

# **For the Prevention of Torture**

**(For the Period of 2004 - 2007)**

**Special Report of the Public Defender of Georgia**

# Preface

The Public Defender's (Ombudsman's) Office of Georgia was established in 1996, when the organic Law of Georgia "on Public Defender" entered into force. The Law provides the Public Defender with wide range of rights. In accordance with the Article 3, "Georgian Public Defender supervises the observance of human rights and freedoms throughout the territory of Georgia, reveals the facts of their violation, facilitates the restoration of the violated rights". With the purpose of ensuring the protection of human rights, supervises the activities of the government, local authorities, high officials and legal entities, evaluated acts adopted by them, provides recommendations and proposals; performs educational activities in the field of protection of human rights and freedoms.

Public Defender enjoys full guarantee of independence and immunity. The Law provides the Ombudsman with strong legal guarantees as well, in particular, each governmental and local authority, high official or legal person is responsible for provision of comprehensive assistance to Georgian Public Defender, immediately present materials, documents and other information, required for implementation of his authorities. Failure to comply the obligations, stipulated by the Law, as well as creation of obstacles of any kind to Public defender's activities is subject to legal prosecution and will be reflected in the Public Defender's report, which is presented by him to the Parliament of Georgia twice a year, and it will be the matter of special consideration by the Parliament of Georgia.

Public Defender is elected by the Parliament of Georgia by the majority of votes of the full assembly.

With the purpose of ensuring the activities of the Public Defender, Public Defender's Office has been established, where 60 members of staff work. Public Defender has regional representations with their offices in Batumi, Kutaisi and Zugdidi (all the three in west Georgia).

Public Defender responds to the violated rights on the basis of received complaints, as well as on his own initiative.

# The Issues of Torture in Georgia

Torture, other Cruel, Inhuman or Degrading treatment or punishment is absolutely prohibited by the international law, as well as by Georgian legislation. And still, this is one of the global problems and Georgia participates in its resolution.

The issue of torture was the problem both before the so called “Rose Revolution” and after it.

In 2004, Georgian Parliament with the majority of votes elected Mr. Sozar SUBARI as the third Public Defender (Ombudsman) of Georgia.

Public Defender of Georgia, from the date of his election, declared that fights against torture would be one of the top priorities in his activities and relevant measures were taken for this.

Public defender fought against torture in several ways: 1) Promotion of improvement of legislation dealing with torture, other cruel, inhuman and degrading treatment or punishment and 2) monitoring of all closed type institutions.

Primarily, together with other factors, the imperfect legislative framework was a problem. In particular, Article 17 of the Georgian Constitution, which prohibited torture, was absolute and it was not subject to restrictions in the emergency and martial law states, Article 18 specified additionally that “Physical or psychical violence over the person detained or otherwise deprived of liberty is inadmissible”. It was possible to restrict the said prohibition in emergency of martial law state, which was in contradiction with the fundamental principles of international law on human rights.

Public Defender of Georgia, in his bi-annual Report for the year 2004, applied with the recommendation to the Parliament of Georgia to make relevant amendments to the Constitution of Georgia and eliminate the possibility of physical and psychical violence in the emergency and martial law state. It should be noted that the Parliament took into consideration the above recommendation and on 27<sup>th</sup> December 2006, there were made relevant amendments to the Constitution.

Similarly, with the recommendation of Public Defender, definition of the term “torture” in the Criminal Code was harmonized with the UN Convention Against Torture and sanction for this crime was increased, as disposition of the above terrible crime was very unclear, making its application practically impossible and the relevant sanction was apparently inadequate to the corpus delicti.

The Public Defender’s contribution in the process of ratification of the Optional Protocol to the Convention Against Torture (OPCAT) should be highlighted. Georgian Government has ratified both UN Convention against Torture and its Optional Protocol. The issue of ratification of the Protocol was arisen by the Public Defender at the Parliament of Georgia and later the Parliamentary Committee for

Protection of Human Rights dedicated special meeting to it. The Ministry of Justice of Georgia was against ratification of this Protocol. They stated as a reason that formation of the national preventive mechanism provided for by the Protocol required significant financial resources. Public Defender explained that the Public Defender's office was able to undertake this role (at least, at the initial stage), as it had been successfully implementing the most significant monitoring function, provided for by the Protocol. And later the Government would make decision on establishment of completely new body for the prevention mechanism. After this the Parliament of Georgia has made decision on ratification of the Protocol.

Group of local and international NGOs (GYLA, PRI, APT), through consultations and cooperation with the Public Defender, has developed the model of National Preventive Mechanism, according to which, the Coordination Council would be established, chaired by the Public Defender and relevant commissions would work with the closed-type institutions. On 27<sup>th</sup> June 2007, the term of obligations undertaken by Georgia pursuant to the Optional Protocol was completed.

UN Special Reporter on the issues of torture, Manfred Nowak, pointed out to Georgia, as early as in 2005, to form really independent monitoring body, in accordance with the Optional Protocol, which would be established under the national human rights institution established in compliance with the "Paris Principles", or, possibly, with Public Defender's Office.

Unfortunately, no steps were made with respect of Protocol implementation from the side of governmental structures.

It should be noted that positive steps were made by the government with respect to torture prevention. In particular, by the decree of the President of Georgia, on 20<sup>th</sup> June 2007, Inter-departmental Coordination Board was established for Implementation of Measures Directed against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, to which, together with the representatives of various governmental and non-governmental organizations, the Public Defender's representative is a member.

In addition, it is encouraging that by the order of the Minister of Internal Affairs of Georgia, each employee of the system of the Ministry, who deals with the detained persons, shall wear the identification Badges. Anonymity of the police increases the probability of impunity of the persons committing torture and inhuman treatment. According to the official information, it is not always possible to wear the identification badges; especially this is the case with the staff of the Special Operational Department.

Georgian legislation provides for the right on compensation for the victims of torture. In particular, according to Section 9 of Article 42 of the Constitution of Georgia, "Full compensation from the state assets is guaranteed for all, who were damaged in the result of unlawful actions of the state and self-government bodies and officials".

On 29<sup>th</sup> December 2006, amendment to Article 33 of the Criminal Procedural Code was made, Section 4 of which states: “If the official is prosecuted for commitment of the crimes provided for by Articles 144<sup>1</sup>, 144<sup>2</sup> or 144<sup>3</sup> and his/her location is not identified, the claim for compensation of losses could be submitted against the State, through civil proceedings”.

There should be noted the recommendation by Manfred Nowak, UN Special Reporter on torture, given to the Government of Georgia, stating that the victims of torture should receive proper compensation and medical services and their vindication should be provided.

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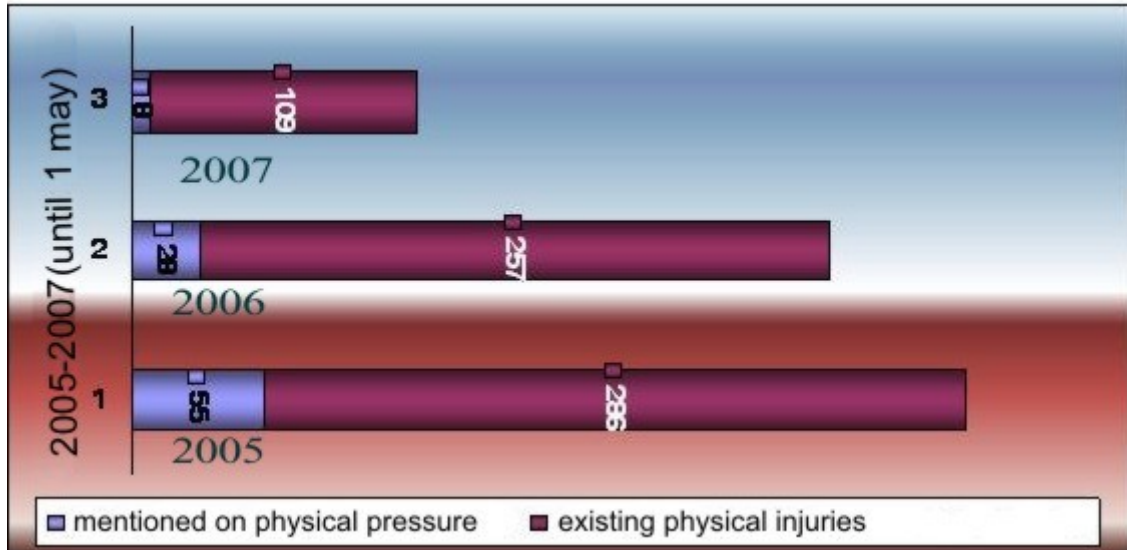
The Public Defender’s most effective mechanism for the fight against Torture and other Cruel, Inhuman or Degrading treatment or punishment is the monitoring of institutions provided for by Optional Protocol to the Convention against Torture (OPCAT). In 2005, Public Defender’s Office commenced the wide-scale monitoring in the closet-type institutions. Primarily, more emphasis was made on the preliminary detention cells and isolators and the penitentiary system and later, all other institutions were covered as well.

This was conditioned by the fact that all persons, detained by the police were subject to beating and torture. This was the well-established rule, traditional for the policemen. At the same time, forcing of the testimonies through torture was the common and the major method. There were applied various methods of torture – connection to the electric power, torture with the electroshock, putting of the respirator of polyethylene bag on one’s head, hanging with hands or legs for many hours etc. There were many cases of death of the tortured persons, though, as a rule, such cases were not investigated.

Extensive monitoring yielded significant results – beating and torturing, which was traditional form of treatment of the persons placed in the police departments and temporary isolation wards, currently is almost eliminated. Though, in the later period the violence displaced to the streets. The policemen beat the person at a time of detention and later they record that allegedly he/she attempted to resist them. There were numerous such cases. In 2005, almost one third of the detained had the traces of injuries on their bodies, occurred at a time of their detention, though, compared with the previous practice of torture, this was a serious achievement.

In 2005, the Public Defender, in his speech at the Parliament, stressed the excessive violence at a time of detention. It should be noted that in 2006, there already were some signs of reduction of violence at the time of detention and the number of complaints in this respect decreased significantly.

