



**Report on the Fulfillment of Recommendations/Proposals Issued  
by the Public Defender of Georgia in 2014**

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## I. Foreword

On 31 July 2014, the Committee on Human Rights and Civil Integration of the Parliament of Georgia by the majority of votes approved the Resolution based on the Report of the Public Defender of Georgia about the Protection of Human Rights and Freedoms.<sup>1</sup> On the basis of the Resolution of the Parliament of Georgia, the respective agencies are obliged to fulfill the recommendations of the Public Defender of Georgia. The list of the measures which should be taken for their implementation is also determined. The report on the fulfillment of the recommendations will be submitted by the government agencies to the Parliament in the beginning of 2015.

The Commissioner for Human Rights of the Council of Europe, Nils Muiznieks and the members of his team visited Georgia from 20 to 25 January. Within the framework of the visit, the Commissioner held meetings dealing with the issues pertaining to the administration of justice, protection of human rights, ethnic minorities, tolerance and non-discrimination.<sup>2</sup>

On 12 May 2014, the Commissioner for Human Rights of the Council of Europe presented the report in which particular attention is given to the following issues:

- After amending legal provisions regarding High Council of Justice of Georgia, the degree of the political interference in the functioning of the above-mentioned agency has been reduced. Nevertheless, it is necessary to continue further efforts for the improvement of the situation in this field.
- The increased efforts should be undertaken towards the improvement of professionalism and efficiency of the Prosecutor's Office of Georgia, which is one of the key agencies of the criminal justice system. Despite the fact that some steps have been taken to reinforce the institutional independence of the Prosecutor's Office, during the meetings dissatisfaction was expressed with the frequent changes of prosecution authorities and improper investigation of the violations of human rights. The prosecutor's appointment, promotion and career advancement should be carried out in compliance with the fair, unbiased and merit based procedures. This approach is established by the Recommendation of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system.
- The Commissioner once again expressly emphasizes the significance of the fair, unbiased and transparent trial of the persons accused of ill-treatment, the imposition of a sentence commensurate with the seriousness of the crime and providing public with accurate information regarding the process of trial.

On 30 April 2014, the National Strategy for the Protection of the Human Rights of Georgia (for the years 2014-2020) was adopted by the resolution of the Parliament of Georgia.<sup>3</sup>

The following issues are highlighted in the resolution:

- The achievement made and challenges facing Georgia in the field of human rights which were objectively and comprehensively reflected in 2013 report on "Georgia in Transition" adopted by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia<sup>4</sup>.

Georgian authorities share the assessments enshrined in the report and take into account the necessity of the further implementation of the recommendations contained in this report.

- In line with the recommendations made by the Public Defender of Georgia, international and non-governmental organizations and the report of Thomas Hammerberg on the achievements and challenges existing in the field of human rights in Georgia, the strategic directions are defined as strategic priorities for the years 2014-2020, as outlined below. However, the state is under obligation to ensure the observance of those universally recognized rights which are not explicitly determined as strategic priorities.

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<sup>1</sup><http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-2013-wlis-adamianis-uflebata-da-tavisuflebata-dacvis-shesaxeb-momzadebul-dadgenilebas-mxari-dauchira.page>

<sup>2</sup><https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2523559&SecMode=1&DocId=2139142&Usage=2>

<sup>3</sup> [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2348314](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2348314)

<sup>4</sup>[http://eeas.europa.eu/delegations/georgia/press\\_corner/all\\_news/news/2013/human\\_rights\\_2013/human\\_rights\\_report\\_2013\\_en.htm](http://eeas.europa.eu/delegations/georgia/press_corner/all_news/news/2013/human_rights_2013/human_rights_report_2013_en.htm)

On 10 December 2014, the Public Defender of Georgia presented the report on the situation of the protection of human rights and freedoms in Georgia <sup>5</sup>

In the report it is pointed out that during the reporting period the number of notifications regarding ill-treatment of the inmates (physical and verbal abuse) has increased.

The implementation of the general and specific recommendations issued by the international and national institutions to Georgian authorities is vital for the establishment of high standards of human rights protection and for the strengthening of effective mechanisms.

## II. Introduction

According to article 2 of the Georgian organic law on “Public Defender of Georgia”, public defender monitors the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.

The Public Defender of Georgia independently examines the situation with regard to the protection of human rights and freedoms, and the facts of their violation, based on both received statements and appeals and on his/her own initiative.<sup>6</sup>

Pursuant to article 21 of the Georgian organic law on “Public Defender of Georgia”, based on the results of an inspection, the Public Defender of Georgia may:

- submit proposals, observations and recommendations<sup>7</sup> related to the legislation of Georgia and draft laws to the Parliament of Georgia or other relevant bodies in order to protect human rights and freedoms, improve conditions and treatment of detainees, prisoners, persons whose liberty is otherwise restricted and of convicts, as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment;
- in order to restore violated human rights and freedoms, send proposals and recommendations to state and local self-government authorities, public institutions and officials whose actions caused a violation of rights and freedoms guaranteed by the State;
- request relevant investigating authorities to start an investigation and/or criminal prosecution, if, after examining the case, he/she comes to the conclusion that there are elements of crime in the case;
- make proposals to relevant bodies on disciplinary or administrative liability of persons whose actions caused a violation of human rights and freedoms.

Moreover, according to the Georgian law on “Elimination of all forms of discrimination”, Public Defender of Georgia monitors issues regarding elimination of discrimination and ensuring equality. In order for Public Defender to carry out his power, he prepares and submits to relevant institutions or persons, general proposals on preventing or combating discrimination.

Even though the recommendations/proposals issued by the Public Defender of Georgia are not legally binding, article 24 of the organic law on “Public Defender of Georgia” states imperatively that the State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.

Organic law on “public defender of Georgia” does not define whether it is working or calendar 20 days within which the examination results should be reported. Consequently, regarding timeframe calculation Public Defender of Georgia applies to the general terms and utilizes the working days.

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<sup>5</sup> <http://ombudsman.ge/uploads/other/2/2148.pdf>

<sup>6</sup> Art. 12 of the organic law on “Public Defender of Georgia”.

<sup>7</sup> Notwithstanding the terminological difference, which therefore implies to the diverse meaning, common term – recommendation is present.

Therefore, regardless the advisory nature, examination of recommendations/proposals and reporting the results in writing within the timeframe set by the law is mandatory.

In addition, examination results should be supplied by the head of a state or local self-government authority, public institution and official who was directly addressed by the Public Defender.

The report covers all the recommendations/proposals that were sent to various agencies from 01 January 2014 to 31 December 2014 period of time.<sup>8</sup>

Presented report includes not only the quantitative statistics of the fulfillment of recommendations/proposals issued by the Public Defender of Georgia, but the qualitative indicators as well. While designating the qualitative ratio of fulfillment, Public Defender descants the criteria such as fulfillment timing, restoration of the infringed right, effectiveness of the taken measure and the outcome.

### III. General Statistical data

Public Defender of Georgia issued 154 recommendations/proposals in 2014 (Annex 1), namely:

Recommendation	66
Proposal	85
Observation	0
Application	2
General Proposal	1

The addressees of the recommendations/proposals are central authorities and officials as well as local authorities (Annex 2).

