpose of sexual exploitation. In some period, T.D. Eventually she managed to escape and return to Georgia.

N. Verdzadze was detained, indicted and as a measure of restraint imprisonment was selected.

On July 25, 2006, the Batumi City Court found her guilty and sentenced to 2 years in confinement for committing the crime implied by the GCC, Article 253, Part 1, regarding the forceful engagement in prostitution threatening with use of force or destruction of the property, by blackmailing or fraudulently. After the appeal, on December 13, 2006, the Kutaisi Court of Appeals sentenced N. Verdzadze to 8 years of confinement.

The Rights of the People with Disabilities

On December 13, 2006, the UN General Assembly approved the Convention on the Rights of the People with Disabilities, which is an amalgamation of the existing international documents and implies a number of positive commitments for the member states. The Convention will be put into effect when the 20 member countries ratify it. The process of fulfillment of the Convention commitments is monitored by the Committee on the Rights of the People with Disabilities, to which the member countries are accountable.

Article 15 of the European Social Charter, ratified by Georgia, is related to independence, social integration and the right to participate in the public life of the people with disabilities[9].

On April 5, 2006, on the recommendation of the European Council, the Action Plan was adopted on the rights and comprehensive participation of the persons with disabilities aimed at specific measures in 2006-2015 to improve the quality of life of the people with disabilities in Europe.

In the Georgian Law on the Social Protection of the People with Disabilities are set forth those main directions, which be guiding the social protection and integration of the persons with disabilities.

Despite all the above mentioned, in today's Georgia the rights of the people with disabilities are often largely ignored hindering the process of their integration into the public life. At a glance, it is ironical that against the backdrop of total violations of the rights of the people with disabilities, there is only a small number of specific cases related to the rights of the people with disabilities. These people extremely reluctant to address the various responcible bodies requesting the protection of their rights. The primary reason for the apathy is their physical and social isolation, hopelessness and estrangement from the public.

1. State policy regarding the people with disabilities

The main problem related to the people with disabilities is lack of long-term and coordinated policy, which causes the isolation of these persons, who cannot participate normally in public life. With some exceptions, the people with disabilities are confined to the places of their residence and have no opportunity to move freely and be active members of the society.

From our perspective, the ratification of the UN Convention of December 13, 2006, will be a significant step forward for improving these people's conditions, and more so because this document focuses on the aspects that the democratic society should consider in its relation with the people with disabilities. Effectively, the elaboration of a single state strategy will be easier, which will help the state bodies to better plan their activity related to the people with disabilities. After ratifying this text the body will be considered responsible for the coordination of the activity connected to the people with disabilities and monitoring the fulfillment by various governmental bodies of their commitments in this sphere.

Therefore, the ratification of this Convention will first of all solve the organizational problems and is less related to the recognition of the new rights of the people with disabilities that might

[9] It should be noted that in the official Georgian translation of the Charter's Article 15 the term used was "disabled/incapable" instead of the term "the people with disabilities", which, in our opinion, is significantly inaccurate and should definitely be corrected.

have cause some reluctance on the part of the state taking into account Georgia's financial capability. As we are going to see below, the rights implied by the Convention are already recognized by the Georgian legislation; however as the coordinating and monitoring body were not created or named, the problems related to the people with disabilities still remain unresolved.

Most importantly, the main purpose of the Convention is the recognition and instilling of the principle of equalityof the people with disabilities with all other people which can neither be rejected nor postponed by the democratic state due to financial restraints.

Besides the organizational issues, it is significant that the Convention will facilitate the better understanding of the international standards related to the rights of the people with disabilities, their appropriate interpretation and precise definition of these rights at the national level.

As we were informed at the Ministry of Labor, Health and Social Affairs, the Ministry of Foreign Affairs requested this body to study the Convention text and submit the conclusion regarding this issue.

The Public Defender's Office made the Georgian translation of the Convention, which will be submitted to the Ministry of Labor, Health and Social Affairs and the Ministry of Foreign Affairs, as well as all bodies and organizations interested in these issues. The Georgian translation of the Convention is enclosed to this report in the form of attachment.

Recommendation: The Public Defender recommends the relevant bodies of the Ministry of Foreign Affairs to initiate in the shortest period of time the necessary procedures for the ratification of the December 13, 2006.UN Convention on the Rights of the People with Disabilities

1.1 Strategy

At the Ministry of Labor, Health and Social Affairs, currently a key body is in charge of the issues related to the people with disabilities, there is still no special service , which would adequately tackle these issues. As we noted in our previous reports, the consultative board formed at the Ministry, which was to define the state strategy regarding the people with disabilities and develop the regulations for the National Board at the President of Georgia, Coordinating and Facilitating the NGOs of the People with Disabilities, or create another body, terminated its activity without any tangible result. The Board at the President was not abolished but its existence is of absolutely formal nature.

It seems that currently the Department for Development of the Sectoral Policy at the Ministry of Labor, Health and Social Affairs is in charge of the issues related to the people with disabilities. As the staff members of the Department explained, a strategy was developed in the frame of the USAID's Program on Ensuring the Equal Rights to the Disabled Persons in cooperation with the Health Ministry, which should be presented in July 2007. However the Public Defender was not able so far to get acquainted with this document. In response to our letter sent to Mr. Tsotne Beselia, Chief of the Division of Social Integration of the Department of Labor and Social Affairs, in which we requested information on the development of the strategy related to the people with disabilities, Mr. L. Peradze, Director of the State Agency for Social Protection and Employment, wrote to us that his Agency did not possess this document. Mrs. Vika Vasilyeva, Deputy Chief of the Department for Social Affairs at the Ministry of Labor, Health and Social Affairs, and Mr. Tsotne Beselia, Chief of the Social Integration Division of the same Department, were unable to confirm the existence of the strategy related to the people with

disabilities in their conversation with the representatives of the Public Defender and UNDP, though they assured that there were plans for activity in the area and in the working plans for 2007 of the Department for Development of the Sectoral Policy the development of the strategy was included. Before this conversation, Mr. Amiran Datiashvili, representative of the Department for Development of the Sectoral Policy, talked with us in detail about the elaborated strategy, which was at the stage of the inter-agency consideration and assured that the strategy fully reflected all the problems concerning the people with disabilities.

Although the representatives of the Ministry of Labor, Health and Social Affairs confirmed the existence of the strategy verbally, in written we were informed that this document was unavaiable, eventually it was not clear whether this document was present or in the process of developement.

Anyway, it is important not to make the development of the strategy and later potentially the action plan the cause for ignoring the rights of the people with disabilities, moreover the existing legislation and primarily the Georgian Law on the Social Protection of the People with Disabilities are sufficient basis at the initial stage for taking concrete steps or for the adoption of other specific normative acts.

Recommendation: ***resumption the activities of the National Board at the President of Georgia Coordinating and Facilitating the NGOs of the People with Disabilities for the purpose of coordinating the issues related to the Peoples with disabilities and organization of the inter-agency cooperation.***

1.2 Legislative changes

On December 29, 2006, significant changes were made to the Law on Medical-Social Examination of December 7, 2001.

Fore mostly it should be noted that till at least March 2007 no body was responsible to conduct the medical-social examination and determine the level of person's disability. According to the new Article 8 of the Law, instead of the Bureau of the Medical-Social Examination at the Social Insurance Unified Fund, the medical institutions would be making conclusions on the medical-social issues; however, taking into account that the law did not provide specifically for competent medical institutions in this area, we could presume that the competent institutions would be defined in parallel to the approval of the forms necessary for the medical-social examination. According to the Law, Article 63, Paragraph 2, the forms should be approved by March 1, 2007.

The changes caused several-months long vacuum in terms of defining the level of disability. Besides that on February 26, 2007, the Parliamentary Health and Social Affairs Committee proposed another draft change to the above mentioned law, which would extend the validity of the existing status of disability until May 1. It is anticipated that at least by this date the new forms for defining the status will not be approved until that date and the people whose disability status is not defined by this time cannot receive the benefit based on the disability status.

The new version of the Law on Medical-Social Examination does not imply the commitment for the development of the individual program of rehabilitation. The individual program of rehabilitation defined the measures of the person's medical, professional and social rehabilitation. In future, the replacement mechanism of the individual program of rehabilitation

should necessarily be developed, which would ensure the measures of rehabilitation and reintegration for the people with disabilities.

Article 15, Paragraph 3 includes the option of the controlling body to request the people with disabilities to appear for revalidation and, according to Paragraph 4 of the same Article, "the status of the person with disabilities will be suspended for the person failing to appear". When dealing with the people with disabilities, it should be remembered that these people may not always be in a position to appear physically at the Agency as and when required.

Recommendation:

To the Law on Medical-Social Examination, Article 15, Paragraph 4, the words "without reasonable excuse" should be added, the dates should be specified when the person with disabilities has the right to appear at the Agency for revalidation and indicate that in the specific case the staff members of the Agency may visit the person at the place of his/her residence, as this happens during the institution checking (Article 46, Subparagraph J).

As a result of excluding Article 18, in case of a job related injury when the person injured is unable to perform the job performed earlier, the employer is not obliged to ensure his/her professional retraining. Taking into account that currently there are no documents specifying the safe working conditions and as a result of the above change in case of a job related injury the employer bears no responsibility, it is clear in how unprotected condition the employees will find themselves and how maliciously the employers may use this situation.

Mrs. Vasilyeva and Mr. Beselia said at the meeting with the representatives of the Public Defender and UNDP that a project was being developed that would include the issue of one time or monthly compensation as agreed between the employer and employee in case of the job related injury.

Recommendation:

A mechanism defining the partial or full responsibility of the employer should be created for the job related injury cases to cover the costs associated with the injured person's rehabilitation and retraining. In the process of developing the above mentioned project, the amount of the compensation defined not by the employer but with the consideration of the injured person's condition and needs should be included. The document should also provide for the possibility to review the amount of compensation if the person's condition deteriorates, **if this** deterioration **is associated with the same trauma that caused the payment of the initial compensation.**

The note of Article 51, Paragraph 2, that "in exceptional cases (in remote and inaccessible areas) the medical-social examination is conducted in the person's absence, with his/her or representative's permission" should be specified, in particular, it should be indicated what kind of documentation will be used as the basis for making the expert conclusion and in what form should it be expressed, the person's or his/her representative's consent to this examination. Without any clarification, this vagueness will be the reason for the bureaucratic complications, and the interests of the people with disabilities may confront the willfulness and contrariness of the administration.

Recommendation:

Based on the legislative change or normative act, the rules and procedures for the examination in absentia implied by the Law on Medical-Social Examination, Article 51, Paragraph 2, should be made more precise.

2. Social rights of the people with disabilities

2.1 Social protection

Financial benefits and privileges

According to the Law on the Social Protection of the People with Disabilities, Article 24, Paragraph 1, "the people with disabilities are assisted financially (pension, benefit, etc), technically and other means, including providing vehicles, wheelchairs, prosthetic-orthopedic items, books with editions printed in special fonts, acoustical apparatus and alarms, as well as medical, social and professional rehabilitation and household services."

In addition, according to Paragraph 3 of the same Article, "the provision of medical treatment, various technical equipment and household services of the people with disabilities is free or on preferential basis, as defined by the Georgian legislation."