In 2005, 2006 and 2007 the monitoring of Temporary Isolators of the Ministry of Internal Affairs was conducted systematically. Here are given the numbers of physical injuries and the numbers of detainees, who mentioned on physical pressure from the police officers.



At this Special Report there the status of human rights is described, with respect to torture and inhuman treatment in the closed type institutions.

### **Current Condition at the Temporary Isolation Cells of the Chief Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs**

Public Defender’s Monitoring Group provides control upon activities of police. The main goal of monitoring is the prevention and final elimination of beating and torturing of the detainees by the policemen, though, simultaneously, they studied the procedural violations and the condition of the preliminary detention cells. Condition of these cells was actually the same as torture. Since January 2005 the Monitoring Group extensively inspected the district police divisions, subdivisions, Tbilisi City Department and cells of temporary confinement in the regions (in particular, Shida Kartli, Mtskheta-Mtianeti, Kvemo Kartli, Imereti, Samegrelo, Svaneti, Racha-Lechkhumi, Guria and Abkhazeti). 1800 unexpected visits to the police divisions and temporary confinement cells were carried out in 2005 and 856 – in 2006.

Performed monitoring revealed numerous problems and violations, which required thorough studying and solving. Basically, the problems of similar nature were

identified. It turned out that the most part of the temporary confinement cells (located in the buildings of the divisions of internal affairs in the districts) were in the terrible condition. The buildings urgently require repair. In none of them was the shower room or medical facility, water supply, ventilation and heating systems were out of order. Water leaked from the ceiling in the cells and investigation rooms, the glasses were broken, there were no plank beds and the detainees often had to sleep on the floors. In addition, there was the problem of food supply to the detained. If the relatives were not able to provide food for the detained, the employees of temporary confinement cells had to provide food for them in their own account. Though, in some cases, the employees could not display such good will, for objective or subjective reasons.

In the cells of temporary confinement the suspected as well as accused are placed, whose term of detention, before imposing of punishment, should not exceed 72 hours, also persons who have committed administrative offence, whose detention may last for up to 30 days. For this period the State should provide food for the detainees, though, this issue is not properly dealt with.

In the facility of temporary confinement (FTC) in Samtredia Department of Internal Affairs the number of the detainees varied from five to seven every day. The cases were recorded, when the number of detainees in FTC of Samtredia Department of Internal Affairs achieved seventeen. Almost all of them, for the violations provided for by the Administrative Code, were condemned to thirty-day detention. It is significant that in the facility of temporary confinement there were 4 cells, one of which, due to emergency condition, was out of operation. In the remained 3 cells, it was possible to place 13 persons. In the facility of temporary confinement of Samtredia Department of Internal Affairs the issue of overloading is of great urgency.

In addition to the above mentioned, there were some technical problems, like absence of bathrooms, absence of conditions for personal hygiene, poor condition of water supply, heating and ventilation systems, damaged boards. Even the administration workers had no bedding; they failed to supply food to the prisoners.

Because of this condition, the prisoners have to serve their sentences in terrible conditions. Unlike the prisoners confined for administrative violations, for the persons confined for the criminal offenses (both, the accused and the sentenced), Georgian Law on Imprisonment provides guarantees for personal hygiene. In particular, the detained must have the possibility to satisfy his/her physiological needs and personal hygiene requirements, without prejudice to human dignity and respect. At least once per week clean bedclothes and barber's services should be provided ... These requirements of the law are apparently neglected.

It is necessary to provide all above for the detainees, as the absence of the conditions required for normal life (lighting, air, food, cleanness, sleep, etc.) offend human dignity and creates conditions for inhuman, degrading treatment.

Public Defender has sent numerous recommendations to the Ministry of Internal Affairs to recover the situation in the temporary confinement facilities.

It should be noted that in 2006, the facilities for temporary confinement in Kaspi (it was full of rain water), Lagodekhi and Akhmeta were abolished and the facilities in Akhlagori, Marneuli, Sagarejo, Kvareli, Rustavi, Bolnisi, Borjomi, Akhaltsikhe and Mtskheta were repaired. In the most FTCs situation is still difficult, though, there is some trend to improvement.

Technical condition of Tbilisi temporary confinement facility is satisfactory due to its repairing.

It should be noted that since 2005, in facilities of temporary confinement, number of the detainees with physical damages decreased significantly.

## **Conditions in the Facility of Temporary Confinement of Tbilisi City Court**

On 25<sup>th</sup> October 2006, personnel of Public Defender's Office inspected underground facility of temporary confinement of Tbilisi City Court.

Though in the facility there were 95 accused. Only 8 cells of were occupied 14. Other 6 cells were not in use because of lack of personnel of the convoy service. In the 8 sq. m. area of the cell, there was one long bench, on which only four people could be placed. There were 8-25 detainees in each cell. The pre-trial detainees set on the bench by turns. Usually, total number of people conveyed to the court is 150-190. The cells require urgent repair. There is no ventilation system in the facility and food is provided to the prisoners only once per day.

On 14<sup>th</sup> February 1007, representatives of Public Defender inspected the facility of temporary confinement of Tbilisi City Court one more time. They found that the situation was actually the same. The detained are placed in 6 cells and there are four-seat benches in the cells – one in each. For the accused only one water closet is intended. In the monitoring period, in the confinement facility there were 131 prisoners.

The temporary confinement facility has no heating system. It is heated with small electric heaters in the corridors, which, of course, is ineffective and there is terribly cold in the cells.

Heavy work conditions of the convoy service staff should be specially admitted. In the temporary confinement facility of the Court, all accused are under supervision of only 22 employees of the convoy service and with rare exclusions, they work 7 days per week. The only change is the significant increase of their wages.



Public Defender considers that the conditions in temporary confinement facility of Tbilisi City Court, both for the accused and for the personnel of the convey service, are inhuman and degrading, thus encroaching their rights.

## **Conditions at the Penitentiary Establishments**

With respect of violating of human rights, penitentiary system in Georgia is still one of the most complex sections.

Both infrastructure of the penitentiary institutions and conditions, in which the detainees are under torture, cruel, inhuman or degrading treatment provided for by international and national legislation are serious problems.

Since 2005, Public Defender's Office performed extensive monitoring in the penitentiary institutions. There were carried out 400 visits to the penitentiary institutions in 2005 and in 2006 number of such visits increased to 600.

After appointment of new management of Penitentiary Department in 2004, the situation has changed in some respects

Up to year 2005, situation in this system could be briefly described as follows: There was total corruption, the prisons were controlled by organized criminal groups – so called “thieves in law” and their accomplices. They collected money every month from each prisoner and later shared this money with the administration. For this the “elite thieves” enjoyed freedom – the doors of their cells were never locked and they moved freely in all territory of the prisons, controlling everything and executing parallel “justice”. Any person, who did not obey to the “thievish laws”, was cruelly punished and some times even killed. As a rule, such murders were not investigated. Against the background of overloaded cells, these thieves had everything in their cells – hot water, the best TV sets, refrigerators, sofas, Jacuzzi...

Since end of December 2005, new management of the Penitentiary Department made significant efforts to combat corruption and “thieves in law” and achieved significant results in this respect, though implementation of this policy was often accompanied with beating and torture of the prisoners.

Maltreatment from the side of the personnel of penitentiary system, together with unbearable living conditions on the penitentiary institutions could be unambiguously assessed as torture and inhuman and degrading treatment.

### **Catering for the Prisoners**

In the first half of year 2006, catering of the prisoners was the problematic issue. Commissions at the penitentiary establishments admitted practically revealed food problems.

According to the orders issued by the Minister of Justice, in certain institutions (prisons #7, #2, #6) the food portions were increased. In the same institutions, on the basis of Part 2 of Article 36 of Georgian Law on Imprisonment, and Order No: 380 of 4<sup>th</sup> April 2006 of the Minister of Justice, sending and receipt of the parcels were prohibited. Relevantly, food for the prisoners became completely dependant on the supply of the prisons; this circumstance, in spite of doubling of the amount, allocated for food, made apparent that the food is not diverse and the portions are too small.

Representatives of the Ministry of Justice explain this by the fact that in the nearest future the stores in the penitentiary establishments will be opened. The shops already operate in Tbilisi #7, Rustavi #2, Rustavi #6, Kutaisi #2, Ksani #7 penitentiary establishments.

### **Lighting, Ventilation**

The issue of lighting and ventilation is one more urgent problem in the penitentiary establishments.

Lighting and ventilation in the cells, in addition to their overloading, created inhuman and degrading conditions in the penitentiary system. With the exception of newly constructed prisons (Rustavi #6 and Kutaisi #2 prisons), no ventilation systems were installed in any penitentiary establishments. In summer 2006, such system was installed on Tbilisi #7 prison, though, this it's not enough.

Supposedly, overloading of the prisons and absence of proper ventilation in conditions of hot summer caused undermining of the prisoners' health and contributed to the death of 33 prisoners in the period during March to September in 2006.

It should be noted that in the result of great efforts of Public Commission at Zugdidi prison, in summer 2006, the bars were removed from the windows at prison #4 and later, in August 2006 – from the windows in Tbilisi prison # 5. (It should be noted that there were the recommendations of Public Defender and numerous international organizations, but this was carried out only when due to unbearable heat and overloading one prisoner died every day).

Punishment cells in #1 and #5 penitentiary establishments were cruel, inhuman and degrading dark cells. There were deep in the ground and there was complete darkness, neither natural lighting and nor natural air penetrated there and there was no ventilation. Dampness and absence of sanitary were the significant problem.

EU Committee against Torture, in its recommendations, with respect of Georgia, offered to cancel the isolation wards in #1 and #5 prisons, as early as in 2003 and it should be noted that the prisoners were in the above unbearable conditions, until the Ministry of Justice took into consideration the recommendation of Mr. Thomas Hamarberg, Human Rights Commissioner on urgent abolishment of the punishment

cells an in August 2006 in and the punishment cells prisons #1 and #5 were abolished.

### **Hygienic condition**

With respect of hygiene, situation is serious problem in most penitentiary establishments.

In the process of monitoring of high security prison #7 the Public Defender found out that the conditions for the prisoners was extremely severe and there were numerous facts of violation of their rights. In particular, in April 2006, in prison #7 of the Penitentiary Department of the Ministry of Justice of Georgia, no conditions were provided for personal hygiene, there were no necessary articles and means (soap, toilet paper, shaving things, toothbrushes, tooth-paste, wall-mirror, scissors etc), they had no bed-clothes. Though there were no wardrobes in the cells, the prisoners had no right to have any polyethylene packages and they had to place food and cloths on small tables.