Local self-government bodies	16
Central state bodies	24
Law-enforcement bodies	56
Ministries of Georgia (except for law-enforcement bodies)	43
State LEPL/LLC/Non-entrepreneurial (non-commercial) legal person	10
Central bodies of Autonomous Republic	3
Local bodies of Autonomous Republic	1
Legal entities of private law	1

It should be noted that after the adoption of the Georgian law on “Elimination of all forms of discrimination”, the Public Defender of Georgia is entitled to address the legal entities of private law with a general proposal.

<sup>8</sup> Those responses to the recommendations/proposals received after December 31, 2014 will be reflected additionally.

The indicator of the fulfillment of the recommendations/proposals issued by the Public Defender of Georgia in 2014 amounts to the following numbers:

- 35 recommendations/proposals were fulfilled - 23 %
- 22 recommendations/proposals were partially fulfilled - 14 %
- 47 recommendations/proposals were not fulfilled - 31%
- 28 recommendations/proposals were left without response - 18 %

(Annex 3, Annex 4)

According to the survey conducted with the support of the United Nations Development Programme (UNDP) 48 percent (48%) of the recommendations/proposals issued in 2013 were not fulfilled. Pursuant to the methodology of the survey this percentage also covers recommendations/proposals on which no response was received and therefore are considered unfulfilled.

While summing up the data of 2014, the recommendations/proposals on which no response was received were grouped separately, since according to the article 24 of the organic law on the “Public Defender of Georgia” state and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obliged to examine them and report in writing on the results of examination to Public Defender of Georgia within 20 days.

After summing up the data of 2014 including “not fulfilled” (31%) and “no response received” (49%) categories of the recommendations/proposals, it can be concluded that 49 percent (49%) of the recommendations/proposals issued by the Public Defender of Georgia are not fulfilled.

<b>Form</b>	<b>Fulfillment indicator (Sum)</b>	<b>Fulfillment % indicator (Sum)</b>
Fulfilled	35	23%
Not fulfilled	47	31%
Partially fulfilled	22	14%
No response received	28	18%
Deadline for response has not expired	22 <sup>9</sup>	14%

The 12 percent (12%) which are 19 recommendations/proposals issued by the Public Defender of Georgia were forwarded by the addressees to other agencies or to the territorial units of the same agency.

From the forwarded recommendations/proposals the Public Defender of Georgia has not received response on 2 recommendations/proposals, 8 were not fulfilled, 5 were fulfilled and 4 were partially fulfilled.

In comparison with 2013, the total number of recommendations/proposals issued by the Public Defender of Georgia in 2014 is increased.

The problem of the forwarding of the recommendations/proposals will be broadly discussed in the chapters dealing with trends of this report.

<sup>9</sup> In December 2014, 24 recommendations/proposals were issued. When this report was prepared, the timeframe established by legislation for the response was not exhausted.

**Comparative table recommendations/proposals issued by the Public Defender of Georgia (general data by the agencies) - 2013/2014**

	2013	2014
President of Georgia	1	2
Parliament of Georgia (Chairperson of Parliament)	2	7
Government of Georgia	4	10
Prosecutor's Office of Georgia (chief prosecutor, including acting chief prosecutor)	22	40
Ministry of Labour, Health and Social Affairs of Georgia	16	7
Ministry of Internal Affairs of Georgia (including Tbilisi' and regional divisions)	12	14
Ministry of Defence of Georgia	2	2
Ministry of Corrections and Probation of Georgia (including deputy-minister)	11	16
Local self-government bodies (city hall, city council, city board)	12	16

The total number of recommendations/proposals issued to a specific agency or an official gives us the possibility to analyze the general information about the violations of human rights and to identify problematic field.

In 2014, 10 and more recommendations/proposals were issued to the following agencies/officials:

<b>Agency/Official</b>	<b>Quantity of issued recommendations</b>
Chief Prosecutor	40
Minister of Corrections and Probation	16
Minister of Internal Affairs	10

#### IV. Statistical Data by the Agencies

As it was mentioned above, Public Defender of Georgia issued 154 recommendations/proposals in 2014. Number of recommendations/proposals issued to the respective agencies is sorted in the following manner:

#	The recommendations/proposals issued by the Public Defender	total 154
1	Director of Non-entrepreneurial (non-commercial) legal entity "Agricultural Projects' Management Agency"	1
2	Minister of Health and Social Affairs of A/R of Abkhazia	1
3	Head of Environment and Natural Resources Division of A/R of Adjara	1
4	Chairman of Government of A/R of Adjara	1
5	Gamgebeli of Akhalkalaki Municipality	1
6	Local Council of Akhmeta Municipality	1
7	Acting Mayor of Batumi	1
8	Minister of Education and Science	9
9	Minister of Economy and Sustainable Development	2
10	Gamgebeli of Vani Municipality	2
11	Gamgebeli of Zestaphoni Municipality	1
12	Minister of Defence	2
13	Head of Architecture Service of Tbilisi	1
14	Mayor of self-governing City of Poti	1
15	Minister of Justice	1
16	Secretary of High Council of Justice	4
17	Minister of Culture and Monument Protection	2
18	Chairman of Local Council of Mestia Municipality	1
19	Chief Prosecutor	39
20	Acting Chief Prosecutor	1



21	Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia	1
22	Chairman of Parliament	7
23	President of Georgia	2
24	Prime Minister	7
25	Prime Minister; Minister of Finance; Chairman of Budget and Finance Committee of Parliament; State Commission for examination of Domestic Debts	1
26	Mayor of Rustavi	2
27	Chief Executive Officer of JSC Bank of Georgia	1
28	Minister of Foreign Affairs	1
29	Minister of Corrections and Probation	15
30	Deputy Minister of Corrections and Probation	1
31	Government of Georgia	3
32	Minister of Agriculture	1
33	Head of LEPL Education Management Information System	1
34	LEPL Artistic Director of the Tbilisi Zakaria Paliashvili Opera and Ballet State Theatre	1
35	Chairman of the LEPL National Agency of Public Registry	4
36	Acting Chairman of the LEPL National Agency of Public Registry	1
37	Head of the Investigation Service of Ministry of Finance	2
38	Mayor of Kutaisi	1
39	Gamgebeli of Kareli Municipality	1
40	Acting Gamgebeli of Kareli Municipality	1
41	Acting Mayor of Kutaisi	1
42	Director of (LLP) Emergency Medical Center	1
43	Minister of Labour, Health and Social Affairs; Director of (LEPL) State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking	1
44	Minister of Labour, Health and Social Affairs	7
45	Head of Department of Internal Audit of Ministry of Labour, Health and Social Affairs	1

46	Head of General Inspection of Ministry of Internal Affairs	1
47	Head of Guria Regional Main Division of Ministry of Internal Affairs	1
48	Head of IV unit of Vake-Saburtalo Division of Ministry of Internal Affairs	1
49	Minister of Internal Affairs	10
50	Head of III unit of Old Tbilisi Division of Ministry of Internal Affairs	1
51	Acting Gamgebeli of Tsalka	1
52	Gamgebeli of Tskaltubo Municipality	1

The agencies/officials which failed to fulfill the recommendations/proposals are listed in the table below:

Agency/Official	The number of recommendations/proposals which were not fulfilled
Ministry of Internal Affairs	10
Chief Prosecutor's Office	8
Government of Georgia	5
Secretary of High Council of Justice	4
Minister of Corrections and Probation	4
Ministry of Economy and Sustainable Development	2
President of Georgia	2
Minister of Culture and Monument Protection	2
Minister of Defence	2
Head of the Investigation Service of Ministry of Finance	2
Mayor of Rustavi	2
Minister of Education and Science	1

The list of agencies from which no response was received on the recommendations/proposals issued by the Public Defender of Georgia together with the brief description of the infringed rights is given in the table below. It should be noted that the overwhelming majority of the recommendations/proposals issued to the Prosecutor's Office of Georgia on which no response was received deals with the ill-treatment, false imprisonment, actions of law-enforcement officials, etc.

