



PUBLIC DEFENDER OF GEORGIA



საქართველოს სახალხო  
დაცველი

PUBLIC DEFENDER  
(OMBUDSMAN)  
OF GEORGIA

**Written submission to the 89th Session to the Committee on the Elimination of Racial  
Discrimination**

**by the National Human Rights Institution – Public Defender (Ombudsman) of Georgia**

*The present submission focuses on the activities of the Public Defender in the field of fight against intolerance and racial discrimination, describes the processes pertinent to the situation of ethnic and religious minorities in Georgia and underscores major challenges and trends related to protection/promotion of their rights and civil integration over the period of 2011 – March 2016.*

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## **Introduction**

Public Defender (Ombudsman) of Georgia (hereinafter, PD) is mandated by the Constitution and Organic Law of Georgia to oversee the observance of human rights and fundamental freedoms on the territory of Georgia, identify the cases of infringement of human rights and assist individuals in redressing of violations of their rights. It is an independent constitutional body, which acts to promote human rights and protect individuals from maladministration of State administrative organs.

As of 2014, Office of Public Defender (hereinafter, the PDO) is designated as an Equality Body under the Law of Georgia on Elimination of All Forms of Discrimination and a Monitoring Body on the implementation of the 2006 UN Convention on Rights of Persons with Disabilities. PD submits to the Parliament of Georgia annual reports, which includes general assessment of human rights situation in the country, a summary of findings and recommendations on how to address problems identified. PD also prepares special reports concerning human rights issues in various fields and presents main findings and recommendations to the public and relevant state institutions.

Effective protection of ethnic and religious minorities, fight against any manifestations of discrimination and xenophobia, promoting the culture of tolerance and equality and fostering civic integration are priority areas in the work of the Public Defender of Georgia.

According to the mandate provided under the Organic Law of Georgia, the Public Defender supervises the general situation of human rights and freedoms in the country, among them minority rights, addresses individual or group violations based upon complaints or ex officio inquiry and undertakes civic education and awareness raising activities. Major findings in the field of discrimination and intolerance, along with the measures undertaken by the Public Defender are further highlighted in Ombudsman's annual parliamentary reports.

Regional offices are significant tools for the Public Defender to effectively carry out its functions throughout Georgia and promptly respond to human rights violations. In this regard, opening of Public Defender's offices in Kvemo Kartli and Samtskhe-Javakheti (regions densely populated by minorities) was an important step forward in terms of ensuring accessibility of the Public Defender's Office for minorities.

## **Law on the Elimination of All Forms of Discrimination**

On May 2, 2014 the Parliament of Georgia adopted the law on the Elimination of All Forms of Discrimination (hereinafter Antidiscrimination Law). The law is intended to ensure the elimination of all forms of discrimination and equal rights of natural and legal bodies under the legislation of Georgia. The principle of prohibition of discrimination had been embedded in the Constitution of Georgia as well as other legal acts. However, the practice proved that it was not sufficient to develop a discrimination free environment largely due to the absence of effective legal leverages in the existing legal acts; in particular, the lack of effective court and administrative mechanisms, which should have guaranteed the restitution of infringed right of equality. Pursuant to the Association Agreement concluded with the EU in 2014 Georgia has shouldered the responsibility to gradually harmonize its legislation with the European law. Antidiscrimination law was adopted within the frames of the agreement and it represents a consolidated mechanism for the legal implementation of the principle of the prohibition of discrimination enshrined in the Article 14 of the Constitution of Georgia. One of the achievements of the Antidiscrimination Law is the expansion of its scope to reach out administrative organs, natural bodies and legal entities of private law. The Law has introduced the concept of direct and indirect discrimination and prohibited support or encouragement of discriminatory actions. The Antidiscrimination Law provides an open list of grounds of discrimination to ensure that discrimination regardless the nature of prohibited grounds never eludes the law.

The above mentioned law entitles the Public Defender of Georgia to monitor and oversee the efforts for the elimination of discrimination. The introduction of additional mechanism together with the court further invigorates the fight against discrimination and makes efforts more effective. The Public Defender pursues four directions in order to ensure the implementation of his functions: Examining cases of discrimination; Developing legislative proposals; Implementing public awareness raising campaigns; Maintaining database of discrimination cases and preparing annual special reports. The Public Defender can exercise proactive functions granted by the law in the process of examining discrimination cases. Under this right the Public Defender can not only start reviewing cases upon the submission of relevant application but also initiate such action. The role of a mediator granted to the Public Defender by the law is an innovative approach. If the Public Defender deems it appropriate s/he is authorized to schedule hearing and invite parties to settle the case by

mutual agreement. Pursuant to the law, the Public Defender has the right to issue a recommendation and general proposal against the perpetrator and require from the latter to undertake certain actions. If an administrative body refuses to comply with the Public Defender's recommendation the Public Defender is authorized to apply to court and demand from perpetrator to issue an administrative act.

In order to effectively implement his competences Equality Department was established under the Resolution N140 of August 22, 2014. The department is tasked to assist the Public Defender in implementing functions and competences granted by the Antidiscrimination Law. The Equality Department Department started up on November 20, 2014.

Despite the importance of the adoption of the law, there are a variety of essential gaps that hinder the effectiveness of the fight against discrimination. In particular, the anti-discrimination law obliges public agencies to provide information to the Public Defender, while entities and individuals of private law provide information about hearings to the Public Defender only voluntarily. Very often private companies refuse to give information to the Public Defender by referring to the articles describing the actions as voluntary and not mandatory. This creates a significant problem in practice, as it makes difficult and sometimes even impossible, to thoroughly examine the circumstances of the case, to establish discrimination and to respond to it properly.

Consequently, it is important to write in the anti-discrimination law that private individuals, like administrative agencies, are obliged to provide information to the Public Defender.

If the Public Defender finds that there had been a case of discrimination, he will send a recommendation to the appropriate person or body. If the administrative body does not respond or share the recommendation, the Public Defender will apply to the court.

The same mechanism applies to private companies and natural persons. Implementation of recommendations is not binding for them. In many cases the Public Defender does not even have information on whether the company or the private individual considered his recommendation. Accordingly, it will be important to amend the law so that individuals and companies will be obliged to provide information to the Public Defender about whether they considered the recommendation and whether they are going to implement it or not.