From January to May, the prisoners were not taken to the bath-house and they had no had shower for this period. Recommendation of Public Defender in this respect was shared and the prisoners were taken to the bath-house again. Though, instead of shower every week, the prisoners take a shower once per two-three weeks.

At teh time of monitoring of the penitentiary establishment by the representatives of Public Defender, it was found out that in prisons of Western Georgia there were no official documents dealing with supply of the articles for personal hygiene and administration followed verbal instructions of the Department.

In June 2006, E. Ch. applied to the Public Defender, stating that his incapable brother, D. Kh., was in Tbilisi prison #5 and demanded to conduct psychiatric examination. Administration of the prison, in June 2006, sent D. Kh. to the psychiatric examination, but he was not accepted, because of his unsanitary condition.

Staff members of Public Defender's Office had personal conversation with the T, Meladze, the Director, informed him about this situation and only after their intervention D. Kh. was washed, cleaned and taken to the psychiatric examination.

### **Video-camera at the Cell of the so-called "Thieves-in-Law"**

At the Prison Hospital, the patients, so called "thieves in law", J. Sh. and M. Z., were placed. The Director of the establishment A. Mukhadze informed us that at the ward of so called "thieves in law", the visual control device is installed.

None of them, because of their health condition, is able to move independently and they satisfy their physiological requirements in the ward, which is subject to visual control.

We regard such form of control as inhuman and degrading treatment, as it is executed over the most intimate points of the prisoner's life. Such treatment intends to humiliate the detained person, as shows prominently disrespectful attitude to the prisoners. It is doubted that a seriously ill person, who, according to the effective legal regulations, is subject to various inspections, permanent control of the penitentiary institution, is at such a danger at a time of being in the toilet, that visual control is required.

### **Overcrowding of the Prisons**

Unfortunately, overcrowding of the penitentiary establishments in Georgia is usual and the society gradually gets used to the fact that 2-3 and even 4-5 prisoners share one and the same bed. Study of actual situation by various governmental and non-governmental independent commissions showed that the situation is urgent and necessary measures should be taken.

It should be noted that Georgian government attempts to solve the problem of overcrowding through building the new prisons.

The above would solve the problem of overcrowding at some extent; though, efforts of the judicial system in this respect are required. In particular, alternative sanctions should be applied at a wider scale.

### **Medical Service at the Penitentiary Establishments**

The issue of medical services in the penitentiary institutions is very problematic. The situation was not improved since first half of 2006. Rate of mortality has almost doubled, in particular, in the first half of the year it was 33% and in second – 67%.

On 20<sup>th</sup> February 2007, at the prison hospital 20 years-old R. M. died. According to the information provided by the Ministry of Justice, “the reason for death of the prisoner was poly-organic insufficiency against the background of the cerebral processes”. Regarding the history of the patient, it is unclear, what were the diagnostic criteria.

It is significant that the patient of neurological/neurosurgical profile is treated in the therapeutic department of general profile. Medical experts regard that the treatment was apparently inadequate. In the treatment scheme the preparations, contraindicated in this specific case, were included. Records in the patient's history are not ordered, often illogical and even comic.

We shall have clear understanding of the situation with respect to treatment and care in the medical facilities for the accused and detained, if we see the following in the report of forensic expertise – “the body and cloths are full of louses. There are beard and mustache on the face... area of anus is dirty with brownish fecal masses, similar to the pants and perineum area...”

The expertise made conclusion that “the reason of patient’s death is poly-organic insufficiency against the background of heavy tuberculosis intoxication”. The deceased had heavy damages of brain, heart, lungs, bronches, lymphatic nodes, liver, intestines and kidneys. Nevertheless, according to the history, the patient had no problems with these organs. There is stated several times that the lungs of the patient were in normal condition according to examination. The same conclusion was made after x-ray examination! Even if the diagnosis were correct, the treatment was inadequate. The issue of qualification of the doctors who has made such conclusion is under doubt, whose diagnosis is dramatically different from the reality!

The above example, actually, presents the dynamics of “medical murder” of the 29 years-old young patient. All those persons, who, with their direct actions or act of omission allowed this to happen. And the main reason for this is the institution, in which this tragedy happened. The institution, which is not subordinated to the system of healthcare! The health legislation, international agreements and conventions, bylaws and principles of medical ethics are not applicable to it. In case of adequate treatment the patient had the chance to survive.

This case was sent to the Prosecutor General of Georgia and Agency of State Regulation of the Medical Activities of the Ministry of Health of Georgia for consideration.

In the penitentiary system there are many patients with tuberculosis, viral hepatitis, cardio-vascular and neurological diseases, what is aggravated with the existing conditions: sanitary-epidemiologic situation in the institutions, inadequate life regime, overloading and extreme deficiency of the medical professionals and material-technical basis.

There was the problem with medical examination of the prisoner and his transfer to another institution for treatment. In many cases, this occurred only after intervention of the Public Defender.

### Case of Giorgi Mikiashvili<sup>1</sup>

On October 29, 2005 officers of Patrol Police arrested Giorgi Mikiashvili. He was blamed in accordance with the Article 353 of the Criminal Code (resistance, threat or violence to the defender of public order of other public agent). The arrested person had physical damages in the area of the head, which, according to his explanations, were received in the result of beating by policemen at the process of arrest. On December 20, after Public Defender showed interest in his case, preliminary investigation commenced in connection with his physical abuse - on the fact of official authorities by police officers; crime, provided for by the Article 333 of the Criminal Code. Later the investigation stopped due to absence of criminal action.

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<sup>1</sup> The patient’s surname and first name is provided with permission of his family members

Mikiashvili was sentenced to imprisonment and was placed in Tbilisi #5 Prison. On November 11, 2005 he was transferred from the prison to the Prison Hospital and placed in psychiatric department. Mikiashvili's state of the health was examined by the doctors-psychiatrists of the Psycho-rehabilitation Centre "Empathy" (M. Jishkariani, G. Berulava, Kh. Chkoidze), according to whose conclusion Mikiashvili had "acute heat of passion, delirium, closed craniocerebral injury and concussion of the brain". In spite of a number of notifications and written conclusion, provided by the experts of the Centre "Empathy", concerning the circumstance that the diseased required comprehensive examination and further medication, he was released from the hospital. After release, due to worsening of the state, he was brought back to the Prison Hospital in three days.

According to **Giorgi Mikiashvili's** explanations, on August 15, 2006, he was beaten by the representatives of administration of the Prison Hospital, including Deputy Director G. Butliashvili. In the result of examination of the prisoner's body, Doctor Levan Labauri – Assistant of the Centre of Protection of Human Rights of the Ombudsman's Office – bruises and excoriations were found on different parts of the prisoner's body; in the right part of frontal bone, hairy part of the head, he had protuberances of traumatic origin. The relevant Protocol was made up in connection with the above mentioned. Mikiashvili was transferred to the isolation ward for the purpose of safety. It should be mentioned that the so called isolation wards represent typical "punishment cell" with terrible living conditions and being there already represents torture and degrading treatment.

In connection with beating of Giorgi Mikiashvili on August 15, 2006 Public Defender held a press conference, where he evaluated treatment towards Mikiashvili and his keeping in inhuman conditions and torture. In this connection Public Defender applied to the Ministry of Justice, Chairman of Penitentiary Department and General inspection of the Ministry of Justice on the same day. Public Defender also demanded to enable the experts of the Centre of Independent Forensic Examination "Vector" provide expertise to Mikiashvili, who was at the Medical Establishment, for the determination of the level of physical injuries.

Public Defender was informed by the Ministry of Justice that on August 16 preliminary investigation started in the Investigation Department of the Ministry of Justice on the fact of less serious damage of Mikiashvili's health, crime provided for by p.118 of the Article 118 of the Criminal Code; also, that the experts would be granted the possibility to provide expertise. In the result of expertise it was established that Mikiashvili suffered from light injuries without damage to health, which, by remoteness, didn't contradict the date specified in the facts of the case (August 15).

On August 16, 2006 Giorgi Mikiashvili was transferred to Rustavi #6 Prison and placed in medical ward for the purpose of safety. There is no doctor-psychiatrist in

the mentioned establishment. In September Mikiashvili's mental state became extremely serious (he broke eight beds, torn down wall tiles, torn off the lavatory pan, refused to eat, didn't want to see his family members; he was so aggressive that the prison's personnel couldn't enter his cell. It was obvious that Mikiashvili's transfer to the Specialized Psychiatric Clinic of the city was necessary.

As Giorgi Mikiashvili's mental state was serious and failure to render the proper treatment equaled to torture, on October 31, 2006 Public Defender applied with recommendation to the Chairman of Penitentiary Department B. Akhalaia to transfer Mikiashvili to the psychiatric hospital of general profile for the purpose of rendering highly qualified psychiatric care; also, Public Defender applied with recommendation to Prosecutor General Z. Adeishvili, that Prosecutor's Office should apply to the court with petition of prescription of forensic-psychiatric expertise to G. Mikiashvili. On the basis of the conclusion of the expertise it would be possible to decide whether Mikiashvili could be kept at penitentiary establishment. No answer was received from Prosecutor General's Office. On March 13 Public Defender received information from the Penitentiary Department that Mikiashvili was transferred to Kvitiri Psychiatric Hospital. It should be mentioned that on January 31, 2006 the transfer of the prisoner to Kvitiri Psychiatric Hospital was carried out on the basis of the court decision. Up to that date, no measures had been taken by the Penitentiary Department in regard to the transfer of the prisoner to the psychiatric hospital of general profile.

On November 28 on the basis of petition of the lawyer, the Judge of Tbilisi Appeal Court M. Chokheli prescribed forensic psychiatric expertise to Mikiashvili (Tbilisi City Court had sentenced Mikiashvili to imprisonment for a year and 6 months; the decision was appealed by the parties; prosecutor demanded 6-year imprisonment, and the defense – his acquittal).

