PUBLIC DEFENDER OF GEORGIA

SUMMARY OF PUBLIC DEFENDER'S ANNUAL REPORT 2012

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THE PUBLIC DEFENDER
OF GEORGIA

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Introduction

Present short version of the Report of Public Defender of Georgia, reflects the situation with respect of protection of Human Rights and Freedoms in Georgia, for year 2012..

The Report covers a wide range of Human Rights and Freedoms and provides an overview of the situation with respect of protection of civil-political, economic, social and cultural rights in Georgia. The Report provides a discussion of the general trends with respect of Human Rights in the country and specific facts of violation of Human Rights and Freedoms.

Year 2012 was one of the most important years in the history of Georgia. For the first time, after gaining independence, the power has been transferred in a non-violent way, through elections.

After the elections, significant improvements were achieved in many spheres, with respect of Human Rights, though, at the same time, numerous areas with significant problems remained to be untackled..

The analysis of the studied cases and applications, regular monitoring performed by Public Defender's National Prevention Mechanism of Georgia reveals that the sphere of protection of the rights of individuals kept in the Penitentiary system still remains one of the key problems.

Monitoring conducted in summer 2012 identified a number of problems, including systematic nature of ill-treatment, as emphasized many times by the Public Defender's special prevention group in their past years' parliamentary and *ad hoc* reports. Unfortunately, The Georgian Government has not taken any proper and adequate measures for elimination of this problem; moreover, full negligence towards the identified systemic violations became a trend. As a result, there occurred what so frequently has been Stated in the reports of the Public Defender of Georgia – the syndrome of impunity – violation of the prisoners' rights, their physical and psychological suppression became a routine and systemic phenomenon.

This has been confirmed by so called "prison videos" released by media on 18th September 2012, depicting the facts of prisoners' torture, their humiliation and inhuman treatment. The world has been shocked by the facts of torture in Georgian prisons, causing indignation of Human Rights' protectors and representatives of civil society.

According to the forensic medical examination reports and information provided by the penitentiary health care system, in 2012, 67 prisoners died in the penitentiary system of Georgia, this is a quite high figure, especially bearing in mind the fact that the average age of the deceased

prisoners was 44 years. Most of them died before the events known as the "prison scandal". It should be noted that in 2011, 140 people died in the penitentiary system, in 2010, their number was 142. No impartial investigation of these facts has been conducted yet.

As a result of implementation of severe criminal policiy (so called "Zero Tolerance" practicy) for a number of years, in early 2012, Georgia was keeping the first place among European countries, by the highest number of prisoners per 100.000 people. The number of convicts decreased from 24.009 (March 2012), to 10.660 (March 2013). Almost all penitentiary institutions had the problem of overcrowding. Quality of medical services was beneath all criticism.

On December 28, 2012, Georgian Parliament adopted Georgian Law on Amnesty and on its basis several thousands of people left the penitentiary institutions.

We think that given the decrease of the prisoners' number, Georgian Ministry of Corrections, Probation and Legal Assistance will easily provide proper conditions for the prisoners and comply with the national and international standards. Hence, in this respect, such a wide-scale amnesty should be welcomed.

In addition, the need for making the criminal legislation more liberal and the abolition of cumulative sentencing principle should be emphasized once more. Otherwise, in few years, the number of the prisoners will again achieve the critical limit. Severe criminal policies should be replaced with a well-designed and planned resocialization and rehabilitation policies.

According to Georgian Law on Amnesty adopted on 28th December 2012 by the Parliament of Georgia, 190 people were recognized as political prisoners. Therefore there arose an issue of their further rehabilitation. Given that Georgian Parliament cannot overrule the court decisions, those convicted and prosecuted by a political sign have been just released from criminal responsibility and punishment and awarded with an opportunity to remedy their infringed rights through legal proceedings and fair trial. Thus, it should be clear what mechanisms for handling the political prisoners' cases, as well as the ways of resolving the issue of their further rehabilitation. are to be developed and set up.

The most important issue of the Reporting Period was amending the Georgian Organic Law on Political Associations of the Citizens made on 27th December 2011 resulting in imposition of stricter limitations related to funding of the parties. The Chamber of Control of Georgia (currently State Audit Service) was assigned with the function of supervision over the parties' finances.

On the basis of above mentioned amendments, the Chamber of Control has performed numerous politically motivated actions and this significantly restricted full enjoyment of the suffrage.

In 2012, numerous facts of violation of the rights of electoral subjects have been identified. In this respect, various violations that took place against the representatives of Coalition "Georgian Dream" should be mentioned.

Georgian Public Defender, within the framework of his mandate provided by Georgian Organic Law on Public Defender, initiated a review of all well-known criminal cases raising high public interest. Such cases include the cases of: Tengiz Gunava, Bachana Akhalaia, Giorgi Kalandadze, David Akhalaia and others.

It should be noted that currently the Georgian Public Defender has partially evaluated the mentioned cases with respect to violation of the procedural rights, though the scrutiny of cases is still ongoing at this stage and the public will be informed about results of their consideration at earliest convenience.

Public Defender of Georgia has studied the events having taken the place in August 2012 in Lopota Gorge, near village Lapankuri. According to the information provided by the confidential sources and family members of the killed individuals in the course of a special operation the signs of grave violations might have occured. Public Defender of Georgia applies to the Parliament of Georgia to establish a temporary investigation commission for the purpose of investigation of the mentioned facts.

Public Defender of Georgia is studying the events developed at local self-governments after parliamentary elections of 2012. A special report will be prepared on these developments but we think that the key trends having place in this period should be mentioned in the Parliamentary Report.

Cases studied by the Public Defender's Office showed that in the Reporting Period, the most acute problem was violation of Human Rights by the law enforcement. Public Defender has received numerous applications from the citizens complaining on improper treatment on behalf of police at a time of detention. Information about all such facts was sent to the Chief Prosecutor's office and investigation is in progress.

During the Reporting Period the trend of violation of presumption of innocence became evident.

The facts of pressure on the representatives of civil society were detected as well. The Society of Turkish Meskhetians of Georgia "Samshoblo" ("Vatan") [The Native Land] is actively striving for return of so called Turk Meskhetians to their homeland for many years and for this reason they have been persecuted by the State structures. In addition, according to the Statement made by Ismail Molidze, the rights of so called Turkish Meskhetians are violated in Georgia up to present.

In 2012, Freedom of Expression was one of the problematic issues and hence, similar to the previous years, it has been on the top of Public Defender's agenda.

In addition, year 2012 was distinguished by an unprecedented number of cases of violation of rights of the Mass Media. One of the reasons for this was a tense pre-elections period. In the Reporting Period, Georgian Public Defender has studied numerous cases of interference into the professional activities of the journalists.

The Report provides a wide discussion of issues of the right on fair trial. The analysis of the citizens' complaints and applications received by the Public Defender's Office for the Reporting Period and monitoring conducted by the Office staff show that there still are numerous problems related to judiciary. Criminal legal proceedings constitute the most problematic sphere. Many instances of application of the procedural actions (or punishment) show quite a few facts of violation of the property rights recognized and protected by the Constitution of Georgia.

After political changes, the number of citizens seeking for justice and remedying their infringed rights increased significantly. Over 18000 applications were lodged before the Chief Prosecutor's Office of Georgia since parliamentary elections. Over 9000 cases relate to the property right and deals with the dubious facts of "voluntary donation" to the State of private property by the citizens. The need of establishment of the special commission to review the court decisions and consider similar cases is on agenda.

In the Reporting Period a number of facts of violation of Human Rights and Freedoms at a time of meetings and public manifestations has been identified.

Numerous facts of violation of fundamental right of freedom and access to information from the side of the officials of public institutions are spelled out in this Report.

In 2012, cases of crimes committed on grounds of religious motivation reduced significantly, though an undesirable trend of religious intolerance, use of Hate Speech and xenophobia has developed.

The Report provides recommendations developed for the purpose of promotion of protection of the rights of ethnic minorities and their civil integration.

Although no complaint has been submitted before the Public Defender in relation with the specific facts of violation of Human Rights of sexual minorities in year 2012, we are thinking that there are certain problems in this respect and additional study of this problem is required.

Furthermore, this report provides a detailed overview of the wide range of socioeconomic rights: property rights, right on adequate housing, right on social security, right on employment at public institutions and etc.

In 2012, the trend of inadequate enjoyment of their rights by IDPs still persisted, the situation, with respect to rights of the ecological migrants has not improved as well.

During year 2012, numerous changes have been implemented with respect of protection of children's rights, though systematic and result-oriented steps should be further made into this direction and relevant State policy should be elaborated.

The Report pays substantial attention to the situation of women's rights in the country, to their

involvement in the political processes, in addition, traditionally, it discusses the situation with respect of Domestic Violence is provided as well.

The Reporting Period was marked with a number of measures implemented by the State for protection of the disabled persons and this is a positive trend, compared to the previous years.

This Report provides consideration of a number of aspects related to enjoyment of the right to healthcare. Apparently, access to the healthcare service is one of the significant challenges in this system.

And finally, traditionally, the Report offers opinions, proposals and recommendations to the legislative, executive and judicial authorities intended for remedying the infringed rights of individuals as specified herein and prevention of further breaches.

National Prevention mechanism

Situation in the penitentiary establishments – in the Reporting Period, staff members of the Department of Prevention and Monitoring of Public Defender's Office paid 587 unscheduled visits to the penitentiary institutions of Georgia meeting 3852 prisoners, and 68 scheduled visits; 84 scheduled visits to the temporary detention facilities meeting 227 pre-trial detainees, as well as 31 unscheduled visits meeting 101 detainees.

In the course of the monitoring the members of Special Prevention Group of Public Defender could access the territories of both, penitentiary institution and pre-trial detention facilities and could freely move there. They were given opportunity to select the places of meetings with the detainees/prisoners and interview them. At the same time, irrespective of requirements of Section 3. Article 19 of Georgian Organic Law on Public Defender of Georgia, information collected at a time of monitoring and published by mass media shows that actually in all premises the spy-cams were installed allowing interception and spying and we can propose that the administrations of penitentiary establishments and any other persons having access to these records could know, what were the inmates and Special Prevention Group Members talking about. This is a grave violation of national and international standards, placing under question the prisoners' security, as well as the effectiveness of the National Prevention Mechanism.

While implementing scheduled monitoring, the representatives of Public Defender inspected, whether the current situation and practices comply with Georgian legislation and international standards or not. In the course of monitoring particular attention was paid to treatment of the detainees/prisoners in each establishment.

Ill-treatment in the penitentiary establishments – monitoring conducted in summer of 2012 identified a number of problematic issues, including the systematic nature of ill-treatment. Public Defender's Special Prevention Group permanently emphasized this issue in the parliamentary and special reports. Unfortunately, for many years The Georgian Government has not taken any proper and adequate measures to eliminate this problem. Moreover, full disregard of the systematic violations identified by the Public Defender became a trend. All this resulted in what was so frequently discussed in the Public Defender's reports – the syndrome of impunity – violation of the prisoners' rights, physical and psychological violence over them became the routine and systematic occurrence.

This was confirmed by the "prison videos" disseminated by mass media on 18th September 2012, depicting the facts of torture of prisoners, inhuman and degrading treatment.

From September 2012, up to the end of year, hundreds of applications and complaints were submitted to the Public Defender's Office, reporting about ill-treatment of prisoners from the side of administrations of various penitentiary establishments. All of them were referred to the Chief Prosecutor's Office of Georgia from the Public Defender's Office for responsive measures. According to the answer received from the Chief Prosecutor's Office of Georgia, a number of investigations have been was commenced in response to all applications.

Special Monitoring in September 2012 by Special Preventative Group – In September 2012, mass media published video records made in Tbilisi Establishment #8 of Penitentiary Department made by hidden camera clearly showing the facts of ill-treatment – physical and psychological pressure, torture and humiliation, with participation of not only prison staff but high officials of the Penitentiary Department, including the individuals mentioned in the context of ill-treatment in the Public Defender's reports for the previous years and applications. Nevertheless, these persons still continued to hold their positions within the penitentiary establishments and the syndrome of impunity accompanying the crimes committed by them made them even worse.

Georgian TV channels broadcasted the video records on 18th September 2012, in the evening. Materials were made in the Establishment # 8 and showed the situation in the quarantine ward of the same establishment, where the leaders of the establishment and its staff members beat the prisoners while in quarantine as well as after they are transferred to the cells (so called process of quarantine dismissal). It should be noted that David Khuchua, director of Establishment #8, Victor Kacheishvili, deputy director and Oleg Patsatsia[1], head of the security service of the same establishment, as well as other staff members participated in beating of the prisoners. In addition to the mentioned persons, the Special Prevention Group members identified Giorgi Avsajanashvili, a staff member of Establishment #18 and the prisoners have submitted numerous complaints dealing with facts of ill-treatment from his side. Public Defender has submitted numerous such cases[2] to the Chief Prosecutor's Office of Georgia, to commence investigation and punish those, who have committed this crime. Though, each time, without any results – investigation, similar to many such cases, was limited to formal search without any specific results.

In addition, the published video clearly shows that Gaga Mkurnaladze, Deputy Chairman of Penitentiary Department, participated in beating of the prisoners. Public Defender has applied to the Chief Prosecutor's Office on 19th March 2010, recommending investigation of the facts of inhuman and degrading treatment towards the prisoners in Geguti Establishment #8 (currently #14) committed by a group of staff members of Penitentiary Department led by G. Mkurnalidze. The investigation of these facts is in progress though no any actual results have been reached up to present.[3]

1. A number of inmates reported to the Special Prevention Group about cruelty of this person, though none of them wants to apply to the investigation authorities yet. Nevertheless, Oleg Patsatsia, together with the other staff members, was named in the special report for the first half of year 2011 and Parliamentary Report of the Public Defender for 2011
2. E.g. Case of Kakhaber Baratashvili, case of George Okroporidze, Parliamentary Report of Public Defender
3. This case was included in the Parliamentary Report of Public Defender for year 2010

On 18th September 2012, in the evening, various videos were released, showing small cells in the quarantine ward of Establishment #8, so called "boxes". In a number of Public Defender's Reports these boxes were described as follows: cells of 2-3 sq m area, without any beds or chairs, with the bars instead of doors. Videos show these boxes, where one of the prisoners is tied to the bars, with a broom sticking between his thighs, with a special hood on his head to prevent from visible injuries, the guards are insulting him, are rough and humiliating. In another video another prisoner is tied to the bars and irrespective of his requests and imploring no one pays attention to him.