In accordance with the anti-discrimination law, the Public Defender and the court are authorized to consider cases of discrimination. The Public Defender has no right to grant compensation to the victim, and accordingly, victims have to go to the court to get compensations. However, the term of appeal in the court is very short - 3 months, while the

Public Defender is obliged to suspend proceedings, if the court considers the dispute. Lots of disputes and possibility for their quick solution remain beyond the Public Defender's competence. Accordingly, the legislative frame should be arranged so that the functions of the Public Defender and the court should not cover each other, and their co-existence, mutual assistance must be oriented to the effective protection of individuals from discrimination. This will be achieved if the 3-month period will be increased to about one year.

On February 11, 2015, in order to improve the anti-discrimination law, the Public Defender addressed the Parliament with a legislative proposal regarding amendments. The Committee of Human Rights and Civil Integration and the Committee of Legal Issues approved the legislative proposal with certain observations. However, it should be noted that the Committees have not started consideration of the amendments yet.

If these changes are not made to the anti-discrimination law, the Public Defender will encounter grave obstacles in the fight against discrimination.

Since 2014 the Department of Equality of the Public Defender has examined 14 cases of alleged discriminatory treatment on grounds of ethnicity, nationality and citizenship. Out of these, two cases concerned discrimination on grounds of nationality and recommendations were issued with regard to both of them. Proceedings are underway with regard to 4 of them, while the rest were suspended or declared inadmissible. As for alleged discriminatory treatment on religious grounds, proceedings were launched into 15 cases. The Public Defender submitted written opinions in relation to 2 of them; 2 cases were declared inadmissible; 1 case was terminated as no discrimination was established; proceedings are underway with regard to 10 cases.

The decree N76 on making changes to Batumi City Council's decree N309 of December 23, 2011, defined the fee for entering the Batumi Botanical Garden as three (3) GEL for Georgian citizens and 8 (eight) GEL for citizens of other countries. The Public Defender held that, introduction of a different tariff for foreign citizens is direct discrimination on grounds of nationality, as far as it has no objective or reasonable justification.

Accordingly, on September 7, 2015, the Public Defender addressed the Batumi City Council with a recommendation to make changes to the decree on "Fees for entering the Batumi Botanical Garden and traveling by electric bus", in order to develop a tariff system for citizens of foreign countries, stateless persons and citizens of Georgia on the basis of the principle of equality.

The Batumi City Hall took into view the Public Defender's recommendation. According to the reply received from the Batumi City Hall on 5 February 2016, the Botanical Garden, together with the Batumi City Hall, by the decree N89 of 15 December 2015 developed a

new tariff plan for entering the Batumi Botanical Garden and enjoying various services, which excludes any kind of discriminatory attitude.

### **Tolerance Centre under the Public Defender's auspices, Councils of Religions and National Minorities**

Tolerance Center has been established in 2005 with a view to furthering the work of the Public Defender along these lines. The work of the Tolerance Center has been supported by various donors throughout the years, among them were: United Nations Development Programme (UNDP), Government of Norway, Swedish International Development Cooperation Agency (SIDA), European Center for Minority Issues (ECMI); Since 2012 the Tolerance Center is supported by the United States Agency for International Development (USAID) funded Promoting Integration, Tolerance and Awareness Program (PITA) program implemented by the United Nations Association of Georgia (UNAG).

Tolerance Center fosters establishing an environment for a multilateral dialogue between the majority and minority groups, organizes educational and awareness-raising events, studies the cases of xenophobia and discrimination on ethnic and religious grounds, and analyzes existing trends and systemic problems in this field.

Tolerance Center conducts periodic monitoring of the situation of religious and ethnic minorities in Georgia, closely collaborates with minority organizations in the regions, and follows up on the media work. Based on monitoring results, it highlights possible threats and dangers stemming from intolerance, xenophobia and discrimination, and works to define ways to address existing problems.

Tolerance Center coordinates activities of the Councils of Religions and National Minorities operating under the auspices of the Public Defender of Georgia.

### **Council of Religions under the Public Defender of Georgia (CNM)**

The Council of Religions under the auspices of the Public Defender of Georgia was established in 2005 and it represents the biggest forum of religious organizations in Georgia. Currently, the Council unites 32 religious confessions and organizations. The work of the Council is coordinated by the Tolerance Center under the Public Defender of Georgia. The Council aims to protect freedom of religion, to foster multilateral dialogue between religious

organizations, to promote equality and peace, shared social responsibility, and civic integration. The Council of Religions represents a consultative body for the Public Defender; on the other hand, it cooperates, holds dialogue and consultations with different state institutions, media and non-governmental organizations.

### **Council of National Minorities under the Public Defender of Georgia (CR)**

The Council of National Minorities has been established under the Public Defender's Office in 2005, and it unites those non-governmental organizations that were established by ethnic minorities and are working on minority issues. The number of Council members counts more than 100 organizations. The Council's work is coordinated by the Tolerance Center under the Public Defender.

The Council brings together representatives of almost all ethnic groups residing in Georgia. With its work, the Council aims to support the protection of ethnic minority rights, preservation of cultural heritage and ethnic identities, advance integration and ensure equal participation of national minorities into the decision- and policy-making process. Along these lines, the Council of National Minorities is actively engaged in dialogue and consultations with the governmental structures and other organizations; it also provides concrete proposals and recommendations for the state institutions.

### **Preservation and Development of Cultural Heritage of National Minorities**

The national strategy of civil equality and action plan for 2015-2020 covers the fields of education, culture, media, preservation of identification, etc. There is some progress in the fields of civil integration and protection of rights of national minorities, but there are areas that require more attention. In particular, this document does not properly reflect the issues, such as coverage of national minority issues by the Georgian media, provision of information to national minorities (in a language they understand) about the ongoing developments of the country, preservation of identification of small national minorities, etc. These issues have remained the biggest problems since the independence of Georgia. This is a significant hindrance to social integration and protection of rights of national minorities.

Proper protection and realization of cultural rights are important for promotion of civil integration and protection of minority rights. The Constitution and the legislation of Georgia, as well as the international legal acts recognized by Georgia, grant national minorities (as well as all citizens of Georgia) important rights to preserve, express and develop culture, participate in cultural life and spread their culture (Articles 34 and 38 of the Constitution of Georgia, Articles 5 and 15 of the Council of Europe Framework Convention for the Protection of National Minorities, Article 27 of the International Covenant on Civil and Political Rights (Article 27), etc.