Agency/Official	Contents of recommendations (violated rights)	Total Number
Chief Prosecutor	Actions of law enforcement officials; launching of investigation	9
	Ill-treatment; launching of investigation	
	Ill-treatment; launching of investigation	
	False imprisonment; launching of investigation	
	Right to property; coercion; launching of investigation	
	Ill-treatment; launching of investigation	
	Ill-treatment; launching of investigation	
	Ill-treatment; rights of inmates:torture and beating of inmates, launching of investigation;	
	Ill-treatment; launching of investigation	

Secretary of the High Council of Justice	Disciplinary violation committed by judge; illegal sentence	3
	Disciplinary violation committed by judge; illegal ruling	
	Procedural violations in criminal cases; Disciplinary violation committed by judge: fair trial	

Chairman of Parliament	Amendments in the normative acts; proper implementation of the right to defence	3
	Legal status of life-sentence prisoners; amendments in the normative acts	
	Domestic violence / Women's rights; Social issues	

Minister of Internal Affairs	Violation of freedom of movement; Procedural violations in criminal cases	2
	Right to labor; Violation of General Administrative Code of Georgia; Social Issues	

President of Georgia	Fair trial; Procedural violations in criminal cases; Application of retrospective law	1
Prime Minister	Right to labor; Social Issues	1

Minister of Foreign Affairs	Double jeopardy of Georgian citizen V.I.	1
Minister of Corrections and Probation	Rights of inmates; Health issues; Conditions in prisons; social issues	1
Gamgebeli of Kareli Municipality	Right to labor; Social Issues	1
Acting Gamgebeli of Kareli Municipality	Social issue; actions of administrative body and public servants; Right to labor	1
Chairman of Local Council of Mestia Municipality	Social issue; Health issue; Right to education; Rights of children	1
Gamgebeli of Akhalkalaki Municipality	Social issue; Right to adequate housing/shelter	1
Minister of Education and Science	Social issue; Rights of children; Right to education	1
Minister of Economy and Sustainable Development	Social issue; Right to property; actions of administrative body and public servants	1
Mayor of Self-governing City of Poti	Social issue; Right to adequate housing/shelter	1

The recommendations issued by the Public Defender of Georgia in 2014 were fulfilled by the following agencies/officials:

Agency/Official	Fulfilled/Total number
Minister of Corrections and Probation	4
Head of Guria Regional Main Division of Ministry of Internal Affairs	1
Head of III unit of Old Tbilisi Division of Ministry of Internal Affairs	1
Chief Prosecutor	15 (not fulfilled – 8, no response - 9)
Head of General Inspection of Ministry of Internal Affairs	1
Head of IV unit of Vake-Saburtalo Division of Ministry of Internal Affairs	1
Director of (LLP) Emergency Medical Center	1
Chairman of the LEPL National Agency of Public Registry	2
Minister of Labour, Health and Social Affairs	2

Minister of Education and Science	3
Local Council of Akhmeta Municipality	1
Prime Minister	1
Chairman of Parliament	2

The performance indicator of the recommendations/proposals issued by the Public Defender of Georgia in 2014 (Annex 6)

Outcomes	ToTal number	% indicator
Outcome accomplished (recommendation/proposal was considered, violated right was restored)	15	11 %
Outcome not accomplished (recommendation/proposal was not considered, violated right was not restored)	82	63 %
Promise of fulfillmen (agency/official replies that the recommendation/proposal will be considered in future, e.g. in the process of budget planning)	18	14 %
The case is submitted to the court (The case was heard in a court at the time when the recommendation/proposal was sent)	4	3 %
Outcome partially accomplished (violated right was partially restored)	12	9 %

## V. Data in the Context of Rights

Analysis of 2014 recommendations revealed the group of the rights that were most frequently referenced by the Public Defender in his application to state agencies and authorities. (Annex 7)

General figures are the following:

Recommendations/Proposals Issued on Human Rights Violations	Quantity
Social Rights	63
Ill-treatment	29
Health Rights; Prison Conditions	3
Violation of rights by the law enforcement agencies	4
Fair Trial Right	5

Within the social field following issues should be identified:

- Right to adequate housing/shelter is particularly problematic in the regions - out of 10 recommendations issues all were directed towards the representatives of local self-government (City Councils and City Halls of Kutaisi, Poti, Tskhaltubo, Rustavi, Akhalkalaki, Vani, Zestaponi, Vani, etc.)
- With respect to children's rights, the most pressing issue concerned the realization of the right to receive education. 4 recommendations were issued in 2014 regarding the right of socially vulnerable children to receive education.
- The realization of the right to education is particularly problematic in regions of Georgia - All seven recommendations issued in 2014 concerned conditions of public and pre-schools (infrastructural difficulties, financing issues) in the regions (Vani, Mestia, Akhmeta Municipalities).

In 2014 the Public Defender repeatedly made public statements calling for the General Prosecutor to pay more attention to the allegations of ill-treatment. As it can be witnessed in this report the General Prosecutor's office failed to comply with 8 recommendations/proposals and did not respond to 9 recommendations/proposals. Out of 15 recommendations complied by the General Prosecutor's office (mostly concerning the initiation of investigation), Public Defender does not have any information on the outcome of the investigations.

## **VI. Positive Tendencies Identified in 2014**

In 2014 the Public Defender addressed the Parliament of Georgia with 7 proposals on amendments of various legislative acts. While in the beginning of the year no information was received by the Public Defender's office concerning the status of proposals, positive shift was identified for the end of the year, whereby not only did the Public Defender receive responses on the proposals, but also the information on issues put on Parliamentary Committee agenda.

Abovementioned practice definitely is a positive tendency and we remain hopeful that in 2015 the cooperation with the legislative body stays to be effective, especially in the context of legislative proposals Public Defender's Office intends to submit to the parliament in order to fulfill aims set forth in the law on "Elimination of All Forms of Discrimination."

## **VII. Negative Tendencies Identified in 2014**

### **Independent and Effective Investigation**

According to the cases examined by the Public Defender's Office, it becomes clear that frequently occurrences of ill-treatment are not given proper legal qualification. In particular, the investigation is initiated under lighter provisions - of abuse of power, while the Criminal Code of Georgia specifically provides for torture, inhumane or degrading treatment.<sup>10</sup> Public Defender has made numerous public statement on this issue.<sup>11</sup>

<sup>10</sup> Criminal Code of Georgia, Articles 144<sup>1</sup>, 144<sup>3</sup>.

