

Report of the Public Defender of Georgia

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

Second Half of 2001

Contents

Introduction	_____
Chapter I	
General Situation on Protection of Human Rights and Freedoms in Georgia	_____
Chapter II	
Universal and Regional Implementation of Human Rights Protection Instruments in Georgia	_____
Chapter III	
Social and Economic Rights: Extreme Poverty and Human Rights	_____
The Decision of the Constitutional Court to Consider the Law of 1998 on Relations Based on Utilization of Living Space Unconstitutional and on the Inadequate Reaction Followed on the Request to Make Changes in the Law	_____
On the Problems Existing at the Ministry of Tax Revenues	_____
Problems of External Migration and Trafficking	_____
Right to Health	_____
Chapter IV	
Civil and Political Rights. Freedom of Conscience and Religious Extremism	_____
Situation in the Army	_____
Desertion	_____
Homicides and Suicides in the Army	_____
The Military Prosecutor's Office	_____
Kodori Gorge	_____
Pankisi	_____
Center for Protecting the Rights of Military Servicemen at the Public Defender's Office	_____
On the Possibility of Satisfying Mr. A. Rtskhaladze, the Former Member of the Supreme Council, with Living Space	_____
On the Case of Dismissing Mr. Bakradze by Mr. Ivanishvili, the Mayor of Chiatura and Spending the Budgetary Funds, Allocated for Special Purposes on Other Means	_____
On the Possibility of Satisfying Mr. A. Rtskhaladze, the Former Member of the Supreme Council, with Living Space	_____
On the Appeal of Attorney Sh. Dzindzibadze for Prolonging the Term of Imprisonment of Mr. R. Khazjomia	_____
On Unlawful Decision to Start Criminal Case Against Messrs. I. Sanaia, G. Zarkua and Z. Gvazava	_____
On Violation of Rights of Mr. G. Kurashvili and Others by their Detention	_____
On Transferring of the Group of Under Aged Victims to Khoni Penitentiary - the Place of Ex- representatives of Military and Defense Structures By Breaking the Law	_____
On Violation of the Rights of Teachers Working in Education System	_____
On Unexplainable Dismissal of S. Osepashvili, Director of School No1 in Chokhatauri Region	_____
On Restoring the Rights of M. Nemsitsveridze Who Lost Her Apartment	_____
Chapter VI	
Regarding the Situation Existing in the Penitentiary System	_____
Violation of G. Didebashvili Rights – Death As a Result of Refusal to Release from Custody Due to Illness	_____
On Illegal Imprisonment of T. Asanidze	_____
On Assault, Battery and Torture	_____
On Assault and Battery of Guram Pirtskhalaishvili and Provoking Use of Fire-Arm Against Him	_____
On Improper Reaction onto Public Defender's Recommendation on Assault and Battery of Sh. Sopromadze and Withdrawal of Private Property and Threatening with Firearm by Kutaisi Prosecutor' Office Representatives	_____
On the Assault and Battery of a Suspect and Defender	_____
On the Assault and Battery of G. Ubilava and Others by Policemen	_____

On the Assault and Battery of Under Age _____

On Self-Injury as a Result Provoking Custody of Narcotics and Blackmailing of Imprisoned Z. Berishvili by

Employees of Department of Oni Internal Affairs and Regional Prosecutor's Office _____

On Unfair Investigation and Drag out of the Criminal Case of T. Khakhutashvili Premeditated Murder without

Aggravating Circumstances _____

On M. Doborjginidze's Statement Related to Unfair Process of Investigation _____

On the Judicial Bodies' Inappropriate Reaction to the Public Defender's Recommendations _____

On Human Rights' Violations Committed By Judges and Court Representatives through Fraud _____

Problems Arising During the Execution of Court Decisions _____

Trial Delays _____

On Z. Devidze's Release from the Position of the Head of Supplies and Sails Department of the State Treasury

Due to his Nationality _____

On Underage Bargain _____

On Heavy Body Injury Received due to Not Taking Measures for Rendering Strontium Harmless _____

Case of Humanitarian Association "Catarzisi" _____

Z. Zeinklishvili's Case _____

Chapter VII

Activity of the Public Defender's Office Strategy Department _____

Activity of the Children's Rights Center at the Strategic Department of the Public Defender's Office _____

The Rapid Reaction Group _____

Chapter VIII

Relations with International Organizations and Non-Governmental Organizations _____

Chapter IX

The Challenges of the Public defender and the PDO Staff _____

Statistical Data of the Activity of the Public defender's Office _____

Introduction

This document is a following report of the Public Defender of Georgia on the existing Human Rights and Freedoms situation in Georgia. The report is prepared under the Law of Georgia on Public Defender.

The report covers the period of July – December 2001. However, for some reasons, the materials of the earlier period are included in the report as well. This mainly concerns the general part of the report in order to identify more clearly the trends that have become prevalent in protection of Human Rights and Freedoms. Moreover, the results of any work are usually summarized by the end of a year.

The report is based on a wide variety of materials such as applications and complaints submitted to the Public defender's office, as well as information obtained from various governmental and nongovernmental sources, the reports of Georgian government on the implementation of packages of economic, social, cultural, civil and political rights. The issues that refer to the extremely grave cases of violation of Human Rights and Freedoms are observed more precisely in the report.

The report consists of the following parts: the general situation on protection of Human Rights and Freedoms in Georgia, social and economical rights, civil and political rights, the activity of the Public Defender's office, the implementation of Human Rights on universal and regional levels, the foreign relations of the Public Defender's office and the problems faced by the staff of the office.

The report does not cover many concrete cases that are still under study or investigation and are not completed yet. As in the previous report, the maximum attention is paid to the issues and cases of torture of people, the inhuman treatment, unlawful detentions, condition of prisoners and violation of labor rights. All these painful problems do exist in Georgia and require the systematic control. I mean the close coordination between the Public Defender and the government authorities for their rapid reaction on any evident facts of Human Rights and Freedoms violation.

I would like to underline the fact, that no positive tendencies are consciously ever mentioned in this report and only the cases and issues of violation of Human Rights, existing problems and obstacles are observed. I deeply believe that first of all, everything negative must challenge and attract the most serious attention and let's why we have made it so vivid and clear.

I would like to express my sincere gratitude to the UNDP Office in Georgia for the active support and assistance provided for printing this and other previous reports of the Public Defender of Georgia.

Chapter I

General Situation on Protection of Human Rights and Freedoms in Georgia

“Even if a country is rich in nature, if my and your, that means people’s rights and duties are hardly visible and not precisely determined there, the success and well-being of people in such country always faces obstacles, if not deteriorating daily”

Ilia Chavchavadze

The words of the great Georgian writer Ilia Chavchavadze used at the very beginning of my report vividly describe the today’s situation in Georgia. The economical and political crises in the country becomes more clear and unveiled. The systematic fail of the state budget, the lost territories, unemployment, constant violation of laws and requirements, the unlawful and self-determined actions of different governmental authorities, the syndrome of unpunishment, limited perspectives for normal life – this is the short list of things that make life of people unbearable in this country.

The fact of catastrophic reduction of the Georgian population vividly supports the truth of these words. If the population of Georgia was 5,464,000 in 1991, the figure goes down to 4,452,000 in 2001. The rapid reduction of the population (more than one million people) in such a short period of time is an unprecedented fact for the Georgian history.

This passive, but massive form of the people’s protest is the result of ignorance of Paragraph 3 of Article 23 and Paragraph 1 of Article 25 of the Universal Declaration of Human Rights (hereinafter the “Declaration”) and Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (hereinafter the “Covenant”). Paragraph 3 of Article 23 of the Declaration says: “Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection“ and Article 7 of the Covenant declares: “The State Parties to the present Covenant recognize the right of everyone to the employment of just and favorable conditions of work which ensure, in particular: (a)(ii)

A decent living for themselves and their families in accordance with the provisions of the present Covenant“

Paragraph 1 of Article 25 of the Declaration says: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control“.

Can we refer to “just and favorable remuneration” when the average monthly salary according to the 1999 data was GEL 67.50? Or what kind of guarantees has a person: “in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control“ when pension is only GEL14.00 and is not paid on timely basis. And this happens when there are about one million people in Georgia living on pension according to 2001 data. This people are made victims of hunger and death by the state if not the help provided by their families and friends. And how many there are who do not have anyone. The unperspectivness of life is proved by the reduced number of young generation. E.g. there were 910 thousand children under age of nine in Georgia in 1989, and in 2001 their number was reduced to 601 thousand. At the same time the process of “aging” of the nation is clearly vivid. E.g. there were 775, 4 thousand people over age of 60 in 1989 and the number reached to 776, 4 thousand by the last year.

The vivid and massive poverty of population becomes a basis for violation of law and crime. According to Article 11 of the Covenant: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ... The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger“.

It is very difficult not to agree with the above-mentioned, but how can an unemployed person survive looking for alms only, especially, when in 1999 this amount was 10,3 GEL. This situation violates requirements of Article 32 of the Constitution of Georgia. At the same time living conditions of those who are employed are no better. If in 1990 the average monthly salary was 214 GEL, in 1999 it constituted only 67,5 GEL. Some categories among employed citizens have less than the average monthly salary. For example, 65% of the average monthly salary is set aside for those working in the educational sphere, 52% - for those engaged in health care, sports and social security and 74% have those engaged in culture. Are not physicians, teachers and art workers supposed to starve when they have

income that constitutes 30-35 GEL? Such low salary level violates Article 30 of the Georgian Constitution.

It is a great offence to expose your own citizens to such poverty. Moreover, when we live in an extremely dangerous region and that was confirmed by the President of the United States. In order to support Georgia, the US President approved a new program that envisages rendering military assistance. I think it's essential that the Parliament and the President should carefully review economic development programs in order to adopt possessing vital capacity programs. At the same time, it is necessary to call to account those persons who during working in executive and enforcement bodies were responsible for economic development of the country. They simply cannot afford to improve the situation and that was proved by the time.

Wide scale disregard of the people's decent living conditions caused decrease of the number of marriages and birth rate. This problem agitates me as a Georgian, a citizen and a mother. It is impossible for the nation to live like that. Item 2 of the Article 36 of the Constitution of Georgia is violated. It says that the government should take care of the well being of a family. Article 16 of the European Social Charter states: "In order to secure development of the family, as the basic cell of the society, all the parties participating in the discussion, should cooperate with each other in order to secure social, economic and legal conditions of the family by rendering social assistance, tax privileges, providing apartments, rendering assistance to young couples, etc.". Assistance that the state provides the young couples with is well seen from statistical data. If in 1980 the number of marriages was 50,500, then it was only 12.900 in 2000. In 1991 Georgia was distinguished by high level of birth rate (8-9 for 1000) but in 2000 this rate became negative (-0.2 for 1000). This means that in Georgia there are more deaths statistics than birth ones. These figure (marriages and birth rates) are drastically decreasing and there is no tendency for improvement. If today we will not take urgent steps for improving the situation I doubt that during future elections the quantity of people in Georgia will be enough to fill vacancies. Vulnerability of families and conflicts that occur within such families cause most of the offences. In 2001, family conflicts and neighborhood disputes caused 21 criminal offences (recorded), including 3 murders. But who can estimate a number of thousands of children who because of the family problems became socially inferior persons? At the same time, in accordance with statistics presented by the Ministry of Internal Affairs it is evident that the family conflicts mainly occur "because of the social and economic problems". The courts taking resolution about divorce on the basis of the family conflicts have to settle the divorced parties in one and the same apartment. This situation creates lots of problems and in some cases even causes irretrievable results.

It is very surprising that the living conditions in the country are becoming more expensive year after year. It is evident that the budget problems do not allow taking measures for efficient improvement of social conditions of citizens. But at the same time it is possible to decrease expenses for some kinds of services not saying anything about freezing of such services. The taxes and fees are not applied in consistency with the prices. It seems that the enterprises are competing with each other trying to increase tariff rates. It's high time to look into citizens' budget and take care of their each Tetri.

The difficult situation in the county paves the way for crimes. In 1995-1999 were recorded 4122 and 5174 grave crimes but in 2000-2001 respectively 8317 and 8601. It is evident that the tendency for crime rate growth for 50% and more is taking place and what is dangerous that this becomes a standard. I fear the existing conditions will increase the rate of such kind of offences in future. The number of premeditated murders and attempts of murder is scaring. In 2001 their number was 430. Unfortunately, this rate in previous years was high as well. It provokes anxiety that last year 70 such cases were not revealed. The number of persons who died in car accidents in 2001 is 558. If we take into consideration that during the last anti-terror operation in Afghanistan the international forces fighting with fanatic Thalibs lost only dozen of contingent, the number of those who died in car accidents in Georgia is catastrophic. This fact points out non-relevant attitude of the traffic police and personnel of relevant bodies to their obligations. High index of deaths, unfortunately, typical for the last period, is scaring. I understand that the financing of the Road Department is not proper. As the traffic police do not fulfill its obligations I propose to significantly cut their financing at the expense of redundancy. These funds can be used for implementation of reforms in the traffic police and its rearmament. This will significantly decrease the level of corruption in this sphere of activity.

As I mentioned corruption, it should be noted that no measures are taken in order to eliminate this vice. And in this situation a whole army of badly paid governmental officials is a burden for citizens as in primary, so in secondary meaning of the words. Unclear tariffs, artificial delay in service rendering and low income are good basis for corruption, and the success of fighting with this vice is evident from statistics. Twenty-two cases of bribing were registered in 2001. This figure is amazing. I acknowledge that investigation of such cases is specific and complicated though some representatives of the above-mentioned traffic police, probably, get bribes 22 times a day. Such a low number of cases processed in terms of bribing have several reasons: non-effective work of law enforcement bodies, bribe becoming the living style of the society and legal nihilism. The media investigation conducted last year revealed and disseminated information on even larger number of bribes. Probably we need to

send employees of law enforcement bodies to editorial houses for internship. Apparently, more rich people are in the country better, though, construction of castles by public administrators and purchase of expensive cars and other luxurious things compared to society poverty is completely unacceptable and disgusting. Once and forever we need to understand that without morale and elementary honesty development of a full-value society is impossible.

Systematic violation of Section 4, Article 37 of the Georgian Constitution refers to the problem of corruption. For years now we talk about illegal cut of timber. Ranges of forest cuts in the near future will result in sweet memories about the beauty of Georgian nature like we do recall the once known prosperity of the Georgian people. Is timber the same as drugs that can secretly be transported through Georgian roads and transferred across the borders. Is not the fact that forests artificially created around Tbilisi by many generations are now cut for summerhouses' construction purposes a vivid example of incompetence and non-efficiency of the authorities? What morale right do these people have to be in any official position when they do not even have enough understanding to acknowledge that by doing so they condemn their children to live in dangerous environment. How can people of such mentality and morale be entrusted the future of the country?

The Public Defender believes that the postponing of local elections would negatively affect citizens' rights in their effort to substitute the current authorities through free elections. Compared to cancellation of elections, such action is no better as according to the law on International Human Rights one of the criteria of fair elections is clearly defined timing. Therefore, such steps undertaken by the authorities that lay claim to be democratic may be evaluated as extremely undesirable.

On August 10, 2001 I submitted a relevant recommendation No 190/01-2 to the Chairman of the Georgian Parliament regarding the above issues:

“As you know, local governmental elections are scheduled for autumn of 2001. The rule of conduct of these elections is defined under the Law on Elections of Local Self-Governance Bodies. According to Section 2, Article 36 of this law (chapter “Transitional Provisions”) “internally displaced persons – refugee voters from Autonomous Republic of Abkhazia and former Autonomous County of Southern Ossetia are not participating in the first (our_underlining) elections of local governmental bodies”. Therefore, the electoral rights of the considerable part of Georgian population were violated.

I would like to remind you that in June, 2000 a group of citizens applied to the Constitutional Court Georgian with a constitutional claim that was questioning the provisions of Section 2, Article 36 of the law on “Elections of Self Governance Bodies”. In resolution as of December 21, 2000 the Constitutional Court suspended the case indicating the fact that

“Sections 1 and 2 of Article 36 refer to the first local governance bodies elections on November 15, 1998 only and not to the local governance bodies elections to be conducted in the future”. Further, “appeal was submitted to the Constitutional Court 10 days after the elections date, when normative act raising dispute was actually void (our underlining).

Considering the resolution of the Constitutional Court we deal with a sort of legal vacuum when it is not quite clear whether the IDPs are eligible to participate in further local elections. Specifically, the Constitutional Court believes that “Article 2 of the Georgian Constitution that sets forth the electoral rights of citizens under ordinary circumstances (comment: error – Article 28 of the Georgian Constitution should be mentioned) cannot equally be applied during extraordinary circumstances”... and “(Constitutional Court) believes that the law was authorized to define a different rule for participation of such people in elections due to migration from places of residence”.

I believe that electoral rights of IDPs are violated and discrimination according places of residence take place. Such action violates not only Article 28 of the Constitution but Sections A and B of Article 25 of Treaty on Civil and Political Rights and Article 14 of the European Convention on Human Rights and Fundamental Freedoms (prohibition of discrimination in respect of rights and freedoms recognized by the Convention) and Protocol 12 of the Convention (general prohibition of discrimination). In respect of anti-discrimination provisions of the European Convention I believe, that in case the refugees apply to European Court on Human Rights, this may become quite a negative and undesirable trend for the country.

In terms of the above-mentioned I need to state that the situation in respect of the electoral rights of IDPs is not in compliance with “Basic Principles of Equality of UN, which state that : “Based on equality and international and local legislation IDPs exercise the same rights and freedoms as other persons residing in their country” (Principle 1.1);

IDPs are not subject to discrimination as a result of their displacement and equally exercise the following rights: rights to vote and participate in state and social activities. Specifically, they should be given right to exercise the opportunity that is required to exercise this right” (Principle 22.1d).

Considering the above the recommendation is as follows:

Electoral rights of IDPs provided under the Constitution and recognized by the law International Human Rights to be considered in electoral legislation and to legally authorize these people to participate in “Elections of Local Self Governance Bodies”.

Further, it should be noted that a new Electoral Code gives the refugees the right to participate in elections that may be considered a step forward.

I quote international documents and their requirements as we undertook certain obligations in respect of these documents towards international Commonwealth and other people. Any obligation provides for fulfillment of responsibility and I am concerned that disregard and failure to fulfill undertaken responsibilities and obligations would have a boomerang effect.

Finally, our nation with three thousand years of state history has no right to let anybody say that, as the President said due to undue conduct and negligence of some people, Georgians cannot independently develop civilized society.

Chapter II

Universal and Regional Implementation of Human Rights Protection Instruments in Georgia

Traditionally, the protection of Human Rights refers to the internal policy of a state. The protection of Human Rights was never the subject to International regulation. Every state could treat its people in the way it considered appropriate and other state did not have any right to interfere in the internal policy of another state, where its citizens' rights were violated.

The UN Charter, adopted in 1945, made a lot of changes in the sphere of protection of Human Rights. It made Human Rights "International" and created the strong base for development the International system of these rights. The massive cases of violation of Human Rights by the Nazi Germany were the main reason for including Human Rights in the UN Charter. The UN General Assembly adopted the Universal Declaration on Human Rights on December 10, 1948. For this reason, December 10th is announced as the International Day of Human Rights.

The European Convention on Human Rights was adopted in 1950, became active in 1953 and was entirely based on the Universal declaration.

The mechanism created by the European Convention is considered as the most effective system in International practice of Human Rights protection. It does not only protect the rights of individuals, but protects the European standards of Human Rights.

Georgia, despite of numerous difficulties, started to built the democratic society. Our aim is to create a state that will be based on the principles of supremacy of law and where the protection of Human Rights and Freedoms will be the question of a high priority. For this

reason we need very much the support of the International community. The first step in this direction is already made – the Constitution is adopted and the entire Article 2 is dedicated to the guarantees of Human Rights and Freedoms. It is in conformity with the existing International standards, guarantees the establishment of the democratic institutions and the Public defender's Institution among them (Article 43 of the Constitution).

As you may know, Georgia has rather serious International obligations in the sphere of the protection of Human Rights.

Nowadays, Georgia is part of many important UN documents on Human Rights. The pacts on civil, political, economical, social and cultural rights are among them, as well as different the conventions against torture, children's rights, elimination of women's discrimination and racial discrimination. Georgia joined the first facultative protocol of the Pact on Civil and Political rights that envisages the rights of the people of member states on individual complaints. Georgia joined the 17 agreements on Human Rights, existing in the sphere of International humanitarian legislation. Georgia is not part of some documents on Human Rights protection, existing within the framework of the European Council. The European Charter, Convention on Protection of Minorities, Convention on Regional and Minorities' Languages and the European Convention on Human Rights are among them.

Georgia became the member state of the European Council in 1999. This historical fact is of the great political, economical and legislative importance. The status of European Council directly makes liable the member states to accept a state into the council where "real democracy" is the ongoing process and where the strong basis for protection of Human Rights and the supremacy of legislation creates the foundation for its existence. Georgia, as a member state of the European Council, ratified the European Convention on Protection of Human Rights and Fundamental Freedoms. It has recognized the essential Human Rights Jurisdiction of European Court. Our people obtained one more chance to protect their own rights and freedoms in the International court.

After the ratification of European Convention of Human Rights and Fundamental Freedoms, Georgia signed also the protocols that constitute the integral part of the Convention.

It should be noted that the Parliament of Georgia already ratified all the protocols, except one. This is the 1st Protocol of the European Convention (It refers to the protection of rights on property, free elections and education). The problem is, that it is practically impossible to protect right on property in the country with broken territorial integrity, caused by existing unsolved conflicts. For example, the question of restitution could only be solved with reconstruction of the country's integrity. It should be noted that among the ratified

protocols is the 12th Protocol (12th Protocol of the European Convention on Human Rights and Fundamental Freedoms refers to general abolition of discrimination in a complete conformity with the Convention that practically is a step forward in comparison to 14th Protocol of the Convention).

In this context, it is worth to mention that due to the conflicts the state jurisdiction *de facto* does not cover the territories of Abkhazeti and Samachablo, which is rather big part of the country. So, the Government of Georgia nowadays cannot protect Human Rights and Fundamental Freedoms on the entire territory of the country and that creates many problems and difficulties. Despite this fact, the Government of Georgia is still responsible for the territories of Abkhazeti and Samachablo, being convinced that our jurisdiction will be recovered on these territories.

Whenever we speak about the European Convention on Human Rights and Fundamental Freedoms, it is very important to remember that according to Article 6 of the Constitution, the International agreements of which Georgia is a part rule over the internal and local normative acts (Law on International Agreements of Georgia). Such International agreements are the integral part of the Georgian juridical system and any International documents including the Convention can be appealed.

I think that the existing situation in Georgia and in many other countries is not very attractive in this regard as International norms are very often not implemented in practice during juridical processes. (E.g. There are only several cases when the documents on Human Rights were appealed in Georgia and only one case when the Constitutional Court referred to the Universal Declaration on Human Rights).

Active and effective court system plays an important role in protection of Human Rights and courts have one of the most important rights of caring on the decision of impartial and fair court.

The court reforms changed the entire juridical system and the modern model of jurisdiction was implemented. Judges were chosen on the competition bases and passed the special qualification examinations, including the International documents on Human Rights and the European Convention.

Unfortunately, until nowadays, many judges in courts consider it demagogical when an attorney refers to International documents or even to the Constitution and it is practically impossible even to imagine that a court decision would be made based upon such documents. Accordingly, the question is raised: How such documents should be implemented if a judge does not refer to it? Whatever is essential for Georgia cannot be a subject of the free will whether to study the International norms or use them in practice. No judge in Georgia should

ever need to be reminded Article 6 of the Constitution and that there is the jurisdiction of the Strasbourg Court, that must be known and not disregarded.

It is essential that every judge, every prosecutor and lawyer must precisely know the International juridical norms and use them in practice. It is essential to conduct studying courses for lawyers, judges, prosecutors and police, until each of them will learn to implement the International juridical norms together with the norms of internal legislation.

(p.14) Probably of these and many other reasons and despite the wide scale reforms, the courts in the country still lack full trust of the society.