Many activities have been carried out in Georgia to promote protection and integration of cultural heritage of national minorities, both by the Ministry of Culture and the local authorities of the regions populated by national minorities. There are a lot of song and dance ensembles and groups of national minorities in the country, part of which is supported by state agencies. Despite many programs carried out in this area, challenges still remain: in particular, rehabilitation of Armenian and Azerbaijani theaters in Tbilisi and development of houses of culture in regions – in villages and municipalities, as well as protection of material and non-material heritage of national minorities. Overall, the field of culture remains a challenge in the area of social integration.

Rehabilitation and promotion of Tbilisi's Armenian and Azerbaijani theaters is mentioned in the Public Defender's Annual Report 2014. The Ministry of Culture informed the Public Defender that working on the rehabilitation project for Tbilisi State Armenian Drama Theater would be completed by April 2016, while the rehabilitation efforts would start during 2016. No decision has been made yet on the issue of rehabilitation of Tbilisi Heydar Aliyev Azerbaijani Theater. According to the Ministry of Culture, the abovementioned is hindered by the facts that the building is in a poor condition and reconstruction-rehabilitation works are impossible to be held there. It should be noted that culture plays an important role in civil integration, inter-ethnic relations and protection of minority rights. Unfortunately, despite the existing great opportunities, the area of culture is not properly engaged and its resources are not correctly used. The culture sector, including the creative resources of the Armenian and Azerbaijani theaters, should be more actively used for promotion of civil integration and inter-ethnic relations.

## Education and Learning of National Language

The role of education is important in promotion of civil integration and protection of minority rights in Georgia. National minorities' right to education is regulated by the Georgian legislation and international legal acts, in particular, by: Framework Convention for the Protection of National Minorities (Articles 12 and 14), Covenant on Economic, Social and Cultural Rights (Article 13); Convention on the Rights of the Child (Articles 2 and 30); Laws of Georgia On General Education, On Higher Education (subparagraphs "t" and "k" of Article 3, paragraph "d" of Article 16) and On Professional Education. Also, the Ministry of Education specifies the state's obligation regarding the education of ethnic minorities in relevant documents.

These rights are realized by the civil equality and integration strategy and action plan approved by the government on August 17, 2015. A number of important programs have been implemented for teaching the state language to national minorities in recent years and significant progress has been observed in this direction, but at the same time, there remain challenges that need timely and effective actions.

Part of the school textbooks of minority language schools is bilingual, 30% is in Georgian and 70% - in minority languages. One of the aims of introduction of bilingual textbooks was to improve the quality of the state language teaching, both among students, and to some extent, in teachers. The PDO monitoring group had many meetings with teachers and parents of students of minority language schools, during which it became clear that bilingual teachers (speaking both Georgian and minority languages), positively assess bilingual textbooks, since for a bilingual teacher it is not difficult to understanding the content of the subject and to explain it to students, while the schools which do not have bilingual teachers, 30% of school subjects, i.e. the Georgian text, remains unclear to both teachers and students.

For this reason, in most cases teaching of the Georgian language and generally academic subjects remains unachieved, as large part of the teachers and students cannot understand 30% of the subjects that reduces the level of education. It should also be noted that the teachers of the Georgian language or teachers that can speak Georgian periodically assist students and teachers to understand the Georgian part of the texts, but it is impossible to overcome this problem only with this kind of assistance.

Therefore, bilingual textbooks, only rarely – in case of existence of a bilingual teacher at school- is effective, otherwise they do not allow students to learn either the Georgian

language, or any academic subject. Thus, it is important to review the approach to bilingual textbooks. One of the solutions might be translation of the Georgian text into the minority languages at the transitional stage, which will make it easier for students and teachers to understand the text.

### **Regarding Small Ethnic Minorities Learning Their Native Languages**

Some of the small ethnic minorities living in Georgia have a problem with maintaining their native languages. One of the most effective means of overcoming this problem is school education providing a voluntary opportunity to learn a native language of a respective minority. The Public Defender has raised this issue many times, and in 2015, the Ministry of Education finally took his recommendation into account, created a workgroup and after a certain period of activity, approved a language learning standard for small ethnic minorities. The issue has gone through all necessary judicial procedures in the ministry, and as a result, starting with 2015-2016 schools will provide classes in minority languages such as Kurdish, Assyrian, Avarian, Kist and Ossetian. By making this decision, the Education Ministry has made an important contribution to preserving ethnic minorities' languages and identities.

### **Regarding Engagement of National Minorities in Decision-making Process**

Full engagement of ethnic minorities in the country's civil and political life still remains a challenge. Despite the statements of high-ranking officials and political party leaders in support of this issue, national minorities are represented in central government in small numbers.

The situation is different in regions populated by minorities, where representatives of national minorities hold responsible positions in city councils and district administrations and are involved in the decision-making process.

It is important that the issue of establishment of the House of Nations in Tbilisi was positively resolved (something demanded by various minority groups for a long time). The City Council and the City Hall pay certain attention to minorities and civil integration issues, but these efforts fail to ensure the representation of minorities in the city government.

Despite the implemented activities, adequate inclusion of national minorities in the city government remains a challenge. It is desirable the state agencies, the City Council, the City Hall and political groups to pay more attention to representation of national minorities in the city government.

New boundaries of election districts were set for the 2016 parliamentary elections. Single-mandate districts of Akhalkalaki and Ninotsminda were united and thus the number of majoritarian MPs from regions populated by minorities, in particular from the Samtskhe-Javakheti region, was changed. In order to avoid negative effect of this change on representation of minorities in the Parliament, it is desirable political groups to take into account the importance a full representation of national minorities in the legislative body and to take appropriate measures for this.

### **Media and Access to Information**

The Georgian legislation regulates the issue of receiving and imparting information. Pursuant to the law on Broadcasting, the Public Broadcaster shall reflect ethnic, cultural and language diversities in the programs; ensure proper proportions of information in minority languages; prepare programs for minorities; facilitate broadcasting of programs prepared by minorities (Article 16). Under the same law (Article 33.11), the Public Broadcaster shall create every year one or more regular program in at least four languages, including the Abkhazian and Ossetian languages.