The released videos clearly show that Oleg Patsatsia, the head of the regime department at Gldani prison, is treating prisoners with particular cruelty and aggression. He personally tortures and humiliates an inmate, threats him to subject to sexual violence and spits into his face. Other published videos show how the staff members make a prisoner strip, in the quarantine ward and force him to place lit cigarette into his anus and stay bended, until the guards order him to stand straight and take the cigarette out and smoke that very cigarette, and later put it into his anus again. The released videos show how they torture and beat one of the prisoner, supposedly, a juvenile. The staff members of the Establishment threat to rape him, punch him, imitate his rape with a trancheon with a condom on its top, forcing him to curse so called thieves in law. Irrespective of the prisoner's imploring to stop such actions, the employees of the prison do not stop this cruelty and continue their malicious actions.

On 18th September 2012, Ministry of Internal Affairs of Georgia published its Statement that on the basis of operative information received from Gldani Establishment #8 they have started investigating the facts of degrading and inhuman treatment of prisoners by some staff members of Penitentiary Department.

On 18th September 2012, the office of Public Defender of Georgia published a special Statement and called the law enforcement authorities for identification and punishment of the offenders. In the same Statement the following is said: "In relation to the facts of alleged torture, inhuman and/or degrading treatment the investigation authorities mostly conducted investigation of formal nature, and the mentioned facts were never followed with any proper response, with the exception of very few cases and this became even some kind of stimulating factor for such offences."

On 18 September, 2012, a hot line started to operate at the Public Defender's Office and the prisoners, their family members, or any interested persons could make calls. Based on the received calls, the status of the dozens of prisoners was examined and the interested persons were provided with detailed information.

On 19 September, 2012, the Special Preventive Group members continued the monitoring of the Establishments #8 in Tbilisi, #4 in Zugdidi, #3 in Batumi, #2 in Kutaisi and the Medical Establishment #18. On the same day, the Preventive Group visited the Rustavi Establishments

#16, #17, #5, Women Establishment and Establishment #5. All buildings of the mentioned establishments, including the solitary confinement and quarantine cells, as well as regular cells were inspected, a number of prisoners was interviewed. The situation inside the Establishments was quite, the prisoners did not complain about any type of violence, they were allowed to use phones and request unplanned visits. In addition, the same day, the mass media disseminated the information on transfer of three beaten prisoners to the Gori Military Hospital. On 19th September, at night, Public Defender's representatives visited the Gori Military Hospital to verify this information and found out that the information was inaccurate and no prisoners were transferred to the Military hospital.

On 20th, 21st, 22nd, 23rd and 24th September 2012, representatives of Public Defender's Office monitored various penitentiary institutions continuously round the clock both, in East and West Georgia. During these days, representatives of Public Defender's Office paid visits to Gldani Establishment #8, establishments: #2 in Kutaisi, #3 in Batumi, #4 in Zugdidi, #14 in Geguti, #17 and #16 in Rustavi, #15 in Ksani, #6 in Rustavi, # 5 establishment for women, #1 in Tbilisi. Department of Prevention and Monitoring of Public Defender's Office continued special monitoring activities up to the first days of November.

Investigation of the facts of torture and inhuman treatment –The results of monitoring conducted in the closed institutions, analysis of the applications submitted to Public Defender's Office and "prison video footages" broadcasted by TV channels in September 2012 showed that ill-treatment is one of the most significant problems in the penitentiary establishments and police. Legal response to the facts of torture and inhuman treatment, identification of the offenders and their punishment is the prerogative of Chief Prosecutor's Office of Georgia. While, for eradication of the facts of torture and inhuman treatment each of such facts should be effectively investigated and the syndrome of impunity should be dealt with. Public Defender has applied to Chief Prosecutor's Office of Georgia in relation with numerous such facts, but in many cases, investigation is still slow.

For the past years, passive and ineffective operation of the investigative authorities caused the syndrome of impunity among the staff members of law enforcement bodies, most victims lack confidence towards the investigation and this further contributed to ill-treatment practice in the closed institutions. As a rule, the prosecutor's office has been negligent to investigate the actions containing signs of beating and torture of the detainees and criminal cases containing such actions. As it was mentioned earlier, such facts were qualified as excess of power or beating rather than criminal acts of torture, degrading or inhuman treatment. Investigation of such cases has always been of perfunctory nature and ended with dismissal of case or stretching the investigation for many years. Attention should be paid that such cases, as a rule, were dismissed on the basis of testimonies of the police officers while the victims mostly denied their testimonies provided to the Public Defender and testified for the benefit of the law enforcement personnel. In some cases, forensic medical expertise was appointed after time passed, when the victim had no injuries any more – in several weeks or even months, after the occurrences.

The same was stated in the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to the Government of Georgia for year 2010[4].

Although, in 2011 PD has applied to the Chief Prosecutor's Office of Georgia with numerous requests to launch investigation, no case was ended with any results, to the best of our knowledge. We hope that the investigative authorities will be more effective and provide immediate response to the facts of ill-treatment and torture.

Changes implemented in the penitentiary system – in few days after the events of 18th September 2012, directors of all penitentiary institutions were dismissed from their positions and new staff was appointed. In few days practically all employees identified by the prisoners as the violators were dismissed as well. Some of them have left their positions on their own.

In the same period, criminal procedures were brought against 18 staff members of the Penitentiary Department and establishments.

On 20th September 2012, Giorgi Tughushi, former Public Defender was appointed to the position of the Minister of Corrections, Probation and Legal Assistance of Georgia. After this a number of positive changes were implemented in line with the recommendations. For example, in the closed establishments (establishments: #2 in Kutaisi, #8, #18 in Gldani, #6 in Rustavi) the inmates were allowed to procure the TV sets in the shops of establishments, absolutely unjustified restrictions about the parcels (e.g. prohibition of jeans trousers) were cancelled, press became available, in some establishments the beds were replaced, as required, in Kutaisi Establishment #2, as well as Gldani establishments ## 8 and 18 the inmates didn't try to avoid walks, provided for by the law.

After the "prison videos" the staff members identified by the inmates in their complaints were dismissed. In the same period, patrol police staff was assigned to provide assistance to the employees remained in the penitentiary institutions, to prevent destabilization in the institutions due to apparent lack of staff.

In the middle October 2012, Ministry of Corrections, Probation and Legal Assistance released information that the list of persons allowed to enter the establishments of imprisonment / deprivation of freedom under the Penitentiary Department without special permits.

The National Prevention Mechanism of Georgian Public Defender welcomed this decision and at the same time, regarded that transparency of the penitentiary system and expansion of the civil society access was of significance for improvement of the system and prevention of ill-treatment and other violations of Human Rights. To achieve this goal, authorities of the Monitoring group members should be stated in details, in particular, the mechanisms for information collection and response.

4. Report on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, Par. 17

Parliamentary elections of 1st October 2012 resulted in resignation of the government, including the Cabinet of Ministers. On 19th October, Sozar Subari, a former public defender was appointed to the position of the Minister of Corrections, Probation and Legal Aid. Simultaneously, in several institutions the senior management was replaced, which, in general, went quite peacefully.

Rustavi Establishment #16 became a sad exception, where, on 29th October, after replacement of the former director, dissatisfaction of the inmates was caused by the fact of appointment of new director.

The National Prevention Mechanism of Public Defender appealed to the Minister of Corrections, Probation and Legal Aid to study deeply the reason of dissatisfaction of the inmates and adopt relevant decision. In addition, the application of the prisoners of Establishment #16 was addressed to Chief Prosecutor's Office of Georgia for response. According to the letter from the Ministry of Corrections, Probation and Legal Aid received on 16th November, Levan Aburjania, the director was dismissed from his position.

In general, after events of September, in some establishments the number of facts of self-mutilation by the prisoners seeking satisfaction of their various requests increased, most such requests are related to the medical services still remaining a significant problem in the penitentiary system. The cases of insulting of the medical personnel from the side of prisoners became more frequent. The prisoners used self-mutilation to demand high doses of psychotropic and sedative drugs otherwise, they threatened to injure themselves.

Disciplinary punishments and administrative measures – in the process of monitoring in 2012, procedures and regularity of application of the disciplinary punishments and administrative measures was inspected in various penitentiary institutions.

According to information obtained from the Ministry of Corrections, Probation and Legal Assistance of Georgia, in the period from 1st January to 31st December 2012, administrative imprisonment was used with 13 prisoners and only one prisoner appealed against a decision on imposing disciplinary punishment. In the period from 1st January to 30th June, inclusively, 1709 prisoners were placed into the solitary confinement cells and one prisoner of them appealed against this decision. In the period from 1st July to 31st December 2012, 921 prisoners were placed into the solitary confinement cell and only one prisoner appealed against this[5].

On the question of the monitoring team pertaining to the issue as to why prisoners have not appealed against director's orders about their placement in the solitary cells, all prisoners gave one and the same answer: they found no sense in appealing.

It should be noted that in the Reporting Period, actual number of punished prisoners was larger, as informal and unlawful mechanisms of the prisoners' punishment (placing into quarantine or so called "box") have been practiced in some establishments, for example, in Gldani Establishment

5. July 29, 2013 N10/8/2-8847; October 31, 2012 10/8/2-12485 and February 12, 2013 N11076/10

#8 and Kutaisi Establishment #2. Such punishment was used where the administration, for some reason, did not want to justify punishment even formally. In addition, application of collective punishment methods was recorded in establishments ## 15 and 16.

Neither the National Legislation, nor international standards allow collective punishments.

Placement into the solitary confinement cells – Monitoring showed that different penitentiary institutions set different term of punishment for one and the same violation. Such approach could be regarded as positive but only when using an individual approach to each of such cases, taking into consideration the personality of the convicted person and circumstances of the violation.

Monitoring showed that in many cases disciplinary violations by the inmates are associated with the demand of medical assistance – the prisoner has to make a noise and bang on the cell door, otherwise, as the prisoners say, he cannot see the doctor. This is the case in Kutaisi Establishment #2 and Rustavi Establishment #6.

It should be noted that in the Reporting Period, cases of placement into the solitary confinement cells were very rare in establishments: #4 in Zugdidi, ## 3 and 12 in Batumi and #17, in Rustavi.

According to Section 2, Article 88 of the Code of Imprisonment: "for the detainees/convicts placed into the cell of solitary confinement is prohibited to have long and short visits, phone calls, procurement of food products". "The CPT recommends that the Georgian authorities take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts"[6].

We regard that the right to contacts with the external world should be deemed as their right and prohibition of such contacts should not be used as the form of punishment. By increasing the incentives and using the punishment mechanisms fairly stability can be maintained in the prisons, while unfair and unlawful treatment of prisoners can cause their confrontation with the prison administration; or, in case of collective punishments – with one another, resulting in heavy and unacceptable outcomes.

Prison conditions – on 25th February 2013, Establishment #1 was closed and this, undoubtedly, is a step forward. Public Defender's reports contained recommendations on closing Batumi Establishment #3 and Zugdidi Establishment #4 – placing the inmates in the conditions of these institutions could be equalized to inhuman and degrading treatment. Though Establishment #12 is a semi-open type institution and the convicts are out for a certain part of the day, due to conditions there, it would not be reasonable to place the inmates there. This building should be either subjected to capital repair, or closed.

6. Ditto, par..115

Report provides the details of problems with respect of personal hygiene, including the right of taking shower, use of the personal hygiene items and visiting a barber.

Report contains also the information dealing with the right of being on fresh air, visits (including short, long visits and video-visits), and obstacles to use phone, issues of resocialization of convicts and employment of inmates, housing of prisoners, as well as difficulties arisen in implementation of the Law on Amnesty.

Monitoring of the Bodies Subordinated to the Ministry of Internal Affairs of Georgia

Police – in the process of monitoring of the police offices and departments the logbooks of recording of the detainees and the logbooks of persons transferred to the temporary detention facilities. We should note that in some cases the prison records were not completed properly. For example, in some cases, it is impossible to find out, what happened with the detainees, at what time person was detained and in some cases the numbering or time of acceptance is confused.

Monitoring conducted in the first half of year 2012 showed that Tkibuli Department of the Ministry of Internal Affairs maintained two logbooks for recording of the detainees instead of one. Regarding the above, on 13th September 2012, a notification was sent to the Head of General Inspection of the Ministry of Internal Affairs of Georgia, together with the documentation on violations detected by the Prevention Group members. According to the answer received from General Inspection of the Ministry of Internal Affairs on 25th March 2012, we were notified that on the basis of received notification the internal investigation was conducted, resulting in issuance of the recommendation cards to 10 staff members of the Ministry of Internal Affairs, 5 staff members were imposed disciplinary measures – admonishments and 7 staff members – reprimand.

Monitoring conducted in the second half of year 2012 again identified breaches in some police offices and departments and Public Defender's Office sent a letter to the General Inspection of the Ministry of Internal Affairs of Georgia. According to the letter #533862 received in response an internal investigation is currently in progress in General Inspection and we expect to be additionally notified about its outcomes.

Monitoring also revealed that alleged consumption of drugs was not evidenced for the most part of the citizens detained according to Article 45 of Code of Administrative Violations. In

December 2012, detaining persons for alleged violation of Article 45 of CAV was beyond all reasonable limits. Inspecting of the logbooks of the detainees in the regions caused the doubt that most males in the regions were detained for an alleged violation under this article[7]. The monitoring showed that "reasonable doubt", in most cases, either was not confirmed or did not exist at all. According to verbal explanations of the policemen, such practice is prevention of the drug abuse, though, in our opinion, it could be assessed as violation of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Liberty and Security). Special Prevention Group believes that citizens should be detained on the basis of CAV Article 45 reasonably.

A remarkable fact was identified in Samtskhe-Javakheti Region, in particular, in Akhalkalaki, where the inspection of the logbooks for recording of the detainees and those transferred to the temporary detention isolators showed that Akhalkalaki police staff used to arrest in the streets every person who was drunk, was under the influence of alcohol, irrespective of whether the person was committing any action prohibited by Georgian legislation and subjected to administratively punishable action or not. The scrutiny of the situation showed that they used to take drunk persons to Akhalkalaki Police Department, where they were left for several hours or even till the morning and only afterwards released them. It should be noted that persons detained in such manner were never placed in the temporary detention isolator of Akhalkalaki and it was unclear, what was their status at the time of their being in the police building.