According to the people with disabilities, the main problem they face is poverty and unemployment. Prior to 2006 the invalids of the first group received 22 lari as an assistance. Additionally, the social privileges were established which included the expences for public utility services and the right to free travel by municipal transport. From 2006 onwards,the social privileges for the people with disabilities were abolished and only the disabled individuals whose family was below the poverty line in the database would be entitled to the benefits. Thus, by abolishing the program for the protection of the people with disabilities, their social and economical conditions were further deteorated

Besides that, the benefits based solely on the socio-economic condition without taking into consideration of the level of limitation of the person with disabilities contradict the requirements of Article 24 the Law on the Social Protection of the People with Disabilities,

Recommendation:

The Ministry of Labor, Health and Social Affairs should develop a special system of assistance and privileges to the people with disabilities that would be based on the level of limitation of the person with disability and his/her personal needs.

Health care and rehabilitation

According to Article 25, the Law on the Social Protection of the People with Disabilities:
"1. Provision of the people with disabilities with technical and other means is based on the program of individual rehabilitation for free or on preferential terms.
2. If the state bodies are unable to provide the people with disabilities with the technical and other means implied by the program of individual rehabilitation, or if the people with disabilities have purchased them with their own resources, they are to be given the compensation as defined by the Georgian legislation."

The Ministry of Labor, Health and Social Affairs program of social rehabilitation for 2007 includes the provision with prosthetic and supporting equipment to the affected persons, but, as

they explained at the Ministry, providing with the supporting items for free will only be for those people with disabilities that are below the poverty line. For others these items should be purchased by their family members; however it is evident that not every family omitted from the database of the households below the poverty line will have the capacity to purchase the supporting items on the own expence for the people with disabilities

A similar situation can be seen in the free health care policy for the people with disabilities, where only those people that gather less than 100,000 points according to the socio-economic assessment are eligible for the health care policy.

The people with disabilities themselves believe that it is necessary to create the rehabilitation center focused on their needs. It is desirable if the Ministry of Labor, Health and Social Affairs takes this request into consideration and, in accordance with Article 16, the Law on the Social Protection of the People with Disabilities, include the creation of this center or opening of the relevant department at one of existing institutions. in the optimization plan

When assessing the level of disability, it is still impossible to instill the WHO system of the International Classification of Functioning, Disability and Health (ICF). As the Ministry notes, the ICF classification introduction should be preceded by the presence of the social workers institution. And as a result the switchover to the WHO standards is postponed for indefinate period.

Recommendation:

The Labor, Health and Social Affairs Ministry should develop the system of privileges for the provision with supporting equipment and health insurance of those people with disabilities omitted from the database of the households below the poverty line. The methodology of the assessment of the level of disability corresponding to the international standards should be developed.

2.2 Employment

According to the Law on the Social Protection of the People with Disabilities, the state should create for the people with disabilities the conditions necessary for the realization of their creative and entrepreneurial capabilities. In the long-run it is financially profitable for the state to focus on the employment of the people with disabilities and subsequently their engagement in the active life, rather than paying for their assistance. It is obvious that the key criterion is not financial but social integration and the belief of the people with disabilities in their own abilities.

In accordance with Article 11, Paragraph 3 the Law on Medical-Social Examination, a list was drawn up containing the Diseases, Anatomical or Mental Defects that enable the people with disabilities to work in special conditions (Decree No. 1/N, the Ministry of Labor, Health and Social Affairs).

The people with disabilities face far greater challanges when seeking employment than others. Most of them are unemployed. Although the primary reason for their unemployment is the lack of job opportunities, if the state creates the relevant favorable conditions, the employment of at least a part of these people would be possible. Unfortunately, till 2007 no program envisaged the measures aimed at facilitating the employment of the people with disabilities.

Accroding to the explanation offered by the Ministry of Labor, Health and Social Affairs, the issues related to the employment would be transferred to the Ministry of Economy and therefore the employment related programs would not be developed by the Ministry of Labor, Health and Social Affairs. It is necessary to define the specific body responcible for the employment issues in the shortest period of time and develop a scheme of measures facilitating the employment of the people with disabilities.

3. Adaptation of the external conditions and infrastructure to the needs of the people with disabilities

The main obstacle to leading a normal life for the people with disabilities is the infrastructure which is not adapted to their needs. Despite the fact that the Georgian legislation implies the adaptation of the external conditions to the needs of the people with disabilities, no noticeable changes were seen. Due to the lack of the adapted infrastructure, the people with disabilities are unable to move independently, which, in its turn, is responcible for their estrangement and exclusion from public life.

The legal requirements

The European Social Charter, Article 15, Paragraph 3, implies the commitment of the member states to facilitate the comprehensive social integration and participation in public life of the people with disabilities, which, according to the same text, includes the removal of obstacles for travel and communication and the provision of transportation and dwelling.

Chapter 2 of the Law on the Protection of the People with Disabilities is entirely dedicated to the creation of a social and civic infrastructure used by the people with disabilities without any obstacles. According to Article 8 of the Law, “design and construction of the inhabited areas, developing the residential neighborhoods, making the design decisions, the construction and reconstruction of the buildings, including the educational, cultural, sports and recreational facilities, airports, railway stations, sea and river transport / travel facilities, communications and individual information facilities are unacceptable unless these buildings and facilities meet the needs and requirements of the people with disabilities.”

Despite this legislative requirement, the requirements of the people with disabilities are often not met and most of the buildings and facilities constructed recently do not meet the needs of the people with disabilities. The streets are not equipped with special elements allowing the people with disabilities to move independently.

There is no landscape plan allowing the blind persons to independently find their way and move on the streets of the cities and inhabited areas. The only audible traffic system in Georgia is installed in Ponichala in the area of centralized residence of the people with the visual disabilities. According to the information given by the Union of the Blind Persons, the Mayor’s Office promised to install more than 10 audible traffic systems. For which, the representatives of Mayor’s Office requested the Association of the Blind Persons to present the desirable locations for the installation of the specialized traffic lights. Despite the development of this map and its submission, this promise is yet to be fulfilled.

Most of the sidewalks, buildings and facilities are not adapted to the needs of the people with disabilities. No ramps, signs in Braille font or in other forms understandable to the people with disabilities are in the institutions entrances. It is often seen that even the buildings, where the

organizations related to the people with disabilities are located, there are no elevators installed or other means of making their movements' easier.

It should be noted in this regard, that the building where the Public Defender's Office is located is not adapted to the movement of the people with disabilities either. Because of this, we had to hear many a time complaints on the part of these people. However as the Public Defender rents this building from the Writers Union, which, in turn, has a dispute over the ownership with the Ministry of Culture, before the property right is eventually determined, our body is not entitled to make any unilateral decision on the issues of its adaptation.

The request of the blind people is to have the signs in large-size font on the side of the buses near the doors to make it possible for the people with some eyesight to see the bus number without any outside help. For the blind persons' independent travel, it is also necessary to have the equipment for audible announcement of the routes and stops in the buses.

For the future purchases of the buses for the municipality pool, the requirement should be included implying the purchase of only those vehicles that are equipped with specialized entrances. With the implementation of the above, the people with disabilities that have to move in wheelchairs will be enabled to make use of public transport without outside help.

It is significant to make the adaptation of different constructions to the needs of the persons with disabilities at the stage of designing. In this case the adaptation will not be associated with substantial expenses, something this cannot say about the later alterations.

Sanctions

As we noted in the previous report, one of the reasons for ignoring the legislative requirements is the inadequacy of the sanctions mechanism.

According to the Administrative Offences Code, Article 178 [1], avoiding the creation of the conditions adapted to the people with disability determined by the legislation entails the punishment in fine of the amount between 300 and 500 lari. Article 178 [2] of the same Code for ignoring the needs and requirements of the people with disabilities when designing and constructing buildings and facilities sets forth the punishment in fine of the amount between 500 and 800 lari. According to Article 239, Paragraph 45 of the Code, the relevant agencies of the Georgian Ministry of Labor, Health and Social Affairs should draw up the report on the administrative violation implied by Articles 178 [1] and 178 [2] of the Code.

Despite the specific indication of the law, till date, there is no specified department within the Ministry of Labor, Health and Social Affairs responsible for drawing up the report on this administrative offence. As a result, the sanctions implied by the Administrative Offences Code have never been applied. Nevertheless presumably the fine between 300 and 800 lari is not going to be effective, particularly in the large-scale constructions.

Thus, besides the selection of the responcible department at the Ministry of Labor, Health and Social Affairs, it is desirable to establish more effective sanctions for violating the rights of the people with disabilities making the exercise of these rights more realistic.

Recommendation:

A special department should be immediately formed or the existing department tasked to fulfill the requirement set forth in Articles 178 [1] and 178 [2], within the Ministry of Labor, Health and Social Affairs, according to Article 239, Paragraph 45, of the Administrative Offences Code,

The changes to the Administrative Offences Code should be prepared increasing the fines for avoiding the creation of the conditions determined by the legislation for the people with disabilities and establishing the additional sanctions for recurrent non-performance. Accordingly, it should be also clarified that payment of the fine does not exempt from the obligations.

4. The right to education

The inclusive program

From December 2006, the 18-months pilot program was launched with joint funding of the Ministry of Education and Science and the Norwegian Government aimed at the introduction of the system of inclusive education in 10 Tbilisi schools The schools were selected based on their geographic location and the number of children (preference given to schools with high number of students). The program is aimed at the gradual inclusion of the children with disabilities to the schools according to the level of their disability.

The main objectives of the program:

- Physical adaptation of the selected schools: ramps installation, rest rooms arrangement, transportation with a special school bus;
- Retraining of the teachers: training of the existing teachers and recruiting special personnel if needed;
- Training of parents: it is worth mentioning that the parents of the children with disabilities also need training, who often incorrectly perceive their children's condition and unintentionally hinder their children's inclusion;
- Raising public awareness: special TV programs, clips, commercials, etc will be prepared.
- Development of the manuals for teachers with recommendations on how to work with the children of different abilities and how to adapt the school curriculum to the children's individual abilities.

In the frame of the program a multi-discipline board will function, which includes the representatives of the Ministry of Labor, Health and Social Affairs, Ministry of Education and Science, NGOs and experts. The objective of the board is to elaborate the primary directions in the sphere of inclusive education and form the state concept of inclusive education.

Along with the board, a multi-discipline team is to be formed; the members include, coordinator and psychologists, speech therapists, neurologists and occupational therapists. This team will perform the functions of monitoring and assessment. It will be this team's authority to make decision on the inclusion of the child into the program of inclusive education, determine the regularity of school attendance by the child and general monitoring over the program implementation.

Inclusion of the children with hearing and visual disabilities

As we were notified at the Ministry of Education and Science, the above mentioned program does not imply the introduction of inclusive education for the children with hearing and visual disabilities.

In connection to the children with hearing disabilities, the reason mentioned was that the employment of the deaf-and-dumb teachers would increase expenses, but since the State allowance for the children with disabilities does not include additional funding, the employment of a specialized teacher is unaffordable by the school. The Association of the Deaf Persons trains these teachers and only one child at the Public School No. 60 had such a teacher paid by foreign grant. It is desirable if the state in future focuses on the facilitation of inclusive education of the children with hearing disabilities. Moreover the Law on the Social Protection of the People with Disabilities, Article 5, makes the state responsible to create the necessary conditions for the use of the sign language.

Occasionally, the textbooks are printed in Braille for the children with visual disabilities , however it would be desirable if the publication of these textbooks is on regular basis and also the Georgian versions of the special software are developed allowing the children to make use, like others, of modern technology and the methods of teaching.

Necessary measures for introducing inclusive education

This program is a step forward in the sphere of integration, although we should not forget that it is supposed to last only for 18 months and will be implemented in only 10 Tbilisi schools. We do hope that the future state program developed in the frame of the current program will imply wider and longer-term measures in terms of inclusive education that will cover the entire territory of Georgia.

Besides that the mechanism of identification of the children with disabilities should be created and not just within some specific programs but in the form of normative act. Similarly, the form of normative act should be given to the regulation of the process of teachers retraining. As a result it will be easier to develop the adequate action plans and implementation.