The Constitutional Court of Georgia, which is the supervisory body for the Constitution, plays an important role in protection of Human Rights and Fundamental Freedoms. The Constitutional Court, during a rather short time of its existence, occupied a worthy and important place in protecting the constitutional and legal rights of people under the state jurisdiction.

The ratification of the European Convention on Human Rights and Fundamental Freedoms was mainly depending on the compatibility of the state legislation with the Convention. In case of inadequate legislation the court mechanisms would not be effective in protection of Human Rights.

The population of Georgia expresses great interest and hope for European Court and its activity. European Court is believed to restore justice when it is impossible to do it on the national (regional) level, despite the fact, that the majority of population is still lacking some basic knowledge on the procedures and the way the court functions. Accordingly, I do consider it necessary that European Court and the rights protected by the European Convention must be broadly popularized. According to the information that we possess, there are about 49 temporary appeals in European Court against Georgia, 20 appeals are registered by the Court, 3 appeals are declared unacceptable and the Court asked the state to submit information on three appeals to determine whether there was a violation of rights.

I would like to underline the fact of utmost importance that Azerbaijan and Armenia also became the full members of the European Council. Their incorporation in the European integrity, to my deep belief, is a serious prerogative for implementation of Human Rights and Fundamental Freedoms in the region. So, the three independent states in the Caucasia proved once again their loyalty to the European heritage, making one more step towards the establishment of law supremacy principals and building of democratic societies.

We have been living in the world of rapid changes and fast development, but the importance and the priority of Human Rights always remain unchanged. Moreover, they strengthen every day.

Chapter III

Social and Economic Rights: Extreme Poverty and Human Rights

“Every citizen of the country must share the idea that envisaging the strategy for poverty reduction and more importantly, its effective implementation is the prerogative for the successful way of the country’s worthy future”.

Eduard Shevardnadze

Every fifth person lives in poverty in the world. It was stated in the UN General Assembly Resolution of 1996 (No 51/178), that 1,3 billion people in the world, out of which the majority are women, live in the extreme poverty, especially in the countries with the transition economy and the number of poor people grows up.

The combat against poverty has become a global task during the recent years. Many International and world organizations expressed their attitude towards this problem. The main goal of their activity is to start the XXI century with the rapid reduction of poverty.

The scale of growing poverty in the countries with the transition economy in Europe and Central Asia is mostly notable on the entire global background.

The improvement of the existing social situation in our country is the question of the utmost importance for the current development of the state. The transition to principles of the market economy created favorable conditions for development of one part of the society and the unknown material problems with loss of the guarantees for stable future existence for the other.

The question of overcoming poverty became the most important one for the Government of Georgia in recent years. Despite the efforts and number of positive steps made in this direction, the situation is still grave in Georgia. According to the latest data, the 60% of the population is below the level of poverty, the majority of which are chronically poor. The economic activity is still slowing down and investments in the country have been decreased by 4.5 %, compared to 1998.

It’s true that the social policy of the government of Georgia remains the most important component of country’s development, but any step forward in the direction of achievement the goal for improving the social life of people is still hardly visible. As for the results, the activities in various economic infrastructures may be considered not effective. The same can be referred to the creation of new working places, improvement of investment environment, growth of entrepreneurship in the country, the government assistance to the private sector and the legalization of illegal business.

The chronic deficits in the budget since 1998 have caused serious problems in wages of people in the state enterprises, paying pensions and financial assistance to the forcefully displaced persons. The Public Defender's Office faces the same problem.

The existing level of poverty is more engraved by unemployment. Starting from the 1990s the number of employed people reduced by 37.2 %. The highest level of more than 29 % of unemployment is in the capital. According to the recent data, the young people of 20-25 and 25-29 years of age are mostly unemployed, that constitutes more than a half of entire unemployed population. And this is the most productive age. It must be noted, that unfortunately, the official statistical data does not reflect this reality created in the country. The so-called, self-employed people do constitute the majority of the employed population. Moreover, many unemployed are not registered, as the temporary unemployment allowance is very small and there is no hope for finding a job.

The national employment program is already worked out, but it is based on statistical data of empiric and expert character, still considering the study of this problem as a main factor of the problem.

Because of a high level of unemployment and low level of economic development, the incomes of employed people are still very low, despite the quality and amount of work done. Though there is a slight increase in minimal wages, this fact cannot be considered as an adequate social guarantee that is necessary for satisfying the minimal needs of a person.

To overcome the difficulties connected to the extreme poverty of people in the context of Human Rights, it is not only enough to study in details the reasons of its existence in the society, but its direct influence on Human Rights and Fundamental freedoms. Poverty is a lack of things or their complete non-existence that are necessary for living, as well as enjoying the fundamental freedoms and rights and taking the major responsibilities.

The chronic poverty makes simultaneously direct influence on different aspects of human life. The human right on adequate living conditions is the integral right of people declared in Article 25 of the Universal Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack livelihood in circumstances beyond his control".

Poverty is a violation of such rights as the right of life, the human development right. The right of people on healthy life conditions, the non-discrimination right, etc. We can say that poverty is the principal reason for violation of human rights in the world. It creates

serious obstacles to people in exercising their individual and collective responsibilities, as of citizens, parents and voters.

According to the International Covenants on Human Rights, the ideal development of people who are free from fear and difficulties is only possible if they live in the conditions where they use their economic, social and cultural rights together with civil and political rights. Every person has the right to have adequate living conditions for himself and his family, including food, cloths and other daily needs, as well as the right to improve these living conditions.

Unfortunately, we are to underline again the fact, that Georgia does not properly protect the social rights of its citizens and does not comply with the responsibilities undertaken according to the Articles 6, 7, and 9 of the Covenant on Economic, Social and Cultural Rights.

**The Decision of the Constitutional Court
to Consider the Law of 1998 on Relations Based on Utilization of Living Space
Unconstitutional and on the Inadequate Reaction,
Followed on the Request to Make Changes in the Law**

Whoever has read the last year's Parliamentary Report, covering the period of 1 January – 1 November 2000, will see that I return back to some unsolved issues as the problem is still unsolved. According to the Law on Public defender of Georgia one of the main instruments is to inform the public through mass media the results of studying the cases related to the violation of Human Rights. Print the analyses on existing documents in reports and addresses make a special report to the Parliament. This is the main goal of this report and not the analyses how the Public Defender or the staff works. Though, the staff members give appropriate answers and explanations to people, together will other spheres of their activity. In many cases, the Public Defender's Office deals with incoming complaints that are connected with issues of violation of Human Rights and freedoms due to the breaches of laws.

As you may know, the new Civil Code was adopted on 25 November 1997 and Article 562 clearly clarifies the relations between a tenant and a landlord. According to the Article, a landlord can terminate a rental agreement with a tenant if he needs a living space for himself or for his family members and/or in case a tenant does not or cannot pay the increased rent, which is growing up according to the respective market value. Today, when apartments and houses are privatized in accordance with the above mentioned law in Tbilisi, Kutaisi, Rustavi

and other big cities of the country, due to the existing social difficulties a tenant faces problems in paying the raised rental price. The Law on Relations Based on Utilization of Living Space adopted on June 25, 1998, protects the interests of a tenant, but it comes into contradiction with Article 21 of the Constitution that protects ownership rights on private property. The Public defender's Office applied with a concrete proposal to the respected Parliamentary committee and demanded to solve the problems related to people living as tenants whose rental agreements were signed in the period of 1921-1991 and separately, the tenants renting a living space after 1992 that means after privatization. The demands were not considered by the committee. The case was turned to the Constitutional Court by the landlords and according to the court decision of 7 June 2001 several Articles of the law adopted on 25 June 1998 were considered unconstitutional. Namely, landlords are not entitled to provide tenants with any other accommodation after eviction or offer a tenant any compensation. The Constitutional Court applied to the Parliament of Georgia to make changes in the law of 25 June 1998, but the law remains unchanged until today.

On the Problems Existing at the Ministry of Tax Revenues

I will return back to some of the problems referred to in our Parliamentary Report of the first half of 2001. These problems exist at the Ministry of Tax Revenues. As you may know, Mr. M. Machavariani was the First Minister of the Ministry of Tax Revenues, who was not very experienced in successful carrying on of the reforms. The same refers to Mr. Mumladze, his ex-deputy. As a result the reform created many problems and cases of violation. First of all in the questions related to staff administration. I could not stay indifferent to such cases and submitted some proposals, conclusions and recommendations to the Ministry of Tax revenues, within the powers granted to me by the Law on Public Defender. This issue was widely discussed in my previous Parliamentary Report, though the situation has not been improved and even worsened since then.

What kind of pretension is expressed towards the Tax Revenue System? It is mentioned that one of the important issues of the reform was to select highly qualified public officials with a good moral reputation. For that purpose the qualification-certifying examinations were undertaken using the method of tests and individual interviews with participants.

A large amount of people participated in the process and out of 2,1 thousand participants about 400 were provided with different positions, 477 were enrolled in the

reserve, later 255 more people were added to them on the ground of Vake-Saburtalo regional court decision and finally their total number exceeded 700.

It should be mentioned that from the reform implementation period, i.e. during two years, the Head of the Tax Revenue Department had been changed many times and nowadays Mr. L. Chrdileli, the fourth person is administrating the Department. All heads of Tbilisi regional Tax Revenues Inspections has been changed, in some inspections twice, a certain part of inspectors had been changed as well, but all these changes did not bring any fundamental improvement.

It is a well-known fact that the laws become civilized only after their implementation. If this does not happen and a law remains inactive, simply a law, it causes various rumors and a lot of other kind of moral damages. Personnel selection requires careful and professional approach, the principle of rotation should not be violated. Immobility, as well a groundless and rapid change of officials, administration and partiality are inadmissible in this process.

It should be mentioned, that the personnel changes implemented in the Tax Revenues System do not give us the ground for hope that every newly appointed manager will immediately reveal all his/her professional and moral features. It should be taken into consideration, that such features can hardly be formed in one day especially when a person works in an institution such the Tax Revenues Department is. But, at the same time, the state budget fulfillment greatly depends on the successful functioning of the institution.

Effectiveness of the Tax Revenues Department is directly connected with the improvement of living standard of Georgian citizens and especially of budget employees. When the state is not capable to meet the budget it has immediate negative impact on the paying pensions, scholarships and wages and on implementation of the main items envisaged by the budget. It is true, that in 2001 the tax revenues' relativity with the Gross Domestic Products has been increased by 2,3 percent in comparison with figures of 1996, but still the tax collection level is unsatisfactory.

The state budget's incomplete fulfillment by tax and tax-free revenues is closely connected with the shadow economics, flourished in the country. During the last years it has been amounted to almost the one third, but in such sphere of activity as trade, hotels and restaurants are, it exceeded the half. It happens at the time when in 2001 the turnover volume of all enterprises involved in the retail trade's network was increased by 13 percent in comparison with figures of 2000, but in case of restaurant – by 17 percent. On that background, share of unregistered products in the entrepreneurial roll constituted to 57,8 percent in 2001. The state budget deficit amounted to 19,1 million GEL in June, to 26 million in July and to 35,9 million in November, 2001.

I think that it partly is conditioned by the shortcomings in the carried (implemented) reform and by ongoing improper personnel policy. It seems quite strange, what do attestations, examinations and tests serve to, if while filling the vacancy, they would not pay any attention to public officials qualification, and as a result, inefficient staff was and still is appointed on different positions.

In connection with similar facts many conclusions and recommendations had been prepared and forwarded to the Ministry but its officials did not show a good will and the consequences are really sorrowful. The staff changes alongside other fallacious practice caused the fact that in 2000-2001 even the reduced budget was not met in the item of tax revenues. Thus, the strong and sharp reaction of the President of Georgia while estimating the work of the Ministry was absolutely correct. He mentioned the same fact that I have been saying from the period of October 31, 2000 up today, that the reform had been failed. But as a result of the Ministry's improper and irresponsible attitude towards the question and due to the budget deficit not only the tax employees' labor rights have been violated, but also labor rights of each citizen of Georgia.

In accordance with Article 32 of the Constitution i.e. the Supreme Law of Georgia, the state undertook an engagement to provide assistance in the sphere of the citizens' employment. Right to choose a sphere of activity, to have fair, normal working conditions, to be protected from unemployment is also envisaged by the International Pact on "Economic, Social and Labor Rights" to which Georgia has been joined. Georgia pledged commit to protect fixed labor rights on the whole territory being under its jurisdiction. But even these obligatory requirements are not fulfilled, and as a result, the former employees of the tax institution and people enrolled in the reserve are obliged to address to different state instances in order to redress their violated rights. They demand the fair enforcement of laws and law related acts, issued but the Ministry, of Law on "Public Service", of court decisions in force and requirements of the Constitution.

We have been demanding the same. There was some promise but, unfortunately, the situation was not improved but even more mistakes were made. More over, the requirement of the rule related to the order No546 of December 25, 2000, issued by the Ministry was absolutely ignored. That is proved by the fact that officials' working experience and the number of points gained (collected, obtained) during the qualification examinations and etc. is not taken into consideration at the moment of staff appointment in Tbilisi regional tax revenues inspections. For example, the personnel change fact in Didube-Chughureti regional inspection, where recently the following persons have been relieved from their posts: G. Chibukhashvili, G. Iashvili, N. Alavidze, L. Beradze, B. Meladze, T. Lejhava, M. Miqeladze,

B. Nozadze, T. Kverghelidze. According to the decision of March 28, taken by the court of the same region, they have immediately been restored, an act of execution was signed but, on the ground of the order, issued by the Tax Revenues Department, the court decisions still are unfulfilled.

Analyzing the documents I came to decision that the Ministry and its structural services do not work in accordance with team responsibility. An unhealthy tradition of the recruitment of under-qualified personnel has been established and the staff selection process has not been carried out publicly and transparently. The situation in the Tax Revenues System makes me think that the activities of the Ministry of Tax Revenues carried out in order to provide positional supervision ?? envisaged by item “r”, Article 7 of the regulations, that were approved by the presidential order No280 of June 30, 2000 were inefficient as the Ministry did not fulfill the court decisions in force, recruited Tbilisi regional tax revenues inspections’ personnel by breaching the law and violated rights of tax employees enrolled in the reserve. I raised a question before the President of Georgia about L. Dzneladze’s, Minister of Tax Revenues of Georgia and L. Chrdileli’s, Head of the Tax Department inexpediency of further being at their positions.

Besides, I asked Mr. A. Jorbenadze, State Minister to take active measures in order to restore violated labor rights.

Problems of External Migration and Trafficking

As it was stated at the World Conference held in Durban, South African Republic, in August 2001, “Every one of every 50 persons in the world is living not in his motherland or residence country. The number of such people amounts to 150 million and as it can be seen, the XXI century will be the new era of migration”. Unfortunately, Georgia is not prepared for such process. The terms “migration” and “migration movement” are mostly used in order to denote the movement of people from the country of their birth or former residence to other countries for temporary or permanent living.

The cases of migration are mostly employment driven oriented. The reasons for international migration are very diverse and complicated. However, I would like to emphasize such an important factor of the employment driven migration as the low level of living conditions in the home countries of migrants.

The process of migration of the population from Georgia is closely connected with the existing poverty and low level of economic development in the country. This situation exists

parallelly and in contrast to stable economic and living conditions, rather high salaries and other positive factors for living in the countries to where people migrate.

The process of migration in Georgia is also caused by constant and high level of unemployment and unfavorable living conditions constituting a vivid contrast in comparison with the demographic stability in the countries of West Europe and North America. Furthermore, the combination of poverty and unemployment forces the population of Georgia to leave the motherland for other countries and sometimes the entire families, though often not very willingly leave for other countries in search of a better life and living conditions.

Moreover, the process of the employment driven migration is closely connected for some people with the question for their survival. Taking into consideration the fact, that the substantial part of migrants is illegal, the risk of discrimination and trafficking for the citizens of Georgia is quite high. According to Paragraph 1 of Article 12 of the Constitution of Georgia: "Georgia protects its citizens regardless their location". However, the citizens of Georgia do not feel quite protected and do not use their constitutional rights and freedoms not only abroad but in their home country as well. Although, it is true that migration has been one of the means for broadening oecumene of people since early times, this process has most exasperating negative manifestations sometimes, such as trafficking and illegal crossing of borders by migrants and the number of these violations is growing up together with the increase of factors binding the entire process of migration.

The difference between trafficking and illegal crossing of borders has been acknowledged by International Law lately. The term "trafficking" denotes the process of taking people abroad by force, with violence or fraud for the purpose of their exploiting, whereas the term "illegal crossing of borders" denotes the process of bribes and other means for the purpose of illegal crossing of state borders.

According to the International community, the rights of the victims of trafficking and illegal migrants can be easily protected in Georgia. Though, non-governmental organizations pay more attention to this problem, than the government bodies do. This problem is especially acute at the period of the statehood development in Georgia. According to an unofficial data, more than one million of our compatriots have left Georgia. This figure is quite impressive, as the population of Georgia comprises of 4,452,100 people only.

This problem is also more complicated by the fact, that though the results of migration are empirically already felt, it is almost impossible to evaluate and state the real figures of migration as the statistical data are often gathered very superficially and the sources of information are mostly not valid and incompatible. The analyses of the available data enable us to make a conclusion that the process of illegal migration from Georgia is quite substantial.

We possess the information on the real facts proving the cases of trafficking of Georgian citizens.

The analyses of data gathered by non-governmental organizations and the organizations working in the sphere of human rights have revealed the following situation: 70% of emigrants from Georgia are women; the average age of immigrants varies from 21 to 49; 60-70% of female immigrants and 15-20% of male immigrants are the victims of trafficking; The victims of trafficking are predominantly young people and they are mostly forcefully displaced persons. The presented data are really shocking.

The countries of destination for the migrants from Georgia are mainly Greece, Turkey, the USA, Belgium, Germany, France, Spain, the Netherlands and Russia. The case of trafficking of Georgian citizens are more frequently noted in Greece, France, the USA and Spain than in any other countries. Female victims of trafficking are often forced to work at different places of rather suspicious reputation, such as night - clubs and striptease bars, especially in Turkey and the USA. They are also forced into prostitution. Male victims of trafficking mostly work at construction sites and agricultural works in unbearable conditions, especially in Turkey, Greece and Portugal. The victims of trafficking usually look for job vacancies through different tourist employment agencies existing in Georgia. Such agencies supply the potential number of migrants with false documents, thus creating an additional obstacle for their further legalization.

I consider it necessary, that the activity and business of such agencies and organizations must be thoroughly investigated by the relevant governmental bodies in order to elicit their direct or indirect participation in the process of trafficking of Georgian citizens.

One more factor that makes trafficking easier is that the citizens of Georgia do not have sufficient knowledge and information on the offered working conditions.

Despite the fact that the substantial part of the population in Georgia has already migrated, the migration potential of the state still remains very high. The main causes for this are well known: difficult social and economic conditions, unemployment, low salaries, lack of hope for future perspectives and sometimes complete desperation. Strange as it may seem, according to the poll conducted by one organization among the victims of trafficking that were returned back to Georgia, some of them still want to leave their home country despite of all the terrible and humiliating experience having abroad.

All these facts point out to the most difficult situation existing in Georgia where people cannot or are unable to satisfy their even minimal requirements for living.

Thus, the protection and assistance to the victims of trafficking must be an indivisible part of the general policy and activity of the state in its fierce fight against this existing

phenomenon. It is of utmost importance to establish contacts and cooperation among different states, international institutions and non-governmental organizations in order to elaborate common programs for returning back to Georgia the victims of trafficking, for reintegrating them into the society and providing them with various types of moral, social and economic assistance.

It is necessary to carry out informational work and activity among the population of Georgia and especially the people who are going abroad in search of work at the risk of becoming victims of trafficking.

It should be noted that some of the non-governmental organizations conduct very active work in order to solve the problem of trafficking. The public discussions of this existing problem are being initiated and encouraged. However, these processes must be fully supported by the government. Though, the most important and effective measures and undertakings that should be pursued in order to minimize the cases of trafficking in Georgia are still connected with the successful social and economic policy in the country.

It is true, that the governmental bodies tend to show their concern towards the existing problem, but this concern is not manifested either in concrete policy or in the jurisdiction. In 1994, Georgia joined a number of international agreements and conventions. Only some of them enable to conduct the fight against trafficking, namely:

- The Universal declaration on Human Rights;
- The Convention on Children's Rights;
- The Convention on Elimination of All Forms of Women's Discrimination;
- Government Agreement of States Participating in BSEC on Preventing Crimes and Namely the Organized Crimes (July 27, 200).

Articles 17, 18 and 30 of the Constitution of Georgia do satisfy the requirements of the above-mentioned acts; however, the same is not applicable and cannot be said about the number of legislative acts. Namely, the Criminal Code of Georgia does not fully cover all aspects of crimes or felonies connected with trafficking, though it applies to some very important aspects, such as forceful driving into prostitution, envisaged by Article 253. The interpretation of this Article does not apply to all the aspects of trafficking, since sexual exploitation is not the only form of manifestation of trafficking. Consequently, it seems highly appropriate to make corresponding changes or amendments to the Criminal Code.

It is also necessary to pay special attention to pursuing number of orders of the president that are not aimed at regulating the problem of trafficking. I would point out the following orders: No 511 – “On the Measures for Protecting and Strengthening Women's Rights in Georgia” (August 28, 1999) and No 64 – “On Approving the Project for Fight Against

Violence Towards Women” (August 25, 2000). The last one envisaged the eradication of women’s trading for their further sexual exploitation and preventing measures against it. To consider the trading of women for sexual exploitation as a violation of Human Rights, to involve juridical, immigration, social, legal authorities and administrative bodies in preventing such violation, etc.

Unfortunately, according to the available information, the fulfillment of measures mentioned above is hindered by the existing lack of governmental funding.

It is of the outmost importance to build up political will aimed at punishment of the people involved in the organizing the illegal crossing of border and trading people. The legislative base needs strengthening, international conventions and protocols should be ratified. Thus, Georgia signed the Convention of the UNO “On the prevention of Transnational Organized Crime” (November 15, 2000), as well as its two additional protocols: 1) “On Prevention and Punishment of Trading with people, Especially Women and Children” and 2) “Against Illegal Transfer of Migrants by Land, Air or Sea”.

The government must bring the existing Georgian legislation into agreement with the demands of these conventions and protocols and we should also take into account the experience of those countries that have reached a certain level of success in preventing illegal migration and trading with people.

Right to Health

Reforms in the healthcare system have been implemented in Georgia since 1995. The reforms were necessitated by the fact that the state was not longer able to fund the healthcare system inherited from the Soviet period. Thus, the National Healthcare Policy Program was worked out elaborated; however, this reform was neither supported by the population, nor welcomed by the physicians. The evaluation of the state policy in this field by the population is rather negative.

The reform was hard blow for the poor and socially unprotected groups of the society (including prisoners). One of the major problems is a constant lack of budgetary funds. The number of applications to the Office of the Public Defender asking for medication and rendering possible medical aid or assistance has considerably increased.

Today, one of the most acute problems is the existing problem of tuberculosis and hepatitis especially among prisoners, as they continue to belong to the group of a high risk factor.

Together with “Georgian Vaccinating Center XXI Century” and Healthcare Department of the Ministry of Justice, the Public Defender supplied prison No 5 of the Penitentiary Department with 1307 doses of Hepatitis B vaccines and Tbilisi Children’s Hospital No 2 with 171 doses of vaccines against rabbits during the times of rabbits wide spread infection cases in Georgia. I would like to express my sincere gratitude to “Georgian Vaccinating Center XXI Century” for their support of my recommendation and providing the supply of the above-mentioned vaccines.

Chapter IV

Civil and Political Rights. Freedom of Conscience and Religious Extremism

During the centuries, Georgia has earned the name of a tolerant country. As Ilia Chavchavadze stated: “A Georgian knows how to respect other religions ... people persecuted and oppressed for religious reasons in other countries, find peace and comfort and freedom of conscience with us here”. The situation in connection with the religious minorities existing today in Georgia is really alien for the rich history of religious and cultural tolerance in Georgia.