Right on telephone call – according to Section 10 of Article 38 of Georgian Criminal Procedure Code the "defendant shall have the right to notify his/her family member or close relative about the fact of his/her detention and location, his/her condition, as well as inform the creditor, other natural persons and legal entities to which he/she has legal obligations, immediately upon detention or in case of arrest". Irrespective of the requirement of the law, in many cases, the investigation authorities do not give the detainees the opportunity to exercise the right of telephone notification.

Treatment – according to Georgian Law on Police, in implementation of its objectives, police shall observe strictly the lawful rights of the citizens, in performing of their formal duties, provide assistance to the State, other authorities and citizens within the scopes of their competence, and strictly follow the norms of ethics in relations with the citizens.

Unfortunately, in some cases the police staff violates Human Rights.

According to the answers provided by the Ministry of Internal Affairs, in the first half of 2012, 7868 persons were placed into the temporary detention facilities in the territory of Georgia, 54 of which had injuries and only 16 persons of them expressed their complaints against police. In the second half of year 2012, 5106 persons were placed into the temporary detention facilities

7. According to Article 45 of CAV, "a policeman shall present an individual towards whom there is a reasonable doubt that he/she has consumed the narcotic drug without a doctor's prescription to a person specially authorized by the Minister of Internal Affairs, for the purpose of examination,"

in the territory of Georgia, 1010 of which had injuries and only 26 persons of them expressed their complaints against police.

Special Preventive Group has studied the reports on visible injuries of the detainees in all temporary detention facilities. In some cases the persons did not complain about police but stated that they were injured at a time of their detention. There also were the cases where the nature and severity of injuries suggested that the person was subjected to ill-treatment. There were cases where several persons had similar injuries , some of them stated that they were injured at a time of detention and complained about police, applying physical force against them while some of them stated that they were injured before detention.

During the Reporting Period, some citizens submitted applications to the Public Defender in relation with ill-treatment from the side of police at a time of detention. All such facts were referred to the Chief Prosecutor's Office and investigation is in progress.

Temporary Detention Facilities Subordinated to Human Rights Protection and Monitoring Main Division of Ministry of Internal Affairs of Georgia

Treatment – the fact that at the time of scheduled monitoring no person was placed in temporary detention facilities and has expressed no complaints about any ill-treatment from the side of the administration staff, should be assessed positively. This was confirmed by the inmates in the penitentiary establishments as well.

Unfortunately, there were some exceptions - several facts of ill-treatment recorded during year 2012. Several applications were submitted to the Public Defender's Office specifying the facts of ill-treatment from the side of staff members of temporary detention facilities. This was particularly applicable to the persons with different political views participating in the activities of opposition. The approach was the same towards the persons detained after 26th May 2011, placed in temporary detention facilities (see Parliamentary Report 2011)

Documenting of the ill-treatment facts – as a result of monitoring it was established that administration of temporary detention isolator (TDI) applies to the prosecutor's office only if the incoming individual having various injuries complains about law enforcement bodies. Public Defender has recommended that if the nature of injuries of the detainees suggests that a person was allegedly ill-treated, irrespective of whether he/she complains or not, TDI administration should give notification to the supervising prosecutor to investigate the cause of the injury.

Except for Tbilisi TDIs ## 1 and 2, where the doctors are employed, the injuries, mostly, are registered by the facility personnel.

In CPT Report on the visit to Georgia on February 5-15, 2010, the practice of visual examination during placement in temporary detention isolator was evaluated negatively and this was discussed in the reports of Public Defender as well. In particular, with the exception of TDIs ## 1 and 2, where the doctor's services are available, visual examination of a detainee is performed by a facility officer on duty, who also has access to all medical records. Thus, medical information confidentiality requirement is not complied with. In addition, the Committee states that presence of the staff member at the interview with doctor would prevent the injured person from openly indicating the cause of injuries. CPT recommends that visual examinations were conducted by the medical doctors only; confidentiality of the medical records was ensured. If a person has injuries and there is grounds to believe that ill-treatment has occurred, the person concerned should be promptly seen by an independent doctor qualified in forensic medicine, who will also assess consistency between allegations made and the nature of injuries[8].

Administrative confinement – according to the amendments made by the Order #1074 of 28th December 2011 of the Minister of Internal Affairs of Georgia to the Order # 108 of 1st February 2010 of the Minister of Internal Affairs of Georgia on Approval of the Additional Instructions Regulating Typical Charter, Facility Internal Regulations and Activities of Temporary Detention Facilities of the Ministry of Internal Affairs of Georgia, the terms and conditions of administrative confinement are Stated.

Public Defender has noted in his Parliamentary Reports that infrastructure of temporary detention facilities is not adjusted for placing of the confined persons and recommended to the government of Georgia to provide creation of special institutions for the persons under administrative confinement based on regional principle suitable for long-term placement. This recommendation has not been taken into consideration up to present and therefore the administrative prisoners are still placed in the temporary detention facilities.

During the reporting period, Public Defender's Monitoring group has identified numerous violations related to placement and living conditions of the administrative prisoners and issued relevant recommendations to the Minister of Internal Affairs of Georgia.

Conditions – conditions of the persons placed in TDIs shall comply with the national and international standards. Nevertheless, in some TDIs no central heating system is installed (Borjomi, Akhalkalaki, Zestaponi, Tetritskaro, Terjola, Lentekhi and Ambrolauri TDIs), hence, the cells are not heated and the detainees/prisoners have to stay in cold cells.

Most TDIs lack proper lightening and ventilation; some of them have no windows at all (Akhaltsikhe, Borjomi TDIs) or the latter is so small that it is not possible to ensure natural ventilation and lighting (Chokhatauri, Ozurgeti and Lanchkhuti TDIs – 1 cell, Samegrelo-Zemo

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Svaneti Regional TDI, Khobi, Zugdidi #1, Senaki, Kvemo Kartli, Tetritskaro, Terjola TDIs – 2 cells, Kutaisi, Sagarejo, Telavi, Zstaponi, Chiatura, Khashuri, Gardabani, Dusheti, Tbilisi #2 TDIs). In some TDIs cells the windows are of adequate sizes but triple bars prevent normal lighting and ventilation (Sighnaghi TDI).

Administration of Zestaponi TDI provided explanations that a new police building was constructed and New Zestaponi TDI will be in that building.

Toilets in the TDI cells are not isolated. Public Defender has recommended to the Ministry of Internal Affairs to provide isolated toilets in all TDIs, though this recommendation has not been implemented.

With the exception of some cells in Ambrolauri, Tbilisi #1 and Batumi TDIs, in the cells of other TDIs the areas intended per detainee do not meet the requirement of 4 sq. m per person. Public Defender provided recommendations in the Parliamentary Reports to ensure standard 4 sq. m area per person. Such recommendation was issued by the European Committee for Prevention of Torture. As for the cells where the detainees are placed in solitary confinement,, the area shall not be less than 7 sq. m[9].

Irrespective of Public Defender's recommendations, in some TDIs boards are used instead of beds. These are: Akhalkalaki, Gardabani, Tsalka TDIs, some cells in Tbilisi TDI #2 and Kvemo Kartli Regional TDIs.

Public Defender has recalled to his earlier recommendations that persons detained for more than 24 hours should be entitled to at least one hour walk. Though, in most TDIs there are no yards. It should be noted that in case of absence of courtyards, the administrative prisoners placed for the period more than 7 days are offered a walk in the adjacent area. Before a walk that have to sign a Statement specifying the responsibility of a person in case of escape.

In Ozurgeti TDI a corridor is used instead of a walking yard and this is absolutely unacceptable.

According to the Order # 108 of 01.02.2010 of the Minister of Internal Affairs, effective in the Reporting Period, only those persons are entitled to daily walk, who are sentenced to imprisonment by the court for no less than 15 days.

Monitoring showed that in the TDIs where the showers are arranged, the detainees can take a shower once a week, though the TDIs where there are no showers are still a problem. These are: Zestaponi, Lentekhi, Dusheti and Akhalkalaki TDIs. It should be noted that cells in TDIs are cleaned by the cleaners twice per day.

In all TDIs the detainees are provided with standard food packages – 300 g bread, 20 g sugar, 2 teabags, spread, canned beef and 1 dry soup package. We regard that such food is not adequate,

9. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2010, par. 117

regarding that some persons have to stay in TDI for even 3 months and have no close relatives who could provide additional food by parcel.

Tbilisi TDIs #1 and #2 are exceptions where the detainees are delivered food from the catering facility of the institution, providing adequate and versatile diet.

Georgian Penitentiary Health Care System and Torture Prevention Mechanism

After parliamentary elections of 1st October 2012 and governmental changes in the country, new management of the Ministry of Corrections, Probation and Legal Assistance has presented new strategy for penitentiary system health care reform and the ways for its implementation. The strategy covers all aspects of penitentiary health care provided by international standards; it also sets the positive ways for making it closer with the civilian health care. Though, we should note that it does not aim to include the most important principle provided for by the international standards: full transfer of penitentiary health care into the public health care system of civilian sector. Integration of the mentioned component into the strategy is of paramount importance,especially taking into account the principle of independence of the medical personnel and giving due consideration to international standards for prevention of torture.

It should be noted that at this stage intervention of civilian health care into the penitentiary system is provided within the scopes of the State TB Control Program and this has improved the standards of timely identification and prevention of TB cases to certain extent, though, this problem is still a primary challenge to Georgian penitentiary system.

One more example of civilian health care intervention is a methadone program for the drug-dependent persons, implemented at Establishment #8 of the Penitentiary Department. From 2012, this program was launched in Kutaisi Establishment #2 as well.

Monitoring has revealed the following problems: scarce stocks of the medicines in penitentiary establishments, poor condition of the medical treatment facilities and relevant infrastructures (though, the Monitoring group has positively assessed the attempts of improvement of the primary health care component in the most establishments, in some establishments the primary health care centers were established and equipped, as well as the outpatient component with the elements of secondary health care (with mini hospital sections). Though, location of the mentioned sections and their infrastructure, in the newly built establishments are actually

the wards and medical rooms located in the prison cells and this does not comply with the organizational aspects of the inpatient and outpatient institutions creating danger of non-compliance with the sanitary-hygiene standards. At the same time, environment there is not psychologically conducive to medical activities, for both, the patients and medical staff, thus providing risk to the principles of compliance with the ethical standards.

It is particularly notable that the infrastructure of psychiatric sections of the medical facilities for convicts and prisoners does not comply with the required standards and therefore, in the existing facilities involuntary treatment of the patients is impossible. Transfer of the mentally unhealthy patients into the civilian psychiatric clinics is also problematic, regarding security standards (convoying, guard) comprising particular problems in case of female and/or juvenile convicts.

Official data on number of persons subjected to primary health screening in penitentiary system for year 2012 are contradicting and ambiguous, suggesting that reliability of the reports submitted by the penitentiary institutions is questionable.

According to the provided data, frequency of the prisoners' visits for medical services was 5-6 visits per year, in average. Given the dissatisfaction of the prisoners with Georgian penitentiary health care system this is hard to imagine. Number of deceased prisoners and diagnoses specified by the experts point to delayed and, in many cases, inadequate medical services.

Interviews with the inmates revealed that they had to wait for long time, before visiting of doctors and after relevant tests, adequate treatment was unavailable because of lack of the required medicines at the establishments.

At the same time, we should note that dental services, including therapeutic, surgical and orthopedic services relevant outpatient tests and consultations are provided in all establishments.

According to the forensic experts' reports studied by the Public Defender and information provided by penitentiary health care system, in 2012, 67 prisoners died in Georgian penitentiary system and this is a quite high figure, particularly, regarding that the average age of the deceased is 44 years. Most of them died before the events known as "prison scandal". It should be noted that the number of the deceased was 142 in 2010 and 140 in 2011.

With respect to professional competences, significant lack of awareness in normative acts and laws regulating health care in Georgia was identified in the most institutions of penitentiary system, with the exception of Establishment #5 for women, issue of awareness in the standards of medical ethics is concerning as well while this is decisive for arising of the interpersonal conflicts between the doctors and inmates.

Stemming from all above mentioned, we consider that it is of utmost importance to transfer Georgian penitentiary health care system into Public healthcare sector. It is necessary also to

promptly design and implement the cycle of professional trainings for awareness in the issues of torture prevention, documenting, ethical standards, international standards of penitentiary health care within the complex-module program for prison doctors.

Report on the Situation at Psychiatric Institutions of Georgia

On 18-25 April 2012, Special Prevention Group of Public Defender conducted scheduled monitoring of Georgian psychiatric institutions intended for evaluation of compliance of the conditions, treatment and care methods with the rules established by Georgia legislation and international/European standards. Monitoring was focused on evaluation of **treatment of patients**; examination of compliance of **physical restraint** procedures with the law; report states that there are no **community-based services,** which would allow a normal life in the society for persons with mental problems.

Monitoring showed that improvements mostly affected the infrastructure problems, having little impact on **systemic approaches** – in the great majority of institutions the outdated treatment methods and medical practices are applied. In some cases the trends of improvement are apparent – new regulations introduced based on the directives of the Ministry of Health Care, basically, intended for ensuring transparency of financial accounting and combatting corruption, are not suitable for compliance with the principles of confidentiality of information dealing with the patients.

Report on the Human Rights' Situation in the Institutions for the Disabled Persons

During the Reporting Period, representatives of Public Defender's Office conducted monitoring of 11 State residency institutions where the disabled and children are (or may be) placed.

Monitoring has identified violations in almost all institutions for the disabled persons. Breaches were of both, individual and systemic nature. Ill-treatment was detected in the institutes for disabled children and adults (Chiatura institution, Tbilisi Public School #200, #203, Akhaltsikhe

public school # 7, Dzevri institution, Senaki institution, Makhinjauri institution). There were recorded the cases of misuse of the labor of disabled (Akhaltsikhe public school #7, Dzevri institution), facts of physical restraint, in breach of regulations provided for by Georgian legislation. Particularly significant violations were revealed with respect of limitation of medical services to the disabled children. Among them, refusal to provide medical intervention and palliative care for the children with the diagnosis of hydrocephaly should be particularly noted. Psychosocial rehabilitation services were limited in all institutions, without exceptions. Actually, no one of the disabled persons was given any opportunity to develop his/her functional abilities and skills for independent life. Global restriction of access to environment does not allow them normal living even in the micro-environment of the institution for the disabled persons. Lack of the personnel, relevant professional approaches and qualified knowledge create danger of violence among beneficiaries with possible severe health problems and lethal outcomes in relation with the disabled persons.