Greater focus should be given on the education of those children that are unable for some specific reasons to get involved in the general educational process. Article 18 of the Law on the Social Protection of the People with Disabilities is regarding raising and education of the children with disabilities at home and implies the assistance of relevant educational institutions in the educational process. Besides that the legislation should regulate the financial guarantees and privileges for the parent or gaurdians, though presently such a normative act does not exist.

The fact should be emphasized that in the inclusive education process is not included in vocational education; however for further social integration of the person with disabilities this issue is of much importance. The Ministry of Education and Science should develop the system of secondary-vocational education for the juveniles with disabilities with the consideration of the desire and abilities of the juvenile.

In regard to higher education, the Ministry notified us that the adaptation of the examination system to the people with different abilities was underway. For that purpose, the Examination and Evaluation Center would allocate funding. According to the Ministry of Education and Science, currently 6 individuals with visual disabilities are getting higher education. It would be

desirable if similar conditions are also created for the people with hearing disabilities for obtaining higher education.

5. The possibility to participate in public life

Access to information

For the persons with disabilities, especially those who are unable to move independently, timely access to the information resources and information is of great importance.

By the order of the Association of the Blind Persons, a special voice software which allows the blind persons to use the computer , internet, read newspapers and electronic editions was translated into Georgian. Currently the software is being improved and adapted to the Georgian language. It would be desirable if the state participates responcible for the evaluation and development of the software could accelerate the process of its introduction.

The blind persons also complain that besides the publication of textbooks inBraille or in the format of audio, they have no access to specialized texts, such as the legislative collections, encyclopedias, dictionaries, etc. The first step in this regard was taken by the Central Election Commission, which published 40 copies of the Georgian Election Code in Braille.

In comparison, the people with hearing disabilities lack the opportunity to listen to news on TV. It would be desirable if the information broadcasting of the Public Broadcaster is televised in the sign language too; this would be a positive step in facilitating the instilling and using the sign language.

Exercising civil rights

Ensuring the exercising of civil rights of the people with disabilities is of great importance for their comprehensive participation in the public life.. The primary request of the people with disabilities is to engage their representatives in the decision making process related to their issues. The Ministry of Education and Science tries to engage the representatives in the process of introducing inclusive education, which is in stark contrast to the attitude of the Ministry of Labor, Health and Social Affairs on this issue. We hope the general strategy on the people with disabilities will imply the creation of a coordinating mechanism that will be attaching importance to the suggestions of the people with disabilities and their representatives.

For the integration of the people with disabilities ensuring comprehensive and independent exercising of their election rights is of much importance. The Election Code, Article 52, Paragraph 2, makes the Central Election Commission responsible to ensure for the voters with visual disability the opportunity to fill the electorate forms independently. Despite this responsibility, for the local elections in 2006 electorate forms printed in Braille was insufficiant

According to the people with disabilities, the public is generally benevolent, though probably due to lack of information and awareness of the public about the problems of the people with disabilities should be blamed for expressing its compassion occasionally in a humiliating and irritating manner, which makes the people with disabilities feel estranged. To avoid such situations, it is important to to promote and organize informational and educational activities, which will be of help to both, the able and the not so able, to respect each other and their equal place in the society.

The general state of human rights at the psychiatric institutions

The Public Monitoring Board formed at the Public Defender, which exercises public control over the human rights protection at the psychiatric institutions, studied all seven psychiatric institutions in Georgia. The monitoring results in each of the seven psychiatric institutions were reflected in the report submitted by the Board and the Public Defender's Parliamentary Report for 2006.

The analysis allowed the Public Monitoring Board to generalize the problems.

The monitoring results:

Monitoring in the psychiatric institutions showed that:

- the Concept of the Human Rights Protection is developed at an extremely low level in the psychiatric clinics;
- all the rights (with no exception) of the patients at the psychiatric clinics are violated (the right to information; the right to quality, acceptable and accessible medical care; the right to communicate with the outer world; the right to respect of one's dignity; the right to the protection from forceful labor, cruel and inhuman treatment; the property right; the right to respect one's personal life; the right to vote; the right to the protection from discrimination and the right to file complaint).
- in the majority of the clinics both, the personnel and patients are in unbearable conditions;
- the clinics resources are scarce (both material and human) for the implementation of effective management;
- no professional training programs are available for the psychiatric nurses. The social workers service is not developed;
- the majority of patients are treated longer than needed in reality, as the problems associated with patient's leaving the hospital and further treatment are not solved;
- the legal issue of patient's involuntary treatment is not organized;
- the psychiatric clinics for compulsory treatment with strict control are extremely disorganized in terms of both the proper functioning of the security service and applying the medical methods;
- the hospitals lack public control and monitoring over the patients' rights.

Some legislative gaps:

- the legislative guarantees the psychiatric of assistance

The Georgian Parliament passed the Law on the Psychiatric Assistance on July 14, 2006. In the transitional provision of this legislative act, in particular Article 28, which imperatively defined the responsibility of the Ministry of Labor, Health and Social Affairs to elaborate and publish by January 1, 2007, a number of normative acts. Their total number was ten, and this gives us a clear impression about the huge volume of legal acts which was to be created for the comprehensive and effective implementation of the Law on the Psychiatric Assistance.

Article 28 is the only provision in the Law, which was to be put into effect immediately at the time of the publication, according to Article 30, Part 2 of the same legislative act.

As of today, when the law is formally in effect, its effective implementation is under threat due to the lack of a number of fundamental acts. The fate of the medical personnel is also unclear, who has to perform the tasks regulated by the law in accordance with a non-existent instructions and rules.

With the request to immediately close the gaps, The Public Defender addressed in written on January 22, 2007, the Georgian Minister of Labor, Health and Social Affairs, Mr. Lado Chipashvili, however, so far we have not received any response from the Ministry.

- exercising the right to marriage

On February 12, 2007, The Public Defender addressed in written tothe Parliament Speaker, Nino Burjanadze, asking her to initiate relevant procedures for announcing invalid Subparagraph E of Article 1 of the Georgian Civil Code, according which "the marriage is not allowed between the persons when at least one of them is found incapable because of insanity or derangement by the court."

According to the Georgian legislation, the person with mental illness may be found incapable by the court on the basis of the application of the interested party. In such case, the person is automatically deprived of all legal rights (to conclude agreements, make payments, give the informed consent for the medical involvement, dispose the property, etc). These rights are exercised through the guardian appointed by the local health care body. However the right to family (marriage) cannot be exercised by other person (legal representative).

- *according to the Universal Declaration of Human Rights, Article 29, Paragraph 2: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"*.

- *the European Convention on Human Rights and Fundamental Freedoms, Article 12, guarantees the right of marriage to the men and women in the age of marriage. The only reason for restricting this right can be the age, no other restriction is acceptable and the states are responsible, in accordance with the national laws, ensure the exercise of this right.*

We believe that Article 1120 of the Georgian Civil Code is contradicting the requirements of international law on the human rights and subsequently it should be changed. In most Western European countries the incapable people are allowed to get married, while those in Eastern European counties, where this right is still restricted, active work is underway to bring the legislation in conformity with the human rights international standards.

It should be noted that the Georgian Constitution does not imply the restrictions on the right to marriage based on incapacity.

We believe the exercise of the right to marriage by the incapable persons cannot harm the legal interests of this person or those of other persons. The presence of the guardian institution is the guarantee to rule out to a maximum extent the cases of marriages for intentions. The family environment is a significant step and tool for rehabilitation and integration into the society of

these people. Moreover, incapacity is not a permanent status and it may be removed if the health condition improves.

- the terminology of the Civil Code

The Georgian Civil Code instills a rather incorrect and to some extent derogatory terminology regarding the recipients of the psychiatric assistance and other persons with mental retardation calling them "insane" and "deranged" persons[*]. "Insanity" [disease of the soul] is a term that was used earlier and is not used by medicine, as regards "derangement" [weak brains], other correct and modern terminological equivalents could also be found. The experience of other countries and the attitude of the international organizations is much more positive and tolerant. Unlike them, the terms used in the Georgian legislation regarding the persons with these medical problems can be understood as humiliating, which should not be the case at the legislative level. We believe, it is necessary to change this attitude and in order to achieve this, according to the WHO ICD and the UN Convention on the Rights of the People with Disabilities, "insanity" should be replaced with the term "mental disorder" and "derangement" replaced with the term "mental development retardation".

- active exercise of the election right

The Public Monitoring Board monitored the exercise of the election rights of the patients. The monitoring showed that during the local (municipal) elections on October 5, 2006, the election rights of the patients in the clinics were restricted as they were not allowed to vote in the elections.

On October 5, 2006, the representatives of the Public Defender and the members of the Public Monitoring Board at the Public Defender visited the four following institutions:

- Asatiani Tbilisi Psychiatric Scientific Research Institute;
- Republican Psycho-Neurological Hospital Ltd. located in Daba Kakhaberi, Khelvachauri District;
- Surami Psychiatric Hospital;
- Academician Bidzina Naneishvili Psychiatric Health Center located in the village of Kutiri, Khoni District.

It was found as a result of the monitoring that the voters were able to exercise their right only in the Academician Bidzina Naneishvili Psychiatric Health Center located in the village of Kutiri, Khoni District, where the precinct election commission members brought the mobile voting box and the patients voted for the contesting candidates by the proportional rule, though even this procedure went on with gross violations of the law. In the process of preparing the list annex, the list handed over by the medical institution administration to the district election commission was incomplete, as it did not contain the ID information. Also, in the process of voting there was a gross violation of the law, because the voters voting through the mobile boxes had no documents confirming identity, as required by the Election Code.

In the case of other institutions, in Batumi, Republican Psycho-Neurological Hospital Ltd. located in Daba Kakhaberi, Khelvachauri District, the administration did not even draw up the list (special list) of the patients with the right to vote and accordingly the patients were not

[*] (*Translator's note*) Literally in the Georgian language the terms are "the person whose soul is diseased" and "the person whose brains are weak", which are outdated and found mainly in literary texts.

included on the annex voter list. As the chief of the medical institution explained, the district election commission did not request for the list and therefore it was not handed over. Nevertheless it should be noted that the institution was required by the law to draw up that list and submit it to the district election commission.

There was a similar situation in the Surami Psychiatric Hospital, where the administration did not draw up the special list, and the patients were unable to exercise the right to vote.

The Asatiani Tbilisi Psychiatric Scientific Research Institute was addressed by the district election commission several days prior to the submission deadline and reminded that, according to the Election Code, the institution was to draw up the special list and hand over to the district commission 6 days before the election. The list was drawn up and forwarded to the district election commission. The list had all the patients at the institution mentioned, which was around 300, but like in the case of Kutiri, the list did not contain the patients ID information In such situation the district election commission did not allow the voters cast their votes in the elections.

It should be noted that participation in the elections was directly restricted by the systemic error, which was made, for instance in Asatiani Tbilisi Hospital: to hospitalize a patient no ID is required either of the patient or his/her guardian; this directly affects the process of forming the patients (special) lists by the hospitals administrations.

On October 9, 2006, we applied in written to Guram Chalagashvili, Chairman of the Central Election Commission, to organize a working meeting for the discussion of these systemic problems. In a response received on March 7, 2007, this body confirmed its readiness to take part in the discussion of these issues.

Recommendations

Monitoring in the psychiatric hospitals showed that, despite the tendency of increased funding of the psychiatric hospitals, the current material and technical base and human resources cannot ensure the protection of the human rights and quality accessible medical treatment of the individual at the psychiatric hospitals.