The Georgian National Communications Commission adopted a Code of Conduct for Broadcasters (in accordance with Article 50 of the Law on Broadcasting). Chapter 9 of the Code requires broadcasters to refrain from publishing materials that may incite hatred and intolerance on grounds of race, language, sex, religion, political views, ethnic, geographic or social backgrounds. Broadcasters shall respect the freedom of thought, conscience, religion or belief and shall avoid abuse of any ethnic, religious, cultural or social groups (Article 32). The Code of Conduct obliges broadcasters to avoid unjustified association of ethnic or religious origin with negative events, including association of the activities of certain individuals with the entire group (Article 33).

Despite these legal provisions, the information delivery system for national minorities (in a language they understand) still has not been improved during 2015. Information about the events ongoing in Georgia is provided to the regions populated by minorities by the Public Broadcaster and regional TV stations of Kvemo Kartli and Samtskhe-Javakheti. The Second

Channel of the Public Broadcaster broadcasts 10-15-minute news program every day in minority languages, which is also broadcasted by the Kvemo Kartli and Samtskhe Javakheti regional TV stations.

Georgia's domestic developments and international events, as well as processes in the regions populated by minorities, develop rather dynamically and 10-15-minute news programs cannot cover all the processes and events that are interesting and important for the population.

So, the mentioned programs cannot fully provide information to national minorities about the ongoing events in the country. The problem is complicated by the fact that very small part of population of the regions populated by minorities watches these programs. They have some positive impact, but in terms of overcoming the existing challenge, this result is very small.

Over the years, the regions populated by minorities have been in information vacuum to some extent – they had been receiving information about ongoing events in Georgia mostly from foreign news channels, while, above all, it is the commitment of Georgia to inform its citizens. Over the years there has been discussion and all agrees that it is necessary to create an effective and proper system for informing national minorities, but the situation has not changed.

The regions populated by minorities are still not provided with full information about the events of the country, which has a negative impact on social integration. Effectiveness of the integration process cannot be achieved without involvement of the media and formation of an effective system of information. Therefore, it is necessary to facilitate creation of an effective system of provision of information to national minorities. The TV program "Our Yard" and radio program "Our Georgia" had been serving this goal for years. These programs had been allowing national minorities to express their views, talk about their problems and successes to the Georgian-speaking population. Also, important issues of civil integration had been regularly discussed in these programs, which, in turn, positively contributed to the integration of ethnic minorities. "Our Yard" has not been on the air since the second half of 2015.

It should be noted that in 2015 the Public Broadcaster's radio capabilities was completely unused in terms of the promotion and integration and civil integration of national minorities. The Public Defender does not consider the means and programs that must be used by Public

Broadcaster, on the one hand, to provide information to national minorities about the events ongoing in the country, and on the other hand, to inform the Georgian-speaking audience of the events of national minorities, but problems are clear in this area and need an adequate response. Armenian and Azerbaijani newspapers "Gurjistan" and "Vrastan" do to some extent contribute to providing information to minorities. These newspapers provide information to Armenian and Azerbaijani population about the events ongoing in the country, but the circulation of the newspapers and their material resources are not enough for full implementation of this function. It is important to continue to support the "Gurjistan", "Vrastan" and other newspapers, as a temporary measure, in order to promote proper provision of information to the national minorities.

### **Situation regarding freedom of religion in Georgia**

Georgia is a multi-confessional country. Approximately 84 % of the population associate themselves with the Georgian Orthodox Church (GOC). Other religious organizations represented in Georgia include Muslims, Armenian Apostolic Church, Jewish community, Catholic Church, Yezidis, various protestant denominations, Jehovah's Witnesses, Bahai, and Society for Krishna Consciousness.

Freedom of religion and separation of religious organizations and the state is guaranteed by the Constitution of Georgia. However, GOC enjoys exclusive privileges based on the Constitutional Agreement between the GOC and the State.

Since 2011 religious organizations were enabled to register as Legal Entities of Public Law (LEPL); The tax code of Georgia grants several tax exemptions to the GOC, while other religious organizations are not benefitting with similar exemptions; The criminal code prohibits persecution of a person based on religious faith, interference with worship services and interference with the establishment of a religious organization; The Law of Georgia on General Education prohibits proselytism, indoctrination and display of religious symbols at public schools.

### **Impunity for the violations committed on the ground of religious intolerance**

Inadequate response by the state to the violations committed on the ground of religious intolerance has been a major problem. In the majority of cases the investigations are not

launched with appropriate articles of criminal code, or the investigation process is procrastinated or not started at all. Jehovah's Witnesses belong to the most vulnerable groups. The statistics of the last years shows that the number of verbal and physical abuse against Jehovah's Witnesses, also obstruction of religious services and damage of their properties has significantly increased. For example, in 2012 two such cases were brought to the attention of the Public Defender; 17 cases in 2013, 45 cases in 2014, 37 cases in 2015.

### **Religious intolerance and violations of Muslims' rights**

Intolerance and violence against Muslims has emerged as an alarming problem in Georgia. The acts against Muslims' rights started to emerge in the end of 2012 first in the village of Nigvziani, Lanchkhuti municipality, and later in the village of Tsintskaro, Tetrtskaro municipality. These acts continued to take place in 2013, in the village of Tsikhisdziri, Kobuleti municipality, and in the village of Samtatskaro, Dedoplistskaro municipality. This chain of intolerance came to a conclusion with the dismantling of minaret in the village of Chela, Adigeni municipality, through the decision taken by the state.

The Orthodox Christian population of Nigvziani, Tsintskaro and Samtatskaro objected to the functioning of a mosque in these villages and prevented Muslims from gathering in the mosque for Friday prayers by using compulsion, threats, verbal and physical assaults.

The problem related to Muslims' prayers in Nigvziani and Tsintskaro has been solved to some extent due to the interference from the authorities, and through the negotiations and agreements between the leaders of religious majority and minority. In 2013, prayers were unhindered in these villages. However, the "conniving" attitude of the authorities towards the acts penalized by the Criminal Code of Georgia, failure to take appropriate measures, the impunity and, sometimes, bias of the majority could be the reasons why the problem of intolerance towards Muslims has been continuously manifested. The acts against Muslims in the village of Samtatskaro, Dedoplistskaro municipality, acquired a permanent nature. These acts that persisted for two months resulted in the local Muslims' spiritual leader's departure from the village and suspension of traditional Friday prayers.

On 10 September 2014, local residents protested against the opening of a Muslim children's boarding school at in Kobuleti Municipality. The protesters slaughtered a pig at the entrance of the boarding school and nailed the pig's head to the school door. They blocked a way to the building not to let the students enter the premises. Despite the fact that the staff and the pupils of the boarding school were not able to move freely and peacefully make use of their

property and the pupils could not exercise their right to education, the law enforcement officers did not put end to the continued violation of their rights. The boarding school has never started functioning.