Monitoring revealed that the target group members have no ability to protect their legal rights and have the representatives (cases of L.B., N. Ts.; cases of S.K. and A.B.)

Results of Monitoring of Small Family-Type orphanages

In December 2012, Special Prevention Group of Public Defender conducted monitoring in part of small family-type orphamages. Namely, small family-type orphanages in Khashuri (2 homes), Chiatura, Sestaponi, Khoni, Bajiti, Kutaisi (3 homes), Ambrolauri, Tsalenjikha (2 homes). Chkhorotsku, Lanchkhuti, Ozurgeti (2 homes), Batumi.

Monitoring was basically focused on psychological condition of the children, treatment and medical assistance available to them. The problems requiring particular attention were identified, primarily, from the side of the Ministry of Labor, Health and Social Affairs of Georgia.

Particularly evident problem is the absence of unified, well-developed State control mechanisms. Though elimination of the large children's homes undoubtedly was a step forward, ensuring significant improvement of the children's situation, there is an impression that the State, after transferring of management of small children's homes to the private organizations, has lost its interest to improve care for children deprived of parents' attention.

Human Rights' Violations Related to election period 2012

Parliamentary elections in Georgia were the most important event in 2012, hence, it was one of the busiest and complicated period, with respect of Human Rights. Public Defender of Georgia has not studied directly the issue of realization of voting rights though general trends in the pre-election period were analyzed.

In 2012, the electoral political entity, Coalition "Georgian Dream" was established. It has launched an extensive electoral campaign. Numerous applications dealing with the violations against the representatives and activists of the mentioned coalition were submitted to the Public Defender's Office. In particular, administrative detentions took place, as well as physical pressure, threatening and injuring from the side of the representatives of law enforcement authorities (Mereti, Karaleti, Beshumi cases, Didgoroba incident). It should be noted that the representatives of public government and local self-governments, as well as the civilian persons. Unfortunately, investigation of the facts was not effective and it was of perfunctory nature.

Georgian legislation was amended as well; in particular, amendments were made to the legislation dealing with political associations and Criminal Code, Code of Administrative Violations and new Electoral Code. Changes made in December 2011 were intended, basically, to limit the inflow of significant funds into the political processes unreasonably limiting fundamental rights of the relevant political subjects. According to the amendments made to Georgian Organic Law on Political Associations of the Citizens made on 27th December 2011, stricter limitations related to funding of the parties were introduced; supervision of the parties' finances was vested on Georgian Chamber of Control (Currently State Audit Service). Later the legislation was improved, though the initial version of the law was effective for more than 4 months, causing certain legal outcomes for some specific persons. Public Defender has assessed actions performed by the Chamber of Control of Georgia within these authorities and identified specific violations, detailed below.

One more issue to be mentioned with respect of legislation, is a legislative change related to mass media, known as so called "must carry". In the pre-election period, private TV companies were deprived of opportunity to cover the regions of Georgia. Parliament of Georgia has adopted relevant legal amendments and obligated cable operators to include private TV channels into their service packages. Terms Stated by Section 17, Article 51 of the Elections Code for so called "must carry" regulations should be evaluated negatively, as they implied its termination on the day before elections.

Dismissal from jobs – in the pre-election period, a number of persons applied to Public Defender, complaining about their dismissal from jobs on the grounds of their political views. It should be noted that most persons who applied to Public Defender were school teachers.

Administrative Bodies and Violations in the Pre-election Period

State Audit Service (Chamber of Control of Georgia at that time). Within the scopes of the authorities granted by Georgian Law on political Associations of the Citizens, on 13th and 14th March 2012, Chamber of Control of Georgia has summoned tens of natural persons "for the purpose of providing explanations for administrative procedures related to the fact of funding of the political subjects through deceptive deals" in different cities (including Kutaisi, Zugdidi, Poti, Batumi, Sagarejo, Gurjaani, Lanchkhuti, Chokhatauri). According to released information, in performing of the above procedures by the Chamber of Control of Georgia, in some cases, the defense attorneys of the mentioned persons were not allowed to fully execute their authorities. Complaints were expressed with respect of withholding the information from mass media; this implied that the latter had no opportunity to be present at the process of providing explanations. In explanations provided to the representatives of Public Defender, journalists of various mass media entities Stated that in some cities of Georgia (Kutaisi, Zugdidi, Zestaponi, Gori etc.), when being interviewed by the Chamber of Control, the political party members were not allowed to freely move within the administrative buildings and in addition, the journalists were prevented from performing their professional activities.

After study of the materials, it could be definitely stated that in the pre-election period, facts of violation of the rights guaranteed by Georgian legislation by the Chamber of Control of Georgia (currently State Audit Service) has taken place resulting in gross violation of the rights and freedoms of a number of citizens and legal entities.

In the mentioned process, Public Defender of Georgia has also revealed violations from the side of the National Bank of Georgia and national Bureau of Enforcement.

Widely Discussed Cases

Public Defender of Georgia, within the framework of his authority vested under Georgian Organic Law on Public Defender of Georgia, initiated a study of all criminal cases causing high public interest. These are the cases of Tengiz Gunava, Bachana Akhalaia, Giorgi Kalandadze, David Akhalaia and other persons.

As of today, the cases are partially assessed by the Public Defender, with respect of procedural violations, though the study goes on and outcomes of consideration will be released additionally. Relevant recommendations were issued on each detected violation cases.

Within the competence granted by Georgian Organic Law on Public Defender[10], Public Defender considers the cases of violation of Human Rights and Freedoms if, in the course of court hearings restriction or violation of the rights and freedoms guaranteed by Georgian legislation takes place; as the court is the only authority in charge of administration of justice, it has an exclusive authority of establishing of the factual circumstances, identification and evaluation of the signs of crime.

Case of Tengiz Gunava

On 16th November 2012, Criminal Department of the Ministry of Internal Affairs of Georgia launched an investigation of a criminal case dealing with alleged procurement and storing of illicit drugs and illegal procurement and storage of fire arms, the crime provided by Section 1, Article 260 and Section 1, Article 236 of Georgian Criminal Code.

On 16th November 2012, T.Sh., a detective-investigator of Criminal Police Department of the Ministry of Internal Affairs of Georgia issued decree on personal search of Tengiz Gunava, on the basis of urgent necessity, based on this resolution the search was conducted on the same day. On the same day, T.P., detective-investigator of Criminal Police Department of the Ministry of Internal Affairs of Georgia issued a decree on a search of Tengiz Gunava's apartment, on the basis of urgent necessity, based on this resolution search was conducted the same day as well.

The above decrees are generally based on par. 5 of Article 112 and Article 121 of Criminal Procedure Code of Georgia, though they don't state what specific reasons are leading to the urgent necessity of a personal search of Tengis Gunava, as well as searching his apartment.

On 16th November 2012, T. Kh., a prosecutor of the Department of Procedural Supervision over Investigation in the General Inspection of the Ministry of Internal Affairs of Georgia, the Criminal Police, Patrol Police Departments and the Unit for Fight against the Illicit Drugs Circulation of the Special Operative Department, in his motion on recognizing lawful the personal search of Tengiz Gunava due to urgent necessity and motion on recognizing lawful of search of Tengiz Gunava's apartment, due to urgent necessity, indicated post factum the reason for urgent necessity, which, in case of personal search of Tengiz Gunava, was named as a real danger of loss of the trace and material evidence and in case of search of Tengiz Gunava's apartment – impossibility of gaining of the material evidence important for the investigation and possibility of destroying of the material evidence significant for investigation in case of delay.

According to Section 1 of Article 112 of Criminal Procedure Code of Georgia: "investigative action restricting private property, ownership or personal inviolability, shall be performed when requested by the party, based on the court warrant." Section 5 of the same Article establishes the exceptions from this regulation, only in case of urgent necessity. Bases of urgent necessity are

10. Subsection "b", Section 1, Article 14 of Organic Law of Georgia on Public Defender of Georgia, 16.05.1996

clearly stated as well. In particular, according to Criminal Procedure Code, the urgent necessity exists where:

Delay may cause destroying the material evidence having importance for the investigation;

Delay may make collection of the mentioned evidence impossible'

item, document, substance or other object containing information was found in a course of performing of another investigative action (if found in result of superficial examination only);

Actual danger to human life or health is present.

Thus, a search without a court warrant is allowed only in the above cases. If the above mentioned grounds exist, the court shall verify lawfulness of the investigative action conducted without a court warrant. By specifying a detailed list of circumstances prior to an urgent necessity the legislation attempts to protect the lawful rights and freedoms of a person to exclude the interpretation of the law by the persons conducting investigation.

Hence, the law enforcement personnel, i.e. the offical who has adopted the above resolution, should have complied with the requirement of legislaton and perform personal search of Tengiz Gunava and search of his apartment only in case of existence of the specific grounds. In addition, the prosecutor has no authority to specify, instead of the investigator, the grounds for urgent necessity for personal search, as he was not a person conducting this investigative action. Thus, in specific situation, what has caused urgent necessity of Tengiz Gunava's search should have been specified by the investigator in his resolution. As Article 121 of Criminal Procedure Code does not specify any special procedures for conducting of personal search upon urgent necessity and refers to the regulations established by Article 120 of Criminal Procedure Code of Georgia; according to Section 1 of Article 120, in case of an urgent necessity, the investigator could conduct the search on the basis of resolution only and as mentioned above, such resolution shall contain specific reason on which grounds as provided for in Criminal Procedure Code the search is justified with an urgent necessity. In addition, if there was any basis for conducting of this investigative action caused by urgent necessity, the investigator had to specify this in the resolution and thus justify the lawfulness of restriction of privacy of Tengiz Gunava. Especially, regarding that Section 2 of Article 120 of Georgian Criminal Code states that before commencement of search, the investigator shall, in case of urgent necessity, introduce the person the resolution based on which a seizure or search is taking place. Thus, the investigator shall inform the relevant person about the basis of urgent necessity and justify reasonability of search without court warrant.

It should be noted that the report of a personal search of Tengiz Gunava of 16th November 2012 is also written in breach of the requirements of Criminal Procedure Code. It specifies that in accordance with Section 8 of Article 120 of Georgian Criminal Procedure Code, a personal search of a person present at the place of search and/or seizure is allowed, if there is reasonable doubt

that he has hidden the subject, document, substance or other object containing information subject to seizure. Such case is regarded as urgent necessity and personal search is conducted without court warrant and investigator's resolution". It is noteworthy that this rule is applicable in case, where search and/or seizure is conducted in the premises, room, or other property and reasonable doubt appears, with respect of the person present there that he has hidden the subject, document, substance or other object containing information. This is the special regulation dealing with the search of another person present at the place of search, while in Tengiz Gunava's case, his personal search was simply an investigative action conducted towards him.

On the other hand, the above personal search report specifies Section 8, Article 120 of the old version of the Georgian Criminal Procedure Code[11], according to which, personal search of a person present at the place of search and/or seizure, without court warrant and investigator's resolution. Thus, according to the version of this Article[12] effective at a time of personal search of Tengiz Gunava, such personal search is conducted without court warrant only and the legislation does not allow conducting of search without investigator's decree.

Irrespective of the above violations, a warrant issued on 16th November 2012, by D.J., a Judge of Criminal Department of Tbilisi City Court, personal search of Tengiz Gunava, lawfully restricting his right on personal inviolability, was conducted in compliance with the requirements of procedural law and no any substantial violations have taken place at a time of conducting of search and its procedural implementation. Here the court relies upon the basis of urgent necessity specified in the solicitation on recognition of lawfulness of personal search of Tengiz Gunava conducted upon urgent necessity issued by prosecutor T. Kh. on 16th November 2012 and states that: "personal search of Tengiz Gunava was conducted on the basis of urgent necessity, as delay of personal search could cause loss of material evidence significant for investigation and hence, impossibility to gain the mentioned data, therefore, the urgent necessity specified in Section 5 of Article 112 of Georgian Criminal Procedure Code as the basis for conducting of personal search without a court warrant."

Similar violations were identified in case of search of Tengiz Gunava's apartment on 16th of November 2012. In particular, the investigator's resolution does not specifies, which specific basis Stated in Section 5 of Article 112 of Georgian Criminal Procedure Code has caused urgent necessity of search of Tengiz Gunava's apartment. Nevertheless, on 16th November 2012, T. Kh., the prosecutor, in his solicitation for recognition of lawfulness of search of Tengiz Gunava's apartment post factum, specified as the basis for urgent necessity, impossibility of gaining of the material evidence significant for investigation and possibility of eradication of the material evidence significant for investigation in case of delay. And Judge D.J. again, in the decision of 16th November 2012, dealing with lawfulness of the investigative action conducted without

11. Version effective before amendments made in accordance with Georgian Law on Amendments to Criminal Procedural Code of 09.10.2009 and Georgian Law on Amendments to Criminal Procedural Code of 22.06.2012.
12. According to the Georgian Law on Amendments to Criminal Procedural Code of 09.10.2009 and Georgian Law on Amendments to Criminal Procedural Code of 22.06.2012

court warrant, Stated that: "investigative action – search at the apartment of the accused Tengiz Gunava was conducted on the basis of urgent necessity, as delay of personal search could have caused loss of material evidence significant for investigation and therefore, the urgent necessity specified in Section 5 of Article 112 of Georgian Criminal Procedure Code as the basis for conducting of search without court warrant." In this case, the court explained that the investigative action was conducted in compliance with the requirements of Criminal Procedure Code and no substantial violations of law have taken place in conducting o search and its procedural execution.

Regarding the above, D.G., Judge of the Criminal Department of Tbilisi City Court recognized personal search of Tengiz Gunava and Tengiz Gunava's apartment conducted on the basis of urgent necessity on 16th November 2012, without court warrant.

The judge shall, in the act, issued by him/her, in this case, the decisions on recognition of lawfulness of the investigative actions, consider and reason, whether the requirements of law violated in the process of conducting of the investigative actions and if he finds that the violation has taken place, though it was not of substantial nature, he should have justified, why this specific violation had not affected lawfulness of the investigative action and why this violation does not provide basis for recognition of the investigative action as unlawful. Particularly, where the legislation clearly specifies the basis for conducting the investigative actions at urgent necessity and states that these bases limit the law enforcement personnel, if the said investigative action is conducted without court warrant. Though the judge's act is the final document, which should provide exhaustive answer to each significant violation and question, judge D. J. has not even considered the above violations and limited it to the uncertain record in the decision, stating that no substantial violations have taken place.