To the Georgian Parliament:

The recipients of the psychiatric services in Georgia constitute the risk group of torture and other cruel, inhuman and degrading treatment. In order to take the preventive measures defined by the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, the Commission for Public Control of the Closed Institutions should be formed and the relevant article amended to the Law on the Psychiatric Assistance. However before the consideration of this issue, we deem necessary to create the national mechanism for control over the closed institutions, as it is defined by the same document. Hence, the work on the formation of the Commission of Public Control is suspended upon our initiative before the decision is made on the matter. This will allow to better distribute the rights and obligations and avoid possible parallel performance of the tasks.

To the Ministry of Labor, Health and Social Affairs:

a) Independently:

The living conditions in the hospitals are breaching the rights of the patients and medical staff. The ongoing reforms in the area of medical services should improve the living conditions in the psychiatric hospitals.

b) With the administrations of the psychiatric hospitals:

In those psychiatric hospitals, where the patients undergo compulsory medical treatment, modern security system equipment should be installed , a healing environment should be created and the medical and rehabilitation methods added. , it is also necessary to change the rules of the "movement" (the so-called mode) in these institutions, new standards should be instilled to ensure the fair and timely trial which would avoid the patients staying at the hospitals for an extended period of time.

To make the psychiatric services quality and accessible and provided in the manner respecting the patient's dignity and rights, it is necessary to create the standards for medical treatment and rehabilitation, provide new services (community based differential services) and increase the level of professional knowledge and skills of the human resources (managers, doctors, nurses, social workers, including the security personnel in case of compulsory treatment) with the consideration of the universal principle of human rights.

To the administrations of the psychiatric hospitals:

The management of psychiatric hospitals needs to be revitalized, efficient and effective internal regulations should be developed ensuring the organized functioning of both the medical personnel and the protection of the patients' human rights.

To ensure the human and patients rights in the psychiatric hospitals the rights related activities should be considered and the medical personnel and patients should regularly be informed of the rights.

The hospitals should facilitate the introduction of transparent and efficient procedures.

Request the NGOs and donors:

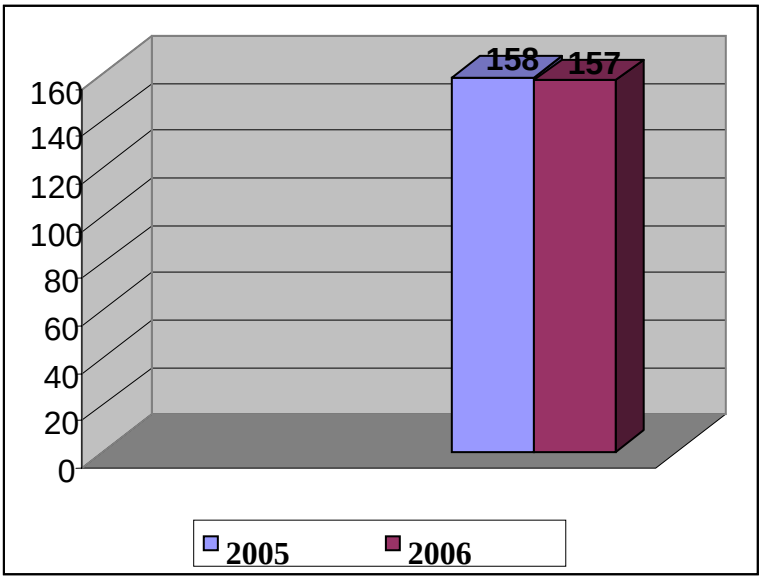
To support those groups that will fight for the protection of their own and other patients' rights.

The representatives of the judiciary, prosecutor's office and medical fraternity should be acquainted with the new Law on the Psychiatric Assistance to stamp out existing stigma; to change the attitude and perception about the recipients of the psychiatric services it is necessary to organize media campaigns. The educational campaigns should be planned with media representatives for the proper understanding of the new law and the issue human rights in the field of psychiatric treatment.

Delinquencies at the time of medical services (comparison of the data for 2005-2006)

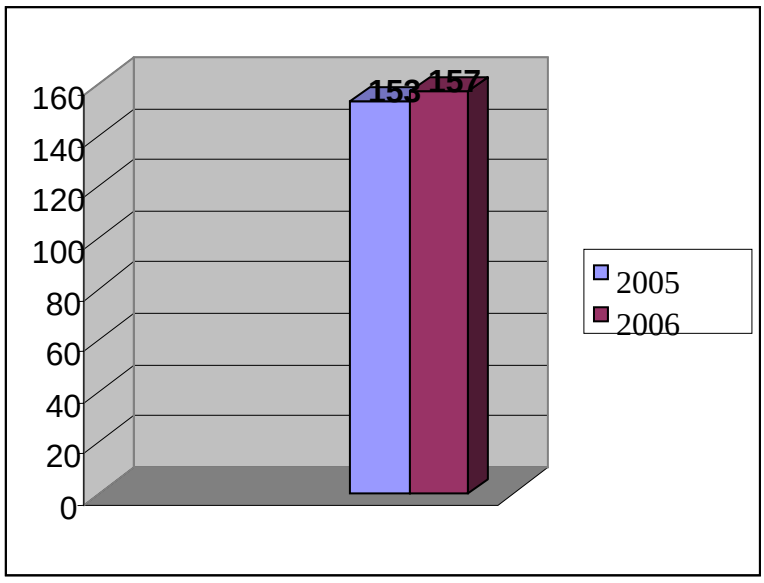
According to the report of the State Agency for Regulating the Medical Activity at the Georgian Ministry of Labor, Health and Social Affairs, the State Regulation Agency forwarded to the courts of the first instance 166 cases (out of this number, 2 cases were detected in 2007) with request to inspect the enterprises. To the court were submitted the requests for inspection of 81 medical institutions in Tbilisi (high numbers are among the following institutions: 7 scientific-research institutes, 18 medical centers, 27 hospitals, 10 emergency and urgent medical services, etc.), and 76 regional medical institutions (11 medical centers, 31 hospitals, 22 out-patient institutions, dispensaries and polyclinics, etc.). It should be noted that in 157 cases the request were approved and in 7 cases rejected. In 2005 by the same indicator the requests were approved in 158 cases. In fact, the situation did not change.

Addresses to the court of the first instances with requests for the inspection of the entrepreneurial activity



In 2006, on the basis of Decree No. 269, the Agency studied the issue of violations in more than 289 enterprises. Out of this number on the basis of the court order 157 medical institutions (84 medical institutions in Tbilisi and 73 regional medical institutions) were studied, while in 2005 on the basis of the court order153 medical institutions were studied.

Inspection of the medical institutions on the basis of the court order

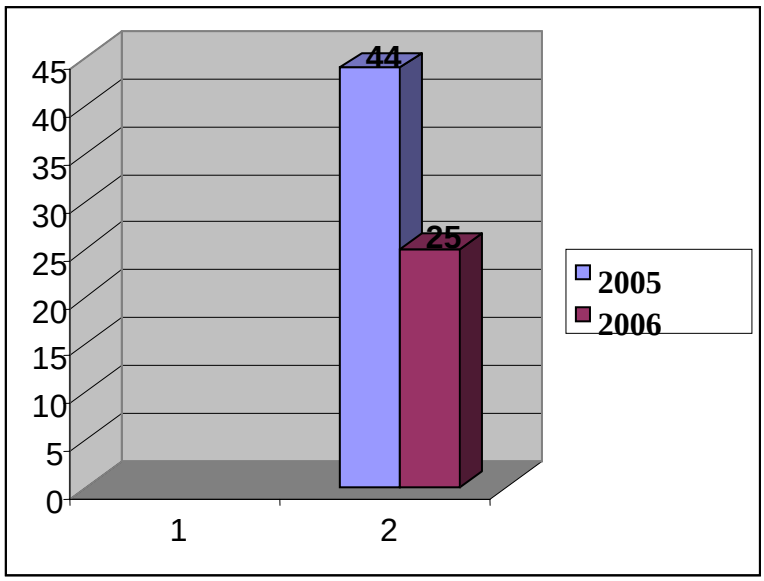


Without the court order the facts of illegal medical and doctors activity were studied in: 132 medical institutions (67 medical institutions in Tbilisi: 3 scientific-research institutes, 8 medical centers, 21 hospitals, 19 out-patient clinics, dispensaries, polyclinics, 7 diagnostic , prophylactic and rehabilitation institutions, etc.; in regions 65 medical institutions: 6 medical centers, 23 hospitals, 18 out-patient clinics, dispensaries and polyclinics, 6 gynecological wards). In fact a slight tendency of growth was noted.

In 2006, the Agency studied the quality of the medical services offered in 114 cases, among them 96 cases on the basis of the individuals complaints, out of which in 45 cases the complainants were the patients. In the data submitted by the State Agency for Regulation, it was not specified what concrete indicators were applied during the study and what kind of problems were found.

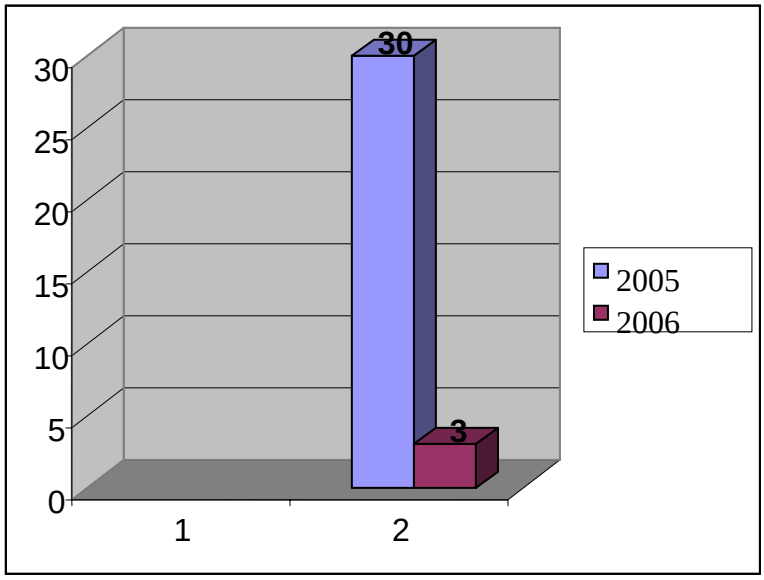
The statistics for 2005-2006 show that in the reporting period for 2006, 25 facts of illegal doctors activity (in Tbilisi and regions: 7 hospitals, 7 out-patient clinics, dispensaries and polyclinics and 3 gynecological wards, etc.) were found. In comparison to the year 2005, this indicator is lower by 43,2 percent.

The cases of illegal doctors activity found



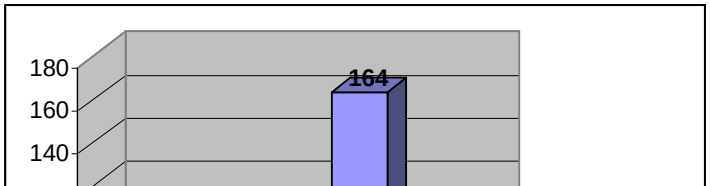
The facts of illegal medical activity also decreased by 90 percent (1 emergency and urgent medical service, 1 diagnostic, prophylactic and rehabilitation institution and 1 gynecological ward; in all, 3 cases, while in 2005 there were 30 cases).

