

Comments of the Government of Georgia
on *Observations of the* Commissioner for Human Rights of the Council of
Europe, Nils Muižnieks (15 December 2015)

Administration of justice and the protection of human rights in the justice system

1. For the last three years the Government of Georgia continued its efforts to further strengthen independence of judiciary from any outside interference and increase public trust towards the Court system of Georgia. The reform is being carried out in several stages.
2. In 2014, a three year structured, transparent and objective appraisal mechanism for judges was introduced before their lifetime appointed. As the probation with the built-in appraisal mechanism serves to ensure that judges appointed lifetime are competent, impartial and objective, it is natural to give it time in order to bring about the results.
3. In addition, creation of the guarantees for non-interference in the activities of judges is set as one of the main objectives of the third stage of reform. In particular, the new law will clearly articulate the principle that no one has the right to instruct a judge on the case.
4. At the end of the last year, the third stage of the reform of judiciary was launched focusing on the guarantees of independence of the individual judges and their involvement in the activities of the court.
5. According to the draft amendments, all candidates will occupy the position of a judge through an open competition. Currently, pursuant to the law, the candidates might be the graduates of the High School of Justice and persons exempted from studying at the HSJ (former judges, etc.). However, the latter category of candidates has a chance to be appointed as a judge only if the graduates of the High School of Justice have not applied for the vacancy. The draft amendments make the procedure non-discriminatory. The graduates of the HSJ and the individuals exempted from studying at the HSJ will all participate in the open competition. Besides, currently the law is vague with regard to the procedure of the selection and appointment of the judges. The draft regulates the

issue together with the procedure for the background check of the possible candidates for the office. The election of judges will take place based on the two basic criteria – good faith and competence. It is noteworthy, that the draft gives candidates the right to appeal the decisions of the HCJ in a special Qualifications Panel of the Supreme Court of Georgia.

6. According to the draft amendments, transfer of a judge to different court will also be regulated. Transfer without consent of the judge in question will be allowed only in exceptional circumstances and to closely situated courts. The High Council of Justice will be obliged to make substantiated decisions regarding the transfer of a judge.
7. The principle of automatic allocation of cases will be introduced to avoid any doubts about the court chairman's impartiality who is currently vested in the power to allocate cases. The detailed rules of automatic allocation of cases will be drafted by the High Council of Justice. According to the draft, if the electronic system is temporarily inaccessible, cases may be distributed without electronic system by the chairperson of court, based on the sequence of incoming cases and sequence of judges.
8. In the context of pressure and interference with the work of judges, a reference has been made to the protests at the private residences of judges following the Constitutional Court Ruling "Citizen of Georgia, Giorgi Ugulava vs. Parliament of Georgia". With regard to the above-mentioned, the following should be clarified:
9. On September 17, 2015, a day after the ruling on the case "Citizen of Georgia, Giorgi Ugulava vs. Parliament of Georgia" was rendered by the Constitutional Court of Georgia, a rally in front of the house of Giorgi Papuashvili, the President of the Constitutional Court, took place in the city of Batumi. The activists that protested against the decision, leveled the blame against Papuashvili that he protected his friends from the United National Movement (UNM) while disregarding the Constitution. They painted hands in red at the entrance of Papuashvili's house that in their view symbolized the UNM's bloody regime. One activist, who threw the tomatoes at Papuashvili's house and made verbally abusive statements, was arrested at the scene for a petty hooliganism (Article 166, Code of the Administrative Offences) to serve the seven days administrative detention.
10. In addition, about 20-25 persons, the representatives of non-governmental organizations and former political prisoners under Saakashvili's rule, gathered in front of the Constitutional Court on September 18, 19, and 21. They protested against