Regarding the above, it is clear that by personal search of Tengiz Gunava and search at his apartment and recognition of lawfulness of these actions requirements of procedural laws were violated substantially, by the investigators and prosecutor, as well as by the judge.

Case of Bachana Akhalaia

Studying of the documents dealing with Bachana Akhalaia's case at Public Defender's Office showed that violation of Section 1, Article 4 of Georgian Law on Police by K.K., the investigator of special cases of Anti-corruption Department of Chief Prosecutor's Office, implying that activities of the policeman shall be based on the principles of law. In particular, the violation was as follows:

Among the materials of criminal case against Bachana Akhalaia, the defendant's party has submitted to the Office of Public Defender the reports of interviewing of two witnesses – V.B. and N.K., in relation with the criminal case. Interviewing was conducted on 8th January 2013, by K.K., investigator of special cases of the Anti-corruption Department of Chief Prosecutor's Office.

Studying of the said interviewing reports showed that K.K., investigator of special cases of the Anti-corruption Department of Chief Prosecutor's Office, in relation with the criminal case against Bachana Akhalaia, conducted interviewing of witness V. B., on 8th January 2013, from 15:05 to 15:25 and on the same day, from 15:00 to 15:15, within the scopes of the same case, the same investigator conducted interviewing of witness N.K.

Section 2, Article 305 of Criminal Procedure Code of Georgia (Criminal Procedure Code of Georgia of 20th February 1998[13]) clearly states that the "witness shall be interviewed separately from the other witnesses. Investigator shall take measures to prevent communication of the witnesses summoned in relation with one and the same case, up to completion of interviewing".

In this case, reports of interviewing say nothing about hpostponing of interviewing or having a break. In addition, as mentioned earlier, joint interviewing of witnesses is not allowed by the procedure legislation. Nevertheless, on both interviewing reports investigator K.K. confirms, with his signature, that on 8th January 2012, both witnesses were interviewed by him together, for 10 minutes (from 15:05 to 15:15) thus violating Section 2, Article 305 of Criminal Procedure Code of Georgia (Criminal Procedure Code of Georgia of 20th February 1998). And if these two witnesses were not interviewed together, how one investigator could interview two witnesses separately at the same time.

It should be noted that according to Section 1 of Article 4 of Georgian Law on Police, the policeman's activities shall be based on the principle of lawfulness. Law enforcement personnel are obligated by the law to strictly follow the principle of lawfulness in implementation of their professional activities. This was not fulfilled in criminal case against Bachana Akhalaia.

Case of George Kalandadze

Studying of the documents dealing with George Kalandadze's case at Public Defender's Office revealed the following:

By the decision of 9th November 2012, Tbilisi City Court partially accepted motion by the Minister of Justice of Georgia and imposed, as the pre-trial preventive measure, the bail. And still, George Kalandadze remained at the position of the Chief of Unified Staff of Armed Forces of Georgia.

On 10th November 2012, Prosecutor G.Sh. filed a motion requesting dismissal of the George Kalandadze, the accused from his position and on 11th November 2012, by the decision of Tbilisi City Court, Judge O.L., the motion was granted.

13. According to Section 1 of Article 332 of Criminal Procedural Code of Georgia, before 01.09.2013, interviewing shall be conducted according to rules established by Criminal Procedural Code of Georgia of 20th February 1998 (with the exception of Section 6 of Article 305)

By the letter of 13th February 2013 from the Administration of the President of Georgia, Public Defender's Office of Georgia was advised that the letter of the Minister of Defense and copy of the decision of 11th November 2012 of the Department of Criminal Cases of Tbilisi City Court annexed thereto was registered by the chancellery of the Administration of the President of Georgia on 20th November 2012. On 18th January 2013, the Ministry of Defense of Georgia, with the letter, provided to the Public Defender's Office the resolution of 20th November 2012 the President of Georgia on dismissal of Brigadier General George Kalandadze, Chief of General Staff of Georgian Armed Forces from his position.

On 13th of November 2012, G.Sh., prosecutor of Anti-corruption Department of Chief Prosecutor's Office applied to Criminal Department of Tbilisi City Court and requested to use detention as pre-trial restraint measure. Judge B.Sh. did not grant the prosecutor's motion and granted the motion of defendant George Kalandadze and his defense attorney partially and imposed bail on him.

On the basis of comparison of the circumstances of the mentioned case, Public Defender of Georgia regarded that Judge L.O. has violated Subsection "v", Section 2 of Article 2 of Georgian Law on Disciplinary Responsibility of the Judges of General Courts of Georgia and Disciplinary Procedures", i.e. he has improperly fulfilled his obligations because of the reasons mentioned herewith:

On 11th of November 2012, L.O., Judge of the Department of Criminal Cases of Tbilisi City Court granted the motion of G.Sh., senior prosecutor of Anti-Corruption Department of Chief Prosecutor's Office of Georgia and Stated that: "accused George Kalandadze shall be suspended from the position of the Chief of General Staff of Armed Forces of Georgia up to final court decision". According to the same ruling, by the decision of judge L.O., this ruling should be provided for implementation and for reference, to the persons and authorities specified in Section 7, Article 206 of Criminal Procedure Code.

It is noteworthy to emphasize that Section 7, Article 206 of Criminal Procedure Code requires maintaining of one copy of the decision on application, change or cancellation of the restraint measure with the court, as well as obligation of providing copies to the defendant or his defense attorney, investigator, prosecutor, institution executing the restraint measure. Though dismissal of the defendant from his position (job) is not a type of restraint measure provided for by Georgian Criminal Procedure Code and hence, its execution cannot be imposed on the persons / authorities addressees of the decision on application, change or cancellation of the restraint measure. Legislation imposes obligation of dismissing of the defendant from his office on the subjects provided for by the special norm, referred to in Sections 2 and 3 of Article 160 of Criminal Procedure Code of Georgia.

Thus, judge L.O. has violated the obligation of proper fulfillment of the judge's duties by the judge by specifying the persons and authorities stated in Section 7 of Article 206 as the subjects

executing the decision of 11th November 2012. Especially, he has not stated that in this case, according to Section 3, Article 160 of Georgian Criminal Procedure Code, the President of Georgia was in charge of fulfillment of the requirement of dismissing of defendant George Kalandadze from his position.

In addition, Judge B.Sh. has violated Subsection "v", Section 2, Article 2 of Georgian Law on Disciplinary Responsibility of the Judges of General Courts of Georgia ad Disciplinary Procedures, as follows:

B.Sh., Judge of Department of Criminal Cases of Tbilisi City Court Stated in the decision of 13th November 2012, that defendant George Kalandadze was dismissed from the position of the Chief of General Staff of Georgian Armed Forces by court decision of 11th November 2012. The record of proceedings of the court session[14] of 13th November 2012 states that the defense attorney of the defendant George Kalandadze has widely considered unlawfulness of the criminal prosecution of George Kalandadze and issues of his dismissal from the position. Nevertheless, in decision of Tbilisi City Court of 13th November 2012, judge B.Sh. simply stated that in recognition of George Kalandadze as a convict, as well as in implementation of the other procedural actions, no any fact of substantial violations, which could have justified refraining to apply the restraint measures, were identified from the materials of the case.

It is well known that according to Section 2, Article 3 of the Order #462 of 8th August 2007 of the President of Georgia on Approval of the Statute of General Staff of Georgian Armed Forces, "Chief of General Staff is appointed and dismissed by the President of Georgia, upon nomination by the Minister of Defense of Georgia."

Article 159 of Georgian Criminal Procedure Code provides for the basis for dismissal of the defendant from his/her position (job): "defendant may be dismissed from his/her position (job) if there is a reasonable doubt that by staying at this position (job) he/she will obstruct the investigation, compensation of losses caused by the crime or continue criminal activities."

According to Section 2 of Article 160 of Georgian Criminal Procedure Code, Court decision on dismissal of the defendant from his/her position shall state "requirement of dismissal from the position". Thus, according to this record of Criminal Procedural Code, court decision on dismissal of a person from his/her position (job) could not be automatically regarded as the fact that a person is dismissed from the position (job). Legislation clearly states that the decision of such type is obligatory for the head of relevant institution, enterprise or organization. Of course, this does not include discretion of the head of relevant institution, enterprise or organization, in the process of execution of this decision. Section 3 of Article 160 of Georgian Criminal Procedure Code does not allow them to refuse execution of the court decision. Law clearly obligates the addressees of the decision to fulfill it. Though, again, according to the requirements of the law, the court decision on dismissal of the defendant from his/her position (job) shall be executed

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and this implies issuance of the relevant legal act, basis for which is provided by the court decision and with respect of the contents, it reflects the fact of dismissal of the defendant from his/her position (job) according to the court decision.

Regarding all above, before execution of the decision of 11th November 2012 of the Department of Criminal Cases of Tbilisi City Court, George Kalandadze could not be regarded as dismissed from the position of the Chief of General Staff of Georgian Armed Forces and no one had the right of criminal indictment against him, with the exception of the Minister of Justice of Georgia, according to Subsection "c", Section 1 of Article 8 of Georgian Law on Prosecutor's Office. Thus, G.Sh., prosecutor of Anti-Corruption Department of Chief Prosecutor's Office of Georgia was not authorized to initiate prosecution against the Chief of General Staff of Georgian Armed Forces, George Kalandadze, until the President of Georgia has not formally executed the relevant decision of Tbilisi City Court.

It is notable that according to Section "i", Article 89 of Georgian Law on Public Service, employment relations of public servant are terminated "by temporary dismissal or other cases (according to or on the basis of the law)." According to Article 92 of the same Law, "termination of the employment shall be executed by an order or decree." In this case, before final decision on the criminal case, Tbilisi City Court issued the decision on dismissal of George Kalandadze from the Position of the Chief of General Staff of Georgian Armed Forces on the basis provided for by Criminal Procedure Code, Article 92 of Georgian Law on Public Service. On the basis of this decision the relevant decree of the authorized person, in this case, the President should be issued, which would execute the decision on temporary dismissal of George Kandelaki from the position of Chief of General Staff of Armed forces of Georgia. Until the relevant presidential decree is issued, the decision of 11th November 2012 of Tbilisi City Court could not be regarded as executed and only Minister of Justice of Georgia was authorized to initiate prosecution against George Kalandadze, Chief of General Staff of the Armed Forces of Georgia at that moment.

In addition, it is undoubted that the court is only competent and authorized body to reveal substantial violation of the legislation. Judge should have made judgment and reasoned why George Kaladadze was deemed dismissed from his position before issuance of the Presidential Decree on his dismissal. Though the act issued by the judge is the final document to answer to all substantial violations and issues at fullest possible extent, judge B.Sh. has not considered the above violation and stated in abstract and dry manner, in the decision, that the requirements of law were not substantially violated. Though the judge is not obliged to discuss all issues in the decision, the position of the judge in relation with the significant issue emphasized by the defense attorney at the court session, dealing with possible unlawfulness of criminal persecution of George Kalandadze, should necessarily be clearly and reasonable formulated. While his record does not clearly show, what were the violations mentioned by the judge. Thus, we regard that this clearly evidences improper fulfillment of his duties by the judge.

Case of the Citizens Related to Fund Komagi and David Akhalaia

Office of Public Defender of Georgia studied the materials of the case submitted by the defense attorney of David Akhalaia, including the subpoena sent to David Akhalaia by Georgian Chief Prosecutor's Office on 1st December 2012.

The above mentioned subpoena includes the identity of a person who prepared it, the criminal case ID number, identity of the person subpoenaed and his personal number, address to where David Akhalaia should appear, identity of a person, before, whom David Akhalaia should appear, time and general caution on the consequences of failure to appear without any valid reason.

On 16th of January 2013, Office of Public Defender was notified by the letter from Chief Prosecutor's Office that "on 1st December David Akhalaia was subpoenaed to the Chief Prosecutor's Office for the purpose of conducting of a procedural action towards him. Subpoena included the reference number of criminal case. In addition, the addressee of the subpoena has been told that David Akhalaia was called in the status of the defendant."

According to the same letter from Chief Prosecutor's Office, "Resolution on accusation against David Akhalaia was made on 1st December 2012, his defense counsel got familiarized with the resolution on 2nd December".

Stemming from all the above mentioned, the subpoena did not specify what his status was and what the criminal case it (substantially) was. Hence, he could not be aware of the consequences of no show at the investigation authority and this is a violation of his rights guaranteed by the law. Since the fact of providing verbal explanation of David Akhalaia,s status could not actually be verified, the mentioned brings in a reasonable doubt towards providing such explanations.

It should be also noted that according to the report issued by K. CH., investigator of special cases of the Anti-corruption Department of Chief Prosecutor's Office on 1st December 2012, on 1st December 2012, he attempted to find out the home phone number of citizen David Akhalaia, to call him or his family members and inform that Anti-corruption Department of Chief Prosecutor's Office has adopted the resolution on initiating the procedures against him, as an accused, on the basis of which, he had to appear at Chief Prosecutor's Office on 2nd December 2012, at 17:00. The mentioned report evidences the fact that reason of summoning of David Akhalaia on 2nd December 2012, was his familiarization with the adopted resolution about his accusation.

It is notable that this was similar to the case with the citizens associated with International Charity Fund "Komagi". In particular, on 12th June, Ia Metreveli, Chairperson of Management Board of the International Charity Fund "Komagi" applied to Public Defender of Georgia asking for protection of the rights of citizens associated with the Fund, as they were regularly summoned to the interviews by the Department of Constitutional Security of the Ministry of Internal Affairs of Georgia, without providing of any information.

Public Defender's Office contacted with the citizens specified in Ia Metreveli's application. Most of the interviewed citizens stated that they received the subpoenas having only the case id numbers, without specifying the contents of the cases, for which they were summoned to the law enforcement structures. This was confirmed by the departments of the Ministry of Internal Affairs of Georgia represented at the Office of Public Defender.

On 4th October 2012, within the scopes of studying of the mentioned case, Office of Public Defender of Georgia was notified by the letter from Chief Prosecutor's Office that on 9th June 2012, 16 persons were interviewed as witnesses in relation with the criminal case related to the fact of bribing the voters, containing the signs of crime, specified by Article 1641 of Georgian Criminal Code. These persons were subpoenaed. Before commencement of interviewing they received explanations on what case they were summoned, they were also informed about rights and obligations of a witness. Hence, it is clear that the subpoenas given to these citizens did not contain the information about the case (its contents) in relation to which they were summoned.

