

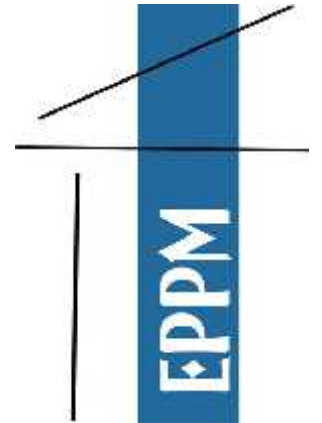
Final Report

of the Commission for the Study of Dismissals of Employees of the Ministry of Education and Science of Georgia Territorial Agencies – Education Resource-Centers and Public Schools on the Grounds of Political Views.

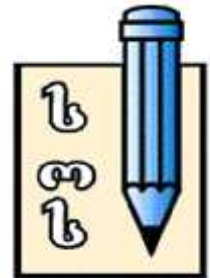


ISFED

საერთაშორისო ადვოკატთა
და დამცურატიის საერთაშორისო
საზღვარდობა



საერთაშორისო გამჭვირვალობა-საქართველო
TRANSPARENCY INTERNATIONAL GEORGIA



საქართველოს სახალხო დამცველი
PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Contents

I. Introduction	4
II. The purpose of the commission and membership.....	4
III. The structure of the commission.....	5
IV. The operation of the commission	5
The initial review of applications	5
I. Facts of sacking because of political opinions	15
VI. Revealed systemic violations.....	18
During the process of examination of cases by the Commission, following problems were revealed:.....	18
Structural problems.....	18
Cases of pressure.....	20
Tendencies revealed during a pupils' certificate exams (so called CAT exams)	21
Facts of interference of local authorities and law-enforcement bodies in the school activities ..	22
Interference of the Ministry in the distribution of academic hours	23
Facts of pressure on the members of labor union	24
VII. Responsive actions of the Ministry on recommendations of the Commission.....	25
VIII. Conclusion	25

I. Introduction

In Georgia, after the elections held on October 1, 2012 and the formation of the new government, the Ministry of Education and Science of Georgia (hereinafter - 'the Ministry') was appealed to by hundreds of people to review decisions about their wrongful dismissal from employment. Most of the citizens asserted that they had been dismissed due to their political views.

On November 30, 2012 the then Minister of Education and Science of Georgia, Giorgi Margvelashvili, appealed to the opposing parties – public school principals and dismissed employees – to solve the problem on the basis of a reciprocal agreement. In most cases, however, despite the Minister's appeal, parties could not agree. In order to take corrective actions, due to the vastness and importance of the problem, the Minister deemed it necessary to form a commission responsible for the review of the applications presented to the Ministry.

In accordance with the commission's mandate, as the commission functionally was not an administrative and/or an investigative agency, the applicant himself was charged to assert the dismissal of the employee on the grounds of political motives. It should be emphasized that the commission's denial of the dismissal of an employee on the grounds of political views doesn't eliminate the existence of such a motive. Furthermore, it is significant that the commission's findings are not a cause of termination, block or start of any kind of proceedings related to the applicant's claim. The commission's main role was to ascertain the fact of the dismissal of the applicant on the grounds of political motives.

The present record adheres regulations about 'the maintenance of Personal data' established by the law; accordingly, for the sake of demonstrativeness, in the featured cases applicants are not identified.

II. The purpose of the commission and membership

The society expected the cases of dismissed employees to be considered justly and objectively. In this context, in order to review the applications of the dismissed persons, the new administration of the Ministry made a decision to form a special, functionally and structurally independent commission which would be staffed by representatives of authoritative and qualified organizations. The formation of the commission by the Ministry aimed at enhancing their credibility through providing the society with transparent application review and decision-making process.

Under the order #1375 (December 14, 2012) issued by the Minister of Education and Science, a commission responsible for reviewing the dismissals of the staff of territorial agencies - education resource centres and public schools - was formed (hereinafter – the commission).

The commission was staffed by the Public Defender of Georgia and 7 non-governmental organizations that were distinguished by years of experience and high qualification in the area of education system and human right protection. In particular, the following organizations were introduced into the commission:

- Public Defender of Georgia (a representative of the Public Defender of Georgia);
- N(N)LP (*Non-entrepreneurial (non-commercial) legal person*) 'Human Rights Priority';
- N(N)LP 'The International Institute for Education Policy, Planning and Management';
- N(N)LP 'School – Family - Society';
- N(N)LP 'The International Society for Fair Elections and Democracy';
- N(N)LP 'Transparency International Georgia';
- N(N)LP 'Georgian Young Lawyers' Association';

Final Report of the Commission

- N(N)LP ‘Civic Initiatives and Employee Rights Protection Association’

With the participation of the commissionaires a statute was written, which determined the boundaries of competence and the operation of the commission. The competence of the commission included studying, assessing and, within their competence, giving recommendations to the Minister about the issues concerning the dismissal of the staff of education resource centers and public schools (teachers, principals, administrative staff and technical staff) on the grounds of political motives from June 1, 2006 until the date of the formation of the commission - December 14, 2012.