Another incident related to religious intolerance occurred in Village Mokhe of the Adigeni Municipality in October 2014. It has been years since the Muslim community living in Village Mokhe has been requesting the handing of the disputed building over to them, which, according to the Muslim community, was a mosque. In September 2014, the Adigeni Municipality Government declared an electronic tender for rehabilitation works of this building. A winning company started deconstruction works on 18 October 2014. On 22 October, the local Muslim parish protested against the ongoing construction and repair works. Police were called to the place of incident. 14 Muslim participants of the rally were arrested. The detainees stated that the law enforcement officers were verbally abusing them and referring to them as "Tatars". According to the detainees, the police officers physically insulted some of the detainees both during arrest and thereafter at the police station. The Public Defender's representatives visited the pretrial detention facilities and examined protocols (reports) of external observation of the detainees on 22 October 2014. As shown in the protocols, the detainees had physical injuries.

The latest incident against Muslims started on 29 February 2016 in the village Adigeni when local Muslims were discussing with local municipality the possibility of allocating space in the village for a Muslim cemetery. A group of Christians attacked them, insulted verbally and physically and as a result three Muslims were injured.

Out of all cases against Muslims that took place in 2012-2014, no one has been brought to liability.

The Muslim community in Batumi has been raising the need for construction of a new mosque for many years. There is only one historic mosque "Orta Jame" in Batumi, which is not enough to accommodate all the Muslims of the city. During weekly Friday prayers, thousands of people have to pray in the open air, due to which Muslim women, in fact, are deprived of the opportunity to attend Friday prayers.

In January 2015, the State Agency on Religious Affairs and the "Muslims Department" made a decision on the expansion of the mosque as well as on the construction of a religious school and a mufti residence, while on October 5, 2015, the Agency and the Muslims Department opened the Mufti Residence.

It is important the state to take effective and timely steps in the shortest time, considering the interests of the Muslim community, in order to make the kind of decision, which will allow the Muslim population to enjoy the freedom of religion guaranteed by the Constitution.

### **Property issues of religious minority organizations**

The restitution of property confiscated from some religious associations in the Soviet period remains problematic. At this stage, the Diocese of Armenian Apostolic Orthodox Holy Church in Georgia is demanding the return of five churches located in Tbilisi and one church in Akhaltsikhe. Catholic and Christian Orthodox churches dispute the title to five temples which are presently owned by the Christian Orthodox Church. The Catholic Church requests the fair solution of this dispute. The return of two Evangelical Lutheran churches, tens of mosques and one synagogue is also on the agenda. Most of these places of worship are the monuments of cultural heritage of Georgia. Due to years of disputes about ownership, these buildings have not undergone any refurbishment and reconstruction works which made their state deplorable.

Another property related problem for non-Orthodox religious organizations is the issue of permits for the construction of places of worship and transfer of title to land and buildings. Local municipal governments who are responsible for issuance of building permits often discriminate on the ground of religious intolerance and as a result do not issue building permits or create extra obstacles.

In 2014 the municipality council of Terjola suspended a construction permit for the Jehovah's Witnesses to build a house of worship. Jehovah's Witnesses community reported this suspension was the result of pressure from local GOC clergy and parishioners. Jehovah's Witnesses sued Terjola municipality council and already won the case at the city court, later at the court of appeals and currently the case is brought at the supreme court of Georgia. Similarly, Catholic Church in the city of Rustavi has been trying to get permission to build a church since 2013, however local municipal council is not issuing the permit.

### **Freedom of religion in public schools**

The protection of freedom of religion in public schools is problematic. Despite prohibition by the legislation, proselytism, facts of indoctrination and distribution of religious symbols is

frequent at public schools. The discriminatory and closed atmosphere at schools that exists in religious context raises fears among the representatives of religious minorities when it comes to bringing this problem into light. This must be the reason why there are a low number of applications lodged with the Public Defender's Office concerning religious discrimination in public schools. Parents and pupils avoid public discussion of discriminatory treatment towards them.

### **State policy and the State Agency for Religious Issues**

In 2014 the government of Georgia created the State Agency for Religious issues. According to its statute, the State Agency is an informative, research, scientific, educational and advisory body to the Government and the Prime Minister with the following competences: analyze the existing religious situation, draft legal acts, projects and recommendations, draft recommendations to fulfill the objectives enshrined in the Constitutional Agreement, draft recommendations concerning the construction of places of worship and religious education, act as an intermediary in case of conflicts among religious associations, support a tolerant environment, etc.

Religious associations' criticism of the State Agency is based on the fact that the Council of Religions under the auspices of the Public Defender and the non-governmental organizations working on similar issues had not been involved in the process of establishment of the State Agency and determination of its competences. The State Agency's decisions are often criticized due to the lack of transparency, biased approach in favor of specific religious organizations and the attempts to interfere in religious organizations' internal activities.

### **Early Age Marriages - Services offered to representatives of ethnic minorities**

During studying different cases of non-Georgian speakers, existing gaps in the access to services became apparent. For example, in number of cases local Social Service Agencies don't have a possibility to hire interpreters. Specifically, in ethnic minority communities depending on circumstances of the case it's necessary to speak face to face with a person speaking foreign language.

One such example is the case of Kh. U. which was studied by the Gender Equality Department of the Public Defender's Office. On 25<sup>th</sup> of March, 2014 Kh. U. when she was

returning to home from school was kidnapped from the street by A.S. and his friends who was living in the village K. Girl was put into the car by force and was taken to the forest of the village Chiauri of the Lagodekhi region, where she was kept during two days. A. I. had a forced sexual intercourse (raped her) with Kh. U.

After the study of the case it became evident for the Social Service Agency that the language barrier was a major communication problem with the Azeri community of the village K. The Agency employees had a difficulty to find trustable person who spoke Azeri and Georgian languages and would help them during the visit to the family of Kh. U. The person who agreed could not speak Georgian well. The Social Service Agency representatives listened to K. U. - the brother of Kh. who spoke with them about the condition/situation of Kh.

In the letter of the Social Service Agency we read that: “regardless of the aid of two interpreters, it was difficult to speak openly and face to face with Kh. U. After a several-hour meeting with her and her family, we did guess about the emotions of the child and about the attitude of the family members towards her.”