The recent events of provoking and encouraging religious intolerance towards the people of other faiths are quite shocking. Moreover, this is especially disgraceful, considering the diversity of religious spectrum in Georgia. Besides the numerous followers of the traditional religions (almost all the denominations of Christianity, Islam, Judaism) there are also a number of people who belong to various religious minorities (Baptists, Krishnaites, Jehovah’s Witnesses, Evangelists, Adventists, etc.). Freedom of religion is one of the most important civil and political rights that should find reflection in the legislative acts of Georgia after it gained independence and started to build the democratic state.

The Constitution of Georgia, laws and normative acts envisage the freedom of religion as well as inviolability of a persona and its private property. Freedom of thought, conscience and religion is the achievement of the civilization and constitutes the basis of a democratic society.

Georgia is a state party to all major International agreements, regulating freedom of religion. Articles 10 and 19 of the Universal Declaration of Human Rights state the right to freedom of thought, conscience and religion. These rights comprise the freedom of choice in

changing the religion or faith, freedom of exercising religion both alone and together with others, both in private and in public, freedom of worship, freedom to profess religious doctrines and perform other religious rituals.

Such statements are included in almost every document concerning human rights and fundamental freedoms. These rights are also expressed in Article 9 of the European Convention on Human Rights and Fundamental Freedoms, which states: “Everyone has the right to freedom of thought, conscience and religion”. By ratifying of the international conventions and protocols, Georgia took the obligation to protect the right to freedom of the religion of its citizens.

According to national law as well as the ratified international documents on Human Rights and Freedoms, the freedom of thought, conscience and religion is envisaged in Georgia. Thus, the situation that has developed in Georgia for the last three years in connection to religious minorities is even more shocking. We mean the numerous acts of violence to which the members of such untraditional religious groups as Jehovah’s Witnesses, Baptists, Evangelists, Krishnaites and others fell victim.

According to the evaluation of international organizations, that I fully share, there are case of massive violations of rights of freedom of conscience as well as lack of access to legal protection and violation of freedom of thought. The fact that the violation of religious rights has become quite common in Georgia is also confirmed by the resolution of the Parliament of Georgia against religious extremism. Besides that, the President of Georgia in his edict called the Ministry of Internal Affairs to put to end the criminal actions of religious intolerance existing in the country.

At the same time, the Supreme Court of Georgia issued a statement denouncing criminal actions and other manifestations of religious extremism and intolerance. Georgian Orthodox Church has played an important role in the history of Georgia for centuries. Georgian Orthodox Church has always been a fundamental factor in establishing the Georgian statehood. For all that, Georgia has never been mono religious for many centuries of its existence, saying nothing of being theocratic state.

Today, Georgia belongs to those states that carry out the wrong inter-confessional policy. The tendency of speculation on the religious values is becoming quite obvious against the background of democratic reforms carried out in Georgia today. The day will come, when the indifferent attitude of the government towards various religious groups and the current existing problems will create obstacles for the state on its way to democracy. Unfortunately, the Georgian government and political forces do not consider the abovementioned problems as serious ones.

At present, many religious groups of different faiths and denominations are functioning without any restrictions in Georgia. Since the strict Communist Regime was changed with absolute freedom, many have understood it as a right to the complete anarchy.

Unregulated relations among different religious groups have led towards the tension between them. Unfortunately, the opposition has grown beyond any comprehensible borders and tuned into the physical assault.

For instance, a law firm “Legality and Justice in Georgia” submitted a request to the Public Defender in September of 2001, to protect the rights of Jehovah’s Witnesses at the religious congress that was organized in Marneuli. Public Defender’s Office sent a letter to the Governor of Marneuli Region with a request of ensuring the security at that meeting. Unfortunately, the congress was violently attacked and disrupted. I addressed the office of Prosecutor of Marneuli Region in connection of that fact. Mr. Iosava, the Governor of Marneuli Region wrote in response that the criminal case No 3101831 was started against Mr. Bluashvili, Chairman of All Georgian Patriotic Union “Djvari” and Messrs. Z. Kevanishvili and M. Chubabria, members of the abovementioned union. The preliminary investigation was being conducted and the case would be closed soon.

On February 27, 2002 the Public Defender’s Office received a letter from the Ministry of Foreign Affairs regarding the Article published in Egypt in journal “Istaizik” on multiple facts of attacking and insulting the Jehovah’s Witnesses, including the fact of attacking the congress of Jehovah’s Witnesses in Marneuli on September 16, 2001. It should be mentioned, that the analysis of the latest available information and complaints received by our office have revealed a terrible tendency.

The facts of religious persecution have been noted in educational establishments as well.

On November 26, 2001, the Office of the Public defender received a collective complaint from the Jehovah’s Witnesses, informing us that their children, the pupils at public school in the town of Tsageri, were insulted verbally, forced to make cross and were threatened by expelling school if they would refuse to do so. Mr. Gulver Bregvadze, Head of Educational Department of Tsageri Region, unfortunately supported this unlawful position of the school principle.

Both International legal norms and Georgian national law protect rights of pupils and their parents. Namely, according to Article 35 of the Constitution of Georgia, “Everyone has the right to education and to free choice of form of education”. According to Paragraph 3 and Subparagraph G of Article 43 of Law on Education “A teacher of educational establishment is obliged to preserve the norms of professional ethics”.

According to Paragraph 1 and Subparagraph B of Article 44 of Law on Education “Parents have right to choose the form of education and educational establishment for their under age children” and Article 14 of the UN Convention on the Rights of the Child of which Georgia is a party since 1994, states that “States parties shall respect the right of the child to freedom of thought, conscience and religion”. These rights are often violated in Georgian educational system.

On December 26, 2001 Ms. Inga Geliashvili, a legal council of Mr. Vakhtang Gabunia who is Jehovah’s Witness and whose child was studying in Sul Khan-Saba Orbeliani School No1 of Bolnisi applied with a complaint to the Public Defender’s Office. It was stated in the complaint, that V. Gabunia’s child was constantly offended, insulted and humiliated by Ms. T. Shubliani, teacher of religion in the abovementioned school.

On September 12, 2001 Mr. Roin Kirtadze, a teacher of religion and culture in Adigeni village secondary school addressed the Public Defender’s Office with a complaint that he was persecuted by Mr. G. Chikovani, Head of Adigeni Regional Educational Department resulted in an attempt to dismiss the teacher from the school. I wrote a letter of recommendation (05.10.2001 No987-04-3) to the Minister of Education in order to study the case. The First Deputy Minister wrote me in response that the Department of Education was informed on the fact and the question of dismissing Mr. R. Kirtadze from school was “removed from the agenda”. It is a well-known fact, that during the last six months there have been many cases of raiding, beating and oppression of various religious groups, including seizure and burning of religious books and literature.

During the given period, more than 70 complaints have been received by the Public Defender’s Office. The existing situation assumes the alarming character, taking into consideration that many complaints were written collectively. The geographic scale of such violations is quite large (Tbilisi, Kutaisi, Marneuli, Kaspi, Tsageri). It is only sufficient to name some concrete facts in order to illustrate the existing situation.

On October 11, 2001, the Public Defender’s Office received the complaint form Jehovah’s Witness Ms. Zizi Gabaraeva from Tbilisi. In her complaint Ms. Gabaraeva informed that her neighbors Messrs. M. Kiknavelidze and Sh. Kakushadze constantly broke up the peaceful meetings of Jehovah’s Witnesses inflicting both physical and verbal assaults and threats. The Public defender’s Office sent a letter of recommendation to Mr. A. Beselia, Deputy Head of Police department of the Imereti Region, asking him to investigate the fact and undertake the legal measures.

On December 5, 2001 we received an analogical letter from a group of Jehovah’s Witnesses comprising of 11 people from different villages of the Baghdad Region. The group

was complaining again on Mr. M Kiknavelidze's and his neighbors' illegal activity. I once again sent a letter to the Department of Internal Affairs of the Imereti Region. Sadly, there is no response from the regional police until now and the perpetrators are still not punished.

Rev. Zaal Tkeshelashvili, pastor of the Evangelical Church "Blessing" applied to the Public Defender's Office with a complaint in connection with the fact that took place in Gldani on September 23, 2001. The congregation of the church was brutally attacked by Basil Mkalavlishvili and his followers during the service and who inflicted physical and moral assault and material damage. In this regard, the Police Department of Gldani filed a criminal case against Basil Mkalavlishvili and the others. Sadly enough, that criminal case brought no punitive results and the violators of law are still unpunished.

The Public Defender's Office received a letter No01, 02 of 26.12.2001 from non-governmental organization "Georgian Center for Religious Freedom" stating that Basil Mkalavlishvili and his fifty followers attacked Pastor Mamuka Djebisashvili of the Evangelical Church "Word of Life" and the members of his church during the religious service held at the "Iveria " cinema house. They assaulted the members of the Evangelical Church both physically and verbally, destroyed their equipment and even robbed several members of the church. The criminal case was filed in regard of that fact by the Mtatsminda District Police Department, that is still pending and is not finished yet.

The analyses of the complaints received by the Public Defender's Office has shown that one of the most frequently and most brutally attacked from the religious minorities is Jehovah's Witnesses, whereas the most notorious violator is Basil Mkalavlishvili and his "Diocese". We have received a lot of correspondence in connection with the above shocking facts from Amnesty International with the majority of letters from French Group 174, from Danish Center on Protection of Human Rights, International governmental and non-governmental organizations and religious organizations.

These letters mainly concern the facts of oppression and persecution of Jehovah's Witnesses and other religious minorities by Basil Mkalavlishvili and the fact of inactivity of the police.

We believe that it is necessary to unify the powers of governmental and non-governmental organizations, of the society, representatives of religious associations, their representatives and of human rights institutions in joint effort to fight such a dangerous phenomenon as violation of the rights of freedom of thought, conscience and religion.

I do consider that the Government of Georgia should start a wide-scale dialogue with all religious denominations existing in the country in order to identify and meet their demands

and needs, to establish the atmosphere of mutual understanding and respect and the law on religion must be adopted.

The Public Defender's Office has worked out a plan for organizing meetings and dialogues with the representatives of different religions and their denominations. The activity in this direction has already started and I will discuss the results of these activities in my next report.

Situation in the Army

Among the subjective and objective problems existing in the Georgian Army at the contemporary stage of its reconstruction and reorganization, the most significant are those of the attitude of the government and society to this process which sadly enough is not up to required standard, resulting in low rating and poor authority both of the officers and soldiers.

All these have lead to the extremely acute problems in the army both financially and socially. The initial cause of such a desperate situation is the "notorious" problem of budget funding that has not been solved up to now. It is common knowledge that those small allocations given by the Defense Ministry are inadequate even for maintaining the army itself. The main function of the army – fighting order – is in a poor state, not to say anything about the entire training process. Thus, the soldiers are not properly trained and the officers do not grow and develop professionally. One of the main rights of military servicemen is the right to live. If military servicemen are not properly trained and do not master art of fighting, the army would not be able to fulfill its function, it would not be able either to defend itself or the territorial integrity of the state.

At the same time, the population that pays taxes on which the army is maintained has the right to live in a safe environment. Bad nutrition, cold barracks, lack of elementary sanitary conditions, inadequate medical service, deficiency of medication and bandaging materials, lack of the first medical aid – all these factors lead to the increased cases of desertion and absences without leave, pushing the soldiers into this violation of strict army rules and obedience. The Ministry of Defense only had 1746 deserters in 2000 and 1334 in 2001.

Desertion is also furthered and aggravated by unregulated relations among officers and soldiers; the conflicts between soldiers that often take place in the army are sometimes completely and practically neglected by officers. Besides, one of the potential sources for desertion is the practice existing in the army when soldiers are allowed by officers to leave their military units and to go home for a certain financial ransom (approximately GEL 50-

100). Sometimes such soldiers do not return back to their military units as they are afraid that their case would be reported to the Military Prosecutor's Office.

The amnesty of 2001 did not bring any significant results. According to our data, about 2000 soldiers have deserted or run away from their military units by now. This can be easily explained by the fact that we do not struggle against the cases of desertion.

The phenomenon of desertion will continue to exist as a problem in our country, until the government approach to this problem would not be radically changed. Moreover, it may be assumed that the government itself is pushing soldiers into desertion, unless the policy of funding is radically changed.

Desertion

I would like to refer here to the information on desertion and its causes, provided by the General Military Prosecutor's Office. The number of cases of absences from military units without leave and cases of desertion has considerably increased in 2001 in comparison to 2000. In 2000, the General Military Prosecutor's Office and Regional Military Prosecutor's Offices had filed 1872 cases concerning the facts of desertion from the army and leaving the military units without official leave. In 2001, this number grew up to 2498 cases. The Military Prosecutor's Office explains this dramatic increase by the implementation of the Law on Amnesty, adopted on December 28, 2000.

The adoption of the law that is valid until April 28, 2001, has brought some very positive results in protecting the rights of deserters and giving them certain privileges. For instance, if in 2000 only 160 cases were dismissed from the court, the number of the dismissed cases comprised 1822 in 2001; that means 1662 more cases that certify the humane attitude towards the future of young generation.

Though, according to the Military Prosecutor's Office the number of desertion facts does not decrease.

Causes:

One of the main reasons for desertion is that no appropriate educational work is conducted among the military servicemen; the requirements of training regulations are not fully observed and the discipline is weak. The officers do not undertake the appropriate measures against those absent without leave and do not carry out any preventive measures.

The cause of desertion is also a difficult economic situation of the deserter's families whom they help during the period of deserting. Military servicemen often leave their units because of their health conditions and problems to undergo medical treatment in public

medical establishments, as there is no qualified medical service in the army, lack or limited quantity of medicaments. Despite that, the army units are not adequately materially equipped.

Food is of a poor quality and the living conditions are sometimes very bad. Nothing is done by the officers in the military units to raise the patriotic feelings of the servicemen. It is well known that in many army units some officers take money from sons of well-off families for releasing them from military service. Such behavior of officers brings a negative impact on other military servicemen and pushes them for leaving their units without any official permission.

The low level of discipline and education level of many officers is an additional obstacle in preventing desertion from the army. Very often, unprofessional people that lack basic education do occupy key positions in the army units. At the same time, these people have tarnished reputation and bad morality. They usually neglect the committed crimes and do not carry out their investigation.

Homicides and Suicides in the Army

The Public Defender's Office requested from the general Military Prosecutor's Office the statistical data on the victims of homicide, suicide and related accidents that took place in the army since 1994. In 1994-2001 the Military prosecutor's Office filed 35 criminal cases suicide and those of bringing to the point of suicide, 113 criminal cases for homicide and suicide.

The statistical dynamics of the cases of suicide and bringing to the point of suicide in armed forces of Georgia is the following:

Regions	1994	1995	1996	1997	1998	1999	2000	2001
Tbilisi			5	3	3	4	1	2
Kutaisi				4		2	2	
Gori					2			
Telavi						1		2
Akhaltsikhe							1	1
Sukhumi	1							
Batumi								
Poti						1		
Total	1		5	7	5	8	4	5=35

Out of total 35 cases on bringing to the point of suicide only 5 cases were brought to trial and verdict.

On the facts of homicides and attempts of homicides the Military Prosecutor's Offices have filed 113 criminal cases since 1994. This data is reflected in the following table:

Regions	1994	1995	1996	1997	1998	1999	2000	2001
Tbilisi	15	18	11	15	6	12	9	2
Kutaisi	4	1	2	1	2	2	1	2
Gori	8	4	2	3	1	1	1	1
Telavi	4	1	4	3	2	1	1	3
Akhaltsikhe		1				1		2
Sukhumi	5			6	3			2
Batumi		1	1	2	1			
Poti						1	1	
Total	36	26	20	30	15	8	13	12

Total = 112; 2002 -1. = 113

This question is of outmost importance and needs special investigation. Such shocking statistics of death roll at peaceful time is absolutely incomprehensible. It is very painful to lose 148 servicemen in peaceful times. During the Soviet time, there even existed such thing as permissible death coefficient factor. I firmly believe that we must reject such disgusting coefficients. It is cynical to admit in advance the possibility of death of servicemen in 2002.

In 2001 I referred to the Parliament of Georgia with a recommendation to set up a Parliamentary Commission that would investigate and study the reasons and causes leading to homicide and suicide in the armed forces in Georgia, in order to eliminate this terrible phenomenon.

Unfortunately, such a commission has never been created.

The Military Prosecutor's Office

Unfortunately, our society does not have adequate and objective information about the situation existing in the Georgian Armed Forces today. It can be easily explained by the fact that the relations between the military and civilian parties have not been properly established and developed. One of the effective means in the solution of this problem is to exercise public democratic control in the army, so that the society will be involved in the establishment and development of armed forces that are the guarantee of state security, as well as in protecting the right of each military serviceman granted to him by the Constitution.

It is very disturbing that the body which is designed to protect fundamental human rights, violates these very rights itself and quite frequently. Otherwise, how could one explain a two-year illegal imprisonment of Mr. V. Chkhartishvili, the former navy commander-in-

chief of the Ministry of Defense. The Supreme Court discharged his case; he was immediately reinstated in his working position, received a damage compensation of GEL 50,000 for moral damage. This fact is beyond any criticism. And is a classical example of how the General Military Prosecutor's Office "fabricates" cases.

V. Chkhartishvili suffered great moral damage. Moreover, in a private conversation with me, he said that the most painful for him was the discreditation of him as a military man of honor, such known to the commanders-in-chiefs of all the Black Sea states. This fact damaged not only his image but the image of Georgia as well.

It is incomprehensible, why nobody carried responsibility for this "fabricated" case. Who had an interest in imputing V. Chkhartishvili of such a serious crime and what were the reasons for keeping the navy commander-in-chief of the Ministry of Defense in prison for the entire two years period.

Furthermore, as it is obvious from the materials received from the Chamber of Control on the cases of corruption in the Armed Forces of Georgia, not a single serious case was completed and carried to its final conclusion. The fact that the majority of cases are still under investigation causes a lot of suspicions.

It should be noted that the activity of the Office of General Military Prosecutor has not been checked for the period of 5 years.

In connection with this problem, I recommend to set up a commission that will comprise the representatives of General Prosecutor's Office, the Anticorruption Board, the Parliament of Georgia and non-governmental organizations.

Kodori Gorge

The public opinion on the events that are taking place in Kodori is rather diverse. Some consider that it was a military operation that could solve the problem of Abkhazia, the others firmly believe that it was a pure provocation that could draw Georgia into unjustified war conflict. The situation was complicated by the fact that Gilaev's alignment was also located in Kodori. This fact caused the immediate reaction of Russia followed by bombing of the region. The mass media reported that Sukhumi was occupied by partisans and it was urgently needed to transfer their military forces in order to retain the occupied position.

However, the Abkhazian side broadcasted on TV the scenes shot in Sukhumi proving that all the institutions continue their work in the routine rhythm. People were completely confused and did not know what to believe.

Mr. N. Epremidze, a lawyer of the Public defender's Office was sent to Kodori, in order to get oriented in the existed situation and define the issues of protecting the rights of the peaceful population.

He had meetings with partisans who participated in military actions. As they stated, they were fighting on the approaches to Sukhumi and the Abkhazian side sustained heavy losses; the groups of partisans were controlling the regions close to outskirts of Sukhumi and the urgently needed military assistance from the government.

Besides, there were meetings with peaceful population from Gali who emphasized the absolute tranquility in the region of Gali and stated that no movement of Abkhazian military units was observed. The most amazing was the fact that there were no restrictions in transportation in the direction of Zugdidi Gali and the population had free pass to Gali.

According to one of the locals, he was in Sukhumi staying with his relatives at that time. He believed that the information about the occupation of Sukhumi was exaggerated, though some rare shots were occasionally heard in the outskirts of the city.

At the same time, some concealed panic could be noted at the Georgian-Russian boarder. There were gathered a lot of people, mostly of Armenian origin, heading towards Adler through the Georgian-Russian boarder. Such contradictory information made the situation very obscure.

I would refrain from giving any political evaluation of the created situation and will concentrate my attention on the results. And the result is the thousands of forcefully displaced people from the Kodori region, including women, elderly and children who were practically left without shelter under the open skies.

Mr. E. Kvitsiani, the representative of the President of Georgia in Kodori, applied to the Office of Public defender for recommendation before Mr. I. Zodelava, the Mayor of Tbilisi, for providing the assistance to the displaced persons in the form of a temporary shelter. WE send a recommendation to Mr. A. Djorbenadze, the State Minister of Georgia for possible assistance in finding some temporary accommodation to the forcefully displaced people.

Unfortunately, we have not received any reply until now.

Pankisi

The situation in Pankisi has become the subject of special consideration of the International community. This so-called “uncontrolled zone” that was formed by the febleness of the government or by interested functionary officials later turned into a criminal oasis. The impotence of the government to control the existing situation in Pankisi is proved by the existence of such problems as drugs industry, trading with weapons, kidnapping, providing shelter to criminals and many other.

The Georgian-Russian relations turned into Achilles heel because of the situation in Pankisi. Georgia has been quite often criticized because of the existing situation in this region. At the Russian-Georgian summit in Moscow, it was emphasized that the situation in Pankisi “is greatly threatening the safety and security of Russia”. One can think that the situation in Pankisi triggered the Chechnya’s problems that Russia has been trying to solve for several years already. Possibly, the ideal solution for justifying the dragging out of the conflict in Chechnya in the eyes of Russian public is to blame Georgia for impeding the regulation of the existing problem. The Russian side even assumed that Pankisi could be the place where Ben Laden could find shelter.

Georgia was also seriously criticized in Strasbourg in connection with the kidnapping of Spanish businessmen, as some representatives of force structures were implicated in the crime. Not once was this problem the question of discussion and consideration in many political circles of the USA. It was also widely discussed by the OSCE.

The Public defender’s Office has received a great number of complaints from the local population of Pankisi and people from the Kakheti Region in connection with kidnapping,

property thefts, and drug trading which was also practiced in schools. All these cause protest and serious criticism of the local population.

For instance, the village of Pichkhovani consisted of 320 families in 2000, whereas today there live only 115 families. The population of the villages in the vicinities of Pankisi is abandoning their homes, driven by fear and complete impunity. In order to avoid further complications it is necessary to solve this problem immediately and without delay.

The tensions reached its culmination after the kidnapping of four monks for whom the criminals demanded one million US dollars. The kidnapping of the Orthodox monks was misinterpreted by the population and considered as a religious persecution. Though, it should be underlined that the criminals did not choose their victims on religious grounds.

The situation in Pankisi created a “fertile soil” for the work of intelligence service of other states.

On January 9, 2002 the Public Defender’s Office sent Mr. N. Epremidze on a special mission to Pankisi in order to study the existing situation and undertake measures against possible provocations.

On the same day, the meeting of the participants in the action with the Minister of State Security and the representatives of the Public defender’s Office took place. According to the leader of this action Mr. N. Kakhniauri, they represented the interests of the local population that is afraid of uncontrolled movement of the armed people in the region, frequent cases of kidnapping, trading with drugs, stealing of cattle, etc. The participants expressed their serious suspicions on the involvement of representatives of Force structures in conducted criminal actions and patronizing criminals in the region. AS Mr. Kakhniauri stated, if you drive a car a red traffic light, in Tbilisi, you will be chased by the whole escort of traffic police, but nobody reacts to seeing a Kist or Chechen men heavily armed with machineguns and trench in the Akhmeta Region. They claimed to the Georgian government on the immediate restoration of Georgian Jurisdiction in Pankisi, immediate release of all the hostages and putting the end to the free movement and activity of the armed people.

The events started to develop very fast after the 9th of January, leading to the future perspective of a joint Georgian –USA anti terrorist military operation. Moreover, Georgia will receive 64 million US dollars from the US Government that will be spent on the training of 4 battalions with the assistance of the US military instructors. I hope, that Pankisi problem will be solved in the nearest future without any bloodshed. The territory will come under control and an end will be put to trading with people, drugs and appropriate measures will be undertaken to protect human rights and freedoms in the region.

**Center for Protecting the Rights of Military Servicemen
at the Public Defender's Office**

The Council of non-governmental organizations working on the problems and questions of protection of rights of disabled soldiers, veterans of war, the perished, the missing and their family members was established at the Public defender's Office.