The facts of illegal medical activity found at the time of inspection



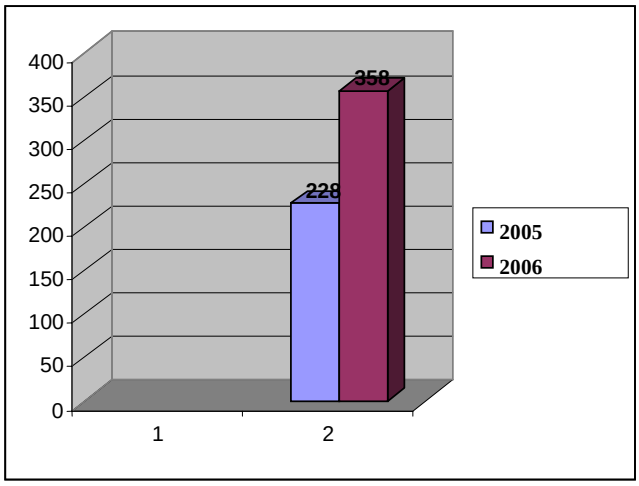
In 2006, 28 reports were drawn up on the administrative violation of illegal doctors and medical activities. Out of this number in 8 cases the judge fined the persons performing illegal activities, in 8 cases did not penalize, and in 12 cases the results of the consideration were unknown (the incidents of illegal medical and physician activities were found in 20 medical institutions in Tbilisi and in 8 regional medical institutions). In comparison with the previous year figures, such occurrences reduced by approximately 83 percent (in 2005 164 instances of administrative violations were found).

The facts of administrative violations found



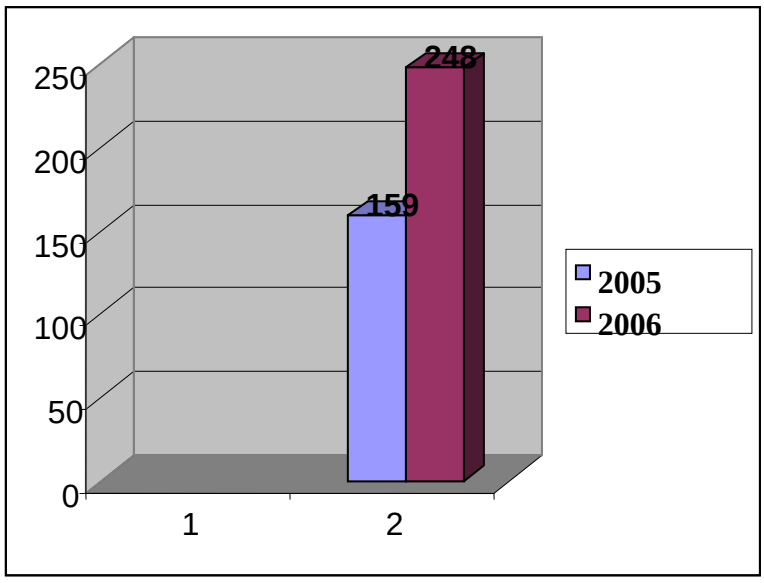
During the reporting period of 2006, based on the inspection carried out the agency, the issue of professional conduct of 385 doctors was raised before the Board Awarding State Certificates which in comparison with the previous year with 228 registered cases, showed an increase of 56.5 percent.

The issue of the professional responsibility of senior and middle level medical and pharmaceutical personnel raised before the Board Awarding the State Certificates

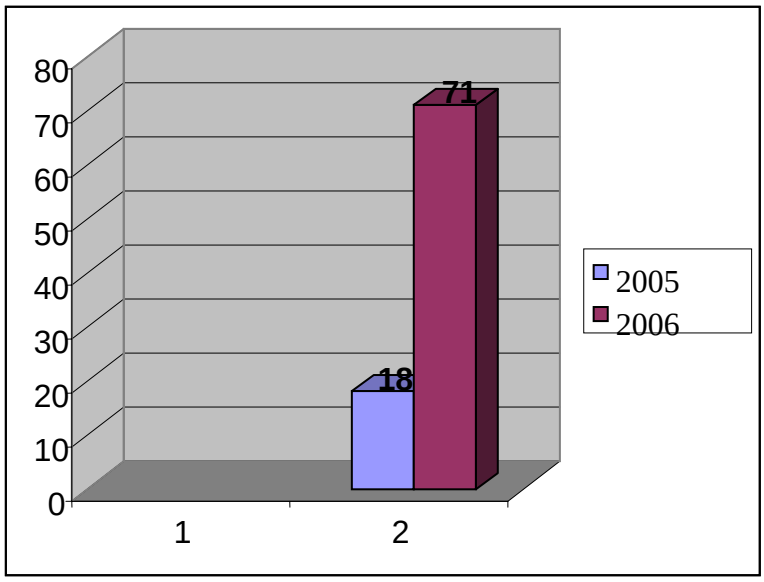


Despite the sharp decrease in the number of illegal doctors and medical activities in 2006, there was a significant increase in the number of sanctions issued by the Board on the problem of professional responcibility of the doctors. In total, 248 written warnings were issued to physicians which in comparison to 2005, is an increase of 55,9 percent; in Tbilisi 139 physicians and 68 physicians in the regions. The highest figure was noted in the hospital type institutions. The State Certificate of 71 physicians was suspended compared to 18 cases in 2005 ; in Tbilisi 43 physicians and 19 physicians in the regions. The court initiated proceedings against 4 regional physicians for the annulment of their certificates, in compared to 8 such cases in 2005

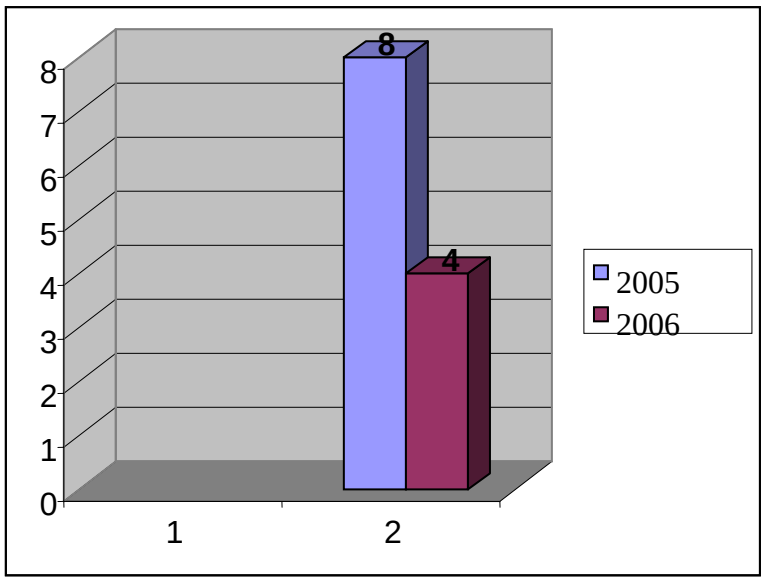
Written warnings issued:



Certificates suspended

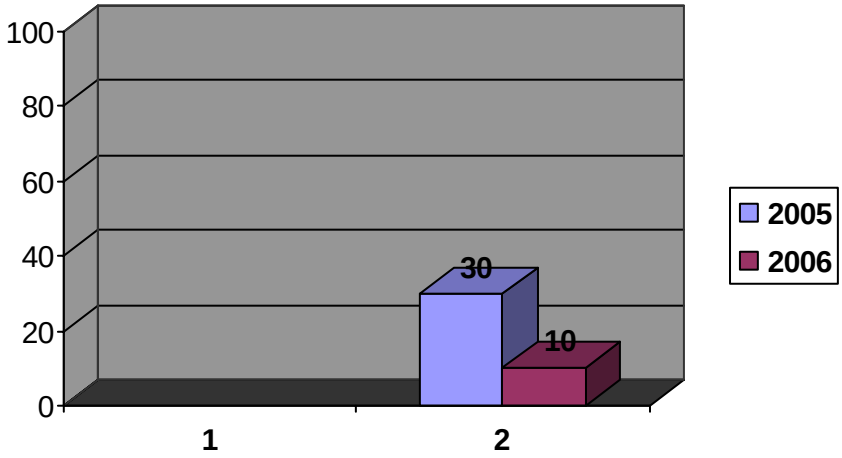


Request on the abolishment of the certificate



In, comparison with 2005, there was a 25 percent decrease seen in the reporting period of 2006, involving cases related to the issue of managerial responcibility of the heads of medical institutions (in 2005 – 30 cases, in 2006 – 10 cases, including 6 in Tbilisi and 4 in the regions).

The issue of the managerial responsibility of the chiefs of medical institutions



During the current reporting period, the agency issued licenses to 56 medical establishments in 115 medical fields**,** 46 establishments were denied the license in 64 medical fields **and** the licenses of 3 establishments in 9 medical fields were cancelled (upon their own request)**.** Based on the inspection licenses were issued to 25 medical establishments of various medical activities in Tbilisi in the 1st and 2nd quarter of 2006 (3 scientific-research institutes, 7 medicinal centers, 4 hospitals, 4 diagnostic, preventive and rehabilitation establishments etc). 13 medical establishments were denied the license (3 hospitals, 2 scientific-research institutes etc). The licenses of two medical establishments were cancelled (1-regional hospital, 1-Tbilisi diagnostic-preventive and rehabilitation establishment). At the same time 29 medical establishments were issued licenses in the regions (12-hospitals, 9 medicinal centers etc). 34 medical establishments were denied licenses (14 hospitals, 5 medicinal centers etc). With the purpose of issuing license 4 medical establishments were inspected in Tbilisi in the 3rd quarter of 2006 (1 medicinal center,

1 OB-gynecological department, 2 diagnostic, preventive and rehabilitation establishments), and for the same purpose 6 medical establishments were inspected in the regions (2 medicinal centers, 2 hospitals, 1 diagnostic, preventive and rehabilitation center and 1 dental clinic). In the 4th quarter of 2006 five medical establishments were inspected with the same purpose in Tbilisi (1 medical-research institute, 2 medicinal centers, diagnostic, preventive and rehabilitation establishment and 1 policlinic) and 20 medical establishments were inspected in the regions (3 medicinal centers, 5 hospitals, 2 emergency medical services etc).

During the current reporting period 11 citizens applied to the agency requesting public information. All the applicants were given responses within the time frame established by the law.

Based on the analysis of the above listed facts, the following tendencies were noticed in connection to the occurance of legal offenses in the sphere of medical service: despite the decline of illicit medical activities and the decreased number of exposed administrative lapses including instances involving senior officials of medical establishments held accountable for their acts, there was a significant rise in the number of cases the Council had to deal with issues related to the professional conduct of doctors and the suspension of their State Certificates.
As an indicator, the written warning issued by the Council saw a rise of 55.9% and suspension of State Certificates increased by 72.6% compared to the prevous year. It must be stated that most of the medical lapses and wrongdoings occurred at the Hospitals, this fact was further established by the decision of the Court identifying the Hospitals as the main establishment where such activities are most commonly noticed.

Information about the professional responsibility of doctors
(Termination of licenses)

The Georgian Law about "medical activity" regulates the issues of professional responsibility of person conducting independent medical activity. According to the article 73 of the law "professional responsibility of a person independently carrying out medical activity is a responsibility established by the law, which is related to the violation of medical standards and ethical norms of examination, care and treatment of a patient". Based on the same law the types of professional responsibilities provided for by the law for conducting incorrect medical activities are: a) written warning; b) suspension of state certificate; c) annulment of state certificate; d) limiting prescription of narcotic, psychotropic drugs and other substances containing alcohol; e) other measures of professional responsibility provided for by the Georgian legislation. The council granting state certificates takes the decision about professional responsibility provided for in the sub-paragraphs "a" "b" "c" for senior and mid-level medical and pharmaceutical personnel. The strictest form of professional responsibility-annulment of certificate is judged by the court based on the application by the council. Any decision taken by the council can be appealed at the court.