The above is a systemic problem. In addition to the specified cases, a similar problem was reported by number of citizens to the Office of Public Defender. As a rule, in the subpoenas only the id number of a criminal case is specified and such indication contains technical information only and does not provide sufficient information about the expected procedural action, placing the summoned person into the informational vacuum and causes the sense of fear in him/her towards the law enforcement structures.

In addition, according to the explanations of the European Court of Human Rights, a person shall be informed in advance about the reason of his summoning to the investigation authority, as well as about his/her status, to be able to foresee the legal outcomes of failure to appear[15].

The problem is further aggravated by the fact that if the resolution on accusation of a person is adopted and he/she is summoned to charge, failure to appear could be is additional basis and argument for the prosecutor's office to request confinement as a pre-trial restraint and for the court – to impose such restraint. In case of summoning of a person as a witness and his/her failure to appear may become the basis for his/her forced delivery or for initiating of the proceedings.

Law enforcement structures shall implement their activities in good faith, based on the principles of transparency, respect to the Human Rights. Hence, at a time of summoning as a witness to the investigation authority, he/she shall be provided with maximally complete information, possibility of foreseeing of the legal outcomes of his/her actions (e.g. in case of non-appearing), especially, if such actions may potentially cause deprivation of liberty.

Hence, it is necessary that a n the note of appear given to a person summoned by the investigator or prosecutor contained: who, with what status, for what, to whom (specifying identity and

15. See case "George Nikolaishvili v Georgia" European Court of Human Rights, January 13 2009 [Application N37048/04].

position) and to what address is summoned, as well as the date and time of visit, as well as the outcomes of non-appearing without good reasons. In addition, specifying only number of the criminal case in a technical manner is not sufficient, the note shall contain the contents of the case, and i.e. what alleged crime is investigated.

About Special Operation at village Lapankuri, Lopota Gorge

Public Defender studied the events occurred in late August 2012, in the village of Lapankuri, Lopota Gorge. Information provided to the Public Defender by confidential sources and next of kin of individuals killed in course of the special operation differs from the official information released by Georgian law enforcement institutions and high ranked officials, according to which, the group of Chechen militants allegedly came to village Lapankuri, Georgia, from North Caucasus. Hence, in the mentioned report, we shall focus on the details made available to the Public Defender in relation of the factual circumstances of the case. As for the breaches of the measures implemented by the law enforcement authorities on the basis of the official information, we shall discuss them in the section dedicated to the law enforcement authorities and human rights[16].

According to the information provided by the source close to the staff and commanders participating in Lapankuri special operation: from February 2012, upon request/instructions of the high officials of Ministry of Internal Affairs, negotiations commenced with the veterans of war in Chechnya, Chechen refugees and representatives of Chechen Resistance Movement residing in different European Countries.

According to the information received from the source (his identity is not disclosed for the security reasons), Georgian law enforcement authorities promised Chechen militants to arrange so called “corridor” to move to Chechnya, training, equipping and providing of all necessary conditions for their moving to Chechnya. Starting from March the Chechens started to arrive to Georgia from various European countries. In some districts of Tbilisi (mostly in Saburtalo District) the accommodation was leased for them. According to the promises of high officials, about 50 militants would move to Chechnya every month. Finally, 120 (one hundred and twenty) militants of Chechen and other Caucasian country origin arrived to Georgia. High officials of Ministry of Internal Affairs took the arrived Chechens either to the places of accommodation or

16. See p. 417

deployment, gave them and registered in their names the fire arms, issued the driving licenses, other necessary documents and items to them. These issues were regulated by the Deputy Minister of Internal Affairs Gia Lortkipanidze and high officials of Ministry of Internal Affairs Sandro Amiridze and Zurab Maisuradze. It should be noted that Public Defender gained a gun registration certificate issued to Aslam Margoshvili by Ministry of Internal Affairs, on 23rd July 2012, Stechkin system pistol (APS, gun number GB 3668), with the permit of keeping of the gun. This suggests that Georgian law enforcement authorities were related to this operation.

According to the information provided by the source, members of the unit formed from the Chechen militants were trained at Vaziani and Shavnabada military bases, where their instructors were officers of Georgian law enforcement authorities, as well as the Chechen militants with great experience gained in various wars.

Residents of Pankisi Gorge confirm that large group of Chechens arrived to Pankisi Gorge in summer 2012. They stated that in summer 2012, over 100 young men arrived from different European countries.

From March 2012, training of Chechen militants lasted longer than scheduled and this caused a negative reaction among the group members. Chechen militants demanded providing of the promised so called “corridor” from the high officials of Ministry of Internal Affairs to move to Chechnya. Staff members of Ministry of Internal Affairs gave various promises to the Chechen militants and named different dates of departure of the group. Upcoming parliamentary elections and straining of political situation in Georgia made Chechen militants think that possibly their stay in Georgia for longer than scheduled period was related to elections and their potential involvment into the election processes in some way.

According to the information received from the source, a group of Chechen militants arrived to village Lapankuri few days before the special operation. According to the information from a confidential source, they arrived to Lapankuri Gorge by pickup trucks of Antiterrorist Center of Ministry of Internal Affairs and brought the arms, food and other needed stuff for the group. Chechen militants were waiting for the permit to move to Chechnya.

According to the data from a confidential source, supposedly, for prevention of possible movement of the group to Georgian-Russian border, 2 days before commencement of Lapankuri special operation, Georgian border and special operations units were deployed from helicopters to the territory adjacent to Dagestan section of Georgian-Russian border. The interviewed witnesses supposed that purpose of these units was prevention of movement of Chechen militants to the north.

At the same time, an armed group of Chechen militants camped in Lapankuri demanded providing a corridor towards Dagestan section of Georgian-Russian border. Last minute Georgian Ministry of Internal Affairs refused to provide the corridor and demanded to give up the arms

and return back, to Pankisi or military bases. This demand of the representatives of Ministry of Internal Affairs strained the relations between Chechen militants and staff members of Georgian Ministry of Internal Affairs. Chechen militants refused to disarm at Lapankuri Gorge.

To resolve the strained situation and negotiate with the Chechen militants, the Ministry of Internal Affairs officers approached the persons respected by Chechens. Chechen militants refused to disarm. After their refusal, Georgian armed forces commenced a so called antiterrorist operation resulting in killing of several Chechen militants and staff members of Georgian armed forces. According to the information from the confidential source, the personnel of Georgian armed forces killed in Lapankuri action, accompanied the group of Chechen militants from the first day of their arrival to Lapankuri.

Merab Margoshvili, father of killed Aslan Margoshvili stated in his explanations provided to the Public Defender that his son was trained at Shavnabada Base and the Georgian law enforcement officers, Tsiklauri and Chokheli killed in special operation were the instructors of the training unit.

According to the information provided by the source close to Chechen militants, for the last months, friendly relations developed between the besieged Chechen militants and high officials of Ministry of Internal Affairs; they were trained by them and they did not believe that Georgian armed forces would open fire against them.

According to the data obtained from the source, aviation participated in the special operation. Aviation opened the fire. In the course of the skirmish seven Chechen militants were killed, three of them were Pankisi Gorge residents. According to the provided data, 9 Chechen militants survived. According to the information from the same source, in few days after the special operation representatives of Georgian Ministry of Internal Affairs accompanied these militants to Turkey, through Vale border point.

After completion of the special operation, for several days, the family members were not allowed to take the bodies of killed persons. According to the explanations provided by parents of killed Margoshvili and Kavtarashvili and relative of Baghakashvili, Deputy Minister of Internal Affairs, G. Lortkipanidze and high official of Ministry of Internal Affairs S. Amiridze gave their consent to transfer of the bodies of the killed to their family members, provided they would bury them the same night: bury them in secrecy, without traditional funeral rites and no people should come to family members to express their condolence. Family members of the killed had to agree with these requirements of the high officials of Ministry of Internal Affairs.

On 3rd September, late at night, the bodies of the killed were brought from Gldani Establishment morgue and transferred to the families. Only fathers of the killed were allowed to attend the funeral. High officials of Ministry of Internal Affairs were present at the burial.

The bodies of the Chechen militants killed during the special operations were at first buried at so called orphans cemetery located in the vicinity of so called airport highway. Despite the requests they were not transferring the bodies to their families for long time.

According to the information received from the parents and relatives of the killed in result of special operation, G. Lortkipanidze, Deputy Minister of Internal Affairs asked them, if they saw the survived Chechen militants, to tell them to contact him (G. Lortkipanidze) and he undertook to safely escort these people across the border. Later this group was indeed accompanied by Ministry of Internal Affairs to Vale border post.

On the basis of information provided by confidential sources and parents and family members of Pankisi Gorge residents killed at a time of Lapankuri special operation, supposedly the high officials of Georgian Ministry of Internal Affairs and other institutions have committed the crimes specified in Sections 1, 2 and 3 o Article 223 of Criminal Code of Georgia, as well as crimes, specified in Article 151 (intimidation) and Article 156 (harassment) towards the family members of the killed.

Public Defender of Georgia recommended to the Parliament of Georgia to establish temporary parliamentary investigation commission to investigate the facts occurred at village Lapankuri, Lopota Gorge, in late August 2012.

Public Defender of Georgia recommended to the Chief Prosecutor's Office of Georgia to launch an investigation of the alleged fact of creation of the unlawful military formations with participation of Chechen militants in 2012, by the high officials of the Ministry of Internal Affairs; as well as investigate the facts of pressure inserted on the family members of the persons killed in result of special operation at village Lapankuri, Lopota Gorge.

Developments in Self-Governments

According to Section 2 of Article 1022 of the Constitution of Georgia, "self-governing unit performs its activities in accordance with the rules established by Georgian legislation, independently and at its own responsibility. Own authorities provided by the organic law are exclusive." Hence, unlawful intervention into the activities of self-governing unit is unacceptable.

Public Defender of GeorgiaStudies the events in local self-governments after parliamentary elections of 2012 and a special report will be prepared. Nevertheless, we regarded that it would be reasonable to focus on the key trends appearing in this period, in this Parliamentary Report.

Before elections, almost in all local self-governments political party "National Movement" constituted majority; after parliamentary elections of 2012, success of political coalition "Georgian Dream" caused inadequate expectations in the society in relation with the self-governments. It should be noted that inadequate political awareness of the society contributed to development of inadequate expectations that change of central government would naturally cause respective changes in local self-governments resulted in chaotic confrontation between different groups fighting for power, in many cases, within the local councils. In the processes directed towards gaining of influence in local self-governments local population was artificially involved, this implied picketing of local self-government buildings, participation in the actions, including the extreme form of protest – hunger strikes. Regarding the above, numerous facts of interruption of operation of the local government have taken place and frequently this was not followed by adequate response from the side of law enforcement authorities.

It should be noted as well that after parliamentary elections of 2012, replacement of the Gamgebelis (Chief local executives) and deputy Gamgebelis, staffs of the self-government authorities started to oust them from their jobs. Hence, the doubt appeared that this was not a sound process and was associated with the politically-driven decisions.

In particular, according of the report of International Society for Fair Elections and Democracy (ISFED), from 1st October to 21st December 2012, all over Georgia, 31 Gamgebelis have resigned from their posts, 29 of the by their personal application and two – by the decision of local council. During the very same period, 16 chairpersons of Sakrebulo (local council) resigned, including 14 at their own will and two at the will of Sakrebulo[17].

Office of Public Defender of Georgia requested information from the administrations of all municipalities on the numbers of staff members who resigned from their offices. According to available information, from the administrations of 49 municipalities in total 1434 employees have left their jobs after 1st October 2012. It should be noted that most of them – 881 people in total, resigned on the basis of their own applications. In this respect, one could state that the processes developed according to the historical practice nonexistent in Georgia. In particular, the approach that replacement of the government is followed by automatic replacement of the staffs was reflected on local self-governments as well.

Though individual cases are hard to study, a number of staff members retired from the local administrations after parliamentary elections of 2012 cause a reasonable doubt that this process went on under certain pressure. In addition, in many cases, additional difficulties are caused by unwillingness to talk of the retired personnel. Public Defender of Georgia showed interest to the facts related to the pressure exercised over specific persons. Nevertheless, in most cases, they refused to provide any explanations and/or information. As mentioned above, Public Defender of Georgia continues studying of the processes ongoing in the local self-governments, though,

17. http://www.isfed.ge/pdf/2012-12-21(rep).pdf

we should note once more that involvement of all relevant bodies is required to place the process within the democratic and legal frames.

Law Enforcement Bodies and Human Rights

During the reporting period, Public Defender has identified the cases of lack of attention to the facts containing the signs of crime from the side of investigation authorities and this showed up in non-commencement of investigation in relation with the specific facts. Facts containing the signs of crime, were extensively covered by mass media, particularly, in the pre-election period. In many cases, similar information was provided to the law enforcement structures by Public Defender, Unfortunately, in some cases the investigation authorities failed to conduct adequate measures.

In 2012, Office of Public Defender has studied a number of cases dealing with the right of administrative detainees. Issue of detention of the activists of coalition "Georgian Dream" should be particularly mentioned. A number of the detainees suggested that the actions of law enforcement authorities had certain political motivation. Study of the cases by Georgian Public Defender's Office showed that this is a systemic problem and it shall be solved.

In relation with the physical assault and threatening of certain individuals from the side of representatives of law enforcement authorities Public Defender mentioned that in the reporting period unprecedented growth of complains of the citizens in relation with the alleged criminal actions performed by the law enforcement personnel against them was observed. This includes physical assaults from the side of law enforcement staff, both, at the moment of detention and after delivery of individuals to the offices of law enforcement authorities. A case has been identified where the representative of judicial authority stated in public about criminal actions against the person from the side of law enforcement authorities. This is a quite concerning trend, particularly, regarding that it maintained in January-February 2013. An extended report provides detailed discussion of such facts (cases of pressure over E.S., K.Ch., Z.Kh. assistant of judge)

Public Defender pays particular attention to the inadequate response from the side of investigation authorities to the claims of the citizens in relation with the facts of ill-treatment (cases of T.Z., P.G.).

Public Defender has also identified the facts of undue restriction of the most significant procedural guarantees for defense of the convicts or detainees from the side of law enforcement authorities.