Its main goal is to envisage the transparency of the problematic issues and improving the material, moral and psychological conditions of the military servicemen and members of their families. The council unites 16 non-governmental organizations:

1. Union for Protecting the Rights of Servicemen;
2. Union of Veterans of Georgian Mkhedrioni;
3. Georgian Society for Protecting Soldier's Rights;
4. Council of National Guards' Veterans of Georgia;
5. Union of National Guards' Veterans of Georgia;
6. Union of Servicemen Sportsmen;
7. Union "Psou" of Veterans and Disabled Soldiers of the War in Abkhazia;
8. Union of Georgian National Guards;
9. Union for Territorial Integrity of Georgia "War and Peace";
10. Union of Veterans and Servicemen "Veterans of Afghanistan for Georgia";
11. All Georgian Union of Veterans and Disabled Servicemen "Shield and Sword";
12. Georgian Charitable Foundation for veterans of War and Disabled Servicemen "Giorgi";
13. Union "Abdjari" of Disabled Military Transport Workers of Abkhazian War;
14. Union "Ndoba" for Protecting People's Rights and Rendering Assistance;
15. Union of Friends;
16. Union "Djikha" of Sukhumi Garrison of Military Servicemen;
17. Tbilisi Center for Euro-Atlantic Studies.

**Why the Implementation of the Law
on Alternative Non-Military Service is Delayed?**

According to the official statistical data, the legislative work of the Parliament of Georgia is credited as high and fruitful every year. However, there is a big difference in

adopting the laws and carrying them out to work in live. The collision between the reality and legislation leads to the fact that the citizens of Georgia do not fully enjoy their constitutional rights. One of these rights that came into force in 1997 is the right to choose non-military alternative labor service.

It may seem rather strange but the Law on Non-Military Alternative Labor Service was adopted in Georgia for the first time in 1991 by the former Supreme Council and was signed by President Zviad Gamsakhurdia.

At that time, many public administrators did not realize the importance of this law as not only nobody refused to join the army, but also the number of volunteers willing to serve in the army increased and was practically enormous.

However, the motivation of President Gamsakhurdia was very clear – he wanted to get separated by means of implementing democratic laws from the totalitarian system for which any humane compromise between the freedom of religion and mandatory military service was unacceptable.

It is obvious, that after the overthrow of President Gamsakhurdia, this law was completely forgotten and those, who dared to mention the Law on Alternative Service had to show a document certifying that they belonged to “sects” or were persecuted and oppressed.

According to the data of non-governmental organization “Justice and Freedom”, at that period there were several cases when criminal cases on deviation from military service were filed against those conscripts who wanted to take up the alternative military service. Several of those people were even convicted and imprisoned.

After the revision of this law, the alternative to the military service is considered a 36-month long socially beneficial work in the following fields: disaster and rescue groups, ecology, fire brigades, municipal service and healthcare organizations. The right to undertake the alternative service will be granted to those conscripts who will be able to substantiate that they refuse to join the military service for the reasons of conscience, thought and religion.

This procedure has the following steps, first, a conscript applies the military commissariat with a relevant statement, basing on the presented data the commissariat will make an interim conclusion that will be passed for final decision to the State Commission.

It should be noted, that this legal right has not been exercised by anyone until now. The invalidity of the law is as always being connected with a familiar problem.

The number of conscripts refusing to undergo military service for the reasons of right to freedom of thought, conscience and religion is increasing according to Mr. Mirian Kiknadze, Head of Public Relations Department of the Ministry of Defense of Georgia. The number comprised 470 people only in the last year.

The lack of funding is one of the reasons but however, there are other more serious problems. Namely, the law does not say anything about the procedure and criteria to prove that a person refuses to take a weapon in his hands because of his conscience or religious belief and not because of the unwillingness to serve.

The most incredible in the whole situation is that the main factor – the State Commission, regulating the questions of the alternative non-military service and defining the destiny of unarmed soldiers” does not exist at all.

In spite of recommendations of the Public Defender of Georgia for 2000 – 2001, the Law on Non-Military Alternative Labor Service is not working.

The Events of October 2001

The intrusion of State Security Service on the premises of TV Company “Rustavi 2” for withdrawal of financial documentation caused irritation in the society. This fact was perceived as an attack of the State Security Service on free mass media.

As a result, the relations between the staff of “Rustavi 2” and the representatives of State Security Service reached a serious tension. The representatives of all the circles of the society – non-governmental organizations, students associations, publications and just ordinary people gathered at the office of “Rustavi 2” in support of free mass media. Later, the gathering turned into a meeting demanding from the government to stop the illegal actions of State Security Service and to protect free mass media. The Public Defender of Georgia with a group of her colleagues also joined the meeting at the “Rustavi 2” office.

Lack of action from the government caused the irritation of the participants in the meeting. The question of resignation of the government was raised and the meeting moved to the building of Parliament of Georgia.

The further development of the events is well known to everybody. I would like to emphasize two main issues; first of all, nobody has the right to restrict any form the free mass media, second, to forbid people to express their opinion in the form of a meeting or gathering.

The Public Defender’s Office of Georgia received a lot of complaints from the students’ associations regarding the cases of kidnapping and threatening of their members by State Security Service. We witnessed with our own eyes how the representatives of State Security Service tried to take away by force megaphones from students in the State University garden. Moreover, together with the students we were pushed and pressed against the fence of the University garden. Attempts to provoke scandal were evident from the representatives of

State Security Service, dressed in civil cloths; they were offending students and snatching the flags out of their hands. It took a lot of effort on our side to help more than 100 students to leave peacefully the territory of the University.

Chapter V

Concrete Cases of Complaints Studied by the Public Defender's Office

On the Case of Dismissing Mr. Bakradze by Mr. Ivanishvili, the Mayor of Chiatura and of Spending the Budgetary Funds, Allocated for Special Purposes on Other Means.

According to the complaint received by the PDO, Mr. Bakradze, Director of Culture House in Chiatura, was twice dismissed without any reason from his position and was constantly persecuted by Mr. D. Ivanishvili, the Mayor of Chiatura. Moreover, Mr. Ivanishvili was accused of spending the funds allocated for the special purpose of recovery of loss caused by the recent earthquake. According to the results of investigation, after the liquidation of Stock Company “Chiaturamanganum” the debt of the local budget constituted GEL 9,000 including the debt for the teachers’ salaries of GEL 753.90 for the period of January 1 – July 1, 1999.

For improving the created difficult social-economic situation, the Ministry of Finance of Georgia credited the local budget of Chiatura with GEL 865,000 aimed at financing the educational system in the region with GEL 566,000 and with GEL 90,000 assistance for the families to recover their loss caused by the earthquake, etc.

Despite the additional order No27.211 of the Municipality of Chiatura on “Urgent Payment of Salaries to the Governmental Entities in Chiatura”, GEL 259,600 from the above-mentioned funds, were spent for other means. The educational system in Chiatura received only GEL 169,600, instead of originally planed GEL 466,000, and GEL 90,000 aimed for the assistance to the families was spent on covering different debts of the governmental entities.

The President of Georgia was informed about the above-mentioned facts on August 10, 2001 and Mr. T. Shashiashvili, Chargé d’Affaires of the President in Imereti Region was instructed to investigate the case thoroughly.

The reaction of Mr. Z. Kadjaia, the Deputy of Chargé d’Affaires on the pretensions towards the Mayor of Chiatura is very surprising as he explains the unlawful acts of the Mayor as if motivated by subjective reasons.

On the Possibility of Satisfying Mr. A. Rtskhiladze, the Former Member of the Supreme Council, with Living Space.

The former member of the Supreme Court, Mr. Avtandil Rtskhiladze has been registered in the individual apartment construction list since 1988. At different times, he put the necessary funds totaling 120,000 rubles for building an apartment in the Kalinin Regional Branch of “Binsotsbank”.

Mr. Rtskhiladze has not received the apartment until today and moreover, his name was taken out from the individual apartment construction list in 1992 motivated by political reasons and his activities in 1991-1992. After my earlier recommendation, Mr. T. Djidjiashvili. The Head of Legal Department of the Municipality informed Mr. Rtskhiladze that his personal account would be credited with USD 6,000 for the purpose of buying an apartment. Since then, Mr. Rtskhiladze had several possibilities to buy an apartment that would satisfy the needs of his family, but he could not do it, as the necessary funds were not available.

Taking into consideration the fact that because of various reasons Mr. Rtskhiladze was not satisfied with the living space for about ten years already, and that the moral and financial harms were caused, I applied with the recommendation to Mr. I. Zodelava, Mayor of Tbilisi, for transferring to any bank the promised amount in order to satisfy Mr. Rtskhiladze with the need to buy an apartment when such would be available. The recommendation was accepted.

On the Appeal of Attorney Sh. Dzindzibadze for Prolonging the Term of Imprisonment of Mr. R. Khazjomia

On October 18, 2001 I received a complaint from Ms. Shorena Dzindzibadze, the attorney of Mr. Roman Khazjomia that his term of imprisonment had been unlawfully prolonged and the criminal case was intentionally dragged on.

According to the complainant, Mr. R. Khazjomia was sentenced to imprisonment according to the second part of Article 170 and paragraphs “a” and “d” of the Criminal Code of Georgia on July 18, 2001 and he was imprisoned on July 19.

Starting from that time, only several investigations were conducted on the case. In particular, L. Mebonia did not testify against Mr. Khazjomia and said that he was not aware of any criminal action from the convict and he was not in the minibus taxi when the robbery took

place. Ms. Khatuna Basileishvily also did not testify against Mr. Khazjomia and no further investigation had been conducted for the period of three months. No evident facts proving of Mr. Khazomia's criminal action were ever obtained by the investigation.

In such circumstances, Mr. V. Gorgadze, an investigator of Investigation Department of the Ministry of Internal Affairs made a statement on October 13, 2001 and requested the Regional Court to prolong the term of imprisonment of Mr. Khazjomia. The request was unlawfully supported by Mr. D. Tsituri, a prosecutor of Preliminary Investigation and Procedural Department of General Prosecutor's Office of Georgia.

It should be noted that the prolongation of the term of imprisonment was not justified by the above-mentioned decision and was only based on general remark of "the necessity of conducting several investigative procedures".

Based on all these, I have considered the decision of Judge P. Kobuladze of the Regional Court, dated by October 18, 2001, prolonging the term of imprisonment of Mr. Khazjomia until November 18, 2001, to be unlawful as it was lacking any basis for such a decision.

Moreover, Mr. R. Khazjomia is a brother of Nino Khazjomia, a journalist of the "Rustavi 2 Channel TV program "60 Minutes" and the attorney together with other members of the family considered the decision of prolonging the term of imprisonment for Mr. R. Khazjomia as result of political motif and revenge. As a proof of the above-mentioned, the complaint points out to the fact that Mr. Vakhtang Jachvadze and Mr. Vazja Maisuradze testified against Mr. R. Khazjomia during the investigation at the time when they had no connection with the criminal case and had been involved in playing the same role during other cases pending in court in former times.

Taking into consideration the existing situation, I have applied to the General Prosecutor in order to clarify the basis and lawfulness of the decision to prolong the term of imprisonment for Mr. R. Khazjomia.

The recommendation was accepted and Mr. R. Khazjomia was released from the prison according to the court decision and after the expiration of his lawful term of imprisonment.

**On Unlawful Decision to Start Criminal Case
Against Messrs. I. Sanaia, G. Zarkua and Z. Gvazava**

It was on June 21 and July 6, 2000 when I requested to release from prison Messrs. I. Sanaia, G. Zarkua and Z. Gvazava and to stop the case against them for the unlawful accusation of participating in armed formation and for acquisition, carrying and using

firearms. The request was completely ignored by Mr. J. Babilasvili, the General Prosecutor of Georgia without any valid reason for that.

I have applied with request to the General Prosecutor's Office as the rights of the above mentioned persons were violated by their imprisonment and unlawful accusation with the lack of proof for such measures and was proved by the ongoing development of events.

After some time of my application, on July 12, 2001 the Supreme Court of Georgia released Mr. G. Zarkua from prison and put him under police supervision. On January 11, 2002, the accusation against Messrs. I. Sanaia, G. Zarkua and Z. Gvazava for the unlawful participating in armed formation was released and in August of 2001 and on January 29, 2002, Mr. G. Zarkua and Mr. I. Sanaia, relatively, were released from prison by the decision of the Collegium of Criminal Chamber of the Supreme Court of Georgia.

On Violation of Rights of Mr. G. Kurashvili and Others by their Detention

Gudjar Kurashvili, Kakhaber Kantaria, Archil Pandjigidze, Giorgi Giorgadze, Avtandil Giorgadze, Mamuka Giorgadze, Ioseb Nadiradze, Otar Melikidze, Dato Tsotsoria and Zaur Kelekhsashvili were detained and the case was raised against them for acquisition and safekeeping firearms and ammunition for intention of their further use in unlawful armed formation aiming at conducting the terrorist acts against the constitutional government since May of 1999.

According to the verdict of 8 November 2001 of the Georgian Supreme Court's Bar of Criminal Law, verdict of 25 January 2002 of the Georgian Supreme Court's Criminal Law's Chamber, by analyzing and studying the establishment of Krtsanisi – Mtatsminda's Regional court's judge, I can conclude that for preparing terrorist act, organizing illegal armed force and for being its members above mentioned persons were arrested during 2 years, 5 months and 8 days (I. Nadiradze, D. Tsotsoria), 2 years 5 months and 11 days (Otar Melikidze), 2 years 5 months and 14 days (M. Giorgadze, Z. Qelekhsishvili), 2 years 5 months and 15 days (A. Giorgadze), 2 years 5 months and 17 days (M. Giorgadze), 2 years 9 months and 28 days (G. Kurashvili, K. Qantaria, A. Panjigidze). The arrest took place regardless unexcited evidence, as the result the Bar of criminal law of the Georgian Supreme Court dropped charges, which followed the approval of the prosecuted.

As to the charges of betrayal of the country and forcing to change constitutional order their being in penitentiary for a long period of time without enough evidence was not necessary and

this must be interpreted as the harsh violation of their rights. In this part of the case the court tried to avoid approval by sentencing the prosecuted for betraying the country and for taking part in forced conspiracy to change constitutional order, sentenced them to slight punishment and freed them from the court room. As to G. Kurashvili, K. Qantaria and A. Panjikidze according to the establishment of 20 and 26 February 2001 of Krtsanisi – Mtatsminda Regional Court, were freed early after 3 months and 12 days from the passing of the sentence.

It must be mentioned that the process was postponed several times due to the absence of a representative of the prosecutor, so I had to apply to the General Prosecutor (N. Gabrichidze). I think that such an attitude to victims' fate should be strictly evaluated.

On Transferring of the Group of Under Aged Victims to Khoni Penitentiary - the Place of Ex- representatives of Military and Defense Structures By Breaking the Law

In the first part of the 2001 years report about the condition of the Human Rights and defending of freedom in Georgia I stated, that ignoring the Articles 82, 83 and 84 of the “Law on Victims” in penitentiary of Khoni, where ex representatives of military and defense structures had conducted sentence, was transferred a group of under aged victims.

In reply to my No 16/02-4 recommendation dated 9 March 2001 I was notified that the transfer was temporary and that the young people would be replaced to the places intended for their sentence by law, after necessary works would be conducted there.

In spite of the fact that more then a year and a half has past since that time, the Ministry of Justice has not made a legal decision about this matter yet.

On Violation of the Rights of Teachers Working in Education System

Teachers working in the system of the Ministry of Education very often bring letters of complaint to the Georgian Ombudsman's office about different reasons of their dismissal, including insincere acts, which is a violation of law.

The number of complaints is about the heads of institutions that put contracts with teachers on a yearly basis and not the permanent basis, whereas the last is correct form according to teachers working specification. The Ministry of Education does not react properly to handle these matters.

In December 2001 teachers of I. Otskheli's gymnasium in Kutaisi applied me for inspection of the lawfulness of their dismissal from the gymnasium.

Enclosed was the notification of the head of the social department of work defense of education labours' republican union E. Nakashidze, forwarded by the chairman of ministry's department G. Mindadze, from which it is getting clear that in the gymnasium teachers recruitment is considered permanent, so an often change of either teachers or students is not right coming out from the pedagogic view.

The same paper informs, that the gymnasium's director puts 10 months working contract instead of 1 year contract with teachers, as the result teachers are paid their annual leaves on 48 working days basis and not 40 working days basis as proper. Coming out from all the above we can say that, issuing an order about teachers' dismissal was not in compliance with schools specification and was unexplainable as for that period the academic year was not finished, diplomas were not issued, deputy directors and teachers were still working.

The director of the gymnasium G. Tevdoradze issued orders No3 and No11 on 5 September 1995 and 1 September 1999. Orders were dated 21 August 1995 and 20 August 1999 and they were about taking M. Murusidze and M. Akhrakidze on the positions of teachers on a temporary basis. The order was confirmed by the director's resolutions dated 5 September 1995 and 1 September 1999, from what we can say that those persons were still working in the gymnasium in September.

We must assume that Akhrakidze's and Murusidze's working in the gymnasium that time helped G. Tevdoradze in his insincere acts. This put him in the position to prove their temporary work in the gymnasium and on the other side did not leave the chance for the teachers to ask for the contract extension. According to the Article 31 of labor law after termination of working contract because of not stopping the working relations one cannot ask for permanent working contract.

Besides, as it is getting clear from the materials researched during the case study, since 1996 the director has not put the 1 year contract with any teachers, so the teachers' dismissal due to the termination of the 1 year contract is very doubtful. We also have to consider the fact that, according to the complaining teachers the gymnasium does not have the approved rules and procedures and even today it, without any basis, behaves in accordance with rules and procedures of Akaki Tsereteli Classical gymnasium of Kutaisi, according to which teachers are recruited for 1, 3 and 5 year terms. This makes us think that in such conditions there had been no basis for putting the temporary contract with the teachers.

As it turned out, the director of the school No2 in Kutaisi Alexander Sandukhadze, together with 87 teachers, was dismissed from the job according to the order No1162 of 25

August 1995 signed by Sandukhadze himself, whereas this order was registered on 21 August, which was Sunday – a non working day.

While considering the matter it is very doubtful that A. Sandukhadze could issue this order.

It must be mentioned that, G. Tenderize without any basis, refused my representative in Imereti Region Q. Candace to give annual leave forms to M. Moralize and M. Akhrakhidze , thus he violated Paragraph Z, Article 18 of Organic Law on Public defender of Georgia.

I, according to Paragraph D Article 21 and 23rd Article's second part of the Organic Law on Public Defender of Georgia sent the recommendation to Georgia's Minister of Education (A. Kurtosis) to examine unexplainable decisions of G. Tenderize, the director of I. Otskhelis gymnasium in Kuwaiti and to discuss the matter of his responsibility to the discipline. The General Prosecutor of Georgia was advised of necessary examinations for clarification of possible false actions.

On Unexplainable Dismissal of S. Osepashvili, Director of School No1 in Chokhatauri Region

On 7 July 2000, by the decision of Chokhatauri regional court Shura Osepashvili was replaced back to the position of director of the school No1 in the same region, who on 1 June 1999, by the order of education department of the mentioned region was dismissed from the job on the basis of the letter of resignation written under pressure.

In spite of this, the Minister of Education issued an order about replacement of S. Osepashvili back on the position of the director on 21 May 2001, 10 months and 14 days after the court made the decision; this was not implemented under the pressure and interest of school district administration of Guria, regional education department and the Governor.

After the Public Defender had interfered with the matter, by the order of 4 July 2001 of Chokhatauri regional education department, S. Osepashvili was replaced back to the position, the order was not implemented again for the reason that Akaki Chikvishvili, the person dismissed from the position that time, refused to leave the school. Under the leadership of A. Chikhvishvili and Lela Imedashvili the head of the school district administration of Guria there were signatures for “old” and “new” directors gathered.

After sending the Public Defender's representative to Guria on 24 August 2001, which was 1 year, 1 month and 7 days after the court's decision, the violated rights of S. Osepashvili were restored and she took after the implementation of the school director's duties.

On Restoring the Rights of M. Nemsitsveridze Who Lost Her Apartment

Citizen of Kutaisi Mzia Nemsitsveridze since 1993 had been trying to restore her rights on 9sqm room, which was allotted her after termination of her marriage from the 4 rooms flat according to the decision of Kutaisi district court on 25 January 1991.

On 16 June 1998, 14 April 2000, 7 June 2000 and 22 June 2000 M. Nemsitsveridze took action to restore her rights on her room. She applied to Kutisi court (three times) to district and Georgian Supreme Court, as the result in the first matter her notice was not considered for the reason of her ownership of specific space in the 4 rooms flat earlier and in other two matters she was refused to terminate the contract of privatization of the flat and the owned living space as well.

After considering the notification about the violation of M. Nemsitsveridze's rights, the ombudsman sent the recommendation to Kutaisi district court on 29 June 2001, which according to the order of 28 June 2001 confirmed the document of reconciliation between the parties, according to which the 4 rooms flat would be registered as owning of Mzia, Zaur and Nugzar Nemsitsveridze after they would return the one room flat to the owner of the mentioned flat Lamara Eremashvili and would refund her USD 2,300. The civil case was closed. M. Nemsitsveradze sent a letter of gratitude for the Public Defender's office attention to the redaction of the newspaper "Saqartvelos Respublika" which was printed in No58 (4117) on 10 March 2002.

About the actions of refunding the money stolen from teachers and staff of historic – ethnographic museum of Mestia

In August 2001 the Public Defender was applied by the chairman of Mestia's regional union's education workers E. Ratiani, as the result of today's very common situation, robbery on Zugdidi, Mestia road, GL 195 000 was robbed. The money was for salaries of Mestian regional education and Svaneti historic – ethnographic personnel.

The notification was also asking to discuss the question of payment of June and annual leaves salaries. The question of their increase, additional payment for years 1998-2000 as the result of attestation for teachers of the region, the question of studying condition of the regions schools In order to improve their financial-technical basis.

For solving the above-mentioned problems, on 10 August 2001 I applied with the official recommendations number 186/03-27, number 187/0327 to the Georgian General Prosecutor and the ministers of international affairs and education.

In spite of given promise the office of Georgian General Prosecutor and the ministry of internal affairs are still unsuccessful in their action, GL 19,500 is still missing and the case opened to detect this matter is being conducted without any result.

The minister of education on October 16, 2001 with the letter number 01-16-17/3372 informed me that he had contacted deputy minister of Georgia mister T. Isakadze to cooperate the allotment the missing GL 19500 from the president fund for the budget year 2001.

As to the question of the studding condition of the regions schools in order to improve their financial-technical basis the ministry of education has left it without any reaction.

Chapter VI

On the Situation Existing in the Penitentiary System

The situation in the penitentiary system is still very complicated. Custody conditions of the prisoners and convicts do not satisfy UN minimum and international standard requirements. The requirements set in Georgian Law “About Prisoners” are being violated.

The extremely difficult situation can be observed regarding the prisoners’ conditions of life in the penitentiary institutions. Prisons are overcrowded. There are cases when 40-48 convicts are placed in one cell. Sometimes the convicts are not provided with beds and as a result they have to go to bed in turn. The Law of Georgia “About Imprisonment” foresees that the minimum living space for one prisoner in the penitentiary institution should not be less 2 square meters. In reality, it is impossible even to speak about the enforcement of this law. But at the same time there are privileged cells where are kept only several prisoners. They are not supplied with clean linen. The prisoners, mainly, are supplied with the linen brought by their family members. The sanitary condition is poor too. In prison No 5 anti-sanitary conditions can be viewed as in the cells so in the administrative offices. There are not taken measures for rats’ annihilation. The matter of prisoners’ personal hygiene is neglected. The matter of dietary of the prisoners is a problem as well. Partially the dietary problem is solved in the women penitentiary system prison No 1 where in this sphere, in a form of an experiment, was done decentralization. In other institutions, where the experiment was not implemented, the dietary problem is still urgent. The food products are of bad quality, the dishes do not have enough quantity of food products and with violation of the norms of hygiene. The prisoners are provided with food products, mainly, from without by means of so called “parcels”. The significant problems are created because of the relations between the prisoners and the

administration. The penitentiary institutions' employees note that alongside with the prison administration some representatives of criminal authorities fulfill the management of the institutions (so called, "legal thieves" and "spectators") that significantly decreases the level of the order maintenance and prejudices the maintenance of good relations between the prisoners and the administration. To solve the problem is possible only in case if the problem of "authorities" in the penitentiary institutions is eliminated or when the prisoners are kept on selective basis. In regard to the problem, the only effort of administration will not be enough. It is necessary that the government and the society would express their will to settle the problem.