During 2006 the council applied to the court 3 times with the solicitation of annulling state certificate issued to the individuals conducting independent medical activity. The Public Defender sent a letter (#225/01 12/02/07) to Gia Tvalavadze, head of state agency regulating medical activities under the Ministry of Labor, Health and Social Welfare requesting the information about the above-mentioned three cases. The head of the agency replied (017/32-4440) informing the Public Defender that the council applied to the court with a solicitation of annulling state certificate for the following:

1. The violations and the non compliance to the licensing terms by "Kutaisi Regional Blood Bank". According to the Georgian law about "the donors of blood and its components" and the resolution #299/m of 6.08.01 by the Minister of Labor, Health and Social Welfare about "establishing sanitary-hygiene and epidemic requirements to the productive transfusion establishments". Based on the article published in the newspaper "Chronic" (17-25 October, 2005 #41 206) -" 5 persons tested positive for AIDS", and according to the study of the results of blood transfusion of patient Mariam Kintsurashvili who got infected with HIV/AIDS. The doctor responcible in this case was Dr. Mirian Kvirikadze.
2. "Outpatient hospital Asureti-Jorjiashvili" Ltd. with regard to its non compliance with the licensing terms and quality of medical services rendered within the framework of state health programs. The doctor held responcible in this case was Dr. Mikheil Tetruashvili.
3. Chiatura JSC "city hospital after Acad. G. Mukhadze"-in connection to the quality of medical service rendered to patient T. Kurtanidze leading to his demise . The doctor responcible in this case was Dr. Natela Brolashvili.

The agency also provided the archived minutes of the meetings of the council for granting state certificates to the senior and mid-level medical and pharmaceutical personnel, which revealed the following:

- By the decision of the council's #1 meeting on 06.03.06 the issue of annulment of state certificate in medical specialty "public health and health organization" to the former director of "Kutaisi Regional Blood Bank" Ltd. Mirian Kvinikadze was raised at Kutaisi city court.
- By the decision of the council's #9 meeting on 19.10.06 the issue of annulment of state certificate in medical specialty "public health and health organization" to Mikheil Tetruashvili, Director of "outpatient hospital Asureti-Jorjiashvili" Ltd. was raised at Tetritskaro district court.
- By the decision of the council's #9 meeting on 19.10.06 the issue of annulment of state certificate in medical specialty "general pediatric" to doctor Natela Brolashvili, of Chiatura JSC "city hospital after Acad. G. Mukhadze" was raised at Chiatura district court.

We have not received any information from Kutaisi, Chiatura and Tetritskaro district courts regarding its rulings in the above cases. Despite the fact, that from January 2007 "public health and health organization" is removed from the list of medical specialties and therefore it is not mandatory to have state certificate for conducting medical activities in this sphere. As a result the implemented sanctions against the above two individuals conducting independent medical activity can be considered as inefficient. The Ministry of Labor, Health and Social Welfare should consider effective sanctions that will be implemented against the persons found responcible in causing harm to the patients' health as a consequence of their administrative and organizational activity.

The first precedent of studying the case by the Ministry of Health of a patient who died at the facility of the department of corrections

In 2006 the first precedent was marked in the activity of the sectoral regulatory agency under the Ministry of Labor, Health and Social Welfare. It was related to the death of a prisoner (Oleg K.). The agency studied the medical service rendered to the patient. According to the information from the agency, we found out that the evaluation by the sectoral regulatory agency of medical activities regarding the quality of medical service rendered to patient Oleg K was found efficient,while the organization of medical service rendered to the patient was evaluated as insufficient; the quality of observance of conducting medical documents for patient Oleg. K. was evaluated as unsatisfactory.

The administration of #8 strict and general regime facility under the Department of Corrections of the Ministry of Justice; M. Dzotsenidze, Director of Kuatisi Ltd. emergency medical service 03; K. Kheladze, Director General of JSC "Dzotsenidze regional clinical hospital"; A. Abuladze, Director of "Chkhobadze treatment and rehabilitation regional clinical center for disabled and elderly" Ltd. and S. Beshkenadze, Director of JSC "Imereti regional infection pathology center" were requested to:

- Study the violations and lapses revealed by the commission and take active measures to eliminate them;
- Implement strict disciplinary measures against the persons whose activities caused the violations and lapses revealed by the commission.

The material collected by the agency was forwarded to M. Chogovadze at the regional prosecutor's office for his action. A report was sent to Varlam Mosidze the deputy minister of Labor, Health and Social Welfare, and L. Chipashvili The Minister of Labor, Health and Social Welfare was reported about the results of the study.

The Public Defender requested the final report of the forensic medical expertise on the death of 54 year old prisoner from the national forensic bureau after Levan Samkharauli under the Ministry of Justice. It came to our noticet that, the decision about conducting forensic medical analysis to the deceased was taken by the investigator M. Sanikidze, from the investigative department of the West Georgia of the Ministry of Justice on 31.07.2006. The examination was conducted (expert's conclusion #97) by forensic medical expert I. Grigorashvili (work experience-26 years). The document does not say anything about the location where the analysis was conducted. According to the analysis report the examination started at 16:30 on July 31, 2006 and concluded on September 6, 2006. The analysis report also mentioned that on July 31, 2006 at 12 midnight the prisoner unexpectedly felt bad, his blood pressure fell and he had symptoms of vomiting and diarrhea. He was moved to the intensive care department of Kutaisi regional clinic at 2 a.m. by the emergency unit. By 10 a.m. the situation was still difficult because the Ministry of Justice did not have an agreement with the clinic about rendering medical service. By the requirement of the clinic the patient Oleg. K. was moved to Chkhobadze medicinal and rehabilitation regional clinical center for disabled and elderly". At about 11:30 a.m. with the purpose of diagnosing the patient with the presumed diagnose of intoxication he was moved to Kutaisi infectious hospital where by the preliminary estimation the patient died from heart insufficiency at 12:05 p.m.

Forensic medical diagnosis: severe cardiovascular insufficiency, severe coronary sclerosis, post-infarction focal scars of myocardium, bronchopneumonia, focal emphysema, liver cirrhosis, nephrosclerosis.

External examination-corps is cold (?). Corps torpidity is obvious in every muscle (?).

Remarks to the expert's conclusions:

1. Adequate medical assistance was not rendered.
2. It is doubtful that after 4-5 hours from death the corps was cold and torpidity was obvious in every muscle.
3. In the description section, the sizes of lungs are not indicated and the sizes of kidneys are indicated together.

The conclusive part of the document says that "the reason for death is severe cardiovascular insufficiency, severe coronary sclerosis, post-infarction focal scars of myocardium, bronchopneumonia, focal emphysema, liver cirrhosis, nephrosclerosis. Despite that it is not clear what caused the clinical signs (myocardium infarction??) described in the medical records and conclusion report of the state regulatory agency of medical activities. The question remains unanswered, why was it necessary to transport the patient within short period of time to 4 different medical establishments? Was the infectious disease pathologically confirmed? (Expert was not asked such question at all)?; what caused shocking situation?. Insufficiency of heart caused by coronary sclerosis does not explain rise in temperature, low blood pressure, diarrhea, toxic infection etc. It would be interesting in the absence of infectious disease, why the patient was moved to infectious hospital? If the seperate diagnosis was not carried out on the infectious disease pathology, intoxication and myocardium infarction (?) then why isn't the possibility of Doctor's mistake being raised?

The sectoral regulatory agency for medical activities under the Ministry of Labor, Health and Social Welfare actively cooperates with the Public Defender's office from 2006. We always receive complete answers to our queries and correspondences in a timely manner from the agency which is important for monitoring implementation of the "right to health". But there are spheres where the agency needs to cooperate more actively with us. The Public Defender's office sent a letter to the state regulatory agency of medical activities describing the alarming and hazardous situation in the medical facilities of the department of corrections, Based on the Georgian Organic Law about "Public Defender", the Public Defender requested from the head of the agency to study the quality of medical service rendered to the patients at the above medical facility and the observance of recording medical documents. The agency has not replied to this request in the timely manner.

The case of patient Murman O.

Citizen Ketevan C. applied to the Public Defender with the request to study the case of her husband Murman O.

From the attached materials it came to our notice, that Ketevan Chantladze sent a letter to the Ministry of Labor, Health and Social Welfare on September 13, 2000 #05/35-101. In her letter she was requesting the commission to study the quality of medical service rendered to her husband at the Urology National Center and the targeted expenditure of the money transferred to the center for the medical treatment. This case was studied on July 28, 2000 by the Health and Social Welfare Municipal Service.

The study of medical records of patient Mumran O. revealed that the patient experiancing the symptoms of disuria, visited the National Urology Center on December 2, 1999. The preliminary diagnosis was urolithiasis disease. As a result of clinical-diagnostic examination the patient was

diagnosed with “renal cavernous tuberculosis with side decease-left renal segment stone”on December 7, 1999.

We found out from the patient’s medical history that Murman O. visited the same clinic in 1996 where he was diagnosed with tuberculosis of urinary tract and referred to the specialized clinic.

On December 9, 1999 the patient consulted with Professor L. Managadze and the visiting professor from Germany R. Hohenpheler, With the purpose of ascertaining final diagnosis the patient was asked to undergo uretherocystoscopy, trans-urethral biopsy and urethero-renoscopy.

The patient underwent the above operations under peridural anesthesia on December 13, 1999. The operation confirmed the clinical diagnosis: “renal cavernous tuberculosis, left renal segment stone”. Professor L. Managadze consulted the patient again on December 20 and on December 23 the patient had consultation with TB specialist V. Katsitadze. The diagnosis remained unchanged followed by the anti-tuberculosis treatment initiated by the TB Specilast. On January 18, 2000 the patient underwent percutan nephrostoma and later discharged from the hospital on January 25.

Because of nephrostoma dislocation the patient visited the clinic again on February 23 and underwent nephrostoma the same day. He was discharged from the clinic on February 28.

The patient revisited the clinic for the third time on May 22. He had consultation with Professor L. Managadze and Professor R. Hohenpheler, in which it was decided that the patient would continue taking anti-tuberculosis treatment course for the following 9 months. The patient was discharged from the clinic on May 29.

It must be noted that the patient was simultaneously registered and taking treatment course at the institute of tuberculosis and pulmonology from March 6, 2006 to July 12 for the diagnosis: right renal fibro cavernous tuberculosis, nephrosclerosis, urethero hydronephrosis, obliteration of the ureter, right nephrostoma, left renal cavernous tuberculosis, pyelonephritis, and chronic insufficiency of sub-compensated kidney. For further conservative treatment he was referred to III tuberculosis center for 2 months. The patient was advised that later he would have to take control urology-radiology examination to decide about the operation.

Total cost of medical examinations and treatment at the urological center amounted to 1716,75 GEL. The expences were as follows:
- Medications – 96.75
-Clinical analysis-252,00 GEL
-Operation-1008,00GEL
-Salaries-359,25 GEL

The accounting office of the clinic returned 66 GEL to patient’s spouse for the purchase of medications.

A total of 1437 GEL was transferred on different occasion for the patient’s treatment from the state medical insurance company and health and social welfare municipal service, which has a shortfall of 345,75 GEL compared to the actual cost of medical assistance rendered at the clinic. 937,00 GEL was transferred from the state medical insurance company to the account of the national urology center #440 28.12.2000 (for operation: pyelolithomy). Health and social welfare municipal service transferred 500 GEL to the account of the urology clinic #68 25.02.00 for cystenostomy.