The case proceeding started on the 7<sup>th</sup> of May of 2014 in the Public Defender’s Office. According to the information requested from the Social Service Agency, no psycho-social rehabilitation program has been carried out for the rape victim during 7 months.

During the proceedings, conducted by the Public Defender’s Office, it was evident that the Social Service Agency has difficulties to carry out activities foreseen by the law in regions inhabited with ethnic minorities. Language barrier significantly hampers the work process and causes lack of services. As a result, a vulnerable group - such as children victims of violence, is suffering. The Public Defender of Georgia addressed the Ministry of Labor, Health and Social Protection regarding the mentioned issue with recommendations.

### **Use of Reproductive Rights**

Enjoyment of reproductive rights is largely dependent on quality of medical service. Awareness of the subject in need of medical service and availability of said service are also important factors. Unfortunately, aforementioned issues remain problem in Georgia. Awareness-raising meetings and regional visits organized by the Public Defender make it obvious that the society is not sufficiently informed, be it about reproductive and sexual health or services and programs available in the country.

The information vacuum and low awareness levels lead to a whole slew of problems and requires special attention from the state, since exercitation of reproductive rights has a serious impact on the country's social, economic and political development. There is also extra need for access to services and information in regions populated by ethnic minorities, since the language barrier exacerbates their low level of awareness, in addition to other problems. Also, information regarding educational programs on reproductive health is very scarce in general.

### **“Passportization” and Resulting Problems**

Abkhazian and South Ossetian citizenships and the passports given out by their respective de facto authorities are not recognized as valid legal documents by Georgia and the international community. However, possession of these documents is associated with many basic rights for people inhabiting the aforementioned territories. Anyone of “Abkhazian (Abaza) nationality” is counted among de facto Abkhazian citizens regardless of the citizenship he/she holds, with the only exception being those who “fought against the state system of the Abkhazian Republic via anti-constitutional means”. Before 1999, people who spent 5 consecutive years living on the territory of Abkhazia were also considered citizens. Double citizenship, however, is allowed only with Russia. Such citizenship requirements discriminate, both directly and indirectly, against ethnic Georgians living in Abkhazia; mainly denizens of Gali who left Abkhazia in years 1992-93 due to warfare, they are not considered citizens. In addition, many of them hold Georgian passports, which makes them, according to de facto Abkhazian legislation, ineligible for local citizenship.

### **Repatriation of Persons Forcibly Resettled from Georgian SSR by USSR in the 1940's**

The subject of persons forcibly resettled from southern Georgia, along with its political impact, remains relevant and frequently discussed to this day; legal status of said persons also represents a problem. Despite Georgia taking up responsibility of repatriating the people resettled from Georgian SSR in 1940 upon its entry into the Council of Europe, making good on that responsibility and dealing with associated procedures has become quite a drag due to a variety of interfering factors. The fact of eight years passing since Georgia's entry into CoE before a legislative base was devised for the aforementioned cause speaks volumes of the government's attitude towards it. Only in 2007 did the Georgian Parliament pass the bill “Regarding repatriation of persons forcibly resettled from Georgian SSR by former USSR in

the 40's of the XX century". Before 2014, there existed no established strategy for proper repatriation of Meskhetians, although its eventual passing can be considered a step forward. There is no action plan for the issue to this day, although a positive tendency in this regard can be noted. According to a statement made by Ministry of Refugees, development of the action plan project is complete and it will be approved in the nearest future, once it's been discussed and commented on by relevant institutions.

The law "Regarding repatriation of persons forcibly resettled from Georgian SSR by former USSR in the 40's of the XX century" should have been designed to regulate proper return of the forcibly resettled as well as the legal status of the entire repatriation process. However, all it does is define the procedures of granting a person the status of a returnee. It does not outline social-economical guarantees and property-related issues, which we consider to be among the major aspects of proper repatriation.

According to the aforementioned law, the state is obliged to provide the returnees with Georgian citizenship via a simplified procedure. Despite the Georgian government establishing that, in accordance to the decree on Simplification of Rules for Obtaining Georgian Citizenship for Persons with Returnee Status, returnees are not affected by article 26 of the Organic Law on Georgian Citizenship, which is responsible for conditions of granting Georgian citizenship, problems in this regard still persist.

The main issue is represented by the citizen status of returnees who, despite having been granted Georgian citizenship, may have it invalidated due to not managing to renounce other country's citizenship according to rules defined by Georgian government's Decree N87 "Regarding simplification of rules for obtaining Georgian citizenship for persons with returnee status". In accordance to paragraph 4 of the given decree, "upon satisfaction of an application for Georgian citizenship by a person possessing returnee status, the President of Georgia is to issue an order that takes effect upon receiving a document confirming the returnee's renouncement of another country's citizenship from an agency, a diplomatic office or a consulate".

Study of documents received by the Public Defender's administration has revealed that while a minority of Meskhetians has received Georgian citizenship, it will become active only upon them presenting a document confirming their renunciation of foreign citizenship to a competent authority. For these persons, the aforementioned procedure is not that simple, since bureaucratic and other barriers existing in their countries of residence prevent them from renouncing their citizenships and therefore, the President's order regarding granting them Georgian citizenship remains powerless.

## **Repatriation and Integration**

It is important to, along with forming a state policy regarding proper return of people displaced from Meskheta, learn their needs and provide them with information in a language they can understand. Thus, the decisive factor in repatriation strategy and the action plan is efficiency of their execution. Therefore, facilitation of the repatriation process requires speeding up of the approval for the repatriation strategy's action plan.

Execution of the repatriation and integration process is among the most important challenges for the Georgian government, demanding a complex approach. The existing legal framework serves as a precondition for facilitation of the return of the forcefully displaced, but actual return requires some concrete measures, such as executing actions described in the repatriation strategy's action plan and eradication of self-contradictory social opinions.

In order to integrate returnees better, it is important to pay attention to problems they might have upon return, namely availability of education, employment and healthcare.

Repatriation law and normative acts based up on it do not envision any kind of social assistance to the returnees, which negatively impacts their return and having a decent life in Georgia.