<sup>11</sup> <http://www.ombudsman.ge/ge/news/sagangebo-gancxadeba-sasdjelagsrulebis-8-dawesebulebashi-arasatanado-mopyrobis-faqtan-dakavshirebit.page>

Additionally, jurisdictional matters still remain problematic,<sup>12</sup> in particular - the conduct of professional assessment/investigation is made by the same law enforcement agency, whose representative is suspected of having committed a misconduct/crime. The latter initially calls into question impartiality of the investigation. Therefore, it is necessary to establish an independent investigation mechanism. In this regard, Public Defender's Office prepared a special report in 2014 "Practice of investigating the alleged crimes committed by the law enforcement officials, legal framework and international standards of effective investigation".<sup>13</sup> In the Special Report Public Defender recommended the Parliament of Georgia to draft and implement amendments to the relevant legislation, in order to create an independent investigative body, with the authority to investigate alleged crimes against life, torture, inhumane and degrading treatment committed by the law enforcement (employees of Ministry of Justice, Internal Affairs, Prosecutor's Office, Ministry of Correction and Probation and the crimes committed on the territory of penitentiary).

The necessity to re-regulate the jurisdictional matters is also substantiated by the responses from the investigative organs. According to the mentioned letters, investigation is frequently terminated, since during the interrogations inmates deny the existence of any illegal conduct of the law enforcement officials directed against them. The frequency of such occurrences leads us to conclude that inmates have mistrust and fear towards the process. The latter, in turn, hinders the conduct of effective investigation.

## **VIII. General Tendencies**

### **1. Trend of Reference to the Future**

In 2014 reporting period, the number of letters received in response of Public Defender's recommendations/proposals are vague, frequently simply referencing them to the future compliance or re-examination of the issue at some time in the future.

It should be mentioned that in 2013 reporting period, Public Defender's Office received similar responses with reference made to future fulfillment/consideration of recommendations/proposals. Therefore, in 2014, in order to monitor proper restoration of the violated rights, the office of the Public Defender sent letters to all of the state agencies that have promised to undertake actions in future. In particular: information was requested from the Ministry of Education and Science concerning construction of a new school in village Lambaro. In 2013 the Public Defender was notified that the construction of a new school in village would be initiated in the fourth quarter of 2013. In September 2014 Ministry of Education and Science notified Public Defender that Lambalo Public School construction is scheduled to be completed on 16 July 2015.

In September 2014, Public Defender also requested the information from Gamgebeli of Gori Municipality, who had notified us in 2013 that providing living space (shelter) for citizen M.Sh. would be taken under supervision and as soon as such space would become available his request would have been considered. Public Defender never received a response from Gori Municipality on 2014 letter, whereby Public Defender requested the information whether or not M.Sh.'s request was satisfied and whether the next year budget of the municipality allocated funds for accommodating needs of homeless citizens.

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<sup>12</sup> In case *Erukidze and Girgvliani v. Georgia* (App. No. 25091/07, 26.04.2011, para. 243) the European Court of Human Rights stated: "For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence."

<sup>13</sup> See report at: <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/saxalxo-damcvelis-specialuri-angarishi-efeqturi-gamodziebis-sakitxebze-2014-weli.page>

In September 2014 Public Defender addressed Tbilisi Nadzaladevi District Gamgebeli on the status of recommendation issued on 1 August 2013. The recommendation concerned providing assistance and shelter for socially vulnerable family residing in Tbilisi, Ghogheridze Street No.3 (former School No. 13 Building). On 12 August 2013, the Public Defender was notified that District Municipality lacked resources to comply with the recommendation. The letter also mentioned that Nadzaladevi District Gamgeoba would discuss the matter with the Council of Tbilisi and would try to resolve the matter according to the law. It should be mentioned that the Public Defender's Office did not receive any response from Nadzaladevi District Gamgeoba to its September 2014 letter.

In September 2014 Public Defender addressed the City Council of Tbilisi and requested the information concerning social protection and providing shelter for homeless persons who were settled in temporarily installed tents at the end of 2013. In response, Public Defender was notified that the Tbilisi City Council plans to construct homeless shelter on the territory of Lilo in 2015.

Subsequently, delaying the process of implementation of recommendations and slow actions from the side of government agencies hinders the process of effective restoration of human rights violations itself.

## 2. Redirection to other Institutions

In connection with implementing 2014 recommendations/proposals, tendency of redirecting such letters to other agencies or officials was observed.

### In total 19 recommendations/proposals were redirected in 2014

For example:

- Recommendation issued to the Ministry of Culture and Monument Protection (dated 23.05.2014 Letter No. 01-6/7598) *Concerning the Protection of Osetian Culture in Georgia and restoration of Osetian House in Giorgi Chitaia Ethnographic Museum.*

In response we received letter signed by the Deputy Minister of Culture and Monument Protection Badri Bagration-Gruzinski, notifying that the recommendation was forwarded to the Director of National Museum Davit Lortkipanidze.

The answer from the Director of the National Museum was never received.

Public Defender's Office received only 2 responses from redirected recommendations/proposals.

08.01.2014	11/3287	Prime Minister	Immediate and adequate assistance of Dusheti Region Village Vedzatkhevi inhabitants suffering due to the hard social-economic and geological conditions	Ministry of Regional Development and Infrastructure
25.03.2014	11-12/5670	Prime Minister	Conditions in Akhalkalaki municipality village Tatanisi	Ministry of Education and Science



## **IX. Failure to Comply with Lawful Request**

Article 173 (4<sup>th</sup> prima) of the Administrative Offences Code of Georgia sets forth the basis for recognizing the failure to comply with Public Defender's request as an administrative offence. In particular, "non-compliance with lawful request of the Public Defender will cause penalty from twenty to fifty minimum amount of the wage." According to Article 239 paragraph 20, the protocol on violation envisaged under Article 173 (4<sup>th</sup> prima) is filed by the Public Defender, and according to Article 208 the case is heard and final judgement is made by the regional (city) court.

All requests issued by the Public Defender within the scope of his/her responsibilities are considered to be lawful. In addition to Article 43 of the Constitution, the legal basis for Public Defender's rights and responsibilities are established under the Organic Law of Georgia "on the Public Defender" and the Law of Georgia on the "Elimination of All Forms of Discrimination."

Third chapter of the mentioned organic law enlists the exact powers of the Public Defender. According to Article 18 of the organic law, while conducting an inspection, the Public Defender of Georgia may: a) freely enter any state or local self-government body, enterprise, organisation, institution, including, military unit, prison and confinement facilities and other places of detention and restriction of liberty; b) request and receive, immediately or not later than 10 days, from state and local self-government authorities or from officials all certificates, documents and materials necessary for conducting an inspection; c) request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender; d) conduct expert examinations and/or prepare conclusions by means of state and/or non-state institutions; invite specialists/experts in order to perform expert and/or consultation works; e) obtain information about criminal, civil and administrative cases, the decisions in which have entered into force.

In addition, chapter IV of the organic law creates legal guarantees for implementing powers of the Public Defender. In particular, according to Articles 23 and 24, all state and local self-government authorities, officials or legal persons shall be obligated to assist the Public Defender of Georgia in every way, immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers. During inspection, or if requested by the Public Defender of Georgia, a state body, an official or a legal person whose action or decision is under examination or is appealed shall be obligated to submit an explanation on the issue in question to the Public Defender of Georgia.