It must be noted that the patient Murman O. was given qualified medical service at the urology center. Based on clinical-diagnostic examinations he was diagnosed and treated, but unfortunately there were faults in this process:

-The patient visited the clinic on December 2 with the diagnosis of urolithiasis disease. On December 7 he was diagnosed with renal cavernous tuberculosis. The TB specialist initiated his treatment not before December 23. The patient was supposed to be moved to the specialized clinic (like in 1996), instead he remained in the same clinic for the next 54 days. The urology center does not have the license for treating tuberculosis diseases (information: 18.09.00-department of standardization, norms and licensing under the Ministry of Labor, Health and Social Welfare).

- If the focus was on treating urolithiasis diseases during the treatment, then the requested amount of 937 GEL for pyelolithotomy by the clinic on December 28 was a delayed request. The patient did not undergo this operation as well as cystenostomy for which the urology center requested 500 GEL on 25.02.00.

If the request of the money was motivated and later the tactics changed the patient or his family members were supposed to be informed about it. The asymmetry between expenditure and the provided information caused the protest by the patient and his family members. It must be said that the faults were found in recording medical documents of medicaments.

Comparing the prescription in the medical card (#1622) and medications given to the patient from I urological department we found out that 59% of the prescribed medications were not given out from the clinic's internal pharmacy. Among them essential medications for the clinic (such as: lidokaine, glucose, streptomycin).

After examining pharmacy's log books and the log book of the I urological department we found out that number of medications (vitamins, glucose, syringes, noshpa), purchased by the patient's family were available at the clinic during that period.

The log book was checked on the use of Dimedrol (medication under special control) for the patient. According to the prescription 7 ampoules of dimedrol were used on the patient and according to the log book 9 ampoules were used (but money was requested for 7).

- The use of dimedrol is not registered in the patient's medical history;
- The rules of acquiring, possessing and using narcotic drug morphine hydrochloride are violated. In particular the patient was given morphine on 02.12.99 and on 24.12.99 and according to the records the department had this medicament available in October (therefore paragraph 6 of the resolution #361/n of the Minister of Labor, Health and Social Welfare is violated).
- There is no log book in the department on narcotic drugs and medications under special control (such log book was functional till 11.99).
- Medicament "phloxsan" from the stock of humanitarian assistance was not issued to the patient Murman O. According to the Pharmaceutical Department this medicament is not registered (information from the department of medicament and pharmaceutical activity 19.09.00 #1401/922).
- According to the patient's prescription paper Murman O. was discharged from 50% of medicaments and it was not registered in the log book. Therefore it is not clear how many medicaments were used.

- The accounting card indicates 76,13 GEL requested for the medications (with the exception of 2 ampoules of dimedrol) which corresponds to the cost of medications issued to the patient from the facility.
- Patient Murman O. was again hospitalized at the urology center on 23.02.00 till 28.02.00, medical card #234. Diagnose: urinary tract tuberculosis. He took the treatment course. The picture is analogical: 50% of the medications were not issued from the clinic's internal pharmacy. The patient was prescribed dimedrol from 24.02 to 28.02 (4 ampoules). This medication is not registered in the records.
- The patient was hospitalized for the third time from 22.05.00 to 29.05.00, medical card #683, diagnose: urinary tract tuberculosis. Prescription of medications is not registered in the medical card.

Other faults were revealed as well which were corrected at the place and the management of the clinic was advised to pay more attention to the observance of conducting financial and medical records.

The Public Defender's office applied with a recommendation to Isani-Samgori district prosecutor's office to provide expertise. At the same time the investigation started on the financial violations which were mentioned in the report of Lira Topuridze, head of the controlling body of the Ministry of Labor, Health and Social Welfare. According to the report 500 GEL for cystenostomy and 937 GEL for pyelolithotomy were allocated from the state budget but the patient did not undergo any of these operations. There is a serious doubt that this money was appropriated. The report of Lira Topuridze also mantioned that when comparing medicacations prescribed to the patient we found out that 59% of the medications were not issued from the clinic's internal pharmacy but were purchased by the family of the patient. Most of those medications were available at the clinic during the given period of time. Despite our request the prosecutor's office of Isani-Samgori district did not pay attention to the above circumstances. Meri Goglidze, Deputy Prosecutor of Isani-Samgori district prosecutor's office indicated that according to the studied materials the patient Murman O. was rendered qualified medical service. The letter #01/20-08-484-07 of Isani-Samgori prosecutor's office said that the medical treatment of M. Odiashvili at the urological national center amounted to 1716, 15 GEL which included the cost of medications, tests, operation and salaries.

The Public Defender's letter of 30.01.07 had attachment of two copies of medical history created at different medical facilities at the same time. In particular the medical history #683 of Murman O. at the urological national center and extract from the medical history of Murman O. from the Scientific-research Institute of tuberculosis and Pulmonology. According to the medical history of the urological national center Muramn O. was undergoing treatment during May 22-29, 2000. According to the extract from the medical history of the Scientific-research Institute of tuberculosis and pulmonology Murman Odiashvili was taking treatment course there from March 6 to June 12, 2000. Therefore the patient was undergoing medical treatment at two medical facilities simultaneously

On November 15, 2000, the deputy prosecutor V. Grigalashvili from Isani-Samgori district prosecutor's office paid attention to this circumstance. He instructed the head of the investigation department M. Metreveli to study the circumstance and find out which medical establishment created false medical history. The Public Defender's office sent a letter on 30.01.07 to the district prosecutor's office requesting information about the findings of the investigation. The letter from the district prosecutor's office (13/02/2007 #01/20-08.484.07) did not provide us with the requested information. The Public Defender's letter (30.01.07) had an attachment of a letter from the department of medical and social expertise #45. According to the letter the senior expert of the expertise policy section of the same department Lali Papulashvili's wallet and the

file containing the medical history of Murman O. was stolen at the minibus #50. According to the letter Lali Papulashvili notified Gldani-Nadzaladevi district 4th police station about the theft. The Public Defender's letter had an attachment of the letter #551/1-640 from Gldani-Nadzaladevi district 4th police station which does not confirm that Lali Papulashvili notified the police about the theft.

The letter of Isani-Samgori district prosecutor's office (13/02/2007 #01/20-08.484.07) indicated that on February 5, 2007 Isani-Samgori Internal Affairs Department sent a letter to the Minister of Labor, Health and Social Welfare urgently requesting for specialists. It is not clear to us why the investigation requested for specialists when the provision of specialists is within the competence of the national expertise bureau.

Furthermore, the patient Murman O. was at the VIA-Vita Ltd. center of treatment of dialysis by effective methods from January 31 to February 4 of the current year. His condition was evaluated as very serious: chronic insufficiency of kidney (terminal stage). He was prescribed haemodialysis 3 times a week. Conducting expertise to a patient in this condition is important for his recovery.

The Public Defender's recommendation is still neglected. The investigation is delayed and there is an impression that the investigator and the prosecutor are not interested to determine the truth about the case. The following questions to the investigators, as to why were there two medical histories at the same time on a single patient?, which one of them was false?,was the state funds allocated for Murman O's treatment spent efficiently? and why the expertise was delayed?., still remain unanswered.

Consumers' rights
(Nutrition policy and the existing situation)

In 1992 the conference organized by the International Health Organization elaborated a declaration and an action plan on the nutrition problems. By adopting the declaration the member countries (Georgia among them) assumed the responsibility to elaborate national plan of action in shortest period of time and ways for its speedy implementation.

The conference took into consideration the fact that the elaboration of nutrition policy for the benefit of health improvement was relatively a new phenomenon for many member countries.
Taking the above into consideration, the conference included the strategies in the nutrition policy to help elaborate national plans. These strategies are:

- Inclusion of nutrition goals in the sphere of program and policy development ;
- Protection of consumers through improved quality control of food and security;
- Prevention and treatment of infectious diseases;
- Support to breastfeeding;
- Taking care of the targeted groups of homeless and socially vulnerable;
- Prevention of insufficiency of certain kinds of food micro-elements;
- Promotion of the healthy way of life and sufficiant nutritional rations;
- Evaluation, analysis and monitoring of the situation in the field of nutrition;

It would fair to say that our country does not have a nutrition policy and that it is being effectively implemented or that all the above listed strategies exist and function as they should, although in the recent years aided by the reform in the public health system, the public health protection department and the state inspection of sanitary-hygiene, rules and norms were

estabished with the purpose of promoting healthy way of life, prevention of infectious diseases and improving food quality and security. The above organizations could have contributed to the elaboration of the right to nutrition policy and rationally use the resources of this sphere.

The State program promoting health and establishing healthy way of life was elaborated (1999-2005). One of its goals was to establish the habits of correct nutrition. This implied:

- Elaboration of nutrition ration norms and standards;
- Indication to the chemical and energetic ingredients in the locally produced food products.
- Print brochures and other materials about healthy nutrition ration.

The directions included in the program are partly implemented. Sanitary-hygiene normative acts and standards should be elaborated permanently constantly. Sanitary-hygiene production technologies change permanently frequently, new products are produced and introduced at regular intervals and living conditions change, therefore norms of certain nutrition ingredients change as well. This means that the country should elaborate and update them permanently regularly taking into consideration the changes and the requirements but unfortunately it's been two years since this process has not been updated due to lack of funds

It must be noted that the millennium development goals in Georgia include (goal 1) elimination of extreme poverty, and the particular task indicates that by 2000-2015 the number of population with unbalanced nutrition ration should decrease to half. The indicators for achieving the above goal are:

- Number of underweight children (up to five years old);
- Indicator of consumed food energies by the socially vulnerable;
- Use of micro-elements in regard to the recommended daily norm;
- Share of the expenditure on domestic products;

One of the goals of the above strategy is the improvement in the quality of food and security.

With this purpose the public health department elaborated the state program for "prevention of violations caused by iodine and other micro-elements". During the implementation of this program a number of violations were revealed in the area of nutrition of the population, which is dangerous to their health (deficiency of iodine, iron deficiency anemia, deficiency of number of vitamins etc). Unfortunately for the objective reasons (inconsistent financing etc.) the program could not reveal all the violations in the area of nutrition of the population.

Later in March 2005 in the framework of improving food quality and security, and the elaboration of the national strategy the European Program of Food Security of the World Health Organization, the Georgian Ministry of Labor, Health and Social Welfare together with the Organization of Food and Agricultural Products and Irish Administration held a seminar to create state level working group of food security. The group was supposed to include the representatives of all the ministries and institutions involved in the area of food security. They were supposed to prepare the country profile and the national food security strategy. In 2006 according to the law the "national service of harmless food, veterinary and plants protection" was created.

One of the strategic directions is the prevention and treatment of infectious diseases which is mainly carried out by the national center of disease control.

As for the below listed strategies like support in breast feeding and taking care of homeless and socially vulnerable, these activities are carried out by the international organizations (UN and UN Children's' Fund), pediatric institutions and with the support of humanitarian society.

I would be unfair to say that the strategy of prevention of insufficiency of certain kinds of food micro-elements is neglected. There has been a lot of work done in this area to prevent the diseases caused by the insufficiency of iodine.

There is a research work being carried out to reveal the violations among the population caused by the insufficiency of iron and to elaborate preventive measures. At the same time, it is desirable to have a research in this area which is more intensive and in a larger scale.

It must be noted that there are positive signs in this respect. The non-governmental organization "Improved Research Alliance in Georgia" held a presentation at the parliament of the national program of overcoming anemia.

Nothing has been done to develop such strategies as promotion of healthy way of life and correct nutrition ration; evaluation, analysis and monitoring of the situation in the area of nutrition.

A lot needs to be done today in the aspect of correct nutrition (conducting correct nutrition policy). Economic, legislative and material base needs to be elaborated.