On January 23, 2006, on court hearing the conclusion of the forensic-psychiatric expertise became known, according to which it was established that Mikiashvili had temporary mental disorder in the form of reactive psychosis and he would be kept at Kvitiri psychiatric hospital until the improvement of the state of his health.

After placement of the patient at psychiatric hospital the state of his health was satisfactory, improving day after day. It had proved once more that his state wouldn't become so serious as he received highly qualified medical care earlier.

On the basis of recommendations and applications of the Public Defender, in 2006, health condition of 18 patients was examined and these patients were moved to the medical institutions for the accused and detained for further treatment.

It should be noted that the confinement cells in the medical institutions for the accused and detained are the premises like dungeons. Inspections of 15<sup>th</sup> August 2006 and 13<sup>th</sup> February 2007, of the operating confinement cells of medical

institutions for the accused and detained, showed that in these wards the situation is unbearable. Situation is similar to the situation in confinement cells of Tbilisi prisons #1 and #5. There are 6 such wards there. Administration of the institution noted that only one of them is not in operation. In other wards there is dampness, there are scattered solid wastes, there is unpleasant smell, there are no windows in any of them, system of central heating is not operating, there is cold. The water closed is not separated from the room and is dirty. It seems that these wards were not cleaned at all for a long time. There is extreme insanitariness there.

Regarding that in the above wards there are placed the psychically ill persons, when their illness becomes especially acute, there is serious danger to their health and lives. The iron bars, instead of the windows, are the simple means for self-damaging. Administration of the institution explained that if the prisoner wants to damage himself, he would heat his head over the walls and therefore, there is no sense to remove the bars. The confinement cells are the very places, which should have the soft walls.

It is impossible to treat the patients in the above conditions. Presence of the patient there would further aggravate his physical and psychical conditions.

### **The Facts of Beating and Torturing of the Prisoners**

There are numerous examples of beating and torturing of the prisoners available to the office of Public Defender. We shall consider only few of them. In particular:

#### **Riot in the Prison #5**

On 27<sup>th</sup> March, in prison #5, there was the prisoners' revolt. Information obtained by the Public Defender provides basis to propose that the revolt was provoked by the actions of Department administration and, secondly, the forces applied for suppression of this revolt were not adequate to the resistance of the prisoners to the Special Forces armed with automated guns.

Many prisoners explained to us that at night, on 27<sup>th</sup> March, Bacho Akhalaia, Head of Penitentiary Department, entered the prison, together with the Special Forces and he outraged several prisoners. This was the cause of revolt, what, irrespective of some resistance, was spontaneous. This is confirmed by the identical witnesses of numerous prisoners. It should be admitted that the prisoners had no opportunity to harmonize their statements. This is also confirmed by the statements of three terribly tortured prisoners – Vibliani, Avaliani and Tsindeliani, who were taken to the prison #7 before commencement of the revolt, also statements of numerous prisoners, who were left in the medical facility.

Es for the special operation, we saw two guns, left in the corridor of the prison, immediately after suppression of the revolt. According to the statement of Goga Poladishvili, the Director of Tbilisi prison #5, the shots were made directly towards



him and as a result two of his personnel were wounded. Only after this the special forces opened the fire. According to Poladishvili's statement, he and his personnel, without any weapons walked ahead of the special forces, to make prisoners recognize them and prevent resistance from the prisoners. Though, the things went wrong. Though, it should be noted that if this had happened this way, this would take place only on one floor of the prison and firing took place on different floors.

Majority of the wounded prisoners questioned by the representatives of Public Defender states that they were wounded not in the corridors of the prison, but in their cells. The prisoners broke the cell doors and went out. Only when the special forces took over the corridor, it could be regarded that the major stage of revolt was ended. The fact that the most wounded and killed prisoners were damaged in their cells, offer that the special forces continued to fire even when the revolt was actually ended and the prisoners did not resist them any more. Consequently, we can suppose that the force applied against the prisoners was not adequate to the resistance and it was possible to avoid victims, at least in part. The same could be said about the fact that some of the prisoners were wounded and killed with the bullets shot through the windows.

On 27<sup>th</sup> March, at night, from the Prison Hospital, six prisoners – **Malkhaz Zedelashvili, Paata Mamardashvili, Zurab Vibliani, George Avaliani, Levan Tsindeliani and Nikoloz Makharadze** were moved to Tbilisi prison #7 of Penitentiary Department.

They had multiple injuries, which, at their explanation, were caused to them, together with moral insulting, by the Head of Department and members of Special Forces, in the office of the Director of Prisons' Hospital. They cut the hair in some places of one of them (Paata Mamardashvili), as he stated, what could be unambiguously assessed as humiliating treatment. At a time of monitoring, part of Mamardashvili's hair was really cut. To George Avaliani, as he stated, they put the humiliating questions and after this they committed act of physical violence – beating, as in the office, also in the yard of hospital and at a time of conveying.

As it is clear from the statements of G. Avaliani and other prisoners, Bacho Akhalaia, Head of Penitentiary Department directly participated in physical violence against Avaliani.

The beating of the prisoners was followed by "noise" in the medical facility, what further spread over the prison #5 and turned into the revolt. After this the above 6 prisoners - Malkhaz Zedelashvili, Paata Mamardashvili, Zurab Vibliani, George Avaliani, Levan Tsindeliani and Nikoloz Makharadze - were moved to Tbilisi Prison #7.

The beaten prisoners brought to the Tbilisi prison #7 was placed on the metallic beds, without any mattresses. They did not let in the doctors and lawyers. The prisoners stated that they took off their cloths and returned only at a time of visit of the Public Defender to the prison. They state that when the Public Defender left the

prison, they took away their cloths again and gave them back only on the next day, 28<sup>th</sup> March.

On the same day, the Public Defender assessed the fact of beating of six prisoners in the evening of 27<sup>th</sup> March, as torture and inhuman treatment.

In connection with the above facts, Public Defender submitted recommendation to the General Prosecutor's Office, to commence preliminary investigation, though there was no response up to present. The prisoners were not subjected to the expertise for injuries and the representatives of General Prosecutor's Office did not interrogate them. Moreover, only representatives of Public Defender came to them.

The above prisoners were beaten so cruelly that even on the 12<sup>th</sup> day after this, on 7<sup>th</sup> April, they had apparent signs of injuries. In addition, the management of Penitentiary Department did not allow the experts assigned by the Public Defender to enter into the prison #7 and did not permit them to carry out expert examination.

Two of the six prisoners taken to Tbilisi prison #7 of the Penitentiary Department, upon Public Defender's declaration that leaving them there would be in breach of ever and all regulations, were moved to the medical institution. One of them was paralyzed and he was not able to move and other was deprived of audition ability, with set of heavy diseases.

On 4<sup>th</sup> April, this year, one prisoner, Zurab V. was taken to Rustavi prison #6 by the ambulance. He had epilepsy, with number of diseases of neurosurgical profile and it was necessary to place him in the hospital. Being in the prison is seriously dangerous for his life.

### **Riot in Kutaisi Prison #2**

On 20<sup>th</sup> December 2005, moving of the prisoners to new prison was followed by unexpected riot. The prisoners put up fire by to reason of bad living conditions. To provide control of the situation, there was carried out the special operation resulting in various injuries of three law-enforcement staff and over hundred prisoners. One of the prisoners, Malkhaz Serginava died later.

Public Defender demanded to investigate this fact. "Purpose of investigation is to determine, how adequate was the force applied against the resistance in Kutaisi prison in order to suppress the riot, resulting in death of the prisoners."- so Public Defender.

The Western Georgia's Regional Prosecutor's Office reports that the prisoners were warned many times to stop unlawful actions, they did not follow the legitimate demand of the law enforcement staff after the special forces had have been entered in and physically withstood the members of special forces and, as a result, the unlawful actions have been suppressed.

The preliminary investigation established that the Special Forces executed their lawful right to restrict the unlawful actions of the prisoners in compliance with the paragraph “c” under Article 28<sup>th</sup> of Criminal Code of Georgia - the application on prosecution, with respect to this fact.

### **Search in Batumi Prison #3**

On 24<sup>th</sup> of January 2006, a search-review has been carried out in Batumi prison #3. The representatives of Penitentiary Department stated that they had received the information that there was weapon in the institution. They had to carry out the operation promptly and, in this way, took the prisoners out, in snow.

In explanations to the representatives of Public Defender the prisoners stated that the members of Special Forces beat them in the corridor and there was no resistance from their side. Later, the prisoners were left in the yard of the prison for more than 4 hours, in winter, in the snow and cold. They were not properly dressed and some of them even had no shoes on them; they were forced to go out in their slippers, as the inspection was conducted unexpectedly.

According to the explanations of the prisoners, they were physically abused, the things, which they were permitted to have in the institution, were taken away from them; in particular, the wooden icons, crosses, TV sets, etc. Many of them were injured.

It should be noted that no weapons have been found as a result of search. Preliminary investigation on this fact was not commenced.

### **Naked Prisoners in the Isolation Cells of Institution #6**

There should be specially emphasized the case in prison #6, when, with the purpose of punishment, the naked prisoners have been placed in the isolation cell. This situation is apparently the case of torture, inhuman and degrading treatment.

On 13<sup>th</sup> and 15<sup>th</sup> of September 2006, staff members of the Public Defender’s Office visited Rustavi Prison #6 and high security penitentiary institution of Penitentiary Department, where they carried out monitoring of the isolation cells. They visited the condemned Genadi Tsurtsunia, Imeda Butkhuzi and Badri Ketsbaia; the prisoners were in underwear, their clothes were flinged on the corridor floor, near the table of the officer on duty.

G.Tsurtsunia stated that he had been in the isolation cell for 16 days, in his underwear, as his clothes were taken away by the administration. They did not give him the hygiene means (towel, soap, tooth-paste, toothbrush), pen and paper. Staff members of the Public Defender’s office examined the log of the prisoners placed in the isolation cell, in which G. Tsurtsunia was not recorded at all. Representatives of

the administration failed to present the order on disciplinary punishment of G. Tsurtsunia.

Imeda Butkhuzi stated that he was in the isolation cell since 14<sup>th</sup> of September. The administration staff took away his clothes and did not give to him the pen and the paper.

Badri Ketsbaia stated that he is in the isolation cell since 11<sup>th</sup> of September; administration staff took away his clothes and left him in his underwear.