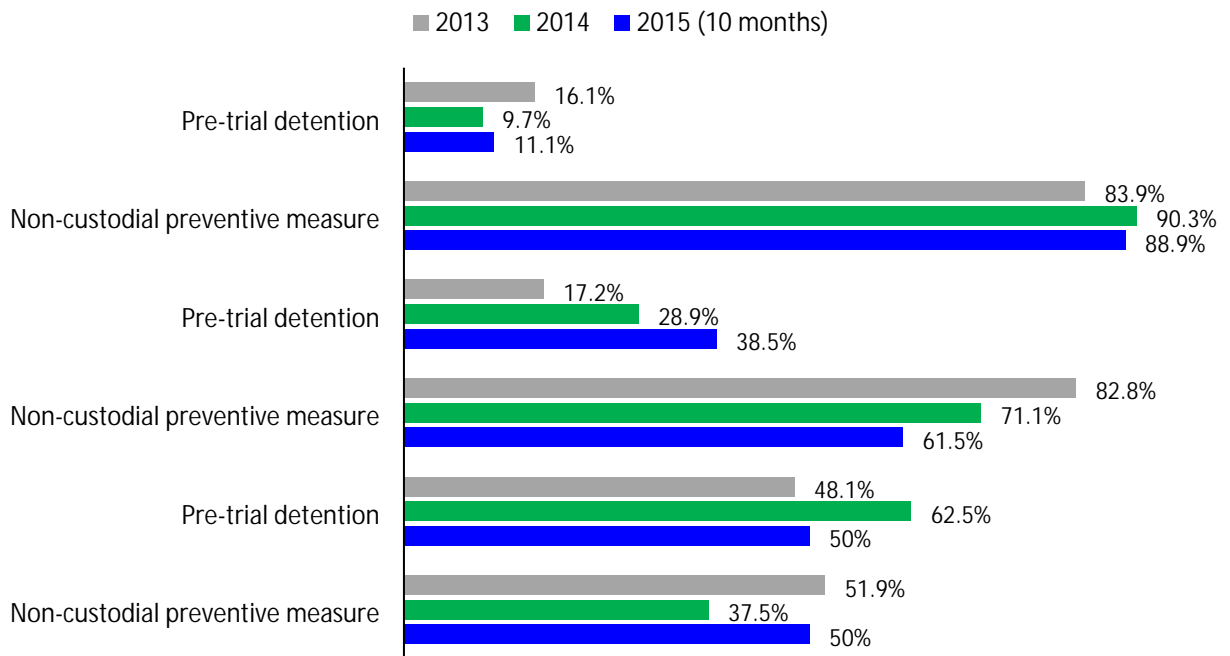
the Constitutional Court's ruling of September 16, 2015, and requested resignation of the President of the Court. The President of the Constitutional Court called on the police to react on these cases, involving "rallies outside the Judges' houses, blocking and making threats against them while calling for physical retributions."

11. The Ministry of Internal Affairs of Georgia immediately made a statement that the response to any offence will be prompt and adequate. The police officers were on the spot and the protesters did not violate any requirement of the Law of Georgia on Assemblies and Demonstrations. The rally was conducted in a peaceful manner and did not cause neither blocking of the buildings (they were gathered in the permitted vicinity by law) and streets, nor violation of the public order. There have been only limited cases, where the protesters infringed the law. E.g., as mentioned above, on 17 September 2015, a protester threw tomatoes and eggs at the house of the President of the Supreme Court in Batumi, Georgia. Police immediately arrested the person involved in the incident, following which the Batumi City Court found him guilty of administrative offence and sentenced him to imprisonment for seven days.
12. In another case, protesters gathered twice in front of the house of Deputy Chief Justice in Tbilisi, Georgia. In each case Patrol Police deployed squads to monitor the situation and to avoid or suppress any possible crime or misdemeanor. However, in the latter cases, there were no signs of crime or administrative offence to trigger the response of the police. The Deputy Chief Justice refused to be interviewed by the patrol police.
13. As to the protection of the President of the Constitutional Court from the interference and threats, Article 365 of the Criminal Code of Georgia prohibits threatening to kill or damage the health of, or destroy or damage the property of a member of the Constitutional Court, Judge, jury or a close relative thereof with respect to the court hearing or court review of materials. However, the Ministry of Internal Affairs has not received any concrete information about the specific potential threats neither from undercover nor from open sources that would indicate that the life, health or property of the President of the Constitutional Court was in danger. Giorgi Papuashvili's house is on the list of the government protected objects where 24-hour security protection is ensured.
14. It worth to be noted that the Prosecution Service of Georgia (hereafter, the PSG) had numerous attempts to contact the Judges of the Constitutional Court of Georgia for the purpose of interviewing them regarding the matter. However, those efforts ended without success, as there was either no reply from Judges or the reply indicating that it