The problem of the prisoners' employment is essential as well. Except several institutions (we mean women penitentiary institution), almost in all institutions this sphere of activity needs improvement and nobody pays attention to it. The material and technical base that existed in previous years was stolen or came out of order. The women penitentiary institution maintains a greenhouse where several prisoners are employed. They also have a sewing workshop. It is worth mentioning that the women penitentiary institution differs from other such institutions and the conditions of life and living space there almost meet the international standards.

In prison No1 the matter of the prisoners' employment also needs improvement. The representative of the institution explained the situation, partially, by the fact that the contingent kept in the prison is too complicated and imprisonment conditions must be strict. The basic problem is an adequate financing and lack of proper programs. The situation in these institutions in the field of the prisoners' employment can be partially improved with the help of the international organizations. Specific projects will assist in improving the situation by means of establishing small and middle size enterprises. In this regard we have a precedent. As it was mentioned above, with the support of the British Embassy, the greenhouse was organized in the women penitentiary institution.

The Law of Georgia "About Imprisonment" envisages the right of a prisoner to receive secondary, professional and higher education but in fact the realization of the right does not take place. The women penitentiary institution representative mentioned that none of the prisoners until now has expressed a desire to get education but in case of existence of such an application there are neither conditions nor mechanisms for such kind of activity. There are no classrooms, offices and base for receiving a secondary education not to say anything about higher education. Representatives of other penitentiary institutions mentioned the same problems.

The situation with supply of the literature, including legal materials, is difficult as well. It was proposed to sign agreements with appropriate organizations that will provide the penitentiary institutions with the necessary literature. Nowadays, the penitentiary system does not have the base that it had before. In some penitentiary institutions the prisoners are willing to receive education, to have relations with the public, religious servants and psychologists. It is essential to establish close cooperation with the apostolic church of Georgia, health care institutions in order to satisfy the spiritual needs of the prisoners and provide them with sufficient medical and psychological help. The only institution that regulates relations between the prisoners and the society is the Penitentiary Department, Prisoners' Rights and Social Issues Division. I suppose that the role of the abovementioned body should be enhanced. The work of the permanent commissions created in accordance with the requirements of the law "About Imprisonment" should be activated to the full extend, especially, as they represent some kind of a link between the penitentiary institutions and the society.

Against that background, when the level of legal and general education among the prisoners as well as among the employees of the penitentiary institutions is low, the international organizations can provide those institutions with the necessary literature, including implementation of international standards in the sphere of human rights, in general, and rights of the prisoners, in particular. Actively communicate with the prisoners and the personnel of the penitentiary institutions by means of conducting seminars. The international organizations can influence upon the government of Georgia in order to attract its attention towards the penitentiary institutions' problems, their social and economical conditions and material and technical maintenance. It is desirable that the international organizations together with the reformers given the specific nature of the country and its economic shortcomings, would elaborate programs in order to speed up the process of reforms.

The health care problems in the penitentiary institutions are not solved. The importance of the medical personnel is much less in comparison with internationally accepted experience. The institutions are in need of medicines, medical equipment and offices equipped with modern techniques.

The problems existing in the penitentiary institutions for juveniles should be mentioned as well. By now, conditions in the penitentiary institutions for juveniles are just the same as in such ones for adults however attitude towards the juveniles must be more specific and professional. The representative of the juveniles' penitentiary institution mentioned that in this regard the legislation has some shortcomings. There is no proper differentiation of conditions of imprisonment given the age of the prisoners.

The 2001 first half report about the situation in the sphere of human rights and freedoms points out to the fact that the requirements set in Articles 82, 83 and 84 of the law “About Imprisonment” were ignored in Khoni penitentiary institution when juvenile prisoners were transferred to the institution where previously law enforcement former employees had been kept.

Due to the conditions that are in the abovementioned institution it will be very difficult to spend a winter. There is no heating and frequently no electricity and no car access road.

By the Public Defender’s representative in Imereti region was inspected the Ministry of Justice, Penitentiary Department, institution No 8. It became evident that it needs capital repairs, the roof is leaky, the windows are not glazed, the prisoners need extra beds, mattresses and blankets. The prisoners have no special uniforms and clothes, they suffer from lack of the dietary and so forth. The condition of Kutaisi prison No 2 building was checked as well. It turned out that it was constructed in the second half of XVIII century as a product booth. In 1865, when it became a prison, were constructed out-houses of a various predestination character. Now the building is fully depreciated, the walls are erosive and cracked.

In the current year, on August, 6 with a recommendation No 160/03 and on October, 18 with a recommendation No 403/03/160, in order to secure protection of the prisoners, I addressed to Minister of Justice of Georgia proposing to close Kutaisi No 2 prison and transfer kept there special contingent to another prison.

In regard to the abovementioned recommendation, I have not got any answer from the Minister. Instead, the letter No 23/t-5481 of August 24, 2001 from the Chairman, Penitentiary Department says that the repairs of Kutaisi prison will be possible after obtaining necessary funds but the process of transferring the prisoners to another prison has already started.

The abovementioned decision, I suppose, is groundless, as the prison is so depreciated that it is dangerous to keep prisoners there. This suggestion proved to be correct as recently the ceiling of the cell No 26 ruined that could entail death of 15 prisoners if the recommendation of the Public Defender was not taken into consideration and prisoners, before repairs, had not been preliminary transferred.

As it became known to me, next to the territory of Geguti penitentiary institution there is a not completed by the construction building of a factory. Construction of the building, with the purpose of its reconstruction and further development, is not necessary. The abovementioned works, for already some years, due to lack of funds, have been stopped. As a result, the facilities gradually became unfit. The abovementioned facility is located on an area with several hectares. It borders with river Rioni and it is easy to get there by Kutaisi-Geguti country road (Vartsikhehesi settlement).

Taking into consideration all the abovementioned, I put forward a recommendation to the Ministry of Justice in order to bring the governmental bodies' attention to the question of reconstruction of the facilities into a prison and for these purposes to draw up project-estimate documentation.

Mr. K. Koberidze, Deputy Minister of Justice of Georgia by his letter No 476 dated December 14, 2001 informs me that the question of reconstruction of the factory facilities into a prison is the point at discussion.

Some problems occur in connection the international standards' requirements to the personnel of the penitentiary institutions.

The qualification level of the employees is beneath all criticism. The system mainly employs casual persons that complicates relations with the prisoners and does not favor the creation of a conscientious atmosphere. As usual, the penitentiary institutions employ persons with diploma in law (approx. 70%). They, certainly, do not have proper medical education and psychological skills that contradict the UN minimum standards. The personnel selection and training programs should be revised and compiled in accordance with the new requirements.

The penitentiary institutions neglect even minimum standard norms. It is recommended to rotate the personnel of such institutions. From the point of view of law regulations we face a total chaos. From the participants of the seminar point of view that was organized by the Constitutional Rights Center, police bodies and the Prosecutor's Office do not cooperate with the penitentiary Department. We, also, cannot see any concern from governmental bodies in regard to other problems. The penitentiary institutions employees do not have normal working conditions. The material and technical base is provided. The representative of the penitentiary institution No 5, the special unit inspector, mentioned that they do not have a copier and stationary. The personnel have to by purchase stationary themselves. Such situation causes problems in the enforcement process of penitentiary institutions. Delivery of the procedural documentation is not executed timely that finally violates rights of the prisoners. Another problem is unfixed working hours. There are cases when the penitentiary institution certain employee has to work several days in succession. This circumstance decreases the level of their working efficiency. Serious problems are created with the parcel delivery. The checking of such parcels, usual, is done by hand as there is no appropriate technical equipment.

Another problem is relations between the prisoners and penitentiary institutions' employees. As usual these relations are normal but sometimes it seems that the rights of the prisoners are more protected than those of the penitentiary institutions employees. Subordination, that is the main feature of the penitentiary system, gradually vanishes.

It should be mentioned that the social service and human rights protection service are of primary priority for the penitentiary institutions. In this connection we face two parallel problems that is an obstacle in the process of carrying out reforms. In particular, such problems as: corruption in the penitentiary system, low level of public legal education, specific character of relations in the penitentiary institutions and economic situation that cause series of problems.

The primary attention should be devoted to the role of the international and local organizations in the process of reforms taking place in the penitentiary system. Many problems can be solved at the first stage of the reform only with active participation and support of the international organizations as from the financial point of view (target projects) so by their influence over governmental authorities.

The reform envisages creation of a totally new type of a penitentiary system that is, practically, unknown for our judicial system. The penitentiary institution should become an open type society where nothing is concealed. The support of states and NGO's where human rights are protected is of great importance. The process of reforms should not stop. The government and the society should actively participate in the discussions regarding the problems that exist in the penitentiary institutions. In this connection it is efficient to hold wide scale seminars and lectures.

It should be mentioned that in the situation when the salaries are too low and there are no elementary working conditions it is very difficult to carry out reforms.

Later, as it became known from the applicant, the abovementioned criminal case in Kvareli region prosecutor's office was being investigated tendentiously and with violations. The investigator tried to intimidate and threaten the victim. This was the reason when on November 1, 2001 I addressed my recommendation to the General Prosecutor to bring a criminal case.

On November 20, 2001 from the General Prosecutor's Office was received a letter. It said that the Public Defender's recommendation had been taken into consideration and the case for its further investigation had been stroke from Kvareli region prosecutor's office and brought to Kakheti county prosecutor's office.

Implementation of penitentiary reforms is an important and inevitable process, though set up of imprisonment institutions in accordance with international standards is impossible unless the reform process covers personnel of imprisonment institutions along with insurance of prisoners' rights.

Protection of prisoners' rights according to UNDP minimum standard rules is also not possible without substantial improvement of the county's economic conditions. Various

recourse (additional funding from budget, charity support, foreign aid) attraction is required. Special attention should be paid to immediate implementation of penitentiary reform project launching developed with the assistance of EU. Considering the above considerations the Public Defender believes that the following activities shall be implemented:

- Ministry of Justice shall become more active in its cooperation efforts with international and local NGOs to mutually develop projects for the partial resolution of employment problem in penitentiary system;
- A special program intended to increase education level of personnel at imprisonment institutions in legal, psychological and sociological aspects shall be developed;
- Attention shall be paid to supply of medical personnel at imprisonment institutions with medicines/drugs and medical equipment;
- To ensure feeding at a required level, create decentralization incentives throughout the whole penitentiary system;
- Take measures to supply each condemned and prisoner with linen purchased at budget expenses;
- To eliminate problems relating to sending/receiving parcels, create incentives for the set up and functioning of trade centers within imprisonment institutions.

**Violation of G. Didebashvili Rights –
Death As a Result of Refusal to Release from Custody Due to Illness**

On July 3 and August 27, 2001 L. Gzirishvili and M. Patarashvili, Mtskheta Region court judges, refused to satisfy the intermediation of medical institution for consumptive prisoners to release prisoner G. Didebashvili from time serving due to illness. Within 10 days upon the court refusal to release convicted G. Didebashvili died in the named institution with the diagnosis of pulmonary-cardiac deficiency. It should be noted that in the first case the judge did not consider the consent of 12 out of 13 medical commission members and refused to release convicted from the imprisonment motivating this by the gravity of the crime and in the second case the refusal was reasoned by the fact that 5 commission members out of 13, specifically: Nugzar Elizbarashvili, Zurab Tabidze, Michael Shavdia, Archil Sakvarelidze and Zurab Zurabashvili did not agree with the conclusion of the commission. Further, the judge

did not consider the circumstances where two months earlier the named persons signed the similar request on the release of Didebashvili.

Therefore, we have a case of formal-bureaucratic and heartless attitude towards prisoner's rights that resulted in the death of the convicted person and that in case of an objective decision might have been avoided.

On Illegal Imprisonment of T. Asanidze

Despite the fact that in my report as of first half of 2001 I have stated the violation of T. Asanidze's rights who was released from time serving, categorical position of the President of European Human Rights Court House onto the high priority of the case revision, the fact that the government of Georgia was informed about, till now the rights of this latter were not restored, moreover his rights are still violated and he is still kept in the jail of imprisonment before trial at the Ministry of State Security of Adjara Autonomous Republic.

With a heavy heart I need to state that my persistent requests to restore T. Asanidze's rights did not result in any harsh and adequate reaction from the society.

Regarding the Elimination of Legislative Vacuum in Consideration of Inconsistency in Requirements Set Under Articles of Criminal Code

It should be noted that Articles of Georgian Criminal Code contain series of incomplete and inconsistent requirements creating legislative vacuum that results in a frequent incorrect and illegal decision making on the part of law-enforcement bodies.

Specifically, it is often that in cases set under Articles 28, 395, 396, 397 of Georgian Criminal Code together with the decision of the termination of processing of criminal case Office of Public Prosecutor eliminates court decisions on the preventive punishment term for the accused. In some instances, while public prosecutors refuse to annul the decision on processing of criminal case in accordance with Article 268 of Georgian Criminal Code, accused persons are not transferred from imprisonment institutions to jails or from one jail to another that violates requirements of Articles 155 and 161 of Georgian Criminal Code. On February 20, 2002 public prosecutor of Tbilisi (T. Makharadze) approved the resolution on termination of criminal case No0201856 processing against M. Ramishvili and simultaneously annulled Vake-Saburtalo district court decree as of July 12, 2002 on the transfer of Mr. Ramishvili under the supervision of police as a preventive punishment. This violated

requirements of Article 155 of Georgian Criminal Code requiring alternation or annulment of preventive punishment by prosecutor decree only.

General Prosecutor of Georgia (G. Meparishvili) annulled resolution made by Public Prosecutor of Adjara Autonomous Republic dated March 24, 2001 on the processing of criminal case and did not consider the fact that such action violated requirements of Article 161 of Georgian Criminal Code, convicted T. Khachishvili was not transferred to Batumi investigator jail.

Considering the above, I would like to raise the issue for the discussion by relevant Georgian state bodies and agencies onto the amendment of Georgian Criminal Code. Such amendments would ensure that investigator and public prosecutor will not be able to annul court decision on changes in preventive punishment and transfer of convicted persons to jail till the court resolution is not annulled.

Regarding the Responsibility of the Personnel of Ministry of State Security and Investigation Service of General Prosecutor in Respect of Illegal Imprisonment of T. Shapatava

In my report as of 1st half of 2001 I was talking about convicted Tamaz Shapatava accused of smuggling and further discharged by the court and groundless resume of case based on newly discovered circumstances by General Prosecutor on December 29, 1999.

During 2000 and 2001 I was systematically raising the issue with General Prosecutor of Georgia and presenting recommendations on the termination of the case processing as the case was caused by the management and investigators of investigation department of the Ministry of State Security and personnel of General Prosecutor and related to a suit brought by Tamaz Shapatava in regard of material and moral damage caused by illegal imprisonment and aimed at escaping possible responsibility. T. Shapatava was a major investor and distributor of German firm "BMW". Illegal imprisonment not only removed him from the entrepreneurial activities by also incurred loss in the amount of GEL 348.569.

According to recommendation No7651/03/627 dated 28 August, 2001 I asked General Prosecutor (N. Gabrichidze) to pay attention to groundless resolution on case processing and I also stated that in case the court annuls the resolution I would retain the right to comment onto the illegal actions of the officials who resolved to imprison T. Shapatava without any ground and restore the case based on newly discovered also groundless circumstances.

On December 21, 2001 Panel of Judges of Criminal Cases at the Supreme Court of Georgia (case No247) by resolution refused to restore the criminal case against T. Shapatava required by the General Prosecutor based on the newly discovered circumstances.

Considering the above circumstances, according to recommendation No45/03/627 as of January 23, 2002 I recommended General Prosecutor of Georgia to consider the responsibility of the personnel of the Investigation Department of Ministry of State Security of Georgia and General Prosecutor who violated rights of Mr. T. Shapatava and others by groundless processing of criminal case, illegal imprisonment and restoration of case based on newly discovered groundless circumstances.

Illegal Decisions onto the Refusal to Restore the Case Based on Newly Discovered Circumstances (Prosecutor Office)

Results of the revision of applications submitted to the Public Defender allow me to resolve that prosecutor office, frequently, make decisions ignoring Criminal Code requirements and refuse to restore cases while newly discovered circumstances occur even when case revision appeal contains provisions set under Article 552 of Criminal Code or there is a direct court resolution onto the restoration of case due to the above reason.

According to Article 596, section I of Criminal Code, based on the appeals submitted to General Prosecutor of Georgia and Prosecutors of Abkhazia and Adjara Autonomous Republic, appropriate prosecutors seize criminal case or other court decisions and according to section III of the same Article in case the ground for case revision is not stated, they (prosecutors, investigators) seize the case which action is approved by General Prosecutor of Georgia and Prosecutors of Abkhazia and Adjara Autonomous Republic.

As we can see the Law does not provide the norm, the Law does not set for the refusal to revise the case in case of discovery of new circumstances, which as a rule is violated by Prosecutor bodies.

On September 24, 2000 General Prosecutor of Georgia (J. Babilashvili) made a decision not considered by Criminal Code. The decision contained refusal to revise the criminal case of Tamaz Kurtanidze based on newly discovered circumstances. Though the reason for the refusal was mistakenly named to be Article 596, section III of Criminal Code that provides for case suspensions and not refusals for revision. It should be noted that in such cases the decision-making by analogue is an acceptable based on the current legislation.

Such illegal decisions were made by General Prosecutor (G. Meparishvili) in respect of Ucha Avaliani on September 14, 2001 and Teimuraz Kurdiani on July 5, 2001 by rejecting Supreme Court resolutions as of May 8, 2001 and December 4, 2001.

Whereas General Prosecutor makes such illegal decisions with infringement of the Law, already processed cases being revised based on the newly discovered circumstances are delayed with the motivation of the same Law requirements. Specifically, due to the fact that the resolution of the trial-forensic commission of experts called to determine health conditions of Ramaz Chaduneli on March 21, 2001 was made with the violation of legal procedures, General Prosecutor's office rejected Senior Military Prosecutor's appeal to revised the case based on newly discovered circumstances and refused to approve conclusion on the appeal to the Supreme Court.

On Assault, Battery and Torture

The most wide spread and intolerable violation of human rights and freedom still take place in operations of regional, municipal and republican bodies representing internal affairs (police). These violations are mainly related to attempt of illegal collection of information, use of authority for own purposes/interests, arresting people with excess of authority, search, violence, assault and battery, torture, threats, cheating, blackmailing, humiliation, interrogation, bribing, illegal storing of arms, ammunition, purchase, keeping, production and distribution of narcotics and provoking of other illegal actions.

On Assault and Battery of Guram Pirtskhalaishvili and Provoking Use of Fire-Arm Against Him

On July 10, 2001 as a Public Defender I was reached by Liana Pirtskhalaishvili, residing at Nutsubidze Plato, 3 micro region, 2nd block, building 5, apartment 33 regarding the fact of assault and battery of her mentally diseased son by Vake-Saburtalo district police employees and provoking rifle withdrawal from their apartment.

While checking the statement, a protocol prepared by inspector on duty D. Elibashvili on June 27, 2001 was withdrawn from temporary arrest jail of Central Department of Internal

Affairs, Tbilisi. According to the protocol at the moment of getting to the jail G. Pirtskhalaishvili had black and blue, redness and swell around nose.

On July 10, 2002 I requested a trial-forensic inspection for Mr. G. Pirtskhalaishvili that detected pigmented spots on fore-parts of both calves caused by hard and blunt object and belong to damage of slight type.

Search and withdrawal of firearm at Mr. G. Pirtskhalaishvili's apartment was conducted by Vake-Saburtalo district police personnel without judge resolution. Further, as it was detected, search was not caused by emergency as at the moment of receiving the executive information police representative was in the defendant's apartment and in case such executive information was received should have immediately reacted in accordance with procedures and notified prosecutor. Moreover, according to Liana Pirtskhalaishvili, mother of the defendant at the moment of entering the apartment police representatives had a bundle that could have been a "fire-arm to be left at the apartment". As for the witnesses who certified the withdrawal of the firearm their objectivity and reliability causes serious doubts, as they are still not examined properly.

Further, the investigation could not verify and the criminal case does not contain information on the fact of cutting the firearm and modifying it into a rifle though he is completely groundlessly accused of this.

On Improper Reaction onto Public Defender's Recommendation on Assault and Battery of Sh. Sopromadze and Withdrawal of Private Property and Threatening with Firearm by Kutaisi Prosecutor' Office Representatives

On May 29, 2001 Plenipotentiary of Public Defender was addressed by Shalva Sopromadze residing at 14 Ganatleba Street, Kutaisi. He stated that employees of Kutaisi internal affairs department Toloraia and Chkhobadze illegally searched his apartment and removed his private property and money and caused physical injuries by assault and battery.

Medical card dated May 20, 2001 states that Shalva Sopromadze got concussion, hypodermic hemorrhages in area of both calves.

On June 20, 2001 I addressed General Prosecutor in order to get the verification of the above. In his letter dated October 8, 2001 Prosecutor of Kutaisi informed me that a resolution

was made on June 14, 2001 onto the refusal to proceed with the criminal case using the received information.

Basis for refusing to proceed with the criminal case was Shalva Sopromadze's explanatory note stating that falling on the floor caused damages. Further, the above mentioned Prosecutor's Office does not comment on the fact that Shalva Sopromadze does not deny the fact of firing shots at him and keeping the shells, loosing watch, GEL 90 and other private property during this assault. His three grandchildren, daughter-in-law and neighbor Venera Geradze did not disclaim original statement of assault and battery. Prosecutor's Office resolved not to proceed with criminal case against the employees of the police without verifying the correctness of the testimony of the above persons and facts of loss of the above-mentioned property from the apartment during the search. No critical assessment of the fact that Shalva Sopromadze denied his prior testimony on the fact of assault was made. Further, no comment was made on whether the fact that concussion and hypodermic hemorrhages in area of both calves are result of falling on the floor.

On the Assault and Battery of a Suspect and Defender

On August 3, 2001 Plenipotentiary of Public Defender in Imereti region was addressed by attorney Ledi Tukvadze who stated the fact of assault and battery and torture of her and her client by Terjola regional department of internal affairs.

According to statement No715 dated July 20, 2001 Temur Todadze got numerous injuries caused by blunt object and Ledi Tukvadze got light hemorrhages with short-term health problems.

The inspection materials were sent to General Prosecutor on August 7, 2001 and recommendation No680/03/694T request timely and qualified inspection and consideration of responsibility case of Head of Terjola regional department of internal affairs (T. Barbakadze).

It should be noted that during the inspection Tukvadze's testimony was disseminated stating that injuries were caused by policeman Chubinidze while making him go out of the police building. At the same time no attention was paid to the fact as to which form was used to ask the attorney to leave the building or why was the attorney supposed to deny the legal right of protecting client. Reasons causing the incident were also not questioned including the fact that the Plenipotentiary of Public Defender was not allowed to see the prisoner. Though, Head of Terjola regional department of internal affairs Temur Barbakadze was reprimanded

based on decree No484 dated August 27, 2001 issued by Head of Imereti Regional Central Department. It is worth mentioning that no reaction followed the fact of assault and battery of T. Todadze.

These violations were strictly criticized by the General Prosecutor of Georgia at the expanded meeting held on March 7, 2002.

On the Assault and Battery of G. Ubilava and Others by Policemen

On January 7, 2002 at about 16:00 drunken policemen Kakha Gobechia, Khvicha and Juri Akubardia from Jvari police department of Zugdidi region assaulted Giorgi Ubilava in the center of the city in the presence of indignant society. A respond to the society intendency was a shot from the firearm.

Plenipotentiary of Public Defender in the region personally met victim Ubilava and registered the fact of eyeball, left ear and both calves injury and according to the medical card Ubilava got concussion of the brain. Prosecutor's Office in Samegrelo and Zemo-Svaneti precincts processed the criminal case against the above-mentioned policemen.

On the Assault and Battery of Under Age

On June 21, 2001 at around 11:00 under age schoolboys Irakli Zarkua and Zaal Zarandia, Zugdidi School No6, XI grade, were taken to Zugdidi department of internal affairs on suspicion of rape.