Following the isolation cells' monitoring it was found out that in no one of these cells were mattresses, bed linen and blankets and the prisoners had to sleep on the wooden beds. The prisoners admitted that they were very cold by nights, as it was already September.

On October 28<sup>th</sup>, the representatives of Public Defender's Office visited the prisoners Vazha Gegenava and Rudik Ovanikimian in Rustavi prison #6, who were in the isolation cells in September as well.

V. Gegenava stated that they took away all his clothes and placed him into the cell. They gave back his underwear in two hours, his clothes he received back in 10 days, after the term of being in the isolation cell was up.

R. Ovanikimian stated that he was placed in the isolation cell for several hours only, though, in this period he was completely naked.

Both prisoners stated that though they were cold, the prison personnel did not return their clothes to them.

Representatives of the prison administration stated that the prisoners themselves refused to wear cloths. The prisoners strongly denied this. By a repeated monitoring the prisoners already had their clothes on, though they stated that they received their clothes 10 minutes before the visit of the representative of Public Defender.

With respect to the above facts, on October 26<sup>th</sup> 2006, the Public Defender sent relevant materials to the Prosecutor General's office in order to initiate the preliminary investigation. On October 27<sup>th</sup>, the preliminary investigation commenced with respect to proposed abuse of power by certain workers of Rustavi prison #6, the crime, provided for by Part One under Article 333 of Criminal Code. Though they had enough time, the investigating did not yield any results and nobody has born the responsibility.

Relatives of the prisoners often apply to the Public Defender, stating that in the penitentiary institutions the prisoners are often exposed to physical pressure: We will give you an example:

## The Case of Mikheil Somkhisvili

Leila Jakobia, the mother of the prisoner Mikheil Somkhishvili, kept at Medical Establishment of prisoners and convicts of the Penitentiary Department, and the President of the Rehabilitation Centre of Torture Victims “Empathy” - Mariam Jishkariani applied to Public Defender in connection with the circumstance that in the process of joint monitoring injuries were found on the prisoner’s body, which, in his words, were the result of multiple blows, electric power and rubber bludgeons.

The representatives of Public Defender visited M. Somkhishvili, who confirmed the fact of beating with his signature on the report drawn up by the plenipotentiaries.

Public Defender applied to Deputy Prosecutor General, Department of Human Rights Protection of Prosecutor General’s Office and Investigation Department of the Ministry of Justice to examine the above mentioned facts.

In accordance with the answer, received from the Ministry of Justice, no notification had been received by the Investigation Department of the Ministry of Justice on the fact of damage of the health of the prisoner M. Somkhishvili, kept at Medical Establishment of Prisoners and Convicts.

In accordance with the information, received from Prosecutor’s Office, on October 20, 2006 preliminary investigation was started on the case # 74068391 in the Investigation Unit of the Prosecutor General’s Office by the signs, provided for by sub-paragraph “b” p.3 of the Article 333 of the Criminal Code of Georgia – in connection with beating of the convict Mikheil Somkhishvili.

On October 25, 2006 forensic expertise was appointed and performed for the purpose of determination of the level and time of injuries existing on M. Somkhishvili’s body.

The answer states that the preliminary investigation of the case is in progress.

With the purpose of prevention of crimes in penitentiary system the Ministry of Justice and Prosecutor General’s Office must ensure that none of cases will remain uninvestigated and none of the guilty persons - unpunished.

## **Monitoring of the Facilities of Administrative Detainment under the Ministry of Defense (Guardhouse)**

From second half of the year 2006, Monitoring Group of Public Defender’s Office started extensive monitoring of the guardhouses under the system of Ministry of Defense.

In the system of the Ministry of Defense operate 6 guardhouses – guardhouse of Tbilisi-Mtskheta-Mtianeti Regional Department (Tbilisi); guardhouse of Kakheti – Kvemo Kartli Regional Department (Vaziani), guardhouse located in Samegrelo-Zemo-Svaneti Regional Police Department (Senaki), guardhouse of Ajara Regional Department (Batumi), Samtskhe-Javakheti Regional Department (Akhaltsikhe) and guardhouse of Shida Kartli Regional Department of Military Police.

During the year 2006, 6 visits to the guardhouses were carried out and during the period from January to May 2007 – the 21 visits. The purpose of monitoring was determination of the situation in the guardhouses, with respect to protection of the rights of the detained and compliance of the conditions in the places of detainment with international standards. The monitoring revealed similar problems – cells, requiring repair, broken windows and dampness. Heating and ventilation systems did not function; there were no water closets and showers in the cells. In some places these facilities were located in the yards and in some of them - at the corridors of the buildings; for instance, in the guardhouse of Ajara Regional Department there was no water closet and the detainees were taken to the building of Military Police; because of absence of the shower-rooms, the inmates have been taken to the division located in village Adilia, Khelvachauri District. Generally the boards were given to the prisoners placed in the guardhouses by evenings and taken away or folded in daytime. The cells were lighted by the bulbs installed over the cell doors in the corridor, what was not adequate in order to provide the proper lighting.

In guardhouses 4<sup>th</sup> of 6<sup>th</sup> the conditions were so bad that being there could be qualified as equal to torture, inhuman and degrading treatment.

In two guardhouses located in Senaki and Vaziani the situation is satisfactory and generally complies with the international standards.

With respect to violations revealed as a result of visits carried out in 2006-2007, Public Defender submitted recommendations to the Minister of Defense in order to improve inhuman and degrading conditions in the guardhouses. According to the letters of the Military Police Department, the recommendations of Public Defender would be taken into consideration.

Upon publication of the monitoring results the Ministry of Defense stated that it would take into consideration the recommendations of Public Defender, though, from January 2007, the possibility to conduct repeated monitoring has been refused to representatives of Public Defender's Office and, in this way, the requirements of Organic Law of Georgia "on Public Defender" have been infringed upon. In order to restore the lawful right of inspection of the guardhouses, Public Defender addressed the Chairman of the Parliament of Georgia and the Prime Minister. After this the opportunity to inspect the situation in the above system was given to the monitoring group, though, carrying out monitoring without any impediment is still a problem.

## Monitoring of Children's Rights

The issues associated with the children's rights are the most acute ones among the work performed by the Public Defender; in particular - the problem of securing of welfare of children in the state institutions.

The main features of the actions of various governmental and non-governmental organizations are the poor coordination, ineffective use of the resources and short term or fragmented activities.

Though, at the legislative level, there is some progress obvious (Law on the Secondary Education, commenced process of de-institutionalization), the systemic approach to this problem is not developed and its complex solution is not provided. Therefore, simultaneously with the de-institutionalization, there are many cases of unbearable living conditions and unacceptable pedagogical practices in the children's houses.

Public Defender's Office provides regular monitoring of the children's houses. In order to provide the timely responses and maximal safeguards for the children, the revealing of the cases of inhuman treatment and violence over the children has been set as an object to monitoring.

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Up to September 2004, in Tbilisi operated the structure subordinated to the Ministry of Internal Affairs – Center for Acceptance, Prevention and Further Orientation for the Juveniles, in which, several years ago, numerous facts of violence were recorded. After our intervention this institution terminated its activities and with joint efforts of the Public Defender's Office and City Administration “Center for Social Adaptation of Children” was established.

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There is still serious situation in the regions, where the level of social and economic development is much lower. In Akhlagori Children's House one of the teachers could not understand, why the children should not be beaten; two police inspectors punished the children physically – they took the children to the police division, with the alleged accusation of theft and beat them with the polyethylene bottle. The management of Children's House, instead of claiming against the actions of the policemen, said to the representatives of our Office that some children deserve not only mere beating, but even shooting down (!). Finally, actions were initiated against both policemen, though the management of Children's house did not do anything for this.

Currently our Office works on the recommendation to introduce legal responsibility for unprofessional approach to the children in the educational institutions.

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On 17<sup>th</sup> and 18<sup>th</sup> of January the representatives of the Children's Rights Centre of the Public Defender's Office visited Tbilisi Children's Sanatorium Gazapkhuli, for planned monitoring. As a result of two-day- monitoring the following problems were identified: the building of the Sanatorium requires capital repair, the living conditions of children are extremely heavy; all sanitary facilities of the building are in poor condition; the sinks and pans are broken and out of operation, there is no hot water and heating. The furniture is old and broke, the bedrooms are poorly equipped - the beds are old, the bedding – of low quality; children have no toys and books.

The Public Defender submitted the recommendation to the Ministry of Education and Science in order to study situation in Sanatorium Gazapkhuli and take relevant measures.

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In the institutions for the socially vulnerable disabled children, the situation is even heavier. Failure to resolve some problems, some times, leads even to the cruelty. Tbilisi Republic Boarding-School for the Sightless Children has no heating system. The hand-rails of the stairs, on which the children rely, are metallic and the metal is frozen in winter. The sightless children have very sensitive hands, more sensitive than common people and therefore in winter, living in the Board-School is equal to torture.

The fact of humiliating treatment towards the juvenile was recorded in Tbilisi public school No: 194. Citizen A. E. applied to the Office of Public Defender. The applicant stated that Nino Kipiani, the Director and Ioseb Gogoladze, the priest forced her 12 years-old daughter to cut her hair.

Director of the school stated that the internal regulations of the school are based on the rules of bringing up of the students in accordance with Christian values, what imply that the student's behavior and appearance should not undermine the reputation of the gymnasium and in addition, as a result of sanitary inspection carried out on November 28<sup>th</sup>, 2006, the fact of existence of pediculosis of number of children was revealed, including her daughter D. B. Though, it should be admitted that no one demanded to cut their hair from any other girls. Psychological pressure over D. B. was executed - they did not permit her to attend lessons, forced her to stay in the library or teacher's room.

The Public Defender assessed this case as the humiliating treatment with the juvenile, what is violation of both, the Constitution of Georgia and UN Convention



on Children's Rights. In addition, the school with the status of public school shall not have any regulations directed to restriction of personal freedom of the students and are discriminative towards individual children.

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The Public Defender has admitted many times that for care of children the terms are of critical significance and their inaccurate setting yields the irreversible results.