Furthermore, Materials, documents, other information and explanations shall be given to the Public Defender of Georgia, upon request, unless request for the materials, documents and other information is received in writing. In this case, documents and other information shall be delivered to the Public Defender of Georgia within 10 days. State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.

According to Article 25 paragraph 1 of the organic law of Georgia on the Public Defender, failure to fulfil the obligations defined by this Law, as well as any obstruction of the activity of the Public Defender of Georgia shall be punishable by law, shall be entered in the report of the Public Defender of Georgia and become a subject of special discussion by the Parliament of Georgia.

Therefore the legislator on the one hand establishes exhaustive list of powers for the Public Defender and on the other hand sets the obligations for the addressee of the legal request not to obstruct activity of the Public Defender.

The abovementioned legislative framework gives the Public Defender a right to properly respond to the attempt to obstruct his/her activities.

Between the timeframe of 2006-2014 the court heard more than 30 administrative liability cases, which are grouped according to year, nature of the misconduct and administrative liability below:

**In 2006** six administrative offence protocols were filed whereby financial liability was imposed on the head of the Tbilisi City Council Urban Planning Unit and Mayor of Rustavi.

**In 2007** two administrative offence protocols were filed and financial liability imposed on the Head of Gori Municipality Council and the Director of No. 2 Rustavi Strict Regime Penitentiary Institution.

**In 2008** three administrative offence protocols were filed, and financial liability was imposed on the guard and duty-men of the Ministry of Defense Guardhouse.

**In 2009** four administrative offence protocols were filed, but none of the requests were approved by the Court.

**In 2010** two administrative offence protocols were filed from which the fine was imposed on the JSC "Telasi" Director General.

**Currently in 2014**, sixteen cases are pending for administrative offence protocols, 4 case was submitted to the court, from which the Court imposed financial liability on: the chairman of LEPL the National Agency for State Property Management, head of Tbilisi Zakaria Paliashvili Opera and Ballet House and Gamgebeli of Khulo Municipality. Kareli Municipality Gamgebeli was given a verbal notice. In addition, currently one case is still pending in the Court.

#### **X. Monitoring of the recommendations/proposals issued in 2013**

In 2014, the Public defender sent in total 12 requests of information regarding the recommendations/proposals issued in 2013 to the following heads of the public agencies: Ministry of Education and Science, LEPL Social Service Agency, Gori Municipality, Ministry of Labor, Health and Social Affairs (6 letters sent), Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Ministry of Corrections and Probation of Georgia, Tbilisi Nadzaladevi District Gamgeoba. It should be noted that Tbilisi Nadzaladevi District Gamgebeli Zaza Gabunia and Gori Municipality Gamgebeli Papuna Koberidze did not respond to the letters of the Public Defender.

As we can see, the issues raised in 2013 recommendations/proposals were left unresolved in 2014 as well, despite the fact that in some cases the promises were made by the public agencies to resolve those problems.

In addition, the Public Defender considers that in many cases the state's failure to take timely and adequate measures and delayed fulfillment of the obligations is likely to amount to a violation of the rights. Therefore, Public Defender's Office of Georgia will continue to submit requests of information and to monitor the 2014 recommendations/proposals, until such time when the issues are resolved.

The Public Defender of Georgia did not receive response on 28 recommendations/proposals within the timeframe set by the law.

The special emphasis should be put on 9 unanswered recommendation/proposals, which were sent to the General Prosecutor and concerned the investigation of ill-treatment in the penitentiary institutions.

<b>Unanswered recommendations/proposals of 2014</b>					
<b>#</b>	<b>Release Date</b>	<b>Number</b>	<b>Addressee</b>	<b>Violation of constitutionally guaranteed rights</b>	<b>Thematic Issues</b>

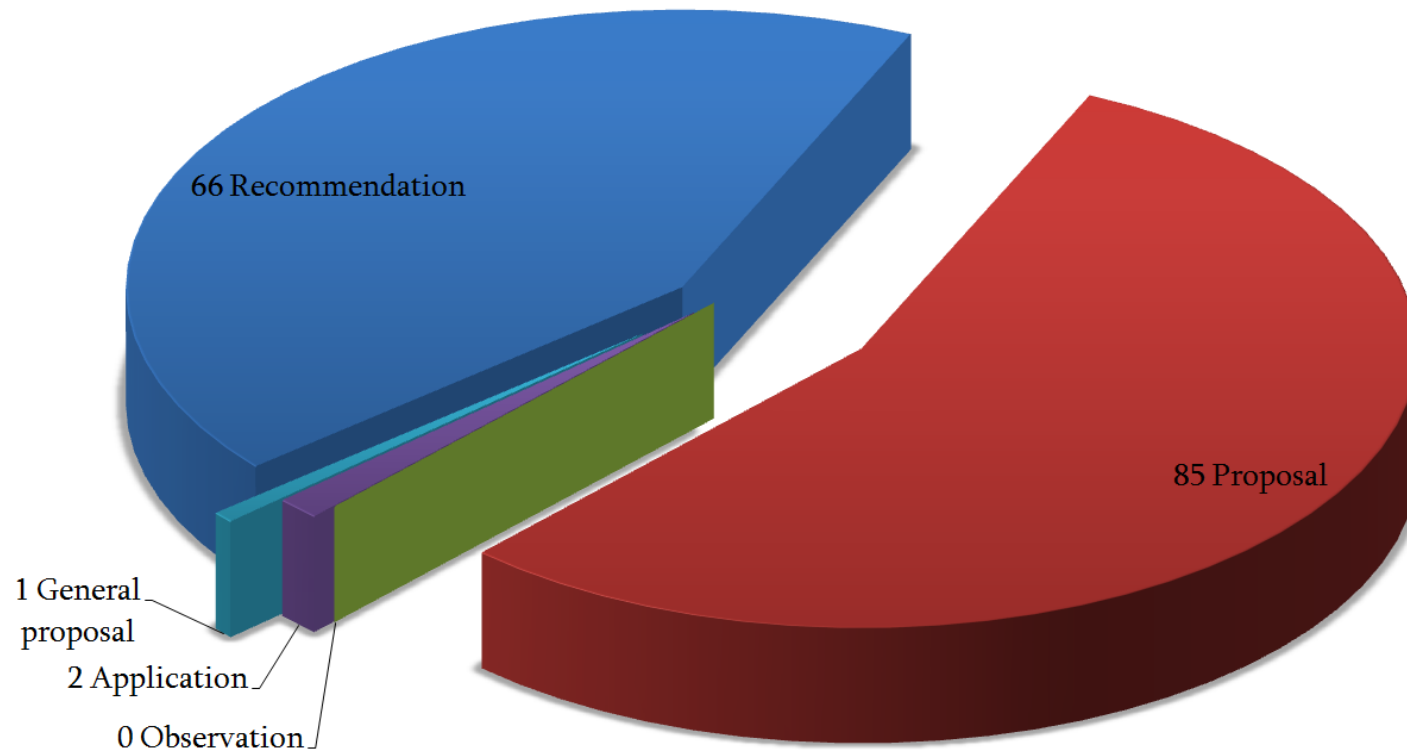
1	20.01.2014	33/04-3/0376-10	Kareli gamgebeli	30	Social Issues
2	20.01.2014	11/3648	Prime Minister	31; Preamble (the welfare state principle)	Social Issue
3	28.01.2014	04-8/3954	General Prosecutor	18 (1, 2)	Actions of Law Enforcement Officials
4	28.01.2014	03-2/3953	Minister of Corrections and Probation	37 (3)	Health issues; Prison conditions; Social issues
5	31.03.2014	04-12/5810	President	42 (4, 5);	Fair Trial
6	06.05.2014	04-6/6994	General Prosecutor	17 (3)	Ill-treatment
7	06.05.2014	04-12/6995	Minister of Internal Affairs	22	Violation of Freedom of Movement
8	07.05.2014	03-2/7038	General Prosecutor	17 (2,3)	Ill-treatment
9	13.05.2014	04-12/7143	Secretary of the High Council of Justice	42	Illegal Sentence
10	13.05.2014	04-12/7144	Secretary of the High Council of Justice	20; 42	Unlawful Judgment
11	13.05.2014	04-12/7148	General Prosecutor	18 (1, 2, 3)	Unlawful Imprisonment
12	30.05.2014	04-12/7710	General Prosecutor	17 (3); 21 (1, 3)	Property rights; Coercion
13	17.06.2014	08/8314	Kareli municipality acting governor	14; 30 (1)	Social Issues
14	09.07.2014	01-5/8984	Chairman of the Parliament	42	Proper execution of the right to defence
15	28.07.2014	11-3/9779	Minister of Foreign Affairs	13 (1); 42 (4)	Prohibition of Double Jeopardy
16	01.08.2014	04-8/9982	Chairman of the Parliament	42	Human Rights state of the persons sentenced to life imprisonment
17	22.08.2014	10/10900	Chairman of Mestia Municipality Council	35 (3); 37 (3)	Social Issues; Health Issues
18	21.10.2014	08/12695	Chairman of the Parliament	14, 15 (1)	Social Issues
19	05.11.2014	10-2/13178	Minister of Education and Science	35	Social Issues
20	11.11.2014	04-3/13407	Minister of Internal Affairs	30	Social Issues