was not necessary to receive additional information from them, and therefore they would contact the PSG if they wish to do so.

15. As provided above, the allegations of interference with the work of judges through these rallies have been thoroughly studied by the PSG.
16. Unfortunately, we are unable to clarify the situation regarding other cases of alleged pressure and interference in relation to judges that are generally referenced in the text, as the report does not specify those cases.
17. As the amendments drafted in the framework of the third stage of the reform provide that the procedures for disciplinary proceedings will be refined, in particular, the court chairperson will not be authorized any more to initiate disciplinary proceedings against judges. The function will be transferred to the High Council of Justice.
18. In addition, the draft requires that the Disciplinary Panel to bear in mind that removal from the office as a disciplinary sanction is the last resort and will be used only in exceptional cases. The draft further increases the transparency of the disciplinary proceedings by allowing the judge to make the proceeding open to the public upon his/her request.
19. It is also noteworthy that a standard of proof will be introduced in disciplinary proceedings.
20. The draft also entails increased transparency of the High Council of Justice by obliging it to publish the information on the Council's website about the adopted decisions, the session dates and agenda and all the relevant information related to its activities.

Statistics of Applying the Preventive Measures in Case of the Offence Covered by Article 239 of the CCG



21. It would not be fair to underestimate the Government's ambitious steps to reform the prosecution service, as a result of which the system which had been closed for decades, became transparent and accountable to the parliament and society at large. Owing to the reform, for the first time in Georgia's history the Chief Prosecutor of Georgia was elected through an open, competitive and inclusive process in which representatives of prosecutors, civil society, the judges, and the executive and legislative branches of the Government were involved. For the first time in history, the Chief Prosecutor will stay accountable to those who elected him. Remarkably, the prosecution service reform was welcomed by the EU, the US Government and the NATO ministerial.

22. As to the alleged abuse, including ill-treatment, in some penitentiary institutions and police stations, it has to be stressed that indeed torture and other forms of ill-treatment were systemic problems in the Georgian prisons until 2012. Since the new government came into power in 2012, combating torture and ill-treatment became a top priority and multifaceted measures have been taken.

23. As the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Mr. Juan Mendez observed during his visit to Georgia in

March, 2015, the situation has been drastically changed since the parliamentary election in October 2012. He marked clear signals by the Government to give high priority to the combating torture and ill-treatment. The Special Rapporteur explicitly noted that the impact of the efforts of the Government of Georgia including prosecutions and convictions, investments in new prison infrastructures and multifaceted policy changes, is visible and quantifiable. The Special Rapporteur emphasized that by significantly diminishing its prison population, while at the same time investing in new and better prison infrastructure, the Government has managed to eliminate overcrowding and, in turn, many of its detrimental consequences. Improvement of the health conditions is another point of departure. As rightly observed by Mr. Mendez and affirmed by the Public Defender of Georgia, torture is no longer a systemic issue.

24. It should be stressed that in the ECHR proceedings Georgia reached friendly settlements or made unilateral declarations with regard to about 40 applications under Article 3 of the Convention, all of those applications being related to the facts having taken place before November 2012.
25. The Georgian legal framework ensures independent and effective investigation of the facts of torture and ill-treatment. All facts of alleged torture or other inhuman or degrading treatment is subject to immediate and thorough investigation conducted by the competent law enforcement authorities.
26. It should be underlined that the political will to establish thorough, transparent, independent and effective investigative mechanism is manifested in the EU-Georgia Association Agenda, National Human Rights Strategy and Action Plan, and reaffirmed in the newly adopted anti-torture action plan.