Employees of the criminal investigation department Gia Kalichava and Zurab Kedia assaulted I. Zarkua and slightly injured him in order to receive testimony.

As a result of injuries I. Zarkua got concussion of the brain, has an injured eardrum that resulted in a decreased hearing.

Plenipotentiary of Public Defender in Samegrelo-Zemo Svaneti region met the under age and documentary registered body injuries (injured calf and back). According to the victim the policemen beat him with parquet.

Considering the fact, according to the requirements of the organic Law on “Public Defender of Georgia” Zugdidi regional Prosecutor’s Office was requested to process the criminal case against these policemen.

Even though the recommendation had evidences enough to file the case (conclusion of the expert, medical statement and photo materials reflecting the injuries and explanatory notes) the case is still not filed and the guilty are still working at the police.

**On Self-Injury as a Result Provoking Custody of Narcotics and Blackmailing of
Imprisoned Z. Berishvili by Employees of Department of Oni Internal Affairs and
Regional Prosecutor’s Office**

On October 10, 2002 Zurab Berishvili kept at Kutaisi Jail No2 gave a written explanation to Plenipotentiary of Public Defender in Imereti region on the fact of self-injury due to custody of narcotics and blackmailing by employees of department of Oni internal affairs and regional prosecutor’s office.

The explanation states that on July 3, 2001 police employees D. Shvelidze, Sh. Chikviladze and K. Gamkrelidze went to the prisoner’s bed-patient grandmother Nina Bidzishvili and in the presence of the neighbor who was at the house at the moment were searching for unknown things for about an hour.

After two days the named policemen with the participation of another policeman withdrawn narcotics and ammunition that they had brought to the house and registered everything in the protocol composed in the presence of a witness brought with the help of the imprisoned.

When the suspect was brought to the police he was offered a deal to receive freedom in exchange for the money received from the sale of his own house in Oni. The deal was suggested by Zaza Chareli, Head of regional department of internal affairs and Tengiz Liparteliani, Prosecutor of the region. When they discovered that the cost of the house was GEL 1000 only they considered the amount insufficient and after the charging on July 6, 2001 sent Z. Berishvili to Kutaisi prison No5.

On January 9, 2002 he was visited by assistant to Prosecutor in Racha-Lechkhumi region Nick Davituaiani who offered freedom in exchange for bribe. This caused

nervousness of the imprisoned and in the presence of Dr. I. Gigiadze he injured himself in the left side muscle with a rusted nail.

On October 16, 2001 I addressed General Prosecutor of Georgia in order to verify the above statements. On November 19, 2001 I received a response stating that the accused denied the original testimony condemning the mentioned persons. Further, Prosecutor's Office did not react to the fact that two days prior to the arrest Oni policemen went to Berishvili's grandmother and might have left narcotics and ammunition in the house for the further provoking purposes.

Despite the request stated in the recommendation, Berishvili's grandmother Nina Bidzishvili and neighbor Zviad Bidzishvili who are the witnesses of the fact still are not asked to give explanations.

Inspection conducted by General Prosecutor is considerable as while stating the fact that assistant to Prosecutor in Racha-Lechkhumi and Kvemo Svaneti region Nick Davituaiani visited the prisoner, though the necessity of a so-called "external examination" of the accused, as this is stated in the Prosecutor's letter, was not clarified.

In such a case it is unclear why should a prisoner be visited especially when he still did not cause any self-injury and what criminal case and external examination have in common.

On Unfair Investigation and Drag out of the Criminal Case of T. Khakhutashvili Premeditated Murder without Aggravating Circumstances.

On August 16, 2001 K. Khakhutashvili put in an application on the name of the Public Defender's Office about groundless drag out and unfair investigation of the criminal case on the fact of an attempt of the premeditated murder without aggravating circumstance perpetrated by P. Asabashvili.

The applicant mentioned that on May 26, 2001, while working the land, between T. Khakhutashvili and P. Asabashvili occurred a conflict. As a result P. Asabashvili attempting to hit T. Khakhutashvili's head with an axe injured his hand.

On the basis of the victim's party application in Kvareli regional prosecutor's office was brought a criminal action but as the investigation was conducted with violation of the

legal procedure the action was declined and it became subordinate to Gurjjani regional prosecutor's office, investigation division. During the preliminary investigation due to the gross error committed by the abovementioned division, in accordance with resolution issued by Telavi regional court, despite distrust expressed by the victim, the action, with the purpose of conducting further investigation, was sent back to Kvareli regional prosecutor's office.

In accordance with the court resolution, during the preliminary investigation process, by means of fraudulent actions, in the procedural documentation were changed the dates of investigation and in accordance with the applicant's statement some significant evidences were withdrawn from the criminal case, were forged trial-forensic findings, the axe, that was a direct criminal evidence, was substituted, etc.

Due to the abovementioned investigation and on the basis of the case documentation analysis, at the Public Defender's Office was compiled a recommendation on the name of the General Prosecutor about withdrawal of the criminal case from Kvareli regional prosecutor's office and passing the case to subordinate to the prosecutor's office investigative body. This became possible only after presenting proper evidences.

On M. Doborjginidze's Statement Related to Unfair Process of Investigation

I, with my recommendations No206/03-6/222-d of March 20, 2001, No493/04-8/222-d of June 22, 2001, No751/04-1/222 of August 16, 2001, No866/03/222-d of September 12, 2001, No1060/03/222-d of October 19, 2001 and No1381/03-222-d of December 26, 2001 repeatedly addressed the General Prosecutor of Georgia to review a complaint of Manana Doborjginidze, resident of Ozurgeti town, 22, Jorjiashvili St. In her complaint she asked for complete and thorough investigation of the case and also requested to investigate reasons of the refusal to study a resolution regarding murder attempt, inflicted heavy body injury, the appointment of a trial-forensic examination and the closure of the criminal case. At the same time, I asked the General Prosecutor to take into consideration a question of arranging audience for M. Doborjginidze's when she would submit to him additional documents necessary for conducting a trial-forensic examination (the investigation had been refusing to give her the documents) and would substantiate the necessity of her medical examination while expertise is in the process.

The General Prosecutor has not yet essentially considered these recommendations. Namely, in his replies sent separately to me he did not explain to what extend it was permitted to conduct a trial-forensic examination without allowing M. Doborjginidze to be acquainted

with relevant resolution and expertise conclusion. He never explained the reasons why the victim was not given the resolution about the closure of the criminal case, did not even mention the date when the resolution had been sent to her and whether she or anyone else had received it.

As it turns out of the letter No15-2/6-2001 of October 4, 2001 signed by Mr. Ramaz Jhgenti, Head of the Investigative Procedure Authority Department at the General Prosecutor's Office, the criminal case concerning defendant N. Gujabidze (N. Gujabidze inflicted M. Doborjginidze's body injury) was over on June 19, 2001. At the same time Mr. Ramaz Jhgenti did not mention whether the victim had been informed about the above mentioned circumstances. According to his another letter No15/2-6-2001 of December 5, 2001 the above-mentioned resolution was not sent to M. Doborjginidze. The fact proves that she was deprived of the right to appeal against the decision taken by the investigator, while the right is envisaged by the Criminal Procedure Legislation.

The letter No15/2-6-2002 of January 28, 2002 issued by the General Prosecutor's Office says that a copy of the resolution about the closure of the above-mentioned criminal case was forwarded to M. Doborjginidze but does not indicate the date of delivery of the afore-mentioned resolution and the types of the measures undertaken by the investigator who, in this regard, during the long period of time had been violating victim's right envisaged by the Criminal Procedure Legislation.

M. Doborjginidze is ready to present the materials that are proving heavy body injuries and has been systematically applying with a request to meet with the General Prosecutor in order to hand them. On this background it is difficult to share General Prosecutor's Office's unwillingness to collaborate with investigation.

The Public Defender of Georgia urgently demands the General Prosecutor's Office to consider the legality of M. Doborjginidze's application regarding the redress of violated rights and to take the lawful decision in connection with the case.

On the Judicial Bodies' Inappropriate Reaction to the Public Defender's Recommendations

Judicial bodies of various instances and their officials by infringing the requirements of item "b" and "g", Article 18 and Article 23 of the Law on the Public Defender of Georgia often refuse or avoid to provide the Public Defender with every necessary information,

documentation and other materials and to give relevant explanations about the issues that are under the process of investigation. Such kind of action is motivated by the protection of their right to act independently, without others' interference in their affairs guaranteed by the Constitution of Georgia and the relevant legislation. By the way, they leave out of sight the fact that the above-mentioned requirements refer to the decisions being in force but in this case the matter concerns the protection of human rights and fundamental freedoms according to the requirements of Article 14 of the Law on the Public Defender of Georgia.

The Supreme Court of Georgia systematically refuses to consider the Public Defender's recommendations regarding the revision of the legality of the decision in force, made by a judicial instance when following the examination it is considered that human rights and freedoms were violated during the trial that could essentially have an impact on the court decision. Such actions infringe the requirements of item "e", Article 21 of the Law on the Public Defender of Georgia.

On February 26, March 19, May 22 and December 3, 2001 in accordance with the provisions of item "e", Article 21 of the above-mentioned law my recommendations No 129/02-1/5-m, No200/02-1/85-j, No363/02-1/289-q and No1244/03/866-m regarding the revision of the legality of the decisions in force taken by the courts of various instances concerning the civil cases of Z. Mamulashvili, Head of "Mrevli", the Fund for Disabled Warriors, War Veterans and Care Deprived Children, of citizens D. Jashi, K. Qoqosadze and T. Mamijanashvili were forwarded to the Supreme Court.

Namely, the recommendation indicated that "Saqartvelos Rkinigza" Ltd. had been charged to pay GEL 172.928 in favor of the fund "Mrevli" in accordance with the decision of October 17, 2000 taken by the Supreme Court, the Civil, Entrepreneurial and Bankruptcy Affairs' Chamber.

The Supreme Court, Civil, Enterprise and Bankruptcy Affairs' Chamber on the basis of the order No 33/133 of January 24, 2001 annulled all the previous court decisions and returned the case for further revision to Gldani-Nadzaladevi regional court as the court did not oblige the Ministry of State Property Management, at that time owner of the state property, to be involved in the revision of the case.

The Supreme Court's order contradicts to the requirements of part I, Article 422 of the Civil Procedure Code according to which the decision in force could be annulled by the statement of the interested party if one of the parties (or legal representative) is not invited to participate in the case revision.

The Ministry of State Property Management had no right to be involved in the case, as it did not represent the party during the case revision. According to the Article 79 of the Civil

Procedure Code of Georgia the interested persons who undertake the trial could be considered as the parties. In regard to that case the trial started on the basis of the appeal of the head of “Mrevli”, the Fund for Disabled Warriors, War Veterans and Care Deprived Children, against “Saqartvelos Rkinigza” Ltd. but during the court session the representative of “Sakartvelos Rkinigza” did not request to invite the Ministry of State Property Management as an owner of “Sakartvelos Rkinigza”’s property.

According to the order of January 24, 2001 issued by the Supreme Court, Civil, Enterprise and Bankruptcy Affairs’ Chamber it was an absolutely groundless decision to give non-dwelling space, e.g. a cellar, a kitchen, a bathroom and etc. in possession of A. Kulijanashvili as at that time there was decision in force taken by the Mtatsminda regional court on November 1, 2001 that proved that the above-mentioned space belonged to D.Jashia. A. Kilijanashvili himself never argued the decision.

According to the order of July 12, 2000 issued by Tbilisi County Court, Civil, Enterprise and Bankruptcy Affairs’ Chamber and the order of November 22, 2000 issued by the Supreme Court, Civil, Enterprise and Bankruptcy Affairs’ Chamber the release of K.Qoqosadze from the position of the Chief Advisor of the State Representative Office of the President of Georgia was a legal action on grounds of redundancy.

The above mentioned decision of the Supreme Court ignored the requirements of Article 19 of the “Law on War and Military Forces’ Veterans” and item “d”, Article 36 of the Labor Law of Georgia, according to which K.Qoqosadze being a war-disabled person had the right of the first priority to preserve his position within the frame of two percent reserve.

In accordance with Borjomi Regional Court decision of February 21, 2000 a suit of “Likani” Ltd. regarding the revision of the case due to the newly discovered circumstances was satisfied. Taking into consideration the amount of average three month salary of a worker-destroyer, partial loss of ability to work a monthly allowance of GEL 34,92 was allocated for T. Mamijanashvili, worker blast-man of Borjomi road section.

The above-mentioned court decisions are groundless as by that time the decree No48 of February 9, 1999 of the President of Georgia regarding the “rule on reimbursement of damage caused by occupational injury” was in force. The decree says that if the relevant or similar level positions do not exist any more in an organization, a person receiving occupational injury is given allowance equal to tenfold amount of the organization’s minimum salary rate. And, according to the presidential decree of June 4, 1999 concerning “Minimum Amount of Salary”, at the time the minimum amount of wage constituted GEL 20. Thus, considering tenfold amount of the minimum salary, loss of 85% of capacity for work and

mixed fault in his mutilation the allowance for T. Mamijanashvili as for a victim had to be equal to GEL 85.

Besides, on the basis of the decisions of February 21 and May 18, 2000 and in accordance with part III, Article 423 of the Civil Procedure Code of Georgia Borjomi Regional Court and Tbilisi County Court, Civil, Enterprise and Bankruptcy Affairs' Chamber could take decision about the restart of proceedings only in case if the party had no possibility to point to the newly discovered circumstances and evidences during the trial or at the moment of taking decision.

The fact that "Likani" Ltd. did not know that the organization had no position of blast-man does not relieve the management of the organization of responsibility. On the contrary, they had to know about it and had to declare about it in the regional and appellant courts during the trial, but they did not do it. The court received the application and took decision without having any discussion on the above-mentioned question so it ignored the requirements of Article 429 of the Civil Procedure Code of Georgia.

I demanded to check the legality of the decisions taken after the study of mentioned cases by the courts of various instances as they violated the above mentioned people's rights. L Gogelia, Head of Law Socialization Department at the Supreme Court of Georgia in her letters No3k/133 of March 20, 2001, No 3k/51 of October 30, 2001, No 3k/683 of June 8, 2001 and No01-b/353 of December 27, 2001 refused to revise the decisions motivating it by the fact that the current legislation does not envisage the revision of the legality of a court decision in force through supervision.

It is worth to mention that I did not request to revise the legality of the court decisions by supervision but on the ground of item "e", Article 21 of the Law on the Public Defender of Georgia I asked to reexamine the legality of the above-mentioned court decisions as I decided that due to the above-mentioned actual circumstances the rights of Z. Mamulashvili, D. Jashi, K. Qoqosadze and T Mamijanashvili had been violated during the trials that itself had an essential influence on the court decisions.

According to Article 4 of the "Law on Normative Acts" of Georgia the Organic Law on the Public Defender of Georgia goes under the category of the normative acts and in accordance with Article 5 of the same law the cases that are to be solved by the Organic Law can not be solved by the Law of Georgia.

As regards to the Civil Procedure Code it belongs to the defined public relations regulating legal norms, to its systematized category. In accordance with Article 19 of the "Law on Normative Acts" that defines hierarchy of legal power for normative acts the Law of

Georgia together with the Codes are considered as normative acts of a lower rank in comparison with the Organic Law.

Taking into consideration the above mentioned circumstances as my recommendations of February 26, March 19, May 22 and December 3 of 2001 within the frame of the power authorized by item “e”, Article 21 of the Law on the Public Defender of Georgia requested to revise the legality of the court decisions and not to check them by supervision as Mrs. L. Gogelia indicates, I repeatedly asked the Supreme Court of Georgia to review my another recommendation and to provide me with relevant information concerning the taken decision within one month term envisaged by Article 24 of the same law.

But, the Supreme Court has not replied yet.

On Human Rights’ Violations Committed By Judges and Court Representatives through Fraud

The materials gathered by the Public Defender’s Office show, that there are cases of violations of human rights through fraud by judges and members of the court.

In May 2000 D.Tskhvedadze, a former teacher of Tbilisi No179 secondary school appealed to me to investigate and institute criminal proceedings against false proof and judges’ criminal activity based on newly discovered circumstances. The materials submitted by D.Tskhvedadze were examined and it turned out, that:

According to the Criminal Law of Georgia during the return of the verdict, the presence of the defendant, victim and representative, defending the victim’s rights (lawyer) and their consent is necessary.

According to the protocol of Tbilisi Isani-Samgori court session dated March 13, 2000, Dodo Tskhvedadze, the defendant, despite being informed about the date of the hearing, did not appear in court, neither did Manana Barbakadze, the representative of the victim’s rights and the statement of reconciliation concerning this case was represented.

According to part 3, Article 632 of the Criminal Procedure Code of Georgian, during the court hearing, the victim’s statement of reconciliation, as well as the oral statement of the person, against whom is made a complaint are recorded in the court session protocol. Therefore, since Dodo Tskhvedadze, the defendant did not appear in court, as it is recorded in the protocol, she could not have made an oral statement about reconciliation with the victim, and according to the materials of the case the defendant did not make neither oral nor written

statement before. As to the undated document, submitted by M.Onashvili, assistant to the judge, in which it is pointed out, that on March 13 (the year is not stated), he informed Dodo Tskhvedadze by phone (the phone number is not stated), that Manana Barbakadze submitted the statement (the date of the statement is not stated) and the lawsuit is ceased, it is quite doubtful, because there is no evidence of any reaction on Tskhvedadze's part in it. Besides, the decision of the cessation of the lawsuit before the defendant's consent is not allowed by the current criminal law. In this case, the circumstance should be taken into account, that according to M. Barbakadze's statement, dated March 6, 2000, the representative of Lasha Barbakadze's rights, he would agree to reconciliation and cessation of the lawsuit, if Dodo Tskhvedadze apologized, which has not happened so far.

As Tskhvedadze states, despite the fact, that she appeared in court, the court session did not take place on that day, thus she could not have made any statement about reconciliation. Besides, she never had such intention, because of her innocence. This circumstance is confirmed by statements, dated May 22, 2000 and submitted to the Public Defender's Office of Georgia by Manana Maghradze (resident of Tbilisi, Didi Digomi, District № 3, Block 5, Apt. 239) and George Amashukeli, Executive Secretary of the Coordination Council of the Teachers' Rights Association. Namely, it is mentioned in these statements, that on March 13 Maghradze alongside Amashukeli, the representative, accompanied Tskhvedadze, helped her and the court session did not take place on that day.

It should be noted that Isani-Samgori district court that was hearing Tskhvedadze's appeal about reinstating, payment for enforced absence, and compensation for moral damage, ignored, did not examine and discuss causes for Tskhvedadze's absence at the school No179 general meeting. In its July 4, 2000 decision the court emphasized that Tskhvedadze was invited to the meeting and the information concerning this issue was placed on the school board. At the same time the court did not take into account the circumstance, that Tskhvedadze at the day of the meeting i.e. on December 29, 1999 was at the Isani-Samgori district court and for this reason she was not able to attend the meeting, which is confirmed by the decision made by the above-mentioned court that day, concerning the defendant's request to organize psychiatric examination (refer to: the decision of the Tbilisi Isani-Samgori district court, made on December 29, 1999 to organize a psychiatric examination).

The authenticity of the act dated December 23, 1999 about holding a school general meeting and informing Tskhvedadze is also doubtful, because on that day a resolution was made by R. Varazashvili, the judge of Tbilisi Isani-Samgori district court, concerning the institution of criminal proceedings against Tskhvedadze and calling her to account by Article 112 of the Criminal Code of Georgia.

Besides, as Tskhvedadze states, despite her petition, the court did not examine class registers, which prove that from December 23, 1999 she did not give lessons at school, because administration did not allow her to.

In the submitted materials there are statements addressed to K. Kamkhadze, the judge of Tbilisi Isani-Samgori district court and made by Sopo Mumladze (undated), a pupil of grade 9^a at the secondary school No179 and Ketevan Tsilosani, Gocha Zenaishvili's parent (a pupil of 9^{III} grade) concerning the denial of their testimonies, given earlier, about Lasha Barbakadze's physical damage made by D. Tskhvedadze. They explain it as some misunderstanding, which the court did not examine and now it is being investigated.

The decision of reconciliation and cessation of the criminal case made by Tbilisi Isani-Samgori district court on March 13, 2000 to significant extent became the base of the court decision of civil dispute, made on July 4, 2000, by which Dodo Tskhvedadze's lawsuit on reinstatement, payment on enforced absence, compensation for moral damage was denied.

It is also became the base of the decision of the Civil, Entrepreneurial and Bankruptcy Chamber at Tbilisi regional court about denying Dodo Tskhvedadze's appeal and the decision of Tbilisi Isani-Samgori court made on July 4, 2000 concerning this subject remained in force.

The above-mentioned actual circumstances, with high probability, create the base, taking into account the above-mentioned proofs, to consider the following as false: the act, dated December 23, 1999 regarding Tskhvedadze's invitation to the general meeting of the secondary school No179 on December 29, 1999; the protocol of the court session dated March 13, 2000, regarding M. Barbakadze's statement of reconciliation and cessation of the case and Barbakadze's and Tskhvedadze's absence at the session; the undated document submitted by M. Onashvili, assistant to the judge, regarding telephone conversation between Barbakadze and Tskhvedadze and participation of R. Varazashvili, the judge of Isani-Samgori district court, M. Mikeladze, secretary of the court, M. Onashvili, assistant to the judge, also, N. Tsintsadze, M. Ivanishvili, L. Kikilashvili, employees of the secondary school No179 in these crimes.

According to item 'g', Article 21 of the organic "Law on the Public Defender of Georgia", on May 31, 2001 I sent recommendation No390/01-1/359-c to the General Prosecutor's Office of Georgia on institution of criminal proceedings against above-mentioned persons.

The letter, dated September 27, 2001 No12-37-2001, sent by the General Prosecutor's Office of Georgia, informs that, taking into account the recommendation of the Public Defender of Georgia and based on her letter, criminal and civil cases together with gathered

materials were sent to the Supreme Court of Georgia for response, to decide the question of the judge Varazashvili's responsibility, according to the organic "Law on General Courts of Georgia".

The letter, dated December 13, 2001 No 07/964-k, sent to me by the above-mentioned court, informs that, despite the above-mentioned fraud and violations, the disciplinary prosecution against the judge Roin Varazashvili was ceased, to which I did not agree in the letter, dated January 9, 2002 and requested well-grounded information, to which I have not received a response so far.

Problems Arising During the Execution of Court Decisions

There are a lot of property rights' violations. I would single out some of them for illustration. Particularly, Lali Marjanidze legally got a 3-room apartment in Didi Digomi, but she was not able to use it, because N. Nozadze-Kapanadze (resident of Khashuri) together with the family members illegally had occupied the mentioned apartment, on which Saburtalo district court made a decision on the family's eviction on April 26, 1999. N. Nozadze-Kapanadze used her legal right to appeal but the decision of the district court has not been changed. On June 21, 1999 M. Nozadze, Chairman of Vake-Saburtalo district court illegally issued executive document.

The point is that, according to Article 2 of the "Law on Enforcement Procedures", the district judge has no right to issue an executive document before the court decision, verdict or act come into force. Especially as the court decision on N. Nozadze-Kapanadze's eviction came into force on February 16, 2001 following the verdict issued by the Supreme Court of Georgia. The executor carried out illegal eviction according to the court decision because according to protocol dated July 12, 1999 made by the executor, N. Nozadze-Kapanadze was not present at the eviction and was not informed about it. Her property was registered and given into L. Marjanidze's charge, but the executor violated item 4, Article 84 of the "Law on Enforcement of Procedures".

Under these circumstances the Executive Department supposes the court decision is executed and Mr. M. Nozadze, Chairman of Vake-Saburtalo district court has not responded so far on my recommendation to issue executive document after the court decision comes into force. And after 3 years, justice has not yet been restored.