Integration-wise, accepting the state policy on repatriation of the forcibly resettled was an important step, with facilitation of proper and voluntary return as well as integration of repatriated population as its goals. The given strategy possesses general bylaws, according to which the document outlines the approach and challenges of the state in two directions: proper repatriation of the returnees and their subsequent social integration. In order to overcome these challenges, maximum level of the returnees' awareness and adaptation of the legal environment are necessary. In order to streamline integration activity in the post-repatriation period, speeding up the strategy's action plan approval is of vital importance.

## **The IDP Issue**

Among the top priorities of the Public Defender's administration is study and protection of the internally displaced persons' legal status. It needs to be said that the IDPs' application rate to the Public Defender is quite high.

Representatives of the Public Defender's administration actively monitor the condition of IDPs across the entire Georgia. In 2015, over 700 visits to IDP compact housing complexes were carried out, with over 900 IDPs receiving legal consultation. Monitoring and review of applications has revealed that despite certain progress and steps forward, difficult living conditions and lack of living space continue to remain a problem for most IDPs.

Representatives of the Public Defender are actively involved in work of the Refugee Ministry's Commission on IDP Issues. In addition, the Public Defender himself is a member of a Supervisory Council on Execution of State IDP Strategy.

The Public Defender welcomes the Ministry's initiative which allowed to publish, on August 9 2013, Decree №320 that approved Commission on IDP Issues' "Criteria and rules of providing IDPs with long-term living space" for IDPs from Georgia's occupied territories. This decree made the Commission's decision official.

The decree describes in detail the procedures that streamline distribution of living space to IDPs. Development of such rules and definitions is an important step in protecting the principle of justice in regulating the process of facilitation of living space distribution and the distribution itself.

In 2015, 1149 IDP families were provided with long-term living quarters, although 55 450 more families across Georgia are still in need of shelter.

Despite a few positive novelties, many IDP housing complexes in Georgia are in a state of decay or otherwise dangerous to lives or well-being of their inhabitants; research by experts confirms that. According to information provided by the Ministry, in years 2013-2015, expert conclusions on up to 90 objects were made, although at this stage, only 38 objects were closed.

Aside from long-term settlement, monitoring performed in 2015 revealed certain problems in the process of privatization of living space allotted for the IDPs. In addition, objects which cannot live up even to minimum living standards yet are legalized despite that, are a frequent occurrence.

Another persistent problem is unequal distribution of living space and so-called semi-legal objects that have been measured and logged several times yet have not been fully privatized yet. Due to this, the IDPs cannot create homeowner fellowships, make use of property as they see fit and take advantage of other civil rights, as only parts of their living quarters are

legalized. Monitoring has also revealed cases when an object does not satisfy minimal living standards yet has been legalized as property by the state.

Yet another persistent problem is lack of awareness regarding standards governing distribution of living space to IDP families according to number of their members. Representatives of the Public Defender's administration conducted monitoring of IDP families expelled from various buildings and now living in alternate quarters in 2010-2012, concluding that the condition of IDPs has not improved in regard to availability of essential lifelines and employment. The government is still in no hurry to execute employment facilitation programs, while local infrastructure is unable to satisfy IDP demand for basic socio-economic means of existence. For the majority of IDPs living in Georgia's regions, welfare remains the main form of income.

Taking international standards into consideration, a person should not become homeless and/or have his/her other rights violated even after expulsion. In case the expelled persons are not able to procure necessary means of existence for themselves, the governments concerned should use any means within the framework of available resources to provide them with alternate living space and/or arable land, depending on the circumstances.

Still, the issue of granting agricultural/arable land to IDPs remains such. However, credit is due to the fact that in the town of Shaumiani, 186 registered IDP families inhabiting a former military building were granted plots of agricultural/arable land.

In accordance to international standards, the government's main goal should be providing land to the poorest and the have-nots. The government's obligations must be defined clearly, giving precise meaning to a person's right to living in a safe and peaceful environment; this includes legal definition of land availability.

For a long-term perspective in solving the IDP problem, a flexible approach to their needs is necessary. The government should start working on that issue in a timely fashion and carry out the activities outlined by the strategy of making living means available to IDPs.

### **Asylum-related Issues**

From the point of view of security, the events occurring in the world as of late point to a trend of a general decline in protection of human rights. Wars and conflicts have turned millions of people into refugees and significantly increased the number of asylum seekers.

Conflicts in eastern Ukraine, Iraq and Syria have caused growth in the amount of asylum seekers in Georgia as well. Ensuring protection of human rights and freedoms of not only our own citizens, but those of other countries becomes more and more important, especially when it comes to a vulnerable category of people such as asylum seekers, refugees and others with a humanitarian status.

According to available data, by December 31 2015, there were 1273 asylum seekers registered in Georgia, 371 out of them refugees and 902 in possession of a humanitarian status.

In comparison with past years, the rate of granting people humanitarian and refugee status has grown considerably. In 2015, 75% of received applications have been satisfied, while in 2014, the same stat comprised 37%. As for more precise numbers, 69 people were classified as refugees and 878 granted humanitarian status in 2015, while in 2014 these numbers were 29 and 105, respectively.

Growth in these statistics and numbers was related to European Commission's recommendation within the framework of a visa liberalization action plan signed between Georgia and the EU; the recommendation envisioned tweaking of legislation and procedure, along with giving consideration to warfare in Ukraine and Iraq.

The right to asylum is guaranteed by the European Court of Human Rights. Any person has a right to seek and claim asylum.

In accordance to the Public Defender's mandate, he monitors the state of human rights and freedoms on Georgian territory as well as those under Georgian jurisdiction. This includes the Public Defender's administration actively monitoring of asylum seekers, refugees and persons possessing humanitarian status, with the purpose of studying and improving their legal condition.

Georgia joined the Geneva 1951 Refugee convention and its 1967 Protocol in 1999, thus acquiring the obligation to protect asylum seekers, refugees and persons of humanitarian status.

Positive tendencies in regard to increased availability of asylum granting procedure for asylum seekers need to be noted, which, in turn, led to an increase in acquisition of humanitarian and refugee statuses as well as fulfillment of recommendations of the European Commission regarding visa liberalization as well as those contained in the Public Defender's report "Regarding the condition of human rights and freedoms".

Despite all that, the challenges persist. In this regard, gaps in the asylum legislation are particularly notable and very well able to impede the ability of persons protected by law to make use of their rights and freedoms.

Even though the new bill “On International Protection”, in the discussion of which the Public Defender’s representatives are actively involved, can be viewed as a positive tendency, the paragraphs in the current law that need to be changed remain in that bill. For example, the period necessary for determining one’s refugee or humanitarian status is 6 months, and can be dragged out to 9, plus the time needed for reviewing court appeals.