21	17.11.2014	11-4/13467	Mayor of Self-Governing city Poti	17 (1); 31; Preamble (the welfare state principle);	Social Issues
22	17.11.2014	11-2/13468	General prosecutor	15; 17 (2)	Ill-treatment
23	17.11.2014	11-12/13470	Akhalkalaki Municipality Gamgebeli	17 (1); 31; Preamble (the welfare state principle);	Social Issues
24	17.11.2014	04-8/13511	General prosecutor	15; 17 (2)	Ill-treatment
25	18.11.2014	04-18/13549	General prosecutor	15; 17 (2)	Ill-treatment
26	19.11.2014	04-12/13601	Secretary of the High Council of Justice	42	Fair Trial
27	11.11.2014	251/04-15/0854-12	Minister of Economy and Sustainable Development	21	Social Issues
28	04.12.2014	11-3/14053	General Prosecutor	17	Ill-treatment

Annex 1

Recommendations/Proposals issued by the Public Defender of Georgia in 2014

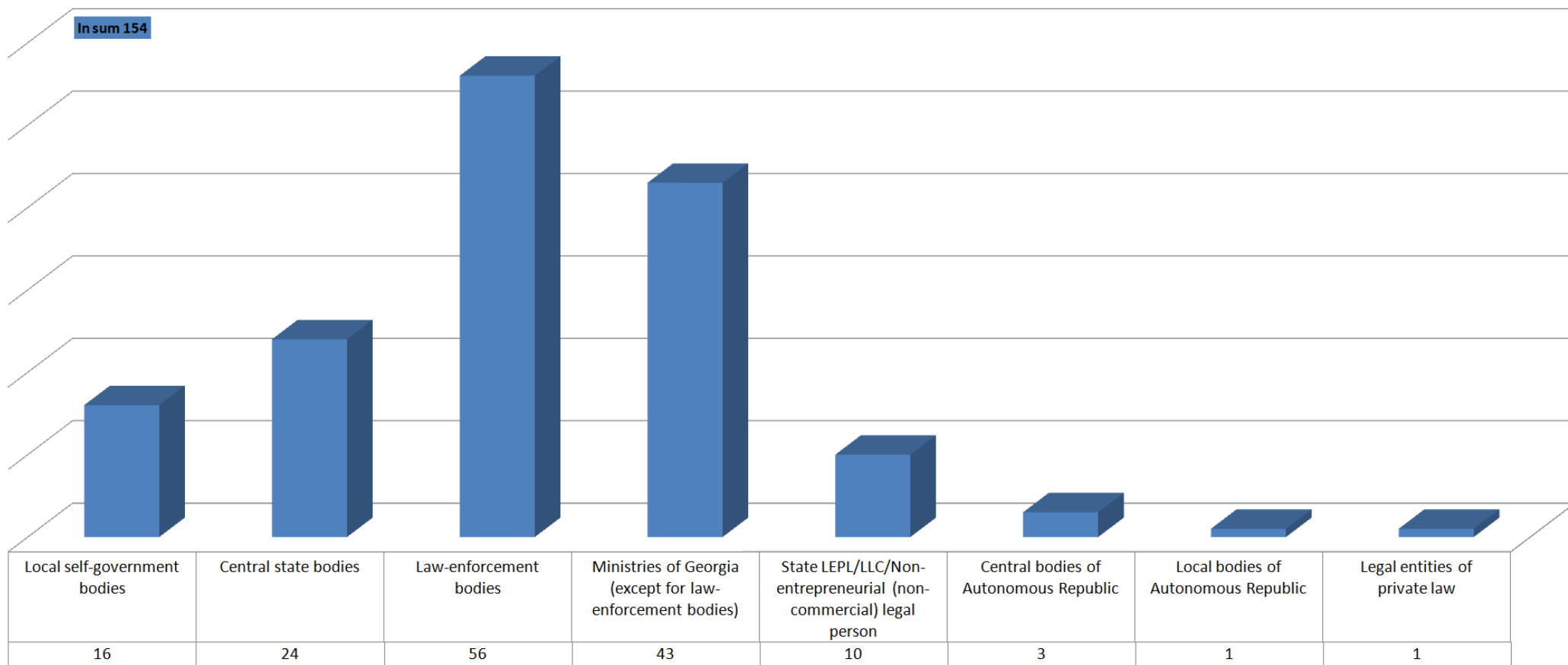
Recommendations/Proposals issued by the Public Defender of Georgia in 2014.  
154 recommendations/proposals were issued in 2014, in particular:



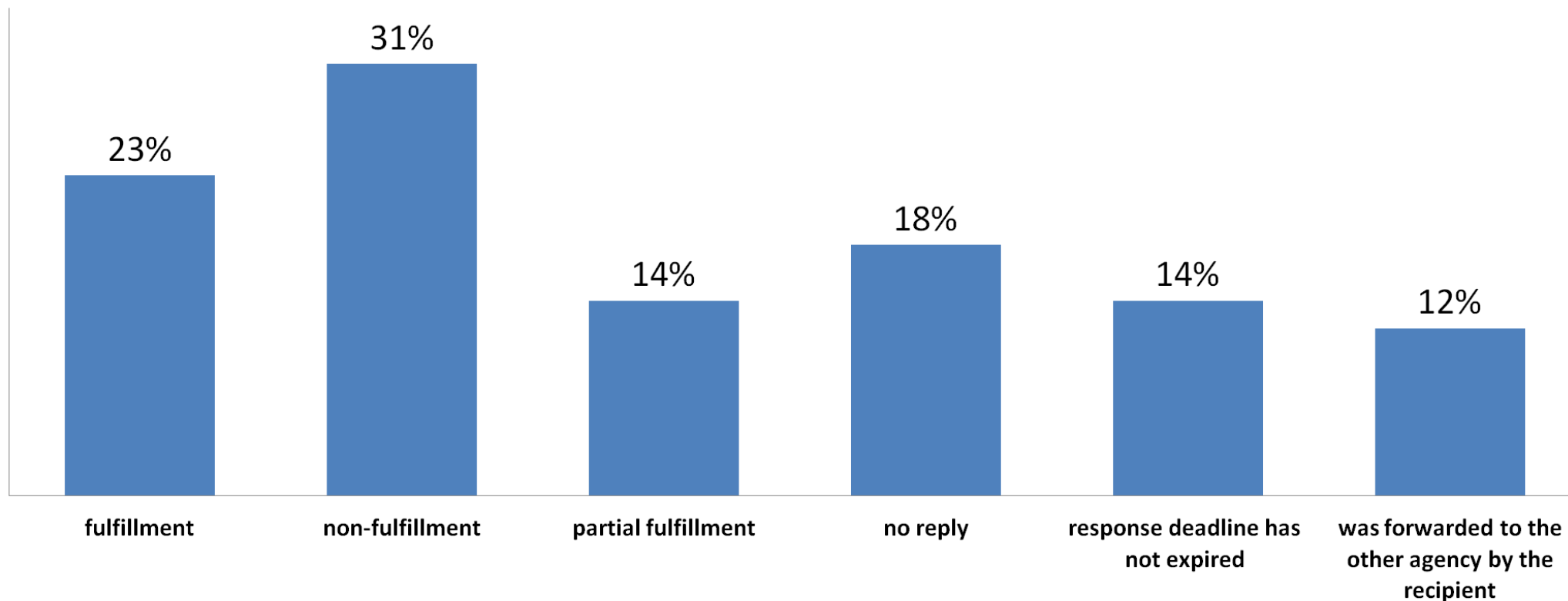
## Annex 2

### Recommendations/Proposals issued in 2014

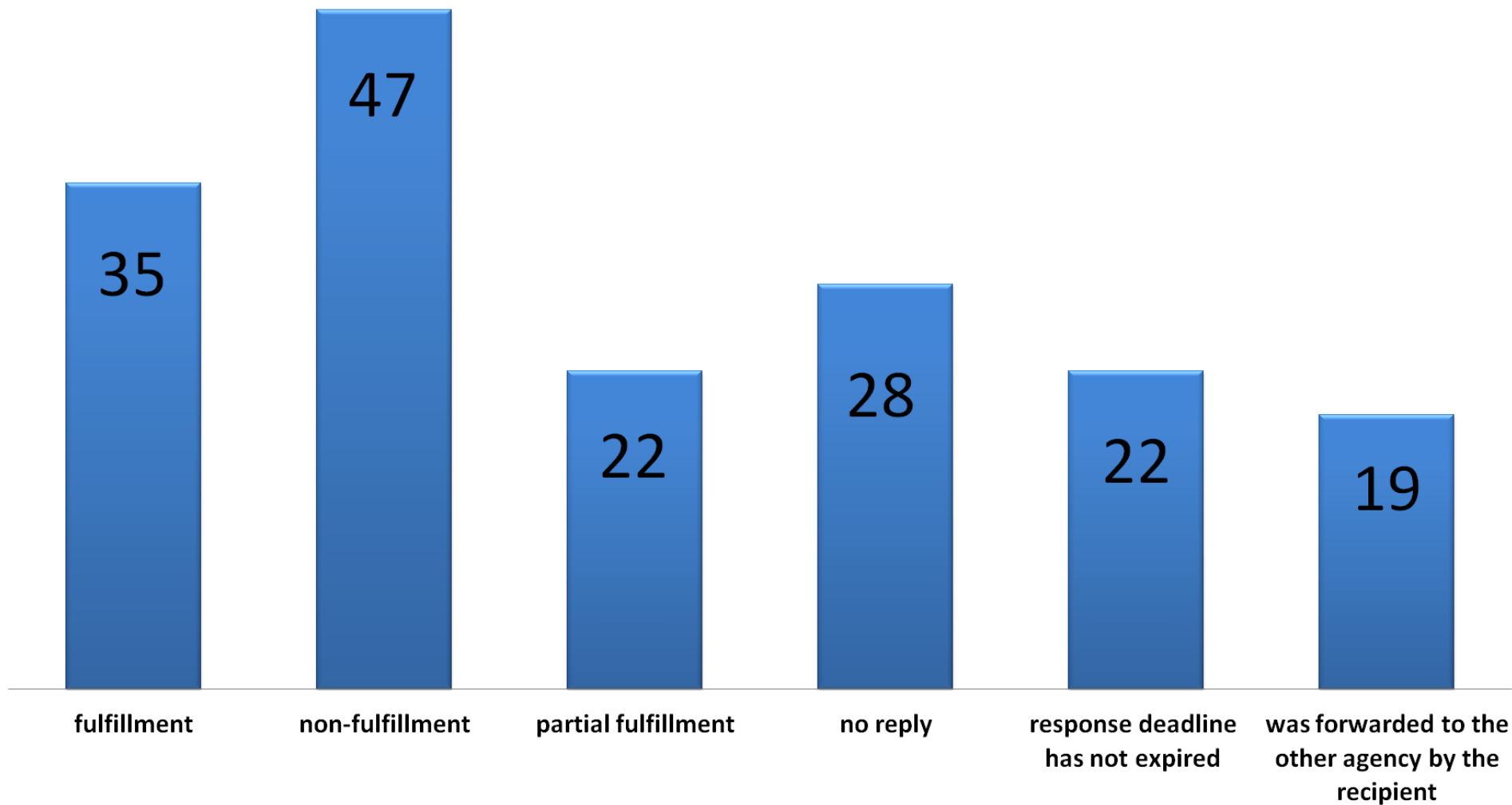
#### Recommendations/Proposals issued in 2014