In the Public Defender's report particular attention is devoted to the protection of the principle of **presumption of innocence**. In 2012, mass media has permanently been publishing the announcements violating the presumption of innocence. It should be noted that civil servants, in many cases, for populist political reasons, questioned innocence of specific persons. The situation was further aggravated by the fact that frequently these were the law enforcement authorities and high officials, who made the official announcements related to the guilt of persons. Such actions were identified even as coming from the side of the President of Georgia.

At the same time, in 2012, there were identified the cases where the official announcements were made by the press services or public relation services of law enforcement authorities. In these announcements the specific persons even without being defendants in those cases were named as the criminals.

Right of Trial

Public Defender of Georgia has analyzed various aspects of the right of fair trial.

Judicial monitoring – in the parliamentary report for year 2012, the outcomes of judicial monitoring performed in November of the reporting year. As a result of the above, Public Defender of Georgia has provided number of recommendations: 1) necessity of harmonization of adjustment of Article 13 of Georgian Organic Law on Common Courts and Georgian Law on Amendments to the Criminal Procedure Code of Georgia of 18th January 2013; 2) providing translation at the trial so that a person having no knowledge of the state language was able to be fully integrated at the court hearings by the legislative provision; 4) provide vesting of obligation of justification of certain types of motions upon the party further allowing the court to make decision only within such justification.

Prejudgment and seizure – in the opinion of Public Defender of Georgia, relevant amendments and addenda should be made to Criminal Procedure Code of Georgia allowing a person, whose property was seized to appeal against the court decision on seizure of his property, personally and/or through the attorney. Public Defender of Georgia has also provided the relevant recommendations for application of the prejudgment resulting from the right of fair trial intended for relevant legislative changes and change of judicial practice.

Cases of administrative violations – special attention of the Public Defender was paid to the cases of administrative violations in relation to which there was mentioned that the parties shall have the opportunity to present and study the evidences in equal conditions. By the recommendation of Public Defender, in case of use of confinement as administrative punishment court decision

shall be necessarily justified with respect of establishment of the fact of violation and imposing of the punishment.

Restraint – Public Defender of Georgia studied the issue of imposing of restraint in reasonable details and identified number of problematic spheres. To deal with the problems the following recommendations were proposed: in case of application of imprisonment as restraint, the circumstances, which, in the judge's opinion, provide basis for non-application of less restrictive measures, should be examined and assessed. Public Defender also calls the judicial authorities of Georgia to ensure elimination of the facts of unjustified and unreasonable delay of trial on the cases of persons to whom non-confinement measures are applied. At the same tie, in the courts, overloaded with the number of cases, relevant measures should be taken to prevent unreasonable delay of trial.

Right to protection – Public Defender of Georgia has studied a number of criminal cases where the right to protection was limited unreasonably. In particular, the cases were identified, where the right to effective use of protection was subjected to artificial, unreasonable restrictions. At the same time, the cases were identified, where practical implementation of the requirements of Georgian Criminal Procedure Code on exchange of information on possible evidences was performed in breach of the law.

Execution of the court decisions

Report of Public Defender of Georgia for year 2012 includes the issues of execution of court decisions as well. There was mentioned that the problems stated in the previous reporting period dealing with the issue of court decisions not executed due to tax lien/mortgage and non-execution of the court decisions by the budgetary organizations, still remained unsolved. For this purpose, detailing of the procedures and terms of placing of the collection to the relevant account of the state budget by the executor where the debtor budgetary organizations do not fulfil voluntarily the monetary obligations imposed by the court, in Georgian Law on Execution Procedures was regarded as necessary measure. At the same time, there was mentioned that in Georgian legislation there was no mechanism for implementation of the decisions by Human Rights' Committee and therefore, necessity of relevant legislative intervention was emphasized. Public Defender of Georgia paid particular attention to the significance of detailing of the measures at the legislative level to be followed by the National Bureau of Execution in implementation of the measures of forced eviction of IDPs living in the other persons' property.

Freedom of Assembly and Manifestations

In the reporting period of 2012, Public Defender of Georgia has identified number of problematic cases related to realization of the right of assembly and manifestation, among which, primarily, inaction of the police in the course of specific actions should be mentioned.

On 17th May 2012, NGO "Identoba" (Identity) arranged peaceful demonstration related to the international day of fight against homophobia. Organizers of the action notified Tbilisi City Hall in accordance with the rules established by the legislation.

Group of the citizens followed the procession. Members of the group insulted the participants of action. Later they closed the walkway on Rustaveli Avenue and did not allow the participants to continue the demonstration and some part of them was physically assaulted as well.

It should be noted that from the territory adjacent to Philharmonic to Rustaveli Avenue, one crew of patrol police followed the demonstration[18]. According to the explanations given by the law enforcement staff, their goal was to ensure security of the participants of action. Nevertheless, the situation between the parties strained and turned into physical assault of the action participants. After intervention of the law enforcement staff the situation was normalized but the participants of the action were prevented from continuing of peaceful demonstration.

Providing of the proper conditions for enjoying of the right on peaceful manifestations is the positive obligation of the law enforcement authorities. Hence, the law enforcement authorities shall try their best to implement effective measures not only to prevent physical assault of the participants, but ensure enjoyment of the freedom of assembly and manifestation in full extent.

Public Defender of Georgia paid particular attention to the necessity of investigation of the past cases of violation of the right on assembly and manifestation to prevent impunity. At the same time, there was mentioned the absence of the issue so called "spontaneous actions" in the legislation and this was stated in the previous report and relevant recommendations to the Parliament of Georgia was provided to make relevant amendments and addenda to Georgian Law on Assembly and Manifestation.

Public Defender addressed with the recommendation to the Ministry of Internal Affairs of Georgia to implement the relevant measures for special training of the structural subdivisions staff for elimination of incidents in the course of assemblies and manifestations, to ensure that after their response on the spot, the action participants could continue enjoying freedom.

18. http://www.youtube.com/watch?v=-Qmj_NFu5ok

Freedom of Expression

In 2012, freedom of expression was one of the most significant issues and hence, similar to the previous years, it was the priority direction of the Public Defender's activities. According to the study published by the organization – Reporters Without Borders, in Georgia, press freedom index in Georgia has improved by 5 points, compared with the previous year and moved to the 100th place[19]. And in the report of Freedom House for year 2012, Georgia moved from 55th to 52nd place.

Year 2012 was distinguished with unprecedented number of violations of the rights of mass media representatives. One of the main reason for this was strained pre-election period. In particular, in the reporting period, Public Defender of Georgia studied about 50 cases of intervention into the journalists' professional activities and prevention thereof. Analysis of the cases studied by the Public Defender' Office identified number of key trends. In particular, prevention of journalists' activities by the public servants, facts of intervention into the professional activities, their physical and verbal insult and threatening, placing of the journalists of similar categories into unequal conditions at a time of performing of their professional activities, compared with the other mass media entities.

Regarding the above, Public Defender recommended to the investigation authorities, in case of preventing professional activities of the journalists, to qualify the mentioned facts according to the relevant article of Criminal Code of Georgia and in addition, he offered the mass media and press entities to take particular care in case of publishing of information detrimental to the private life of the third persons, avoid distribution of the unverified and assaulting materials not to contribute to expansion of the interests of interested parties.

Freedom of Information

Public Defender of Georgia discussed the degree of guaranteeing of freedom of information in Georgia. In his report number of problematic issues was identified: unlawful non-granting of information, defects in submission of the annual reports etc. Several recommendations were developed for dealing with these issues. Primarily, Parliament of Georgia was requested to modify Article 49 of General Administrative Code of Georgia so that the President of Georgia and Parliament of Georgia were provided with adequate documentation in relation with the current situation with respect of freedom of information. Parliament of Georgia was requested

19. http://en.rsf.org/press-freedom-index-2013,1054.html

also to impose administrative responsibility for non-granting of public information. In addition, Public Defender of Georgia regards reasonable to commence the procedures for ratification of the Convention of 18th June 2009 on Access to Official Documentation of European Council to provide one more legal lever for securing freedom of information.

Freedom of Religion and Tolerant Environment

While comparing with the previous years, cases of physical assaults based on religious motivations, have reduced in 2012, though the cases of xenophobic rhetoric increased significantly. Coverage of the issue of religious minority by mass media and intolerable position of part of the society to the different religious groups became the traditional problematic issue. The issue of so called disputed religious buildings and returning of the properties expropriated from one or another religious association in the soviet period and their transfer to the historical owners is still unsolved. No steps were made for elimination of the tax inequality. Actual implementation of the Law on General Education forbidding proselytism, indoctrination, and exposition of the religious symbols with non-academic sign, at the public schools was still problematic; about 40 facts committed with religious hatred motivation in 2009-2011 period remained uninvestigated.

Xenophobic rhetoric, hate speech could be regarded as one of the main problems of 2012, while in previous years this implied non-armenophobic statements, in the reporting year it mostly referred to Islamophobia (problem related to restoration of Sultan Aziz Mosque).

Actions against Local Muslim population in the village of Nigvziani, Lanchkhui District and the village of Tsintskaro, Tetritskaro District, in November and December 2012, could be regarded as some kind of resonance to the pre-election xenophobic attitudes.

Among the changes made to the legislation in the reporting period, amendments made by the Parliament to Criminal Code on 27th March 2012 could be specially admitted. According to these amendments, crime committed with the "racial, color, language, sex, sexual orientation, gender identity, age, religious, political and other views, disability, citizenship, national ethnical and social belonging, origin, property and title status, place of residence and other discriminating signs" could be regarded as aggravating circumstances.

In relation to these and other issues provided in the Report, Public Defender has developed numerous recommendations, in particular: it is significant to complete the investigations commenced in 2009-2012 and delayed, in relation with the facts of treatment restricting freedom of religion and discrimination on the religious basis and provide adequate qualification

of each crime committed with the religious intolerability; representative state commission for identification of the origins of so called disputed historical monuments shall be established and operated within the reasonable terms; consideration of the issue of budget funding of the other religious associations should be commenced, taking into consideration the international experience and existing different models; involvement of the experts in respective spheres and representatives of religious associations should be provided; systemic and effective monitoring and response mechanism should be developed for elimination of discrimination on religious basis within the space of public schools and for proper implementation of the requirements of Georgian Law on General Education.

Protection of the Rights of National Minorities and Promotion of Civil Integration

In the recent years, numerous programs were implemented for the purpose of promotion of civil integration and protection of the rights of religious minorities. This yielded certain positive results and the environment conductive to civil integration was created in the regions densely settled with the national minorities. Though, the issues of civil integration contain numerous challenges and this requires timely solutions.

With respect of promotion of civil integration, for the national minorities, improvement knowledge in the state language is of great significance. In the recent years, the number of people studying Georgian language and those, speaking in Georgian increased in Samtskhe-Javakheti and Kvemo Kartli. It should be noted that the schools of the regions settled with the national minorities lack the teachers. Teachers for Azerbaijanian and Armenian schools are not trained in the higher education institutions of Georgia. Quality of textbooks translated into Azerbaijanian and Armenian languages is a problem as well.

It should be noted that increasing number of school, graduates from Azmtskhe-Javakheti and Kvemo Kartli is enrolled at Georgian universities and this became possible after amendments to Georgian Law on Higher Education in 2009. According to these amendments, the preliminary examinations of general skills could be passed with the examination tests in Abkhazian, Ossetian, Armenian or Azerbaijanian languages.

Though, it should be noted that this legislative norm could not be realized still, with respect of Ossetian-speaking graduates, because of administrative practice. For the last three years, tests on general skills were not translated into Ossetian language and hence, general national examinations in general skills provided for by Georgian Law on Higher Education are not held in

Ossetian language. Because of this, the school graduates of Ossetian ethnical origin, who do not speak Georgian, have no opportunity to use benefits provided for by the legislation.

For the purpose of protection of the rights of national minorities, Georgian Public Defender has developed number of recommendations. In particular, in accordance to the amendments made to Georgian Law on Higher Education in 2009, in 2013, at the national examinations, for Ossetian-speaking graduates, the examination in general skills should be conducted in Ossetian language;

Ossetians, Assurians, Kurds, Kists/Chechens, Udis and Lezghins (Avars) and other minorities should be provided the opportunity, to study their native language in the places of their dense settlement, within the scopes of school education.

Public Defender regards that the regional televisions of the regions densely settled with the national minorities should be supported to be able to provide information to the population of Kvemo Kartli, Samtskhe-Javalheti, South Ossetia in the language known to the; in the news programs of Public Broadcaster, in the languages of national minorities more attention should be paid to the live and significant events of the national minorities.

Property right

One of the sections of parliamentary report of Public Defender for year 2012 is dedicated to number of aspects of securing of the property rights. Primarily, the violations specified in the previous report related to expropriation of the property were mentioned and relevant departments were addressed to continue extensive work in this direction and study of the relevant facts. At the same time, parliamentary report for 2012 provides several significant aspects of violation of the property rights.

One of the problematic issues is recognition of the property rights provided according to Georgian Law on Recognition of the Property Rights on the land parcels in the Ownership (use) of Natural Persons and Legal Entities of Private Law. The cases were revealed where, in implementation of the law, the procedures set by General Administrative Code of Georgia were not complied with. Issued acts on refusal to recognize the property rights did not meet the requirements of Georgian legislation. Public Defender recommended to the permanent commissions for recognition of the property rights to eliminate the above violations in the process of legal regulation.

Public Defender of Georgia has identified some cases, where territorial registration offices of the Agency of Public Registry of the Ministry of Justice of Georgia have registered the property rights

in breach of the legislation, without comparison of the documents maintained with the offices and submitted for registration. The cases of "overlap" in registration of the property rights were identified as well. Regarding the above, Public Defender of Georgia provided recommendations to the relevant authorities to recover this problem at the systemic level.

Public Defender of Georgia applied to the relevant authorities and Chief Prosecutor's Office of Georgia to review lawfulness of the facts of transfer of the property in a form of donation by natural or legal persons to the state, where there are affected the properties surrendered forcedly to the state, in a form of donation.