Centre of Protection of Children's Rights received the information about M. M., whose both parents deceased. M. M. lives with his elder brother, who has tuberculosis. He is in bed, in the heaviest condition. Representatives of the Public Defender's Office visited this family and examined the life conditions of the child. There are no elementary living conditions at home, the glasses in the windows were broken, water tap was out of operation, and there was no heater. The child did not attend schools for years and has no person to take care of him. He has no birth certificate.

Currently the child still lives in the unbearable condition, without any guardian. All relevant structures are informed about his situation, though because of absence of exact terms and response mechanisms in the law the process is delayed.

On July 12, the representative of the NGO "Information and Documentary Centre of Human Rights" G. Kokrashvili applied to the Public Defender' according to the applicant's explanation, under-aged V.T. suffer from torture from the side of the parents.

There were multiple injuries on the child's body, wounds were found on the head. As we learnt from his friend, these injuries were made by his parents and the members of the street company. V.T. is a homeless child, whose placement in the institution was necessary with the purpose of ensuring of his safety.

On July 21 V.T. was brought by the police into the Centre of Social Adaptation. It' was necessary to take him to Samtredia, because there was a risk that he would leave the centre again. As no responsible authorities were found for ensuring it, the child was taken to Samtredia by the members of the Public Defender's Office.

In regard to the case of V.T.the NGO "Information and Documentary Centre of Human Rights" applied to the Ministry of Education and Science as early as on February 27, asking for response. But No response was made by the Ministry to the application during 4 months. During this time the under-aged again became the victim of torture for several times.

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During the monitoring of Childrens' Homes and Pensions the representatives of Public Defender saw, in the Centre of Social Adaptation, the mother of minor, aged 16 - D.Z., - after the placemen of D.Z. in Tbilisi Psychiatric Hospital the child remained without mother's care, which was the basis for his/her placement into the Centre. The child refused to return home after the mother's release from the hospital, explaining that he/she was afraid of the mother, as she beat and treated him/her cruelly. With the purpose of study of the case the representatives of the Public Defender's Office talked with M.Z.'s neighbors, who confirmed the child's words.

Despite of this circumstance, after living in the Centre for a month, M.Z. took his/her decision to return home. And it put his/her development and health under the risk. As the situation required the interference of the social worker, the case was sent to the Ministry of Education for Response.

The study of the case from the side of the Ministry of Education required a lot of time, though finally M.Z. was placed in Martkopi Children's Home, where, as we learned on the basis of information, provided by the Ministry of Education, he/she feels far better and the process of rehabilitation proceed successfully.

The issue of capability of the mother – D.Z. or the issue of her deprivation of mother's rights – wasn't arisen by the relevant authorities, which means that the matter of well-being of the child again depends on D.Z.'s good will.

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The Centre of Children's Rights of Public Defender's Office learned from mass media about the incident, which took place in Akhaltsikhe #3 Public school, where the teacher physically abused the pupil of the 7<sup>th</sup> form E.E. In connection with the above mentioned the Director of the School explained that the teacher of history actually beat E.E. The fact of beating of the pupil by the teacher was submitted to the Committee of Trustees of the School, which took the decision, prohibiting to the guilty teacher to conduct lessons in E.E.'s form. The teacher received severe reprimand and was deprived of one month salary, though E.E.'s parents demand to release the teacher from the position. The mentioned case was sent to the General Inspection of the Ministry of Education and Science for response, which informed us that the investigation of the case has begun.

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The resident of the village Akhalsopeli of Kvareli region, N.L., aged 15, applied to the Centre of Children's Rights of Public Defender's Office. The minor states several facts in her application, when she was abused by the father, R.L., in particular: on

April 29, 2007 as N.L. recall, father shouted at her because she went out into the yard and beat her severely – twice hit her head with his fist and hit her back with iron poker. In general, there is a tense situation in the family; conflicts are frequently provoked from the father's side. N.L. has the brother of 17 G. and the sister of 10 M.; also N., aged 15 tells in her explanation, that she was awoken about a week ago (she can't specify the exact date) at night, because she felt somebody touching her intimate places and saw that it was her father. The child tries to resist and began to shout to awake her sister and brother. R.L. left the room after M. aged 10 awoke. Though, at the same night, he tried to do the same, but this time the elder brother awoke.

Public Defender's Office, with the purpose of providing alternative expertise to N.L., applied to the NGO "Empathy" where the signs of light concussion of brain were revealed in the child in the result of neuropathologist's examination.

The Public Defender sent the case to the General Prosecutor's Office of Georgia and the Ministry of Education and Science for response.

At present the children live with their grandmother. Social service began activities with the purpose of placement of the children with foster parents. Criminal suit was initiated on the above mentioned case according to the Article 126, point "d" of the Criminal Code.

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On May 29, 2006 the Centre of Children's Rights of Public Defender's Office received the letter of the General Director of the "Centre of Social Adaptation of Children", Ketevan Kobaladze, where she asked to study the case of Kh., aged 8. On May 25 this year the child became the victim of sexual abuse from the side of her step-father.

The representative of the Centre of Children's Rights of Public Defender together with the representatives of Didube-Chugureti Educational Resource Centre of the Ministry of Education and Science studied the case on the place and drew up a protocol.

At present investigation is conducted on the mentioned case, and the child's stepfather is arrested.

The Centre of Children's Rights of Public Defender applied to Didube-Chugureti Educational Resource Centre of the Ministry of Education and Science with the recommendation to facilitate the issue of the birth certificate to Kh.T. and provision of medical and psychological care to her.

## **Situation at Psychiatric Hospitals**

In the second half of the year 2005 Public Defender commenced monitoring of human rights at psychiatric establishments. The necessity of implementation of the monitoring was conditioned by the unbearable living conditions, inhuman relations towards patients, lack of transparency and deficit of attention from the side of society, existing at psychiatric establishments.

The Monitoring Council of psychiatric institutions was established in 2005 on the initiative of Public Defender on the basis of Memorandum, signed with the Ministry of Labor, Health and Social Defense of Georgia.

The establishment of the Council of Social Monitoring was very timely and significant step by that time, as the condition existing at psychiatric establishments, required fundamental study and urgent response. The Council was comprised of the representatives of organizations like: Global Initiative in Psychiatrics – Tbilisi, Georgian Association of Mental Health, Human Rights Informational and Documentary Centre, and the Centre of Psycho-Social and Medical Rehabilitation of the Torture Victims.

Up to date, The Monitoring Council performed monitoring in all Psychiatric establishments, studied in details and recorded situation existing in psychiatric hospitals in regard to human rights and developed the relevant recommendations.

The picture, obtained in the result of monitoring, performed in psychiatric hospitals in 2005 was more or less similar. The buildings needed repairs; bathrooms and toilets were offensive for patients as well as for the staff. Patients were systematically deprived of possibility to take shower and didn't have elementary hygienic means. Overcrowded sections, low-grade and insufficient food, bedclothes, which was seldom changed, absence of laundries, problem with heating, instability of water supply, absence of elementary conditions for patients' security and insufficient number and qualification of care-takers kept patients with mental disorders in inhuman and degrading conditions.

In the result of inspection, provided during the same year, violation of in-patients' rights was stated. Patients, including those who didn't need treatment, were kept at hospital during years. The only way of treatment was pharmacotherapy. For placement of patients relatives paid certain sum. Cases were revealed when, due to payment of the sum, old-aged patients were placed, allegedly for the reason of medication, whom their relatives got rid of. The members of the staff considered that the patient wasn't to be discharged from the hospital until somebody came for them. Long-term isolation of patients resulted into the loss of their social and working skills.

Patients weren't informed about their disease/ diagnosis, treatment and rights. There was no mechanism for placing complaints.

Patients often carried out activities related to the cleaning of wards, carrying loads, taking care of disabled patient, cleaning of toilets, without getting any compensation. Even in 2007, in the process of monitoring, majority of patients stated that in spite of the

circumstance that forced labor wasn't used as the form of punishment, they were often forced to work. It's important that the administration must apply strict control over the application of patients' labor and methods of physical restriction from the side of medical personnel and apply the above mentioned only with adherence to procedures.

Rendering of specialized medical non-psychiatric care was carried out on the basis of personal contacts of the administration.

Contact with the outside world was extremely restricted. Patients didn't have possibility to use a telephone, mail, TV and printed media.

The questioned patients complained about facts of frequent implementation of the methods of beating, punishment with painful injections, verbal insult, isolation and physical restriction.

The monitoring made it obvious that the existing law concerning psychiatric care didn't correspond to the modern standards established in psychiatrics and couldn't ensure the protection of rights of patients with mental disorders kept at hospitals.

In 2006, in the result of great efforts made by Public Defender the situation improved significantly. Recommendation made by Public Defender related to the living conditions existing at psychiatric hospitals was taken into account and gas supply to A. Zurabishvili Tbilisi Psychiatric Hospital was restored.

In 2006 rehabilitation of patients' wards and repairs of heating systems was started. Food and medicaments' supply was improved. Patients were given possibility to use bathrooms relatively systematically. Replacement of equipment started. Though, hold-up of patients at establishments without any grounds still represents a problem.

After publication of the results of monitoring by Public Defender, development of the new law "Concerning Psychiatric Care" began, which was adopted by the Parliament by the end of 2006 and entered into force on January 1, 2007. All rights of patients with mental disorders, stated in international acts, were reflected in the new law. It's in conformity with standards, established in present-day psychiatrics.

After monitoring, performed by Public Defender, budget allocations for Psychiatric establishments increased by 30%.

On the background of these positive changes monitoring continued, as patients' rights in establishments were still violated.

It turned out that media was not ready for protection of rights of patients' with mental disorders either. Incorrect articles appeared in printed media, which contributed to deepening of stigma towards such patients.

In 2007 in some hospitals (e.g. establishments existing in Batumi and Kutiri) the situation has cardinally changed.

Repair works were provided in wards. Cleanliness is kept in establishments, rooms and corridors have proper lightening.

Problem of heating has been regulated. Bedclothes have been systematically charged, but the majority of patients still have a problem with clothes and the establishments don't provide them with standard package of clothes.

Hygienic means are available and patients have possibility to take a bath systematically. There are four meals a day and the questioned patients are satisfied with the quality and quantity of food.