■ Recommendation /Proposal Fulfillment Percentile



### Fulfillment Indicator of Recommendations/Proposals. 2014

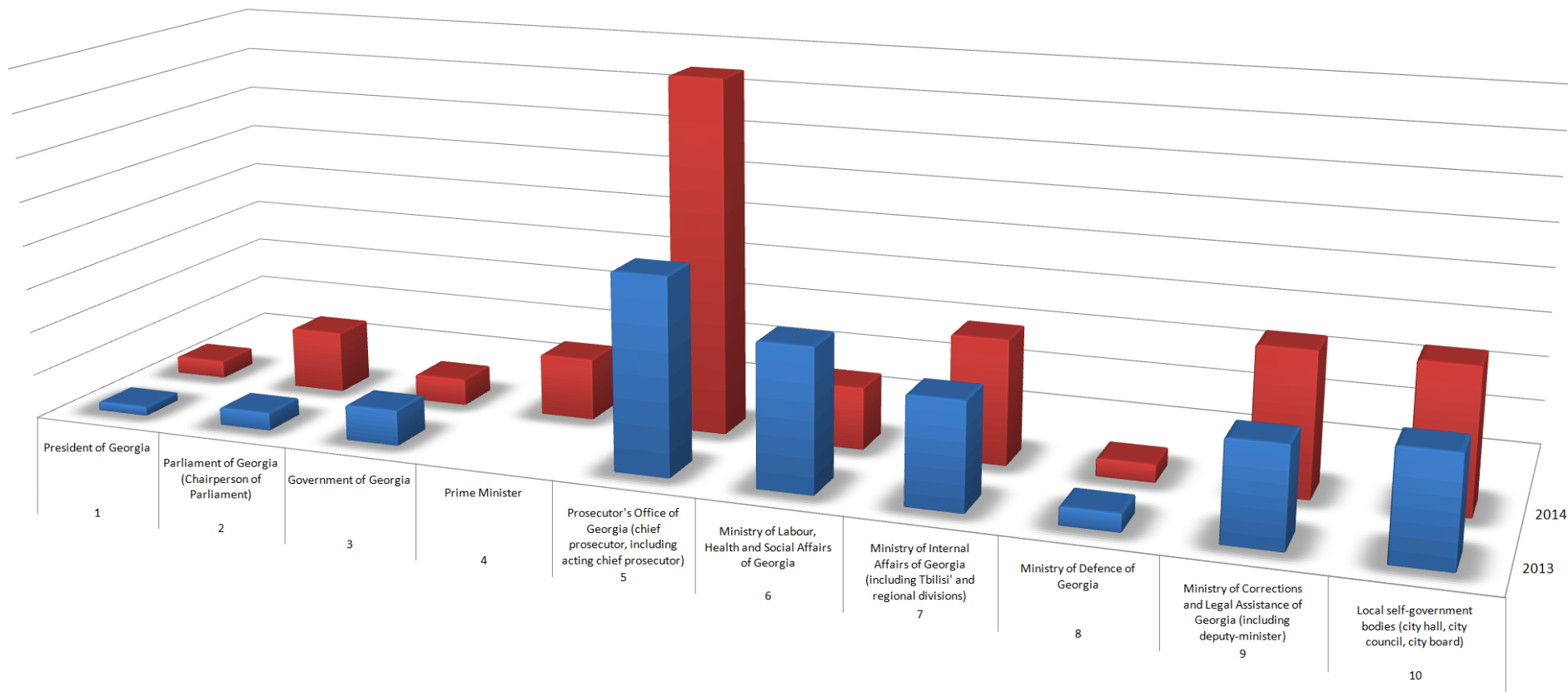




Annex 5

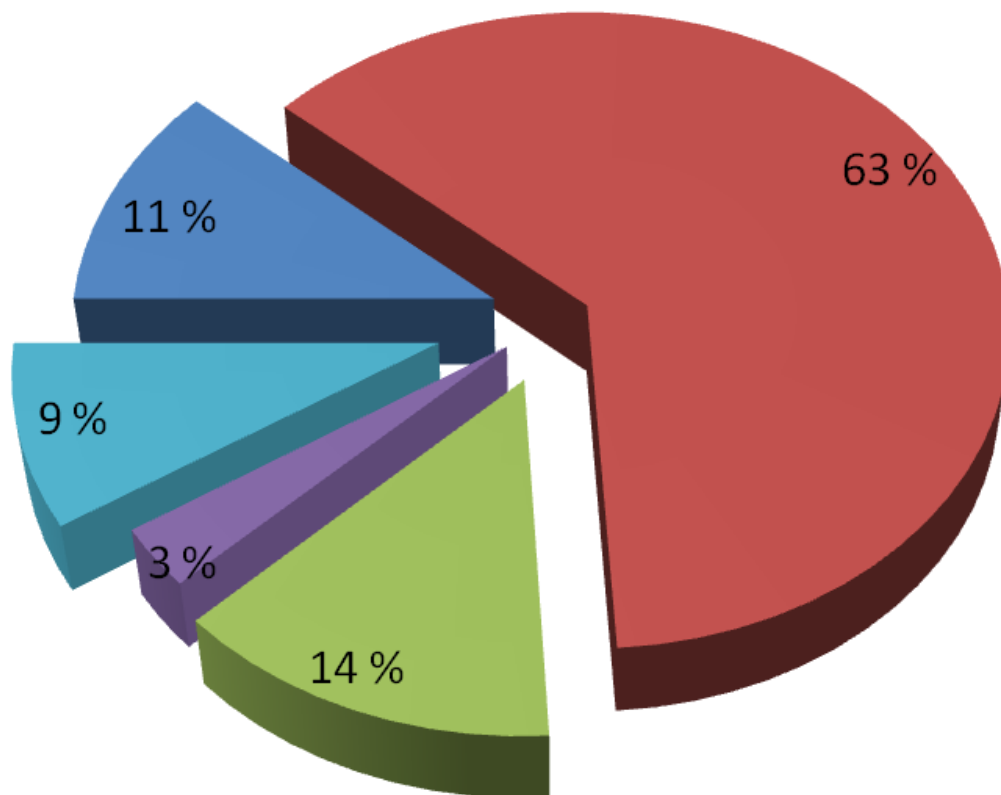
Comparative table of recommendations/proposals issued by the Public Defender of Georgia (data by the agencies) - 2013/2014

Comparative table of recommendations/proposals issued by the Public Defender of Georgia (data by the agencies) - 2013/2014



	1	2	3	4	5	6	7	8	9	10
	President of Georgia	Parliament of Georgia (Chairperson of Parliament)	Government of Georgia	Prime Minister	Prosecutor's Office of Georgia (chief prosecutor, including acting chief prosecutor)	Ministry of Labour, Health and Social Affairs of Georgia	Ministry of Internal Affairs of Georgia (including Tbilisi' and regional divisions)	Ministry of Defence of Georgia	Ministry of Corrections and Legal Assistance of Georgia (including deputy-minister)	Local self-government bodies (city hall, city council, city board)
■ 2013	1	2	4	7	22	16	12	2	11	12
■ 2014	2	7	3	7	40	7	14	2	16	16
■										

### Effectiveness indicator for the fulfillment of 2014 recommendations/proposals issued by the Public Defender of Georgia



- accomplished outcome 11 % (recommendation/proposal is considered, violated right is restored)
- no outcome is accomplished 63 % (recommendation/proposal is not considered, violated right is not restored)
- promise of fulfillment 14 % (agency/official states in the response that the recommendation/proposal will be considered in the future, e.g. in the budget planning process)
- case is pending in the court 3 % (at the time of receiving the recommendation/proposal, the issue was being examined by the court)
- outcome is partially accomplished 9 % (violated right is partially restored)

### Recommendations/Proposals issued by the Public Defender of Georgia during 2014 in the light of basic rights violation