At the meeting (held on 18 May 2015) the Council decided that the line ministries will thoroughly analyze the principles upon which the investigation mechanism can be based on. The comments of the relevant agencies were collected by the secretariat and the follow up meeting was held on 23 October 2015 to progress in reaching common ground and chart the way ahead.

Allegations on the Abuse in Kobuleti Police Station

27. On 3 December 2015, the Investigation Unit of the Office of the Chief Prosecutor of Georgia launched an investigation against four police officers of the Kobuleti Regional Unit of the Ministry of Internal Affairs of Georgia into the allegation of excess of official authority under aggravating circumstances.

The investigation was initiated on the proposal and relevant materials of the Public Defender, which were submitted to the PSG on 2 December 2015.

In due course of investigation, it was established that the Prosecutor's Office of the Autonomous Republic of Adjara was conducting two investigations in relation to the above-mentioned police officers for the similar allegations. In order to avoid any conflict of interests, on 7 December 2015, the first deputy Chief Prosecutor of Georgia transferred both investigations to the Investigation Unit of the Office of the Chief Prosecutor of Georgia. The investigation is pending.

Giorgi Mdinaradze Case

28. On 8 November 2015, the Investigation Unit of the Office of the Chief Prosecutor of Georgia opened the investigation against police officers into the allegation of excess of official authority under aggravating circumstances, committed by the police officials.

On 9 November 2015, Giorgi Mdinaradze was granted the status of victim.

On 14 November 2015, Lasha Kvirkvaia, the Head of 5th Division of the Vake-Saburtalo Unit of the Tbilisi Main Unit, Ministry of Internal Affairs of Georgia, was charged with the excess of official authority, committed under aggravating circumstances. Court applied detention as a measure of constraint against the person concerned.

On 29 December 2015 Tbilisi City Court held pre-trial hearing of the case. As a result of the hearing, the pre-trial judge transferred the case for hearing on the merits.

The hearing on the merits of the above-mentioned case is currently pending before Tbilisi City Court.

Investigation of the Cases of Ill-Treatment

29. In 2014, the Public Defender's Office (PDO) addressed the Prosecutor's Office of Georgia with 31 proposals regarding the alleged ill-treatment committed by Police and employees of the penitentiary system.

After a careful study of the received information on 19 proposals, corresponding investigations were initiated. In relation to the remaining 12 proposals, no signs of offences were identified. Therefore, respective justification for not starting investigations on those 12 cases was provided to the PDO.

2014- 2015 (eight months) Statistics of the Cases Related to Prison Staff and Police Officers

30. In 2014, 6 employees of the penitentiary establishment were prosecuted for torture and inhuman treatment of inmates. Among them were former heads of the Penitentiary Departments and their deputies, and two heads of the penitentiary establishment.

In 2014 guilty judgments were rendered against 9 persons.

In the 8 months of 2015, three employees of the penitentiary establishments were prosecuted. Among them was a former head of the penitentiary establishment #17.

In addition, four employees of the penitentiary establishments were convicted in 2015. Three among them were convicted under the Article 1443 (Degrading or Inhuman Treatment) and one person under Article 332 (Abuse of Official Authority). The convicts were former heads of the penitentiary establishment #17 and #4, a deputy head and a chief inspector, Main Unit, Legal Regime of the penitentiary establishment #4.

In 2014, 27 employees of the Ministry of Internal Affairs were prosecuted for torture, inhuman treatment of detainees and other related crimes. Among them were former Minister Ivane Merabishvili, one of the heads of the regional police office and other police officers.

In 2014, guilty judgments were rendered against 10 police officers.

In 2015, four police officers were prosecuted, out of which three persons were charged under Article 1441 (Torture) and one under Article 333 (Excess of Official Authority) of the Criminal Code of Georgia.

In 2015, guilty judgments were rendered against two police officers.