At the same time, in the result of monitoring, establishments have been revealed, where there is still stagnation in regard to improvement of living conditions. Implementation of monitoring and publication of outcomes through media resulted in interest of society and administrators of psychiatric establishments in respect of protection of patients' rights.

By NGOs represented in the Monitoring Council a number of trainings, serving for awareness of administrations and personnel of hospitals about the right of patients with mental disorders were planned and conducted with the participation of Public Defender's Office of Georgia.

Violation of patients rights, according to the situation existing in 2007 can be divided into several categories, in particular:

#### Contact with the outside world

The patients have the possibility to receive the visitors. But majority of the questioned patients state, that they aren't given possibility to take their vacation.

The patients can't send and receive letters, as they haven't the necessary means. Some of them consider that a letter sent by them will not be received by the addressee.

The patients have no possibility to use telephone, as in wards no telephones are installed for them.

#### Medical service

Due to the lack of financing provision of patients with non-psychiatric medical care still represents a problem. It causes worsening of the state of their health. The monitoring has revealed the case, when the patient was waiting for surgeon's consultation on heavy leg trauma during months in vain.

### Cruel and inhuman treatment

The questioned patients state that medicaments are being used for the purpose of punishment as well.

Part of the questioned patients' state that there were facts of beating, threat and shouting from the side of personnel.

Patients often get aggression when they refuse to take medicines.

### Awareness about rights

The majority of the questioned patients have no information concerning their own disease and diagnosis, don't know how long they must stay at the establishment and aren't aware of their rights. Still, in some establishments information related to the patients' rights is published.

### Prohibition of discrimination

Discrimination of patients still occurs in psychiatric establishments. Medical personnel have "assistants" among patients, who enjoy various privileges.

### The right of placing a complaint

The mechanism of internal complaints doesn't function. Boxes for complaints are installed in only one establishment, where, as per administration's statement, "2-3 letters were found during the year and they were absurd".

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In spite of the increase of funding of psychiatric establishments, financing is still insufficient, which results into impossibility of putting the infrastructure in proper order at full extent, repairs of the wards and recruitment of highly qualified staff. Results of the monitoring prove that medication at psychiatric hospitals don't help the majority of patients to return to the community and normally adapt with the usual living rhythm.

Monitoring performed on the initiative of Public Defender in psychiatric establishments was the first case of social control over the above mentioned institutions in Georgia. A number of conferences were dedicated to this topic. Such activities have increased

liberality of the society towards the above mentioned topics. Positive changes are obvious, but a lot of work is to be done for obtaining of the desired final results.

## **Monitoring of the Homes for the Elderly**

In May 2007 Public Defender's Office of Georgia conducted the monitoring of almost all the Homes for the Elderly throughout the Georgia with the purpose of study of the situation in regard to observance of their human rights. Among the establishments were: Tbilisi House for the elderly, A Home for elderly "Beteli", A home for the elderly "Katarzisi", A home for disabled in Dzevri, A home for the elderly in Dzegvi, Kutaisi Home for Elderly and The Home for the elderly "Satnoeba".

The purpose of monitoring was to study the cases of violation of human rights at the home of elderly, to collect information related to their living, security, medical service, care, rehabilitation and proper treatment conditions, to analyze of the collected information and develop relevant recommendations.

The monitoring has revealed contrasting picture of living, boarding and other conditions existing among various establishments for old-aged people.

Judging on the basis of general picture, with the exception of two establishments existing in Tbilisi, living conditions don't comply with minimum standards. Toilets and bathrooms are out of order. The dwellers are not provided with hygienic means. Heating systems and electric wiring don't meet safety requirements. Equipment is old and insufficient. Almost all establishments require repairs.

Conditions of looking after the dwellers aren't satisfactory, often there is insufficient staff. Dwellers don't receive enough attention. Most of them can't afford medical service and consultations of doctors of various specialties. Medicaments' supply is insufficient.

The right of receiving information is not implemented. The dwellers aren't familiar with internal regulations, only part can use TV and telephone. Majority of the questioned people don't know what the funds allocated by the state for them are spent for. The mechanism of internal complaints doesn't function.

The dwellers have to work for the needs of the establishments without any earned compensation.

Monitoring, conducted at homes of elderly revealed that the system existing for old-aged people in Georgia can't ensure the support of participation of old-aged people in families, society and in the process of economic development, doesn't facilitate their involvement in decision-making process. Olde-aged people aren't given opportunity to continue income-oriented activities while they have its desire and productivity.



The number of establishments existing for homes of elderly is insufficient, as there are far more homeless, lonely and poor old-aged people than resources for their care, nourishment, primary medical care and rehabilitation.

Such establishments often isolate old-aged people from the society and deprive them of their social and economic roles.

Conditions existing at homes of elderly differ. Uniform approach towards such establishments with the purpose of introduction of general standards doesn't function.

With the purpose of improvement of the existing situation Public Defender has developed the relevant recommendations, which were sent to the Ministry of Labor, Health and Social Defense of Georgia, the relevant committees of the Parliament and Directors of the establishments.

### **Investigation conducted by the Prosecutor's Office on alleged facts of beating and torture**

Public Defender sees to the manner of investigation of cases, which are sent to the investigation authorities on the facts of injuries caused in the cells of temporary confinement and penitentiary system with the demand of response. On the basis of materials supplied by the Prosecutor's office and Ministry of Internal Affairs authorities several trends can be traced, following to which we can judge about the attitude of investigation bodies towards the facts of beating, torture, degrading or inhuman treatment. In some case the Prosecutor's Office treat the facts of beating of the arrested without due attention. Investigation is formal and often ends with abatement of the case due to non-existence of the signs of crime in policemen's actions. In most cases, on cases related to beating, studied by Public Defender, comprehensive and unbiased investigation wasn't conducted, which means conducting of all required investigation action with the purpose of establishing the issue. Often forensic expertise isn't held for the establishing of the nature and level of seriousness of injuries. And if such expertise is held, illogical and improbable versions are invented by investigating bodies in order to explain the reason of injury on the prisoner's body. Invalidation of probable crime committed by the policemen is made by the statement of the policemen themselves. As a rule, the arrested people change their evidences in the favour of policemen, which proves his/her defenselessness and great pressure from the side of police. Prosecutor's Office covers and condones the illegal actions committed by the policemen. Policemen's lack of professionalism reveals also in their action, which is not directed towards the prevention of crime, but aggravation of crime of the alleged criminal. Public Defender studied several such cases:

1) Following to the united operation, conducted by the officers of the Department of Internal Affairs of Tbilisi, as well as special troops and officers of Vake-Saburtalo Department of Internal Affairs Gela Toritadze, suspected in robbery was arrested, who was visited in the cell of temporary confinement by the monitoring group of the Public Defender's Office, which stated injuries existing on his body, following to which Tbilisi Vake-Saburtalo regional Prosecutor's Office initiated preliminary investigation on the fact of exceeding official authorities – crime, stipulated by part I of the Article 333 of the Criminal Code of Georgia (**Exceeding of Official Duties**).

On the basis of information, supplied by the Prosecutor's Office we learnt, that the investigation, conducted on the fact of exceeding of official duties had established, that the arrested Gela Toritadze, on the basis of external examination, had hyperemia of the rights cheek-bone, hyperemia and excoriation of skin on the right jaw, multiple scratches and excoriations on the surfaces of the both shanks. As per explanations provided by Gela Toritadze, the mentioned injuries were caused at the process of arrest.

Gela Toritadze, questioned as a witness on criminal case, gave evidence that in the jail #2 of temporary confinement he was visited by the representative of the Monitoring Group of the Public Defender's Office, to whom, in the process of interview, he told that the injuries were caused in Vake-Saburtalo Department by Baksadze. In reality, he got injuries when he was entering Vake-Saburtalo Department of Internal Affairs, when the door accidentally hit his face, and as he was very agitated he considered that it was done by the policemen purposefully, but now he understands that it was an accident and neither in the process of arrest, not afterwards any verbal or physical abuse was caused to him, for the scratches, stated on bringing to the cell, he explained that these injuries were the result of scratching and has no pretension.

Inspector of the Division of Criminal Cases of Tbilisi Vake-Saburtalo Department of Internal Affairs K. Tkeshelashvili was also questioned; he explained that he participated in the arrest of G. Toritadze, suspected in robbery and there was no fact of resistance from Toritadze's side or physical abuse from the side of Policemen; it was confirmed by the evidences of the officers of Tbilisi Division of Internal Affairs N. Gvimradze, M. Rukhadze and D. Bichinashvili. On the basis of the above mentioned circumstances the preliminary investigation of that case was abated.

Investigation considered this illogical statement made by G. Toritadze as plausible without any hesitation. For the establishment of the cause of injury – whether it was caused by accidental hitting onto the door or scratching – it's necessary to provide medico-legal expertise, which wasn't conducted by the investigation.

G. Toritadze himself didn't state any pretension towards the policemen, though injuries and traces of violence were obvious on his body, or the arrested states that he suffered physical and psychical pressing from the side of the policemen; the probability that torture, threat of torture or degrading or inhuman treatment was implemented towards him is great. In connection to the above mentioned,

International Law on Human Rights demand from the states to systematically revise the rules, instructions, methods and practice of questioning, as well as arrest and treatment of persons, subject to any form of detainment, arrest of confinement, as effective measures for avoiding torture and degrading treatment.

In accordance with the guidelines for investigation of the cases of torture or other degrading treatment, even of investigation doesn't support the claim made in regard to the torture or degrading treatment, it's necessary to conduct the investigation properly, and the society must get the relevant information. The documented written decision must be made in regard to the claim, where, alongside with proofs, the final decision will be provided. In accordance with the mentioned guidelines, all incidents will be investigated as the cases of potential crime of torture or degrading treatment, until the contrary is proved; structure must be planned and approved for ensuring, that proper response has been made on the received information and that immediate investigation has been conducted for urgent and accurate determination of the facts, etc.

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Often, the Prosecutor's Office doesn't initiate investigation on the basis of the monitoring reports, sent by the Public Defender's Office, where the confined persons state the facts of physical or psychical pressure from the side of police officers of the member of staff or penitentiary establishments. On receipt of the monitoring reports, investigator or prosecutor meets with the detainee (accused), interviews him and compiles record, where the person brought under criminal responsibility denies the illegal fact committed against him.