Public Defender of Georgia conducted detailed analysis of the property right, with respect of criminal law. For this purpose, Public Defender of Georgia provided number of recommendations: 1) distinguishing between the regulations provided for by Article 52 of Georgian Criminal Code, Subsection "a", Section 1, Article 81 of Georgian Criminal Procedure Code, was regarded as a necessary measure; 2) obligation of justification of property expropriation on the basis of Article 52 of Georgian Criminal Code shall be directly stated by the law and exact and clear standards shall be formulated within which restriction of the property rights will take place, according to the relevant explanations provided by Constitutional Court of Georgia; 3) exact specification of the provision of Section 2, Article 52 of Criminal Code – "state and public necessity" – and providing of more clear definition providing better formulation of the public interest and will be subjected to justification from the side of judicial authorities shall be regarded as necessary measure; 4) procedural and material legislation shall directly state the procedural guarantees of protection of the interests of the property owner, where the punishment specified in Article 52 of Criminal Code is applied to the property owner and differentiation depending on the guilt of the property owner shall be established; 5) the law shall differentiate the items bearing double load at a time of property expropriation and the judge in charge of the case shall be obligated to distinguish such objects; 6) after termination of prosecution or investigation, any decision on transfer of the evidences to the state property shall be subjected to the judicial control; 7) in case of seizure of the property, possibility of deduction of over 50% of the pension shall be prohibited in the criminal legislation as well.

Right to Adequate Housing

Similar to the previous years, providing accommodation to the homeless families was a significant issue in the reporting period of 2012. Public Defender offers set of recommendations to the relevant state structures: 1) measures shall be planned to identify approximate number of persons who, due to different reasons, live in the streets or periodical shelters; 2) at the stage

following the mentioned one, local self-government authorities shall ensure implementation of the relevant measures for recording of the homeless persons and providing of these data to Social Service Agency; 3) Georgian government, for the purpose of proper realization of the right on adequate accommodation of the citizens of Georgia, shall ensure development of the state program and long-term action plan; 4) self-government authorities shall take into consideration the obligations vested in them by Georgian Law on Social Assistance and include the relevant costs into the budgets, for creation of the housing stock and/or for implementation of the other alternative project providing shelter to the homeless people; 5) criteria set by the "social accommodation in the friendly environment" program shall be amended so that the homeless families, which, due to absence of the place of residence are not included into the poverty alleviation program, will have opportunity to be registered as beneficiaries; 6) respective changes shall be made to the regulations of providing of social assistance so that the homeless persons had the factual right to use the social assistance.

Right of Work in Public Service

Public Defender of Georgia has studied the issue of one of the component of the right to labor – guarantee of employment in public service and identified number of violations. The cases of unlawful dismissal of the public servants were identified, at the same time, the gaps of Georgian legislation were revealed. Regarding the above, Public Defender of Georgia provided some recommendations to the state structures. Parliament of Georgia was requested to commence implementation of the relevant procedures for proper realization of the right to protection of employment, for the purpose of ratification of the Convention #158 on Termination of Employment adopted at 68th Session of General Conference of International Labor Organization on 2nd June 1982. At the same time, recommendation was provided to Georgian Bureau for Public Service to continue work on the draft Public Service Code. Public Defender of Georgia provided recommendation to the executive (central and local self-government) authorities, according to which, at a time of decision on dismissal of specific public servant the circumstances of crucial significance should be studied in details, recorded in the relevant act, specifying the legal and factual preconditions providing basis for making of such decision.

Right to Health Care

After examining of numerous problematic cases identified in the health care system, the Public Defender identified the relevant spheres requiring revision and reformation.

Improvement of existing state-subsidized health care programs shall be improved, with respect of incorporation of the medicines. Expansion of the medical insurance package for the persons of age from 6 to 18, within the state health care program of 2013 was deemed reasonable. Particular emphasis was made on insurance of the persons with disabilities, stating that insurance for these persons should be provided independently from the relevant categories assigned to them, without differentiation. At the same time, necessity of minimization of differentiation within the health care programs was stressed, as well as the necessity of equal treatment. Based on the outcome of study, it was deemed necessary to revise and correct the terms of consideration of the issue by LEPL Agency for State Regulation of Medical Activities and its presentation to the Professional Development Board. For the purpose of securing interests of certain part of the population, Public Defender of Georgia regards that it is necessary that resolution #331 of 3rd November 2010 of the Government of Georgia on Establishment of the Commission for the Purpose of Decision-Making on Providing of Relevant Medical Assistance within the Scopes of Referral Services shall be revised and relevant amendments made to ensure effectiveness of applying to the Ministry of Labor, Health and Social Protection and timely response.

Public Defender of Georgia paid particular attention to the rights of persons with tuberculosis and provided recommendation, according to which, the state Program for Tuberculosis Management, regarding the specific nature of nosology of spread and due to high risk of infection of the third persons, should be available for all and disseminated irrespective of citizenship. Tuberculosis is of significance, with respect of public health care and the latter implies fulfillment of certain obligations from the side of the states, for protection of the population, through prevention of the contagious and non-contagious diseases. Public Defender of Georgia also regarded that Order #01-1/N of 7th March 2011 of the Minister of Labor, Health and Social Affairs was inadequate and requested to make relevant amendments to it to provide possibility of anonymous consultations, HIV testing, to prevent marginalization of individuals and danger.

Rights of IDPs in Georgia

Public Defender of Georgia studied the rights of IDPs in Georgia in details. Study was provided in different directions and was based on the information from applications submitted to Public Defender's Office and results of monitoring conducted within the project funded by European Council and High Commission of Refugees. Report mentioned some positive developments but at the same time, in the process of providing long-term accommodation to the IDPs numerous problematic issues were identified requiring immediate solution. Report stated that the relevant governmental authorities shall ensure involvement of the IDPs into the measures implemented within the scopes of long-term housing supply. In implementation of the action plan of the state strategy, the primary priority shall be the IDPs and their needs. The main precondition mentioned in the report is still lack of financial resources.

Though in 2012, numerous collective resettlement sites were privatized and construction of the new settlements for IDPs at the national scale was completed, great part of the IDPs cannot be provided with the long-term housing in time. Irrespective of numerous recommendations of Public Defender of Georgia, the IDPs are not resettled from the most buildings under the threat of collapse. Public Defender of Georgia subpoenas that no any effective steps were made by the government for providing accommodation to the IDPs living in the private sector.

Resettlement process – Number of problematic cases were identified in the process of resettlement. In particular, no list of the sites to be resettled was provided in the resettlement process. The IDPs were not informed about the exact date of resettlement. Process of recording of the family member numbers was inconsistent. Resettlement process was conducted in chaotic manner. For example, the IDPs living in Tskaltubo were resettled to Poti, while they could be accommodated on the site. Numerous infrastructure problems were identified in the resettlement process, these problems, in aggregate, significantly impacted the rights of IDPs (for example, construction of the buildings not adjusted for the disabled, scattering of a family into different buildings, resettlement of the IDPs into the unfinished buildings, natural gas supply problems). Part of the IDPs living in the private sector were not even affected by the resettlement process and where they were supplied with housing, no clear and exact criteria and reasons for selection of the specific family were provided.

Public Defender of Georgia regards that resettlement process shall be conducted according to the clearly defined principles. This implies introduction of the procedures set by the legal act. At the same time, the recommendations were provided to the relevant departments to implement various income-generating projects in the nearest future in the resettlement places and include the provisions for the disabled into the agreements with the construction companies.

Housing privatization process – according to the action plan of state strategy implementation, one of the most significant stages of long-term resettlement is transfer of the premises used

by the IDPs in the places of dense settlement into their ownership. Monitoring conducted by the Office of Public Defender of Georgia showed that most IDPs are unaware in the established standards of living areas. The issue of rehabilitation of the housing buildings is a significant problem still. Public Defender of Georgia regards that the legal status of rehabilitated housing areas shall be promptly defined, all IDPs were provided with the relevant documents evidencing ownership of the property and the IDPs resettled from the buildings, which could not be rehabilitated because of their poor condition. At the same time, the IDPs shall be provided with opportunity to make voluntary and reasonable choice in relation with the privatization process; distribution of the housing areas shall be provided in accordance with the effective standards.

Situation in so called border villages – living conditions of the population of so called border villages are quite severe. In result of events of August 2008, hundreds of houses were damaged and ruined. In 2009-2010 period, within the scopes of the measures for liquidation of the war outcomes, the damaged houses were restored, though, according to the statements of local population, only small part of the houses were restored fully. In addition to the housing buildings, local infrastructure, including roads and water supply systems were damaged by August war. Unemployment rate is critically high in all places. After conflict of 2008, the state has not implemented any income-generation programs for the purpose of employment of the population. They have no access to the arable lands, as these are in the territory controlled by Ossetian party. One more significant problem for the villages is supply of irrigation water. Health care availability is a problem as well. No outpatient facilities operate in these villages, if required, local population has to visit Gori and Tkviavi hospitals located in tens of kilometers from their homes.

Public Defender of Georgia regards that Georgian government shall provide the following: 1) population, whose lands are located in the territories out of Georgian control, shall be provided with the alternative land parcels; 2) irrigation water supply system shall be restored; 3) income-generation projects shall be implemented with the governmental support.

Child's Rights

In 2012, particular problem is life of children in poverty. According to UNICEF study, 77.000 children live in poverty. Public Defender appealed to the government of Georgia to take immediate and drastic measures to eliminate children's poverty.

Significant part of the report was dedicated to the problems related to lack of monitoring and studies of the state services and reforms implemented in the sphere of children's rights, hindering evidence-based decision-making in planning of the children's welfare policies.

In 2012, the problem of children living and working in the streets still remained unsolved. Violation of rights of these children is not recorded in any reports. The issue of possible being of these children victims of labor exploitation, violence or negligence is left without any response. In the same report, Public Defender evaluates positively the project initiated in 2012, for protection of children living and working in the streets with UNICEF and EU support and hopes that the outcomes of the mentioned project will not be lost after termination of donor's funding, due to passive response of the state departments, as in 2008.

Report also mentions the problem of determining of place of residence of a child in case of litigation between his/her parents, discussing the issue of involvement of a psychologist by the Agency of Social Services for execution of the decision and identification of true interests of a child.

Report provides discussion of the problems related to education of children of ethnical minorities in their native language, Public Defender assessed this as violation of children's rights in this respect.

Particular attention was paid to realization of the children's right to participate and express their opinion at schools; this should be provided through operation of self-governance at schools. In the current year, representatives of Public Defender analyzed operation of the mentioned structures and with the support of UNICEF project recommendations were developed for improvement of the functions of these structures and ensuring their effective operation.

Women's Rights

Involvement of women in political life – in Georgian reality, women's participation in the political processes is still a problem. Under the aegis of executive government number of steps were made, oriented towards stimulation of women's participation in the political processes and improvement of their awareness. Nevertheless, there are some problems. Public Defender of Georgia calls on the relevant authorized governmental agencies to ensure operation of the mechanism of gender equality coordination council at the executive level, develop special programs for identification of women leaders, conduct analysis of employment of women at the governmental-political positions in the ministries and other governmental departments and develop relevant recommendations.

Measures against family violence – in addition to the amendments made to Criminal Code of Georgia, in 2012, the measures for identification of family violence were enhanced. Nevertheless,

general statistics on family violence cases shall be improved and systematized, as well as proper implementation of numerous activities provided for by the state plan. Public Defender of Georgia regards that there is need of integration of the guidelines developed for the purpose of protection of the victims and assistance to them into the national referral mechanism for health care workers. In addition, Public Defender recommends to the Parliament of Georgia to ratify the EU Convention on Prevention and Elimination of Violence against Women and Family Violence of 2011 (Istanbul Convention) in the nearest future.

Women's employment rights – gender segregation still persists at Georgian labor market. Irrespective of their qualification and education women dominate in non-producing sectors, where work remuneration is much lower. At the same time, women still work with triple load – they are engaged in professional activities, work at their homes and take care of children. One of the serious challenges is the issue of payment of the maternity leaves to the women employed in private sector as this amount does not depend on the size of wages and is paid in fixed amount. Public Defender of Georgia calls on the government of Georgia to initiate relevant procedures for the purpose of ratification of ILO Maternity Protection Convention #183 and establish a working group oriented towards harmonization of legislation with the key function of consideration and working of amendments to Labor Code in gender aspect.

Gender-sensitive social assistance system – current approach of the social assistance system is unable to cover certain part of the victims of violence. Moving of the socially vulnerable victim to the asylum provides basis for loss of the state allowance and in many cases, they refuse to take advantage of this by this reason.

Early marriages – information requested by the Office of Public Defender confirmed great number of early marriage cases. Because of this, females often leave education institutions. In relation with this, Public Defender of Georgia applied to the Ministry of Education and Science to ensure obligatory education provided for by the law for each child. In addition, it was deemed necessary to inform various institutions in early marriages, as well as improvement of awareness of the teachers and parents. In addition, Public Defender of Georgia recommends to the Ministry of Labor, Health and Social Affairs of Georgia and the Ministry of Internal Affairs to ensure, in various forms, protection of juveniles from power abuse from the side of parents or other legal representatives.

Rights of the persons with disabilities – Public Defender of Georgia conducted detailed analysis of the situation of the disabled with respect of human rights and identified the key problems in this sphere. Primarily, he recommended to the Parliament of Georgia to ratify UN Convention of 13th December 2006 on the Rights of Persons with Disabilities. At the same time, the issues were identified and relevant recommendations were provided to the Ministry of Labor, Health and Social Affairs, Ministry of Education and Science and Ministry of Regional Development and Infrastructure for implementation of the following measures: 1) adjustment of the insurance terms and conditions for the persons with disabilities to their actual needs; 2) special needs of the

persons with disabilities shall be included into the state health care program “Rural Physician”; 3) ensure providing of complete information about insurance of the persons with disabilities; 4) for the purpose of delivery of medical services on site, improvement of qualification of the “Rural Physicians” and improvement of their awareness; 5) arrangement of seminars for the staff of medical facilities dealing with the standards of relations with the disabled patients with different needs; 6) studying and introduction of the methods of applying to the emergency medical care services by the persons with hearing or speech problems; 7) implementation of all measures ensuring involvement of the disabled people into the processes of professional training and re-training; 8) ensure maximal involvement of the students with disabilities at the public schools with the inclusive status, adjustment of internal and external infrastructure; 9) ensuring access to the building, as well as possibility of use of the building internal and external infrastructure; 10) taking into consideration of the special needs of disabled persons in improvement of the road infrastructure (sidewalks, parking lots, road regulation signs and equipment); 11) physical availability of the court (including court halls) for the persons with disabilities; 12) regarding special needs of the persons with disabilities, implementation of the adequate actions in relation with the issues associated with regional development projects.