Other Efforts of the PSG in the Area of Combating Torture and other Inhuman or Degrading Treatment

31. Office of the Chief Prosecutor of Georgia is actively involved in the process of implementing the 2015-2016 Action Plan for the Fight against Torture, Inhuman, Cruel or Degrading Treatment or Punishment elaborated by the Interagency Coordination Council Working on the measures against torture, inhuman, cruel or degrading treatment or punishment. The PSG periodically submits reports before the Council concerning investigations and prosecutions involving torture and inhuman treatment.
32. With the view of ensuring effective fight against torture and ill-treatment, qualification-raising of the prosecutors and retraining of the staff of the PSG take place on a constant basis. Recommendation on Effective Investigation of Torture, Threat of Torture and Inhuman and Degrading Treatment (crimes punishable under Articles 1441, 1442, 1443 of the Criminal Code of Georgia) is issued for prosecutors, which is to be updated in 2016.
33. On 13 July 2015, with financial support and assistance of the Council of Europe and EU, the Office of the Chief Prosecutor of Georgia organized a workshop concerning the legal qualification of ill-treatment incidents. Prosecutors, together with the judges attending the workshop, discussed the conflict between Article 1441 (Torture), Article 1443 (Inhuman or Degrading Treatment) and Article 333 (Excess of Official Power) of the Criminal Code of Georgia, whether the qualification in general is defined correctly and if the incorrect qualification represents a violation of Article 3 of the Convention. The mentioned workshop was also attended by the Public Defender.
34. Achieving high level of transparency is among the priorities of the Department for Investigating Offences Committed in the Process of Criminal Proceedings. Since its

creation on 2 February 2015, the Department informed the public about the results of its activities through 8 press conferences. The information on the activities of the Department has been also published on the website of the PSG. The department is committed to keep the public informed about the results of its activities in future as well.

Tolerance and non-discrimination

35. The PSG has invested and is committed to continue investing significant efforts in increasing the competence of prosecutors with respect to the anti-discrimination matters. The measures undertaken recently for the achievement of the said goal are as follows:
36. In 2014, 57 intern-prosecutors and 23 newly-appointed prosecutors were trained on anti-discrimination related issues. In 2015, 68 prosecutors were trained on the same matters.
37. In the end of November 2015, a training of trainers was held on the issues related to the elimination of all forms of discrimination. In the framework of the said training, the study program corresponding to the international standards as well pertinent materials were elaborated for the future trainings of prosecutors.
38. The PSG closely cooperates with the Council of Europe on these issues. Due to this cooperation, trainings on anti-discrimination issues are conducted by the experts invited by the Council of Europe.
39. Several trainings were conducted in 2015 in the scope of the Project 'Capacity Building of the Ministry of Internal Affairs of Georgia to ensure/enhance adequate Human Rights Protection in Temporary Detention Isolators through trainings and introduction of new standard of work'.
40. In 2015, 11 Trainings on "non-discrimination" were conducted for prosecutors, Police officers and the MIA staff on investigation and response to such cases. The duration of trainings was a day and half. The trainings were jointly conducted by representatives of

the MIA Academy, the Prosecutor's Office and the Ombudsman's Office. The trainings covered all regions of Georgia and were pertained to the following issues:

- International standards and mechanisms for prohibition of discrimination
- Georgian legislation on non-discrimination
- Law of Georgia on Elimination of All Forms of Discrimination
- Law of Georgia on Gender Equality
- Stereotypes, Xenophobia, Racism and related cases
- Description of a hate crime
- Role of law enforcement agencies in countering discrimination (code of ethic and conduct, international best practices)
- Case study
- European Convention on Human rights
- Discrimination case investigation techniques, etc.

In total, 222 law enforcers were trained.

1600 brochures on non-discrimination were printed and distributed in Police departments throughout Georgia, the MIA Academy, the Prosecutor's Office and other law enforcement agencies.