On Trial Delays

Another example of property rights' violation is the fact ascertained after K. Giorgobiani's appeal's consideration. According to an agreement concluded on November 7, 1995 between the firm "Sioni", owned by the Georgian Patriarchy and Resort and Medical Department of Social Security Service (Z. Glonti, Chief of the Department), the firm "Sioni" was obliged to supply with mutually agreed products until January 1, 1997 and the administration should have paid cost of the products after their selling. After receiving the products, the administration sold them in Moscow but did not make payment to the firm "Sioni" that became the subject of the trial. According to the decision of Mtatsminda district court made on December 11, 1998, the administration was obliged to pay both the main sum and penalty, which amounted to the total of USD 38,600 equivalent in GEL. The decision of Mtatsminda district court has not come into force so far and the case has been under hearing in the Supreme Court instance for six years. Now the case is being heard in Tbilisi Regional Court.

The same situation is in the joint-stock company "Trest No 13". The point is that the Machinery of the Georgian Parliament (Chief Kh. Gogorishvili) owes the company USD 942,300 equivalent in GEL and GEL 981,600 for the construction works of repair and reconstruction of the Parliament's administrative building. The existence of the debt is confirmed by the conclusion of the commission created by the State Minister's No 76 order, dated September 29, 2000 in order to pay debt. Despite this the company 'Trest' has not been financially supplied by customer organizations, thus violating the company's large number of employees' rights. Since 1997 the court bodies have delayed the decision of the case and it is hard to say when justice is restored.

It should be noted that many appeals and petitions are submitted to the Public Defender's Office concerning delays of the decisions in the courts of different instances.

According to Article 184 of the Criminal Code of Georgia, being into force since July 1, 2000 (in order to seize illegally cars or other mechanical transport) the crime committed in state of intoxication is not recognized. According to the previous Criminal Code (Part 2, Article 243), Otar Vashakidze was convicted to 6 and a half years for this crime. On March 9, 2001 Vashakidze appealed to the Supreme Supervising Chamber of Georgia to bring this crime into line with the above-mentioned law. Despite the fact that the convict applied again on June 22, 2001, the Supreme Court has not made a decision, thus violating O. Vashakidze's rights.

On September 8, 2001 Tbilisi regional court, without any reason, did not allow K. Khakhutashvili (the victim's representative) to attend the trial and reached the decision, without his presence, to leave in force the verdict made by regulating session of Telavi regional court on the case of deliberate murder committed by Asabashvili.

The court's refusal to allow K. Khakhutashvili attend the court session was caused by the fact that the document verifying the crime's proxy was absent.

Examination, carried out by the Public Defender based on K. Khakhutashvili's appeal, shows that in the criminal case there was the legal representative's proxy, therefore as the letter No344-t-01, dated September 25, 2001 sent by the Chairman of the regional court shows that investigation on Gogokhia's (assistant to the judge) case is under way.

On Violations of Terms Determined by Law and Prisoners' Condition with Physical Damage

Despite the measures taken, there are cases of delayed transfer of prisoners from the cells for pretrial and preliminary detention to Tbilisi, Kutaisi, Batumi and Zugdidi prisons with physical damage of prisoners and violation of terms defined by the criminal legal procedure.

In Batumi prison under the Ministry of Justice of Georgia the prisoners' condition was examined and it became known that most of the time there are cases of transferring prisoners from the institutions controlled by the Interior Ministry of Adjara Autonomous Republic with violation of terms defined by the Criminal Code.

Namely, on September 1, 2000, December 7, 26, 2000, February 2 and 8, April 25 and 26, May 21, June 19, 2001 in the above-mentioned prison 11 prisoners were placed with violation of terms defined by Article 137 the Criminal Code of Georgia, including 2 prisoners from the Interior Ministry of Ajara Autonomous Republic, 2 prisoners from Batumi city Interior Department, 1 from Khulo Interior Regional Department and 6 prisoners from Khelvachauri Interior Regional Department.

On October 6, 16, 2000, November 16, 2000, March 9, April 23, July 13, 17, 2001 in the above-mentioned prison 11 prisoners were placed with violation of terms defined by Article 137 of the Criminal Code of Georgia, including 8 prisoners from Ozurgeti Interior Department, 3 from Chokhatauri Interior Department and 1 prisoner from Guria Regional Interior Department.

It should be mentioned that the process of transferring of some prisoners lasts over a month with violation of the law. For example, prisoners David Bajelidze and Vitali Arevadze

were transferred to prison by Khelvachauri Regional Interior Department by 1 month and 4-day delay, prisoner Ramaz Diasamidze – by 1 month and 2-day delay. The prisoner Omar Tvalbeishvili was transferred to prison by 76-day delay, Tengiz Gorgadze – by 53-day delay and Teimuraz Gorgodze – by 32-day delay from Chokhatauri Interior Department, etc.

The above-mentioned issue was considered at the board of the Prosecutors' Office of Georgia, based on the Public Defender's recommendation.

According to the information given by the prosecutor to the board, most of the prisoners' physical damages happened before their arrest, as a result of falling off the stairs, while resisting the arrest, negligence on the part of the police, jumping from buildings, etc. It is also mentioned, that the confirmation of the facts of torture and physical abuse by the police officers is impossible because the prisoners often change their testimonies.

The Public Defender' Office most of the time cannot verify the facts of torture and physical abuse committed by the police officers, because it does not often check prisons objectively. In cells for pretrial detention the prisoners' health is not examined and they are not testified. As a rule, the prosecutors don't ask the administration of preliminary detention to compose protocols on prisoners' physical condition and submit them immediately. Due to this fact the police officers put pressure and threaten prisoners, causing to change their previous testimonies and belated examination of prisoners' physical condition is not effective.

Often I receive replies, informing that the Public Defender's Office has no authority to carry out proper revision concerning the transfer of the case with bill of indictment to the court. This is another example of delayed reaction to the facts of prisoners' physical abuse.

Therefore, the Public Defender of Georgia supposes, that when a revision to verify the real reasons of prisoners' placing in prisons with physical damage and violation is not carried out, according to Article 111 of the Criminal Code Georgia the evidence of prisoner's criminal offence should be inadmissible, otherwise it would be a violation of law.

In every case when prisoners are placed in prison with different kinds of physical damages and violation of terms are confirmed, also preliminary examination of their causes is not carried out, the responsibility of chiefs and public prosecutors of respective regional, city and republican Interior Departments should be considered.

Considering the above-mentioned situation, I think that the explanation of the Interior Departments and Prosecutor's Office, in which they justify these cases by lack of financial and transport facilities, is unacceptable. Whatever the reasons, a violation of the law is inadmissible and unjustified.

The key point is that the lack of financing and transport facilities cannot justify physical abuse and torture of detained persons.

**On Z. Devidze's Release from the Position of the Head of Supplies
and Sails Department of the State Treasury Due to his Nationality**

On July 2001, Vilen Kokoev, resident of Tbilisi, 21, Meunargia St. addressed me with an application. The applicant mentions that his son Z. Devsuradze was released from his duties due to his Ossetian nationality Nodar (Dato) Noghaideli, cousin of the Minister of Finance was appointed on the vacant position of the Head of Suppliers and Sails Department of the State Treasury.

As the applicants note David Lortkiphanidze, director of the State Treasury publicly insulted them during the trial in Didube-Chughureti regional court and in presence of the people around declared that he would not give a job in his factory to "Kokeev, Taraev, Ossetians, Armenians and Abkhazians". Gocha Gelasvili, resident of Tbilisi city, 10, Libani St. and G. Dzigua, a solicitor confirmed the above-mentioned fact in written form.

The applicants think that the fact that D. Lortkiphanidze could not keep self-control and personally insulted co-workers before the court had been stipulated by his close relation with a higher official, Zurab Noghaideli, the Minister of Finance. It should be mentioned that Eka Amaghlobeli, the Minister's cuisine is at the same time the wife of the State Treasury Director.

Taking into consideration the above-mentioned circumstances I addressed the Minister of Finance with the recommendation No633/03/642 of July 25, 2001. The Minister of Finance in his letter No01-01-12/123/440 of September 7, 2001 sent to me did not mention anything about his relation with the State Treasury Director. Though, at the same time, the aforementioned letter revealed that Nodar Noghaideli who for several years had been working together with David Lortkiphanidze in Vani region processing industry was really appointed on the vacant position of the Head of Supplies and Sails Department of the State Treasury.

Practically, the Minister of Finance did not react upon the fact indicated in my recommendation.

On Underage Bargain

During the report period the law-enforcement bodies revealed several facts of underage bargain and making the fraudulent documentations in order to take underage abroad.

Namely, Olga Gorelick, Canadian citizen was charged with underage bargain and several illegal deals with several persons using other's positions for her benefit, preparing and using some fraudulent identification cards in order to take the underage abroad.

On the basis of illegal bargain the above-mentioned person gave for adoption to Patrick and Maria Anastasies, residents of Malta Giorgi Kasiasvili, three year old son of Irma Beriashvili, resident of Taliani village, Kaspi region. She also hid two other infants Mariam Sadikova and Kukuri Mkrtychian with Zaira Dzebisashvili, a nurse in a hired apartment in order to give them for adoption to some Canadian citizens. Canadians have not been identified by the investigation. O. Gorelick could not manage to take the above-mentioned infants abroad as the police had been informed on the fact.

Olga Gorelick was charged in accordance with part II, Article 24 and part III and IV Article 25, part II Article 172 and item "a", "b", "d" and "e", part III of the same Article, part I, Article 362 and items "a" and "b", part II of the same Article of the Criminal Code of Georgia.

Olga Sadikova, Irma Beriashvili, Teimuraz Mazmishvili and Ramin Kuchuberia have been allied to a criminal account together with O.Gorelick and the case on the basis of accusation was submitted for further thorough study to the court on May 22, 2001.

Krtsanisi-Mtatsminda Regional Court of Tbilisi studied of O.Gorelick and others' cases and on December 11, 2001 O. Gorelick was sentenced to six year imprisonment in a colony of common regime. Accusation was applied to other offenders as well.

On Heavy Body Injury Received due to Not Taking Measures for Rendering Strontium Harmless

In 1984-1985, "Strontium 90", radio-active materials, kept in four concrete containers needed for providing Khudonhes construction with radio communication, instead of render harmless in accordance with a certain rule, was left without taking any safety measures in the mountains of Tsaneljikha region.

The discovered radiation element is a radio-isotopic source – 90, that contains Strontium 90. It is poured together with metal-ceramics in a form of Cylinder and is 9X11 of size. It generates energy of 15 kilowatt per hour. Generating heat Strontium's beta-rays are transmuted into gamma-X rays, and heat itself is transferred into electric energy.

Strontium 90 radiates 24 000 roentgens per hour while the natural radiation background does not exceed 8-12 micro-roentgens per hour in Georgia. Although, security and

environment protection services were informed about existence of dangerous materials in Tsalenjikha region, they did not take measures in order to render harmless.

On December 3, 2001, E. Dzadzamia, T. Marshia and Miqava, residents of Lia village, Tsalenjikha region had been trying to load the materials, received heavy body injuries that are really dangerous for their lives. They have been hospitalized and are still under the treatment in Tbilisi Hematology Institute.

Taking into consideration the above-mentioned circumstances, on January 4, 2002, a month later after its discovery, the Procurator's Office of Tsalenjikha region brought a criminal action on the basis of part II, Article 230 of the Criminal Code of Georgia. At the same time a question of responsibility of the officials who's inaction led to heavy grave consequences is still in the air.

In connection with the above-mentioned facts it is difficult to rely on the explanation given by the officials from the Ministry of Environment and Natural Resources saying that the above-mentioned radioactive materials do not radiate gamma-X radiation in a distance of 200 meters and do not have a negative impact on the radiation background.

I think that in order to settle the question professionally it is necessary to invite the qualified specialists and foreign experts as well to participate in the research.

Case of Humanitarian Association "Catarzisi"

In accordance with a personal instruction of Zviad Gamsakhurdia, Chairman of the Supreme Soviet of Georgia and on the basis of the order No21-g of January 21, 1991 issued by T. Sigua, Chairman of the Council of Ministers of Georgia, a building located at 121, David Aghmashenebeli Ave. was transferred from balance to balance to humanitarian association "Catarzisi", for the purpose of arranging a charitable house. The transfer of the building to the association was proved once again with the letter No743/6 of September 30, 1991 issued by B. Gugushvili, Prime-Minister of Republic of Georgia addressed to Tbilisi Municipality.

Item 5 of the resolution No15.03.118 of August 13, 1993 issued by Tbilisi Municipality says: "ask the Council of Ministers is asked to abolish its order No21-g of January 21, 1991 regarding the transfer of the building located in 121, Aghmashenebeli Ave. that was accounted on the balance of Executive Committee of Didube regional Soviet, to "Catarzisi" Humanitarian Association. The item is followed by item 6 which says: "deliver The item is followed by item 6 which says: "give the former building of Didube regional

Committee of the Communist Party of Georgia into the possession of “Catarzisi” for the purpose of arranging the charitable house.

As we can see, these two items radically contradict each other. On the basis of item 5 G.Tsagareli, Premier of the Municipality asks the Council of Ministers to annul its order of 1991, at the same time, in accordance with item 6 the Municipality does not wait for the order of the executive government and illegally embezzles the building that was passed into “Ctarzisi” possession on the basis of the order issued by the Council of Ministers.

On November 20, 1995 the governor of the State issued the order No487. Item 1 of the order says: “give the followings into the Municipality’s possession: all administrative and other buildings and premises on the territory of Tbilisi regardless their subordination to state bodies (except of the buildings and premises that are located on the territory of the enterprises); each building, premises and non-dwelling space that have been transferred from the balance of the local administration to other organizations during the previous years.

On January 30, 1996, on the basis of the order Tbilisi Municipality passed the resolution No02.92.150, which approved the protocol No1 of January 23, 1996 issued by Tbilisi city commission of Real Estate Management. According to the protocol the building located in 121, D.Aghmashenebeli Ave. was considered as a property of the Municipality and was transferred to the balance of the Municipality Chief Logistics Department for the purpose of arranging Didube regional “Gangeoba” office.

By adopting the resolution, the Municipality violated the presidential decree No19 dated December 13, 1995. According to the decree the following amendments have been made to item I of the decree No487 of November 20, 1995 signed by the state governor: According to them “all the above-mentioned does not apply to cultural, educational, publicity, healthcare and sport institutions that are not subordinated to the Municipality.

It is generally known and approved by the regulations of “Catarzisi” that the charitable house at the above-mentioned humanitarian association has cultural, educational, healthcare and other similar functions. Namely, free drug-store, medical check and dental surgery, psychological help service with two trust phone lines available 24 hours, anti-aids society of Georgia, theatre of disabled people, chorus “Khandazmuli”, circle for studying vocal, library and exhibition hall function at the charitable house. The charitable house prepares different kinds of publications: newspapers, prospectus, leaflets, posters, various anti-aids propaganda literature. It systematically organizes various sport competitions for old and disabled people and awards prizes and bonuses to participants.

Besides, a canteen, a barber’s shop, baths, disabled and other vulnerable people’s employment service, second-hand clothes receive-distribution post, shelter for careless old

people function at the charitable house. It should be stressed that the above-mentioned services are free of charge for the disabled and socially unprotected people.

It is clear that the charitable house at “Catarzisi” is in complete compliance with the requirements of the presidential decree No19 of December 13, 1995, as it represents a cultural, educational, healthcare and sport institution that has been serving to the most vulnerable strata of the society for already 11 years.

As it was mentioned above, the resolution No02.92.150 of January 30, 1996 issued by the Municipality contradicts to the decree No19 of December 12, 1995 signed by the president of Georgia. Thus, on the ground of Article 24 and 25 of the “Law on Normative Acts” the resolution issued by the Municipality must be considered as abrogated from the day of its adoption.

I think that the only formality that should be fulfilled is that the Municipality must declare the resolution of January 30, 1996 invalid and leave the charitable house on the balance of the association “Catarzisi” as the only legal owner of the building.

I have already addressed with relevant recommendation to Mr. V. Zodelava, Mayor of the city about the question.

Z. Zeinklishvili’s Case

On October 18, 2001 citizen Z. Zeinklishvili applied to the Public Defender’s Office of Georgia. The applicant noted that he had addressed the Adigeni regional police for many times regarding the fact of theft of his cattle. He had a suspicion that the police had been covering culprits. Once, addressing the police, Z. Zeinklishvili said to policemen that he would be obliged to apply to the superior bodies. The policemen Tumanishvili and Akophashvili took him into the police station and physically insulted him. As a result he received concussion of the brain.

Z. Zeinklishvili lodged a complaint to Samtskhe-Javakheti Internal Affairs’ Department (Skhvitoridze, Head of the Department; Maisuradze, Deputy Head) but without any result. Then he appealed to the Prosecutor’s Office of Adigeni region (O. Gogoladze, Prosecutor; Murmanishvili, Investigator), but as Z. Zeinklishvili says, Murmanishvili told him that he would not bring an action. Later Z. Zeinklishvili addressed to I. Bregadze, Samtskhe-Javakheti County Prosecutor, who returned the case for further investigation to Adigeni Prosecutor’s Office promising that the case would be forwarded to the court.

The applicant was asking the Public Defender for help to investigate the criminal case concerning the fact of his beating fairly and without delay.

On November 1, 2001 the application signed by the Public Defender was forwarded to the General Prosecutor for reaction. On December 5, 2001 I received a reply saying that on October 10, 2001 Adigeni regional Prosecutor's Office closed the criminal case relating the fact of Z. Zeinklishvili beating but on November 14, 2001 Samtskhe-Javakheti County Prosecutor's Office abolished the resolution about the closure of the case and renewed the investigation.

As to the policemen T. Akophashvili and Tumanishvili, they have been dismissed from the police.

Chapter VII

Activity of the Public Defender's Office

Strategy Department

As a result of the reorganization of the Public Defender's staff, a new department was set up. The Strategy Department carries out very significant functions and is the most important in the entire activity of the Public defender's office.

The department prepares Parliamentary and special reports, works on legislation, projects and provides legal expertise of international programs. The department has also to elaborate a strategic plan on the issues of national priority related to protection of Human Rights.

During the period covered in the report, the department prepared:

- The complete package of reorganization of the staff based on the recommendations of international experts (i.e. the Statute, Internal Regulation for the staff and the department, administrative work procedures and record keeping, etc);
- Parliamentary report of the first half of 2001;
- Revision of 84 draft laws;
- Revision of Law on Deportation of Foreigners that will be presented for discussion in the nearest future.

It should be noted that all this work is undertaken by five people. As you can see a lot already been done, but there is still much more to do. Once again, I would like to emphasize the failure of the Ministry of Finance of Georgia to allocate funds for the normal functioning

of the Public Defender's office. The amount requested for salaries would enable us to have 60 staff members. In reality, the number was cut down to 44.

The way from the existing situation was found with the help of the international experts who suggested creation of various centers within the department where a number of experts will work. Today, the department comprises of:

- Children's Rights Center, (with technical support of UNICEF) with the main objective of involving children and young people in public debates and activities; assisting them in independently finding solutions to their own problems;
- Women's Rights Center, with the main objective of facilitating improvement of the situation of protecting women's rights and to raise their status in the society;
- Religious Center, with the main objective of implementing of Article 9 of the European Convention on Protection of Human Rights and Fundamental Freedoms and the requirements of the Constitution of Georgia and the Law on public defender of Georgia regarding the protection of the right to freedom of thought, conscience and religion;
- Educational Center, with the main objective of carrying out the educational work and realization of Article 3, Paragraph 3 of the Law on Public Defender of Georgia in the sphere of protection of human rights and fundamental freedoms;
- Center for Protection Rights of Military Servicemen, with the main objective of promoting the rights of military servicemen, the improvement of the drawbacks of national legislation and co-operation with different governmental and non-governmental organizations working in the sphere of protection of rights of military servicemen.
- Together with Open Society – Georgia Foundation we are elaborating the national service for protecting the rights of women and children. The main objective of this activity is the implementation of the new project that will work against the violence towards women and children; the creation of informational bank and coordinating center through coordinated and integrated network of different governmental and non-governmental organizations.

The creation of Anti-trafficking Center and Legislative Center is also planned within the framework of the department.

**Activity of the Children's Rights Center at the Strategic Department
of the Public Defender's Office**

Proceeding from the experience gained from a one-year work of the Children's Rights Center, I have to confess that the protection of children's rights and realization of children's situation in Georgia is still a painful question. The analyses of the existing situation on protection of children's rights proves, that it is of outmost importance to use a new approach to the existing problems and take rather bold and unordinary decisions.

However, as long as the government keeps complaining about shortage of finances and does not seriously comprehend the importance of every tetri spent on the future generations, any considerations or steps undertaken for the improvement of the problem will remain eternally delayed projects.

The society must realize that temporary economic and financial problem do not exempt the government from their obligation to protect children's rights. The duty of each of us is to envisage the protection of children's rights and struggle against the causes leading to the violation of these rights.

The participation in the status of an observer at the meeting of children's ombudsmen network in Paris in October of 2001, confirmed once again the necessity of new approaches in solving this problem. The network is a union of independent institutions of children's ombudsmen from 32 countries. Georgia was unanimously united into the network on November 16, 2001.

This step can be considered to be crucial for the happiness of future generations.

The deficiency in exchange of information among the governmental and non-governmental organizations work on the questioning of children's rights protection and hinders the complete and clear visualization of the situation existing in Georgia today.

To eliminate this problem an informational bank based on the data received from the governmental and non-governmental organizations as well as from the Regional Representative Offices of the Public Defender was set up at the Children's Rights center at the Public defender's Office. The information of the bank is regularly updated. The bank collected the available data on all studies that were connected with children's rights and all the data received from governmental and non-governmental organizations.

The analyses of the collected data were conducted in order to work out the strategy for the further activity.

WE have established close contacts and cooperation with all the state structures, mass media, non-governmental and international organizations active in working on issues related to children and young people.

In order to facilitate the cooperation and coordination of the organizations working on the issues of children's rights, the Public Defender's Office regularly organizes the working meeting for these organizations. Such working meetings are very significant as they enable us to undertake common and realistic efforts and effective steps in protection of rights of children and young people. Consulting Board comprising of the representatives of these organizations was set up. Accordingly, the by-laws, defining its structure, activity and regulations were worked out. A hot telephone line is functioning in the center. The line enables us to keep the record of the problems, study them and give relevant response to their possible solution. The most important is that it provides the citizens with psychological comfort and legal advice.

The Center initiated the opening of Pupils' Board, based on elective principals, in several secondary schools of Mtatsminda-Krtsanisi district of Tbilisi, in order to study the rights and obligations of children and young people, to develop their ability to express opinions and viewpoints. This initiative is an experiment; however, we hope it will be successful and will be implemented in primary and secondary school. For this reason, an organizational group of young people was set up to work together with these boards.

In spite of the state program, envisaged by the edict No 80 of March 2, 2000 of the President of Georgia "On Protection, Development and Public Adjustment of Young People", the rate of crimes committed by the representatives of this age group comprises almost 5%. Especially alarming is the growth of group organized crime tendency. In 2001, 5141 juvenile delinquents were brought to light. The majority of them had already been several times in the reception-distribution centers for under aged. This is indicative of formal attitude of local government bodies.

Our visit to special school in Samtredia revealed the drastic situation. The building and school premises were in need of urgent reconstruction; there was lack of school equipment and medication. The majority of children at Samtredia school had enuresis, which is indicative of their poor psychological state. The children did not have any medical examination. The level of both physical and mental development of children was drastically low; no attention was paid to educational process.

Within the powers granted to me by the Organic law on Public defender of Georgia, I applied with a recommendation to the Minister of Education of Georgia in order to pay adequate attention and rectify the shortcoming in the school of Samtredia. In response to our

appeal we received a letter No01-16-03/1753 from Mr. V. Sanadze, First Deputy Minister of Education, stating that the State Commission on the cases of underage together with the Ministry of Education would undertake every possible measure to restore the normal conditions and improve the situation in school of Samtredia.

Unfortunately, as it turned out later, their help came to nothing more but fixing the roof, painting the façade and repair of one floor of the three-story school building.

Such attitude creates obstacles and problems in harmonious development of children that have to live in unbearable conditions.

The Rapid Reaction Group

The previous report was devoted to the structural reorganization of the Public defender's Office according to the European standards; it is worth mentioning that the reorganization included gender factor as well; namely, two departments are headed by men and two are headed by women. The only recommendation that was not fulfilled concerned one of the most important components – the group of rapid reaction.