-The work towards the improvement of normative base in the field of food production and its realization has been initiated, but it is not enough. The country lacks a number of important normative documents without which it is impossible to achieve the result. In parallel with the elaboration of new documents the existing base needs to be revised constantly.
-The existing social-economic condition in the country has an impact on the population's health and nutrition. It is widely accepted that once in every 5-6 years the state should study the situation in the area of nutrition and health to reveal violations, improve nutrition structure and regulate the share of products used extensively. Research of such scale has not been carried out for the last 20 years in our country apart from several pilot researches (with the support of public health department). Such researches would help us reveal the deficiency level of food substance, develop correct regional programs of nutrition, improve nutrition structure and increase the production of products of high nutritional and biological value.
-With the purpose of elaborating nutrition norms, the issues of the population's health and nutrition needs to be studied (based on age and profession: army units, adults' and children's groups, penitentiary system etc);
-It is equally important to improve the state control system over the quality of food products and raw materials. In this case the recommendations and the requirements of the international organizations (World Trade Organization, World Health Organization, and World Food Organization) need to be taken into consideration.
-Changes in the composition of food products consumed reflect on the population's health condition and on the children's and adults' anthropometric indicator very fast. We don't have a country wide anthropometric research indicator not only for the last 10 years but from the 80-ies of the past century. This fault needs to be corrected and an anthropometric data base of the country's future generation should be created to do comparisons in the future.
-A laboratory should be established to keep control over food products and raw materials produced through genetic engineering. Food products should not harm people's health.
-Urgent measures should be taken to work out nutrition norms for pre-school and school children and to improve the relevant normative acts for organizing correct nutrition at the facilities of this type.

-The nutritional diet provided at the medical-preventive facilities is substandard. With the purpose of studying the situation in this area, a research was carried out supported by he Sanitary-hygiene Scientific-research Institute after G. Natadze and the Department of Standardization and Norms. The findings of the research are unfavorable with a few exceptions (treatment combinat, center of tuberculosis and lungs disease). Nutritional diet needs to be improved at all the medical facilities and these establishments need to employ qualified staff.

The implementation of the above strategies is possible through joined efforts of different sectors of management, international organizations, non-governmental organizations and private sector.

Real situation with the protection of consumers' rights in Georgia

(Consumer and issues of harmless food in Georgia)

In 1991 UN General Assembly adopted a resolution "guidance principles for the protection of consumers' interests" which includes eight main principles on the protection of consumers' rights:

- Right to security;
- Right to be informed;
- Right to listen;
- Right to choose;
- Right to be reimbursed;
- Right to education;
- Right to healthy environment;
- Right to basic needs;

In the developed countries of the world the consumers' rights are protected based on the above eight principles.

The consumers' rights in Georgia are guaranteed by the Georgian Constitution, Article 30 (2). In addition, based on the Constitution the consumers' rights are protected by the civil code, the Georgian Laws about "protection of the consumers' rights", "certification of production and service", "standardization"', "food safety and its quality" and other normative acts.

For years the Georgian anti-monopoly service, "Sakstandart", sanitary-epidemiology supervisory service, Ministry of Environment and Natural Resources and some other agencies were conducting supervision over the consumers' rights and food security. Until 2003 "Sakstandart" comprised standardization, accreditation, meteorology, certification, control and supervisory departments. This organization was responcible for setting standards, accredit ting of laboratories, determining the types of meteorological equipment and conducting supervision and control over the consumers' market.

Based on the assumed responsibilities towards the World Trade Organization, World Bank and the European Union "Sakstandart" was supposed to be relieved from all other functions and focus opon updating and setting standards, bring them to the consumers and register them, which did not happen because of the abolition of this organization.

The national service of harmless food, veterinary and plants protection under the Ministry of Agriculture and is in charge of the issues of harmless food and its quality. The spheres field

energy and communications are supervised by the Georgian National Regulatory Commission and the service of the consumers' rights protection at the Georgian National Communications Commission. But as we already mentioned the unified supervisory body in many areas has not been created. For example the rights of the consumers in industrial-domestic, construction, children's toy, clothes and other spheres are not protected.

In December 2005 the Parliament of Georgia adopted the law "about food safety and its quality". According to the first article of this law "the law aims to protect the health, life and economic interests of the consumers in regard to the food and takes into consideration the effective functioning of the local market and its diversity".

According to the results of the monitoring of the consumers' market held in the current year by the non-governmental organization "union XXI century", out of 50 types of examined products only 3 satisfied all the requirements. The following types of violations were revealed: terms of storing and selling; violation of relevant standards and sanitary-hygiene requirements; outdated products or no information on expiration date; absence of labels in Georgian language (violation of the article 6 of the law about "protection of consumers' rights").

If we compare the results of the monitoring of 2004 and of the current year we will see a very unfavorable situation:

	2004	2005
Certificate of adequacy or safety document	13%	0
Violation of storage conditions	87%	60%
Label in Georgian language	20%	42%
Violation of expiration date	27%	34%

As we can see from the chart the improvement is only seen in the decrease in violation of storage conditions (from 87% to 60%) which is the result of the increased number of super markets where storage conditions are more or less safegaurded.

Labeling

According to the article 6 of the Georgian Law about "the protection of consumers' rights" "manufacturing dealer is supposed to provide the consumer with the necessary, true and completel information about the product (Para 1) and "the information should be provided to the consumer in the Georgian language" (Para 2). In order to get a clear picture of the situation in the consumers' market we should analyze the results of the monitoring.
Despite the requirement of the law the market is full of products without Georgian labels. It may be argued that according to the recently added article 36^{1} Para 3 "Until June 1, 2008 state control over safety of food/animal food is conducted in special situations according to the rules established by the Government of Georgia". What does "special situation" mean or what is considered to be the "special situation?"

The purchase of 24 types of products without Georgian labels during monitoring is a "special situation" (one can ascertain at any super market that 80% of the imported products don't have labels in Georgian language). The most obvious is the fact that compared to 2004 (when the supervisory bodies to some extent were functioning) the number of products without Georgian

label became twofold. It must be noted that the monitoring was held only on the food products. The situation with industrial and household products, construction materials, children's toys and clothes and other items is much worse. Information in Georgian language is not available for household equipment and other products, which is mandatory. This is a violation of the Article 6 of the Georgian Law about "the protection of the consumers' rights"

Certificate of adequacy

Article 36^1 Para 5 of the Georgian Law "about food safety and its quality" stipulates that "until February 1, 2007 the Government of Georgia shall establish rules of issuing hygiene certificate of food and food related products and shall ensure the smooth functioning of this system" according to which Georgia shifts to hygiene package certification. Unfortunately there is no state agency at the consumers' market requesting document of product adequacy in the form of adequacy certificate or application-declaration.

Realization conditions

The monitoring covered Tbilisi, Rustavi and Marneuli markets including several big super markets. According to the conditions of storage and selling the supermarkets in most cases met the specified terms which is not true in the case of markets. (Although, there are lots of instances at the super markets of salespersons selling unwrapped bread without gloves).

The situation is the same at every market. There is total unhygienic situation. The conditions of selling meat and meat products, diary products, fish, pastries with cream and eggs are violated. Food products are sold in the open air. Different products that should not be kept, transported or sold together are next to each other on the counters, such as food products and detergents etc. Food products are not protected from dust and other type of pollution. It is impossible to determine expiration date for many products or the products are actually expired or full of emulgators and other artificial adjuncts.

Meteorological services don't work in reality; scales used during sale are not checked.

Food adjuncts.

Food adjuncts are natural ingredients or chemical substances which are added in small quantities to food products with the purpose of increasing its cost, improving its appearance or prolonging its expiration date. Together with these positive qualities some of the food adjuncts cause side effects which provoke different diseases in people. Which is the reason why, the leading scientific institutes of the world are conducting regular researches in this direction.

There is a list of potentially dangerous food adjuncts which may provoke different diseases. Use of 6 types of food adjuncts is forbidden in Georgia but according to the product label it is not possible to learn about the ingredients of the product.

Comments about the amendments to the Georgian legislation in regard to food safety

The Georgian law "about food safety and its quality" was amended according to which the entry into force of the regulations declared in the law about harmless food and its safety is postponed and specific deadlines are indicated in the article 36^{1} -articles 22, 23 and 30 for entry into force on January 1, 2009.

The above articles deal with the inspection, its general principles and annual report and planning of the service. The draft law indicated to the postponement till January 1, 2009 but according to the amendments (29.12.2006) the postponement is until June 1, 2008. Also Article 36^{1} Para 3 indicated that until January 1, 2009 state control over safe food/animal food was conducted in special situations according to the rules established by the Government of Georgia. According to the amendments (29.12.2006) this was postponed till June 1, 2008.

Article 36, Para 8 indicates to the implementation of the findings, threat analysis and introduction of critical control letter system (29.12.2006) which was postponed till January 1, 2010 based on the amendments.

It must be noted that the law "about food safety and its quality" was adopted one year ago, on December 28, 2005 and entry into force of its certain articles were postponed.

Currently when the Georgian markets are full of products of uncertain origin and it is practically impossible to do threat analysis it would preferable to limit the deadlines for the purpose of ensuring safe food products for the population. There is a legislative initiative of a draft law about amendments to the Georgian law about "implementation of biological agro-industry" (adopted on June 25, 2006, should come into force on March 1, 2007). The amendments deal with the article 18 to postpone the entry of the law into force from March 1 to October 1, 2007.

Article 13:

1. State certificate is a certificate approving the right to private veterinary activity, which defines the scope and deadlines of private veterinary activity.
2. The form of the state certificate is approved by the Ministry of Agriculture in agreement with the Ministry of Education and Science.

The explanatory card indicated that the accreditation of the biological agro-industry assessment body was quite difficult and long term process and by the estimation of the experts this process could end in March or April and the terms of establishing bio-industry ought to correspond to this law and the requirements defined by the relevant standards which was not admissible because of thelengthy procedures. That's why we think it is advisable to postpone the entry into force of the law from March 1, 2007 to October 1, 2007.

Conclusion on food by the biological agro-industry and further improvement of agro-industry are important but it is not clear why the law was adopted in a hurry. It is also not clear to us why the explanatory card indicates to the "experts' estimation" while concluding that the experts did not take part in the elaboration of the draft law.

We think that postponement of the entry into force of the law until October will cause absence of supervision over the products of biological agro-industry for one more agrarian year. It must be noted that it was possible to involve the experts and the specialist of this field in the formation process of the unified national accreditation center.

The amendments in the above two laws are partly related to the amendments to the law about "state certification rules of veterinary doctors" (adopted on October 24, 2004, came into force on April 1, 2005). According to the article 49 the Ministry of Agriculture passed the following resolutions:

1. "About approving qualification training programs of veterinary doctors in regard to state certification";
2. "About creating certifying council of veterinary doctors";
3. About approving the list of private veterinary specialties and veterinary high schools of state accreditation";

The above by-law-acts created legal basis for certifying veterinary doctors. It was technically impossible to certify all the veterinary doctors by December 31, 2006 and by the presented draft law the certifying deadline was defined until December 31, 2007 and from January 1, 2008 veterinary doctors without state certificate for private veterinary activities will be forbidden to continue their activities.

This means for another year the issue of veterinary estimation of food products will not be improved and regulated by the law. Provision of the population with healthy food is guaranteed to them by the right to health according to the Georgian Constitution. Coming from the above-said we can easily declare that that the local consumers' market presently is full of harmful products of local and foreign origin that in most cases endanger heath and life, needless to say anything about the protection of the citizens' rights guaranteed to them by the Constitution and other normative acts (Article 30, Para 2 of the Georgian Constitution, Articles 336, 342-248 of the Georgian Civil Code; law about "the protection of the consumers' rights etc).