41. The Human Rights Protection Unit of the Chief Prosecutor's Office of Georgia has drafted the recommendation (internal guideline) for prosecutors and investigators on application of Article 53 §31 of the Criminal Code of Georgia.
42. The above recommendation provides a guidance for prosecutors and investigators on qualification of hate crimes, investigation particularities and collection of evidence.
43. In order to maintain precise statistics, the draft recommendation also obliges prosecutors to report to the Human Rights Protection Unit each case where the motive under Article 53§31 of the Criminal Code of Georgia is identified.
44. Currently, the mentioned recommendation is being reviewed by the EU expert. After finalizing the review process, the document will be circulated among the employees of the PSG.

Incident of May 17, 2013

45. Investigations have been launched with regards to 6 cases reported during 17 May 2013 demonstrations.
46. With regards to the incidents occurred on 17 May 2013, 14 complaints have been lodged, out of which 8 have been dismissed in agreement with the Prosecutor's Office and initial examination and 6 investigations have been launched.
47. On May 22, 2013 these investigations have been merged as one criminal case under Article 161 (1) of the Criminal Code, illegally and forcefully breaching the right to gatherings and manifestations. 5 persons have been detained; two of them were churchmen (no preventive measure was imposed by the Court) and three were civilians (the Court imposed a bail as a preventive measure).
48. During a pre-trial hearing the Court terminated prosecution in relation to one person and with respect to the remaining four persons forwarded the cases for hearing on the merits. On 23 October 2015, the Court acquitted the remaining four persons. The PSG appealed the above-mentioned decision of acquittal in the Court of Appeals. The hearing is pending appeal.

Kobuleti Incident

49. Investigation in Kobuleti incident is carried out under Article 151 of the Criminal Code of Georgia, which prescribes the liability for the offence of threatening.

Investigation continues into the details of the incident that occurred in September 2014, when the head of a pig was nailed to the door of one of the buildings located in Kobuleti, which was intended for the Muslim Confessors Boarding House. Herewith, the population that gathered on spot allegedly threatened the person in charge of constructing the Boarding House.

Various investigative actions were conducted in relation to the given case; in particular, more than 70 individuals were interviewed, the crime scene was inspected. At this stage, there is no final decision in relation to this criminal case. After the investigation collects sufficient evidence, a criminal prosecution will be launched against the possible perpetrators.

Mokhe Incident

50. On 22 October 2014, the workers that arrived in Mokhe Village (Adigeni District) to reconstruct an old club encountered resistance from local residents who did not allow them to start the works on site; they maintained that the building belonged to the Muslim community and they planned to open a mosque in the building. Law-enforcement authorities were mobilized on site due to the aforesaid. Since the Muslim confessors tried to break into the building (including with the use of physical force) for the purpose of obstructing the construction works, the law-enforcement officers were forced to arrest several protesters.

With the view to establish whether the police officers used excessive force during the mentioned incident, in December of the same year, the PSG launched investigate under Article 333 of the Criminal Code of Georgia, which imposes criminal liability for the excess of official authority.

More than 50 witnesses were interviewed, forensic medical and commodity examinations were appointed. As of today, there is no final decision on the criminal case. After the investigation collects sufficient evidence, a criminal prosecution will be launched against the possible perpetrators.

Jehovah's Witnesses

51. Please be advised that the Public Defender reported 19 cases of alleged abuse and violence against the members of the Jehovah's Witnesses community in 2014, instead of 45 mentioned in the report.

In 2014, the Prosecutor's Office of Georgia launched investigation on 19 criminal cases for the crimes committed on the basis of religious intolerance. The cases concerned the criminal acts committed against the Jehovah's Witnesses with religious motives.

In 2014, 7 individuals were prosecuted for the commission of crimes based on religious intolerance. Criminal prosecution against 6 individuals were launched under Article 156 §2 (a) of the Criminal Code of Georgia. One individual was prosecuted for the commission of crime under Article 155 of the Criminal Code of Georgia (Illegal Interference in Performing Religious Rite).