It should be taken into account that the criminal procedural legislation doesn't provide for verbal questioning – “interviewing” as procedural action. Thus, it can happen that persons under persons brought under criminal responsibility deny the facts of torture and degrading treatment against them from the side of law enforcement agencies in exchange for procedural agreement. Following to it, effective and unbiased investigation of the fact of torture and degrading treatment, provided by Georgian legislation as well as International documents ratified by Georgia (International Treaty on Civil and Political Rights, European Convention against torture and other cruel, inhuman or degrading treatment) is under the treat. For example:

On September 6, 2006, Director of the Prison #1 of the Penitentiary Department of the Ministry of Justice Levan Maruashvili, together with several persons, entered one of the cells, where the prisoners Michail Kereselidze, Otar Baboev, Tamaz Shaveshov and Guram Vashakidze were held. Levan Maruashvili introduced himself as the new Director of the establishment, demanded mobile telephones from the prisoners and threatened that otherwise he would “place” with them various illegal items and add the punishment. When, on searching, no illegal items

were found, the officers took the prisoners separately and physically abused them. In the result of external examination the prisoners had injuries on their backs and legs. The representatives of Public Defender took their explanations and made records, which were sent to the Deputy Prosecutor General, George Latsabidze, Head of Investigation Department of the Ministry of Justice of Georgia Pavle Kovziridze and the Department of Human Rights of the Prosecutor General's Office of Georgia.

Afterwards the officers of the Department of Human Rights of the Prosecutor General's Office A. Nadareishvili and Z. Begiashvili met with the prisoner's at the cabinet of the Director of the prison. The meeting was attended by the Director of the Prison Levan Maruashvili and Deputy Director, whose presence was perceived as the means of pressure against the prisoners and interfered with the effective investigation of alleged facts of torture and other cruel, inhuman and degrading treatment (in this connection Public Defender sent a letter to the Prosecutor General's Office). This fact was discovered accidentally by the members of the Monitoring Group of the Public Defender's Office. On the question, what kind of procedural action was conducted and why the representatives of administration attended that action, the officers of the Prosecutor's Office answered that none of official procedural actions were taken and they simply "talked" with the prisoners about the fact, occurred on September 6.

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The main levers of defense of human rights for the Public Defender are Parliamentary reports and proposals and recommendations to the State authorities. But in some cases, when there is no support from the Government, it's very difficult to restore the violated human rights. In particular, if the case touches systematic violation of human rights, which is the part of the public policy, or specific cases of human rights by high officials, it's very difficult to obtain the relevant response.

For example, this year the Public Defender's Office investigated the fact related to the Head of Special Operative Department Irakli Kodua. The matter is as follows: on February 18, 2007, 3 a.m. a young man called on the mobile phone of Irakli Kodua's friend (female), Head of NATO Informational Centre Nanuka Zhorzholiani. This fact made Irakli Kodua so angry that the same day, in the morning, the owner of the telephone Gocha Khorguani and two young men, sitting in the microbus – brothers Mildiani, who, for some reason, were taken by policemen for Khorguani's friends – were arrested.

For the purpose of creation of legal basis for this arrest, police has made a false document after arrest, stating that allegedly there existed "well-organized criminal group" consisting of those three persons. After arrest was documented as if they had a large amount of narcotic substances and 3 grenades and allegedly they resisted

to police in the process of arrest. We have questioned 6 persons – witnesses of the arrest – the driver of the microbus and 5 passengers, and all of them confirmed that in the moment of searching the arrested persons had neither any narcotic substances nor weapon and they didn't resist to police. After arrest narcotics were injected to those three persons.

When the police found out that brothers Mildiani were arrested accidentally, they were released in two days, though the false documents couldn't be changed and it was decided that both of them used drugs, resisted to the police and carry drugs, and one of them had a grenade. Accordingly, sanction for the crime of one brother provided for 17 years, the other – 25 years of confinement. Despite of it, they were released from the court hall with minimum punishment – 5 years conditional imprisonment.

The third person – the owner of the telephone – was released only after 2 months with the same punishment, and only after they ascertained that the call was made from his telephone but by another person. Everything is documented by us, but there is little hope that the investigation confirms the same.

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The analogous situation was in regard to the widely known fact of murder of Sandro Girgvliani, aged 27, illegally arrested by high police officials in January 2006, Girgvliani, together with his friend, was taken uptown, to the cemetery, where they were naked, tortured and treated degradingly. Girgvliani escaped from the torturers, but couldn't come out of the forest and died. The Ministry of the Interior tried to hide this fact, but the truth revealed in the result of journalistic investigation. In the result of public pressure the Ministry of the Interior was forced to arrest the immediate executors of the murder.

Public Defender's Office systematically kept up with preliminary investigation and consideration of the case by the court. According to the legislation of Georgia, Public Defender has no right to interfere with the preliminary or legal investigation, though he can estimate the legality and fairness of these processes.

Public Defender considers that the investigation towards the accused – G. Alania, A. Aptsiauri, A. Ghachava and M. Bibiluridze was to be conducted according to the Article 144<sup>1</sup> of the Criminal Code (torture). The action provided for by the mentioned article is absolutely identical with the crime committed by them. In particular, the definition of torture is provided by the Criminal Code as follows:

“Torture, i.e. creation of such conditions or such treatment towards the persons, his/her relative or materially or otherwise dependent persons, which by its nature, intenseness or duration causes physical pain or mental or moral suffer and the purpose of which is to obtain information, proof or confession, frightening of the

person or forcing him/her or action allegedly committed by him/or her or the third person.

In this particular case we had the following facts: treatment towards the person, which by its nature caused strong physical pain and psychical suffering and the purpose of which was the frightening and punishment of the person for action committed by him (in the case of Sandro Girgvliani) or by the third person (in the case of Levan Bukhaidze). It should also be mentioned that this action was committed by the officers (employees of the Ministry of Internal Affairs), with the implementation of official duties (M. Bibiluridze had a weapon and in the case of necessity they were ready to “arrest” actually arrested persons) towards two persons, in group. Consequently, their crime must be qualified according to part 2 of the Article 144 prime.

Unfortunately, the investigating authority didn’t conduct investigation in this direction and they were accused of other, less serious crime, and were adjudged guilty later.

Immediate chiefs of the accused – persons towards whom the suspicion existed that they ordered this crime, still remained on their positions. After recommendations and statements made by the Public Defender these persons – Head of Informational Department of the Ministry of the Interior Guram Donadze, Head of Department of Constitutional Defense Data Akhalaia and Head of General Inspection Vasil Sanodze were released from their offices.

In spite of the above mentioned, certain results are achieved towards high officials. E.g. in 2005 Shida Kartli Regional Prosecutor D. Tsituri was released from his office and Gori Regional Prosecutor A. Babajanashvili was arrested and sentenced to 5 years of imprisonment for the facts of torture discovered by Public Defender.

Due to the statistical information received from the Prosecutor General’s Office:

Type of Crime	2007 (5 months)		2006		2005	
	Registered	solved	Registered	solved	Registered	solved
Torture	5	1	13	2	12	1
Threaten of Torture	0	0	2	1	0	0
Inhuman and Degrading Treatment	8	4	8	2	0	0

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The issue of adjudging guilty of particular persons in the process of preliminary action is quite problematic. In Prosecutor's Office and investigation authorities improper definition of the Article 68 (Adjudging guilty) of the Criminal Procedural Code and its distorted implementation in practice often takes place. In particular, at the very beginning of preliminary action on the fact, investigation bodies don't adjudge proper persons as victims or assignee of the victim with the motive that the criminal nature of the action hasn't been established, first investigative actions must be provided, on the basis of which it will be established whether the crime was committed or not, and only after that the person will be adjudges as the victim or the assignee of the victim. Such approach of investigating body towards the issue is incorrect. According to the part one of the Article 68 of the Criminal Procedural Code, "victim – is the state, natural or legal person, to whom moral, physical or property-related injury was caused in the result of crime or illegal action committed by incapable person, or such injury was caused by the person, who became mentally diseased after committing the crime". Also, according to the part two of the same Article, "In the case of the crime, which involved the victim's death, the rights of the victim will be assigned to one of the close relatives of the victim". Following to the mentioned regulation, as soon as investigation begins on the case (committed fact, supposedly – criminal action), the proper persons must be automatically adjudged as victims or victim's assignees. The mentioned problem mostly emerges in the process of investigations, initiated on the facts of death of the suspected or accused in the process of special operations provided by the Ministry of Internal Affairs, physical abuse of arrested persons, suicide committed by prisoners in penitentiary establishments. As the relevant persons aren't being adjudged as victims or assignees of victims by the investigating body, they aren't give opportunity to enjoy the rights, provided by the Article 69 of the Criminal Procedural Code in the process of investigation (rights of the victim and victim's assignee), which, following to the Article 18 of the Criminal Procedural Code (investigation of the case must be comprehensive, unbiased and complete) results into bringing the objectivity of the investigation under challenge. In the case of investigation of such facts, investigating body must be interested themselves that the authorized persons give to the investigation the questions related to suspicious circumstances of the particular case, and, in the result of the relevant investigative actions, get adequate answers on them; it will finally remove the distrust from investigation. At the same time, if in the process of investigation it proves that there is no basis for adjudging a person as victim, in accordance with the part 8 of the Article 68 of the Criminal Procedural Code, the authority, conducting the case will carry out the decision (resolution), which will annul the decision (resolution) adjudging the person as victim or victim's assignee. Following to the above mentioned, the issue of adjudging person as victim or victim's assignee mustn't be problematic from the side of investigating bodies.

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The Report clearly displays that despite the general prohibition, facts of torture and inhuman and degrading treatment still occur in Georgia, in particular in the closed type institutions.

Whereas Georgia is on the path of democratic development, striving for integration into European space, it points to human rights as a priority; more attention must be paid to the above mentioned issues. It should be noted that certain steps have been made by the State for the prevention of torture, but still, the occurred facts of torture are often investigated inadequately or ineffectively, and it creates serious problem of impunity in the country.

The State must ensure the fulfillment of obligations in the framework of international agreements at full.

Fight for prevention of torture, inhuman and degrading treatment or punishment is the issue, for which the whole society must join hands.