It is, however, important that the bill includes a precise paragraph on the right to request international protection on-the-spot (“sur place”), in order to avoid contradiction with the Geneva 1951 Refugee Convention. The Public Defender hopes that the given bill will be passed next year.

Aside from gaps in legislation, the main problem today is refusal of asylum seekers on the grounds of state security and later appeal of the individual administrative-judicial act in the court.

The study conducted by the Public Defender’s administration has revealed that the document issued by State Security Service’s Counter-intelligence Department is not substantiated and does not include even minimal explanations of its factual foundations, which plays a large role for the refused asylum seeker’s ability to protect his/her rights. It is important that the aforementioned document is as substantiated as possible, with highlighting of factual foundations the divulging of which will not interfere with the state security interests and/or does not represent a state secret. Despite information pertaining to state security is of confidential character, the state cannot disregard making explanations and procedural justice when refusing asylum seekers. In cases when an administrative authority’s reply does not contain substantiation due to lack of knowledge about factual circumstances, there is no way to check whether a violation of the asylum seeker’s rights, discrimination or unequal treatment is taking place.

Representatives of the Public Defender’s administration studied several cases for their report and have discovered that the refused asylum seekers had not received even minimal information regarding grounds for their refusal. We consider it important to have the administrative authority’s decision contain substantiation with factual circumstances explained, as long as such information does not represent a hazard for state security.

## Summary

During the recent years there were no fundamental changes from the perspective of protection of national minorities and fostering the civil integration. However, minor positive trends in this respect should be noted. Namely, in 2015 the Government of Georgia approved the State Strategy of Civil Equality and Integration and the Action Plan for 2015-2020. The Strategy and the Action Plan set forth numerous important activities, that should be carried out in the coming years to foster the civil integration.

Moreover, in 2015, the Ministry of Education and Science approved the Plan of Teaching of Languages of National Minorities. The plan provides for teaching of native languages of ethnic minorities living in Georgia in public schools, where Georgian is and is not the language of instruction.

The protection of rights of Roma people, their integration, education, health care, access to social security and other numerous issues still pose the important challenge in Georgia. In this respect, 2015, similar to the previous years, has seen no effective program of activity undertaken by the State. There still remain the problem of rehabilitation and full functioning of the Petros Adamiani Armenian Theater and Heidar Aliev Theater in Tbilisi. Awareness of the national minorities on the developments in the country is crucial for their civil integration and effective protection of rights of minorities.

The Public Defender has repeatedly appealed to the state agencies, including the Government, the Ministry of the Internal Affairs, the Prosecutor's Office, the Parliament, the Ministry of Education and Science, the Office of State Minister for Reconciliation and Civil Equality, the Ministry of IDPs, Accommodation and Refugees and the Ministry of Corrections with following recommendations and proposals:

- The Government of Georgia, as well as local self-government and government authorities, must carry out awareness campaigns to eliminate discrimination in the country.
- An effective investigation should be held and a timely summarising decision must be made on the activities carried out against Muslim population in the villages of Nigvziani, Tsintskaro, Samtatskaro and Kobuleti in 2012-2014, which contained the signs of crime under the Criminal Code.

- Effective and active measures must be adopted to develop the culture of religious tolerance in the country, especially to raise awareness of public officials and decision-makers;
- To set up a commission of so-called restitution issues, involving the Public Defender, religious and non-governmental organizations;
- The issue of granting compensation for the loss inflicted to religious communities during the Soviet era must be solved for other religious communities as well, in a fair and non-discriminatory manner;
- Unequal tax regime, according to which, taxes of the Orthodox Church and other religious groups vary, must be eliminated.
- The Ministry of Education and Science, the Public Defender, the Public Defender's Council of Religions and non-governmental organizations must work out an emergency action plan for protecting religious neutrality in schools and establishing the culture of tolerance.
- Long-term and effective educational programs should be developed for bilingual teachers of schools of languages of minority languages;
- State language teaching programs must be continued and strengthened in the regions populated by minorities, both in municipalities and rural areas;
- Effective mechanisms should be developed for informing the regions populated by national minorities about civil integration, ethnic relations and ongoing events in the county in a language they understand; access to this media product must be improved;
- Information delivery system should be improved and increased for Georgian-speaking viewers in order to regularly inform Georgian population of the news stories about national minorities; both television and radio resources should be used for this purpose;
- Until there is a language barrier and understanding of information provided in the Georgian language is a problem in the regions populated by national minorities, publication of the newspapers "Gurjistan", "Vrastan" and other editions should be promoted;
- The state should support, plan and implement projects/programs aimed at promoting civil integration, ethnic relations and protection of the rights of national minorities through effective use of the capacity of cultural sector;
- To ensure representation of national minorities in the central government and to carry out information and educational activities for this purpose;
- To hold preliminary consultations with national minorities about activities directly connected to them and ongoing in the regions populated by national minorities;
- To promote provision of information to target groups about the new, changed (preferential) system of entering universities for Ossetian school-leavers;

- To regulate procedures defining factual address of displaced families and to determine relevant criteria;
- Criteria should be developed for one-time cash assistance for IDPs, which will reveal vulnerable groups;
- In 2016, during the long-term resettlement of IDPs, advantage should be given to facilities that represent danger to life or health of IDPs;
- To ensure resettlement of IDPs to places where they have access to livelihoods and employment;
- IDPs living in regions should be given agricultural land, while employment programs must be implemented at places of new resettlement;
- Specific measures must be taken to increase awareness of IDPs on privatization and reconstruction processes, as well as the rights of IDPs;
- In 2016 a new law of Georgia on International Protection must be adopted;
- Administrative-legal acts on refusal of granting refugee or humanitarian status on grounds of national security must indicate justification of the refusal by providing factual circumstances, which will not contain confidential information or information that is harmful to national security;
- Institutions must be provided with interpretation services in order to identify and solve the problems of foreign citizens/stateless persons/asylum seekers, refugees and prisoners with humanitarian status;
- Special measures must be taken for increasing awareness of the staff about the rights of asylum seekers, refugees and persons with humanitarian status.

The Public Defender of Georgia considers that these recommendations should be fulfilled by the Georgian government in order to ensure the integration of national minorities and full enjoyment of their civil and political, economic, social and cultural rights.