Out of the 7 individuals mentioned above, the guilty judgments have been rendered against 5 persons. As for the remaining two, the court is hearing the merits of the cases. In 2015, the Prosecutor's Office of Georgia launched investigation on 20 criminal cases for the crimes committed on the basis of religious intolerance. 18 cases concerned the criminal acts committed against the Jehovah's Witnesses with religious motives, and two criminal cases concerned the offences against Muslim persons.

52. In 2015, 5 individuals were prosecuted for committing crimes based on religious intolerance. Criminal prosecution against one individual was launched under Article 156 §1 (persecution) of the Criminal Code of Georgia. One individual was prosecuted for committing a crime under Article 151 (threat) of the Criminal Code of Georgia. Three individuals were prosecuted for the commission of crime under Article 125 (beating) of the Criminal Code of Georgia. Guilty judgments were rendered against all of them (in total, 5 convicts).

53. Committing crime with religious motives has not been confirmed in 7 criminal cases initiated in 2015. Correspondingly, investigation into these cases was terminated in compliance with Article 105 §1 (a) of the Criminal Procedure Code of Georgia.

54. Investigation is still underway in relation to 8 criminal cases.

55. As for the allegations related to pressure on children belonging to religious minority groups in public schools, it has to be underlined that one of the main strategic priorities of the Ministry of Education and Science of Georgia for the development of the education system is to provide equal access to high quality general education for all children irrespective of age, religion, place of residence, ethnicity and social status which implies education system to be free of indoctrination, proselytism and religious discrimination.

Other Human Rights Issues

56. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia provides accommodation program for the families affected by and displaced as a result of natural disasters (eco-migrants). Under

this program any citizen of Georgia, who was affected by natural disasters, established by Minister's Decree #779 on 13 November 2013, such as: landslide, mudslides, stone falls, rock-falls, river erosion, snow avalanches, can apply to the Ministry with the "application for the obtaining of living spaces". Afterwards, in case of approval of damage fact by the municipality, the received application is studied and evaluated according to the criteria defined by Minister's decree. After the evaluation, the commission, where various authoritative non-governmental and international organizations are involved, makes a decision on granting or rejecting the individual applications of the families.

57. Everyone, including eco-migrants settled in so-called "Dream Town" as well as families migrated to Tsalka, can participate in the mentioned program. These families can apply to the central and territorial bodies of our Ministry, as well as to the Ministry of Health and Social affairs of Adjara.

58. The Government of Adjara Autonomous Republic has conducted a profound survey on the conditions and the state of affairs of the residents of the so-called "Dream Town". By the order of the Chairman of Autonomous Republic of Ajara, a joint-government commission was set up to study the cases of squatter settlement households in residential areas which are under the ownership of the state. The commission has thoroughly elaborated the particular type of act for the study of every family and recorded each family settled on the territories of so-called 23rd and 53rd military battalions. Total number of recorded families made up 1 397. All the families were divided according to their primary residence and consequently relevant lists of all recorded families were sent to the municipalities. They studied each case by visiting families at their referred addresses. Based on the information acquired by the commission, squatter families have been categorized according to the following type and number:

1. Families who were affected by natural disasters - 31 (families who have already received relevant state aid)
2. Socially vulnerable (with rating score less than 57001) - 404
3. Single mothers – 0
4. Squatter families from other regions -137
5. Families who do not fall under any of the given categories -825

59. Socially vulnerable families enjoy all the benefits that are determined by the law. They also have an opportunity to participate in all the programs available in the country, among them in the sphere of Agriculture and Healthcare.
60. The issue of the so-called "eco-migrants" also requires a great attention, as Adjara is distinguished by its frequent number of natural disasters. Up to 236 eco-migrant families have been given housing units free of charge.
61. Along with all above mentioned, it should also be outlined that 1 111 families affected by the natural disasters received material aid from the Government Reserve Fund of Adjara Autonomous Republic. The total sum made up 2185335 (two million one hundred eighty five thousand three hundred and thirty five) GEL. The given finances were used for restoration works of the damaged houses.