According to Article 19 of the Organic law on Public defender of Georgia, the Public Defender has the authority to monitor to what extent human rights and fundamental freedoms are observed in all places of detention, pretrial arrests and other places of restricted movement. The Public defender is authorized to meet in person and have conversation with people who are held in pretrial detention or to inspect the documentation proving the legality of their imprisonment.

Thanks to the broad authorities granted to the Public defender by the law that brings the level of her independence up to the maximum point. whereas the dependence on other official bodies is really minimal. Though, this is not completely true in regard to the Ministry of Finance that does constantly violate the fiscal norms and needs of the Public Defender's Office while developing the budget. This is the main reason for the failure to implement the component of the rapid reaction group, as well as many other recommendations of international organizations and experts on human rights protection.

This will be discussed in detail in the chapter of International relations.

The project "Rapid Reaction group" was being implemented from December 2001 to June 2002. The project was funded by democratic institutions and Human Rights Protection Office of OSCE, as a part of the project against violence. I would like to express my heartfelt

gratitude to Mrs. Pascal Rousseau, Head of OSCE Human Dimensions Office and Eugenia Avetisova, Administrative Legal Assistant for their assistance and support of the project provided by United Nations Development Program that is financing the publishing of the information collected by the group in newspapers and Internet web-site.

The official presentation of the project took place at the conference at Public defender's Office on December 17, 2001. The conference was attended by the representatives of OSCE Mission, governmental and non-governmental organizations.

The project stems from the fact that according to the available information, the violation of human rights most frequently takes place at the moment of detention period; no documentation according to the legal proceedings is drawn up. Thus, the pilot project of the staff is aimed at monitoring of all two types of institutions; first, pretrial detention places of police departments (Department of Internal Affairs of Gldani-Nadzaladevi District of Tbilisi), second, the Military Commandant's Office and Guard room at Tbilisi Garrison. Moreover, the group must give immediate response to all telephone calls and/or written applications, concerning the facts of violation of human rights by these bodies. The information on the group and its 24 hour availability was spread by means of press releases in the following newspapers: "Akhali Taoba", "Dilis Gazeti", "Svobodnaia Gruzia" and "Georgian Messenger". It is possible that the project will facilitate the diminishing facts of human rights violation and breaching of legal norms by rising the monitoring and control levels of the Public Defender's Office.

As far as this report covers the results of the 6 months only, I will refer to two weeks of working activity of this project and discuss the most much-talked cases.

On December 21, 2001, Theresa Safarova applied to us asking to protect her from the unlawful actions of the police of Didube-Chugureti Department, the General Prosecutor's Office of the same region and the Executive Department of the Ministry of Justice.

Before discussing the events of December 21, I would like to inform you on the details of this case that are absolutely absurd and led towards the tragedy in life of the above mentioned person. Namely, in October of 2001 the Regional Court did not satisfy the case regarding the privatization of the apartment. Regardless the court decision, Mr. P. Kakulia unlawfully occupied Safarova's apartment. In connection with this matter, the Didube-Chugureti Regional Prosecutor's Office filed a criminal case No 020/874 against Mr. Kakulia. In accordance with the resolution of Mr. L. Tevzadze, an intern of the same office, Safarova was acknowledged a victim. Strange as it might be, the same L. Tevzadze closed the case against P.Kakulia on November 4, 2001 and annulled the resolution on acknowledging T. Safarova as a victim. Even more, a criminal case under the Articles 148,160, paragraph 3 of

the Criminal Code of Georgia (launder, fraud, inviolability of private property, insult and threatening, hindering legal procedures). All these accusations were denied by the accused as she wasn't guilty in any of them and there were no evidences proving those facts.

T. Safarova is accusing P. Kakulia in exceeding his commission, as he did not take into consideration that residents of the flat were 74 years old blind father of T. Safarova, having the I category of disability and her sister who suffers from schizophrenia. P.Kakulia and other employees of the Executive Department inflicted both physical and moral damage to them and they were hospitalized to Hospital No1

It should also be taken into consideration that, as mentioned above, in accordance with Tbilisi, County Court resolution No3b/168-2001 as of October 4, 2001 was annulled Didube-Chughureti regional court resolution No 2/1448-2000 as of 2000 and decision by default about privatization of the flat No 29 located in Tbilisi, Digomi Masiv, block 2, building 19 and the case was returned to the same regional court for further re-examination. Due to the fact, it is fairly suspicious that the accusation brought against T. Safarova under the Criminal Code, the above-mentioned Articles has the basis and is still in force.

Taking into consideration the above-mentioned, the decision taken on December 10, 2001 by Khvedelidze, Didube-Chughureti, Prosecutor's Office, investigator to apply to Didube-Chughureti Court asking to take measures of compulsion against T. Safarova, as a defender, with the purpose of taking her to the investigator. Moreover, if we take into consideration the fact that, as stated by T. Safarova, in accordance with the code requirements the investigator never sent her and accordingly she never got notification about subpoena to the investigative body. The actual circumstances should also be taken into consideration that the process of bringing T. Safarova forcefully to the investigator by Didube region police division, policemen was conducted with the violations of the Criminal Procedure Code requirements. This action resulted in pogrom of T. Safarova's working place, a classroom and other illegal methods.

The Public Defender filed a relevant recommendation on the name of Mr. Nugzar Gabrichidze, General Prosecutor. In accordance with information received from the General Prosecutor Office it became evident that actual circumstances indicated in recommendation proved to be correct and the investigative body was given respective directives.

The Group also examined the under age Vakhtang Mamuliani's case. V. Mamuliani, in accordance with the under age Giorgi Marsagishvili's testimony, was detained by the policemen of Didube-Chughureti regional police division on fact of theft at shop Kodak. Against Marsagishvili as well as against Mamuliani were taken superhuman and strong measures. They beat him unmercifully and threatened him with a rape. Besides, Mamuliani's

conveyance to the police station was not registered as it is foreseen by The Criminal Procedure Code requirements. This circumstance gave possibility to the policemen to deny the fact of Mamuluanis detention.

In accordance with the above-mentioned the Public Defender, within the limits of her authorities, filed a recommendation on the name of the General Prosecutor asking to bring a criminal case against those persons who are suspected in the above-mentioned offence (Butikashvili, Koiava, Adamia).

As to my knowledge, the mentioned persons were relieved from their posts.

On December 31, 2001 by Gldani-Nadzaladevi No 2 police division for citizens' robbery was detained Mamuka Kupradze, previously six times convicted, and who despite previously committed grave crimes and requests of the family members, was discharged from the court-hall by Emzar Bidzinashvili, Gldani-Nadzaladevi regional judge. This had a serious result. Just from the court Kupradze went to his wife's apartment. There he inflicted extensive injuries to his wife and her mother. He himself, in order to avoid responsibility, swallowed a nail and a result was taken to a hospital No 2. There he orally insulted the hospital personnel and broke the window glasses. Later, after leaving the hospital, with a purpose of stealing a car he attacked a citizen. After that he was detained by Gldani-Nadzaladevi, police division No 4. Taking into consideration the above-mentioned I applied with a recommendation to Chairman, The Supreme Court regarding imposing a disciplinary penalty on E. Bidzinashvili.

I suggest that the results of the working activity of the group in such a short period of time are very efficient.

I would like to supply you with additional new information regarding the fact that during the 74th Session of the UN Committee on Human Rights conducted on March, 18 – April, 5 was reviewed Georgian second periodical report. The session positively apprized the Rapid Reaction Group creation.

At the same time, it is impossible not to mention the problems that face law enforcement bodies. They are as follows: first of all, the low level of their legal education in the sphere of human rights, difficult working conditions (lack of electricity, transport means on duty, fuel, radio stations, winter uniforms, financing and lack of financing in the items of the office expenditures, low rate of salaries and their systematic delay). A separate issue is for ages "frozen" and outstanding salaries to law enforcement policemen financed from the local budget.

The project is in the process of implementation and the results will be discussed in the next report.

Chapter VIII

Relations with International Organizations and Non-Governmental Organizations

The fact that the Public Defender's Office had no predecessor or analogue in Georgia naturally has attracted a lot of attention to its activity since its foundation. Diplomatic Representations of various foreign countries accredit Ted in Georgia and many International Organizations expressed their support and readiness to cooperate with the Public defender's Office and this cooperation turned out to be very fruitful.

First of all, I would like to mention the United Nations Development Program. The Georgian government signed the four years project of the UNDP on "Assistance to the Public defender's Office". The Project implemented on January 1, 1999 has been very successful up to nowadays. The main aim of the project is to increase capacity of the Public Defender's Office in compliance with the International standards and to promote and popularize the Law on Public defender of Georgia.

The project on the assistance of the Public defender's Office is carried out with the participation of the following agencies; Swedish International Development Agency (SIDA), Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), Danish Center for Human Rights (DCHR), the Government of the Netherlands and United Nations High Commission on Human Rights (UNHCR). The Government of Georgia also participates in the project through the obligations undertaken regarding the project (USD 100,000) though the untimely fulfillment of these obligations created serious obstacles for fundraising and proper functioning of the project.

In January 2001, the Program on Public Awareness financed by the Government of the Netherlands started to function. This program was carried out parallely with other components of the project. Other components of the project were carried out by Swedish International Development Agency (SIDA), Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

The cooperation with these institutions, which ended on December 31, 2001, comprised the following activities:

- Training of the Public Defender's Office staff in the field of Human Rights protection in Sweden and Germany, relatively at the Universities of Lund and Viadrina;
- The Human Rights Library and Informational Documentation Center were opened at the Public Defender's Office. The library was enriched with books and periodicals in

the summer of the last year. It should be noted that the language barrier was taken into consideration and stocking of the library funds included mostly literature in Russian and Georgian languages. Today, the library houses the collection of all major international legal acts on Human Rights, reports, fundamental works and other materials on Human Rights, as well as dictionaries, laws, etc. The library is of utmost importance for the effective work of the staff and is open and accessible to everyone who is interested in or involved with Human Rights. The library is carrying out a systematic study and research activity;

- The Public defender's Office was equipped with necessary office equipment;
- In order to improve the monitoring of information storage in files, the office daily work and record of complaints, a special computer program was developed and installed in the office;
- Two volume collection of main International Instruments and Legal acts on Human Rights was translated from English into Georgia and published later;
- Training programs for teachers of the Police Academy, military institutions and colleges were conducted;
- Regional seminars for policemen were organized;
- Seminars at General Prosecutor's office were organized;

All the seminars were conducted with the participation of foreign experts in Human Rights.

I would like to use this opportunity and express my gratitude to Swedish International Development Agency and Raoul Wallenberg Institute of Human Rights and Humanitarian Law and especially to Ms. Charlotta Larsson and Mr. Mikael Johansson whose contribution to the successful implementation of the project is invaluable. Though the program is over, we still keep in touch and cherish the hope for future possible cooperation.

At the same time the components of the project sponsored by the Government of the Netherlands continues to progress and includes the following:

- English language lessons for the Public Defender's Office staff;
- With the assistance of the Rector of Georgian Technical University the Public Defender's Office staff took the computer courses;
- Technical updating and modification of the office is under way;
- The series of TV programs "Your Rights" that started in January in Channel I of Georgian State TV is still being continued. The program last for 20 minutes and is aimed at raising public awareness on their fundamental rights and freedoms, practical

explanation on how to apply to the Public defender's Office; Up to now, 12 TV programs have been broadcasted and they are repeated several times. The programs are also broadcasted by 11 regional TV stations in accordance with the signed memorandums with regional TV companies;

- The series of Radio programs are broadcasted. The prepared 9 programs enabled the Public defender of Georgia to establish a direct contact with the public and the public can use the telephone hot line and ask the questions and have a dialogue with the Public defender;
- Newspaper Group has been preparing Articles and materials for 7 central newspapers (a Russian language and a English language newspaper among them). The Articles are published also in several regional papers in Imereti and Samegrelo-Zemo Svaneti;
- Two edition of Quarterly Journal of the Public Defender's Office were published The third edition is being prepared;
- The Internet web-site of the Public Defender of Georgia is functioning in both English and Georgian languages (<http://pdo.gateway.ge>);
- The Human Rights week, dedicated to the International Day of Human Rights on December 10, was held at the Public Defender's Office for the first time and included the following activities: The exhibition of children's paintings and drawings (more than 200 children participated), round table for journalists, 2 seminars and a conference dedicated to the event, presentation of two editions of Quarterly Journal "Your Rights".
- Presentation of two volumes of International Instruments and Main Legal Acts on Human Rights;
- On the basis of 65 regional libraries a library network on Human Rights was set up.

Mr. Levan Berdzenishvil, Director of National library fully supported this activity both by advise and provided expertise. He also played an active role in preparation and editing of the above mentioned two volumes collection of International Legal Acts.

I would also like to stress the support and assistance of the UNDP rendered to the Public defender's participation in different international meetings and conferences. Such participation helped to establish and broaden the Public Defender's international contacts.

I would like especially to mention the World Forum Against Racism, held in Durban, South African Republic, the Meeting with the UN High Commissioner, the meeting of Ombudsmen from Central and Eastern Europe held in Johannesburg.

I would also like to express my deep gratitude to His Excellency Harry Molenaar, Ambassador of the Netherlands to Georgia, who initiated and greatly supported many activities of the PDO, the results of which will be discussed in the next report.

The mentioned project is a governmental and that's why a month after the end of each year a TriPatrioate Meeting is held with the participation of representatives of the UNDP, Georgian Government and the Public Defender's Office. Mr. Lance Clark, a new Resident Representative of UN and UNDP in Georgia participated in such meeting for the first time in February of 2002. The results of the project's activity received a positive evaluation and the new activities were planned which will give the opportunity to intensify our cooperation and work with non-governmental organizations, to increase the number and frequency of TV and radio programs, to increase the public awareness and more active participation of governmental bodies, to pay more attention to translation and publication of documents and materials on Human Rights. Though, the fulfillment of such important components of the project and the continuation of the project itself is doubtful if Georgia does not comply with its obligations.

Here I would like to refer to the words of Mrs. Marry Robinson, UN High Commissioner, with which she addressed the President of Georgia:” I attach a special importance to independent governmental institutions that play a significant role in envisaging and protecting of Human Rights. I appeal to you with a request to render relevant support to the Public Defender's Office, so that it could carry out its activity as a mechanism envisaging the protection of Human Rights”.

It is really painful, that the government has not managed to finance properly this not very expensive democratic institution.

Finally, I would like to use this opportunity and I express my special gratitude to Mr. Marco Borsotti, the former Resident Representative of UN and UNDP in Georgia for his invaluable contribution, assistance and support provided to development of the Public defender's Office in Georgia. He undertook all possible steps to make its activity efficient and bring it to international standards.

I would also like to add that this positive tradition is being continued by Mr. Lance Clark who carries on the permanent assistance to the project and provides active support to all the initiatives. Again, I do express my gratitude and hope that our cooperation will continue in future.

The Public defender's Office is constantly cooperating with OSCE Mission in Georgia. The project “Rapid Reaction Group” was brought to life by their active assistance and support.

European Council – a member of the activities of the Public defender's Office.

UNHCHR financed the activity of the legal group at the Public defender's Office that works on the legislation and drafts. I would like to mention the active participation of non-governmental organizations in the activity of this group.

I would like to thank Mrs. Valentina Tsoneva, Head of Legal; department of the Commission for her active support of the group's activity and help in providing literature and consulting services.

One of the most significant direction of the Public defender's Office's activity is closely connected with Amnesty International. In the close cooperation we are conducting work aimed at granting pardoning to the convicts. Quite frequently, the Public defender's office receives letters from Amnesty International with requests to pay special attention to the separate cases of human rights violation or the cases of illegal imprisonment.

We also maintain close contacts and cooperation with embassies and foreign missions accredited in Georgia, the Embassy of the Netherlands, Germany and the USA among them.

I would like to express special gratitude to the British Embassy and Mrs. Deboraah Barnes Jones whose invaluable support and assistance helped us to initiate two projects in 2002 – the assistance to the Public Defender's Regional Representatives in Samegrelo-Zemo Svaneti and Djavakheti regions. Some other activities are also planned.

The Public Defender's Office pays special attention to the cooperation with all organizations working or active in protection of human rights in Georgia. The cooperation with non-governmental organizations is a very important activity and provides significant assistance to the Public Defender's Office.

The idea of democratic society, first of all implies civic society as the existence of high-level democratization process. The institutional basis created by means of the non-governmental organizations provides the society with the possibility of independent finding of the way for the solution of the vital problems of which the protection of Human Rights and Fundamental freedoms remain to be one of the most important. It is much more vital and important when the violators of these rights and freedoms are the governmental institutions and their bodies. That's why the role of non-governmental organizations active in this field is so much important. In contrast to the countries of Central and Eastern Europe, the society in the post soviet countries does not take an active part in the formation of civic society. Thus, the specifics of our country imply that non-governmental organizations need not only support and facilitation but also some other strong stimulation from the society.

The non-governmental organizations engaged in the activity of protection of human rights and freedoms are usually characterized by certain specialization, which can be considered positive. Moreover, within the powers granted by the Law on Public Defender and within the legal framework of the Public Defender's Office we can conclude based on the experience and practice, that the cooperation with NGOs is not only desirable and necessary, but also most essential one.

Such cooperation has already been started and is quite varied. It comprises the cooperative activity in different projects, and for instance, joint expectation of places of detention, the cooperation in publishing literature on protection of human rights, the work of legislative proposals and issues, etc.

However, it should be mentioned that in spite of the close cooperation of the Public defender's Office with non-governmental organizations, some of them still have suspicions about the expediency of such cooperation, concerning the possibility of the coordination of their activity by the Public Defender, or whether the PDO considers itself to be a higher authority, etc. I believe, that this attitude is caused by psychological factors rather than by conceptual ones. That's why I am convinced that this sphere of activity will become more fruitful in future.

Chapter IX

The Challenges of the Public defender and the PDO Staff

Today, when the range of problems is so wide in Georgia, it is very difficult to persuade people to believe in justice or make them understand that the Public defender can act only within the frames of the granted legal powers. And it is not able to change the state administration or the judicial system. The only thing that the Public defender can do and must do is to activate the work of the administration, fight for the improvement of the existing situation in protecting human rights and freedoms. All this should be done in close cooperation with public.

For this reason, this chapter will be devoted to those problems and obstacles that hinder the fulfillment of the powers granted to the Public Defender and the PDO staff by the Constitution and the Law on Public Defender of Georgia. The problems are mainly of two types: legal and financial. We will focus on each of them.

It is obvious that if the Public defender is deprived of real legal levers for exercising her duties, the whole activity is doomed for failure and existence of such an institution becomes senseless.

That's why it is very urgent to make the following amendments and changes to the existing law:

1. The necessity for introducing amendments to the original Criminal Procedure, Civil Procedure and Administrative Code has been already emphasized in several reports. These amendments shall envisage (Despite the expiration dates for complaints on violation of human rights) on the recommendation of the Public Defender, the revision of the legality of the verdict in case of serious violation of human rights and freedoms, miscarriage of justice, revelation of new extenuating circumstances.
2. Participation of the Public defender in preparation and issuing of draft laws and Presidential edicts, as it will be much more beneficial for the society to take into account the recommendations of the Public defender in the process of discussion then to add changes after passing them. Our suggestion is to introduce changes into the regulations of the Parliament of Georgia, so that the draft law presented for the discussion at the Beurou is accompanied by the resolutions or conclusions of the Public defender on the issue. We also intend to raise a question on introducing relevant changes and amendments to the edict No326 of the President of Georgia of May 17, 1998 "On Preparation, Publishing and Implementation of Normative Acts of the Executive Bodies".
3. We have already talked about empowering the Public Defender of Georgia with real levers; however, unfortunately, the opposite process is taking place. Thus, for instance after the adoption the Law on Public Defender of Georgia, three Articles 206⁷, 206⁸ and 206⁹ were added to the Criminal Code, that declare punishable the non-execution of the Public Defender's demands and requests, the influence on the Public Defender and insulting her. Today, the currently in force the Criminal Code has only one Article No359 – "Pressure on the Public Defender". The failure to execute the Public defender's demands and requests is no longer legally punishable. At present, the only available lever against such a wide spectrum of human rights violation is fining, envisaged by Article 173⁴ of Georgian Code of Administrative Breaching of Law, that varies from GEL 400 up to GEL 1,000. Such fines are absolutely harmless for those high authorities that are blamed in violating human rights and freedoms.

For this reason, I put forward the proposal to restore Article 206⁷ of the old Criminal Code, in order to make the failure punishable and to exercise lawful requests of the Public Defender of Georgia.

I have no doubts that the majority of the Parliament will support the proposal of the Public Defender, thus, facilitating the solution of problem in protecting human rights and freedoms.

The other group of problems is characteristic for many bodies and institutions. This is the inadequate funding.

In spite of numerous applications addressed to Mr. Z. Nogaideli, Minister of Finance and the instructions of the President, the question of adequate funding of the Public Defender and the PDO staff has not been settled yet. The Public Defender's Office was deprived of GEL 48,648 or 69% for administrative expenses from the reduced budget of 2001 by the Ministry of Finance.

Paradoxically, that the State budget for 2002 allocated GEL 56,700 for the PDO Office 44 staff members salaries. At the same time, GEL 8,000 is allocated per year by the State budget for the maintenance of every car of a minister or other high official. Thus, the salary costs for 44 staff members of the Public defender's Office equals to maintaining cost of 7 cars of minister for the State. As they say, no comment is necessary.

In 2001, after the reduction of the budget, the overall expenditure costs should have comprised GEL 174,600. Actually the total expenditures committed mainly with salaries of staff members and contracted employees amounted to GEL 113,444. Such attitude of the Ministry of Finance does not encourage the effective and full value of work of the Public Defender's Office staff (business trips, communications, office, power, expenditures).

Once again, I would like to state that the norms envisaged by law on forming the budget for the Public defender and the Public defender's Office are violated. The Ministry of Finance is not at all interested in the opinion of the Public Defender when introducing the reduction of the budget to the Parliament without our content. This is of without any doubt, the exceeding of powers and authorities on their side. At the same time, according to Article 25 of the Law of the Public defender of Georgia, the expenditures connected with the organization and activity of the staff are envisaged by a special Article of the State budget of Georgia. The Public Defender of Georgia should submit the project of expenditures connected with the activity of the Public defender's Office according to the legal procedure.

The support of the Ministry of Finance even in the framework of the reduced funding is crucial for the effective work of the office and the exercising the legal powers granted by law. Unfortunately, this could not been achieved up to now.

Activity of the Public Defenders Office of Georgia for the Second Half of 2001

Statistical Data	Total Number	%
1. Total number of the received persons	3918	
2. Number of oral and written applications	1267	
- From Tbilisi	816	64,4
3. Applications according to context		
-Working on criminal cases (study-investigation)	247	19,5
	24	1,9
- Unlawful imprisonment among them	150	11,8
	50	3,9
- Restriction on freedom of religion	23	1,8
- On military service	19	1,5
-Women's rights	3	0,2
-Children's rights	11	0,9
- Discrimination of ethnic minorities	1	0,1
- Questions of pensions and social assistance	173	13,7
- Labor rights	154	12,2
- Problems related to living space	162	12,8
- Problems related to earth owning	32	2,5
- Questions related to education and culture	39	3,1
- Medical issues	21	1,7
- Questions related to banking-finances	67	5,3
- Conflicts between neighbors	12	0,9
- Questions related to pardoning	37	2,9
- Other questions and issues	157	12,4
4. The complaints are addressed to:		
- State bodies	4	0,3
- Governmental bodies	56	4,4
- Courts	227	17,9
- Self governed bodies	3	0,2
- Ministry of Internal Relations	228	18,0
- Prosecutor's Offices	72	5,7
- Penitential system	2	0,2
- Subdivisions of Ministry of Defense	8	0,6
- State Security Service	3	0,2
- Tax authorities	9	0,7
- Election commissions of every level	1	0,1
- Healthcare and social security system	16	1,3
- Other bodies	75	5,9
5. Recommendations and mediations of the Public Defender	473	37,3
- Positively resolved cases	105	22,1
- Not shared	103	21,8
- In process of study and/or investigation	265	56,1