III. The structure of the commission

In accordance with the statute of the commission, the commission was led by the chairman, who chaired meetings and controlled the operation of the secretariat. In case of the chairman’s absence, sessions were conducted by a chairperson of the meeting, who was selected from among the members of the commission. Every member of the commission had an equal right to vote in the process of decision-making.

Hereby, in order to support the operation of the commission, a secretariat was formed which included the chief of the secretariat and 4 lawyers. The operation of the secretariat was enforced by the Ministry.

The functions of the secretariat of the commission were determined as follows:

- Organization of the commission meetings;
- Legal treatment/preparation of pending issues;
- Timely and complete presentation of pending materials to the commission;
- Communication/consultation with citizens, inviting them to the commission’s sessions.
- Introduction of the commission’s decision to the Minister.

IV. The operation of the commission

The commission operated through meetings. A commission’s decision was made on the basis of the meeting protocol signed by the chairman of the meeting and other members present at the session. The commission came to a decision through consensus between the members present at the meeting. The commission’s decision is permissive and it is not an individual administrative legislative act.

The operation of the commission was carried out in two stages. At the first stage the initial review of applications took place, and if found flawed, they would be corrected. At the second stage the application and attached documents were thoroughly analysed. The analysis of applications included oral interviews with the applicant as well as with other individuals concerned with the case.

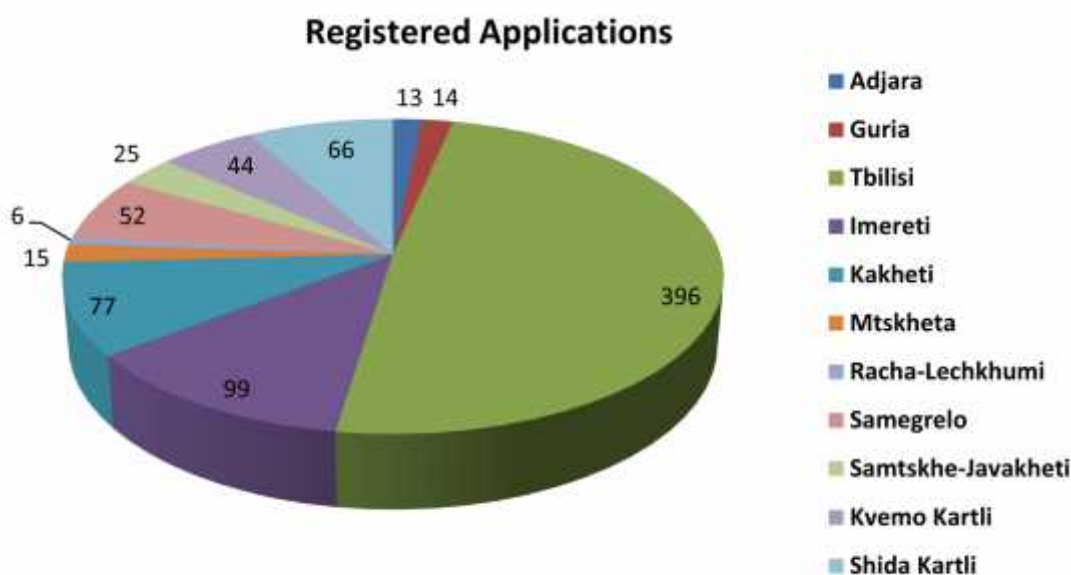
The initial review of applications

At the stage of the initial review, the commission evaluated the correspondence between the claim noted in the application with the enclosed documents and the requirements considered in the statute.

Final Report of the Commission

According to the commission's statute, the application along with the following documents was supposed to be presented in a written form:

- Order of dismissal. In case of the dismissal of a public school principal, also the protocol concerning the dismissal of the principal issued at the meeting of the board of trustees;
- Court decision (if any);
- Explanations given by a person/persons aware of the reasons for the dismissal of the applicant;
- Any other kind of document or piece of information as a confirmation of the factual circumstances described in the application.



In case the documentation attached to the application was inconsistent with the established requirements, the applicant had a chance to present additional documents/information to the commission in order to complete his/her application within at least 10 days.

As a result of the initial review, it was detected that most of the applications did not contain enough information (documentation) to support the facts noted in them. Accordingly, the commission devised a subsidiary instruction¹, through which the list of documents required to rectify the inconsistencies was specified.

Hereby, the commission conducted two informational meetings² in order to provide applicants with detailed information about the operation of the commission. At these meetings commissionaires

¹ <http://mes.gov.ge/uploads/xarvezi.pdf>

²

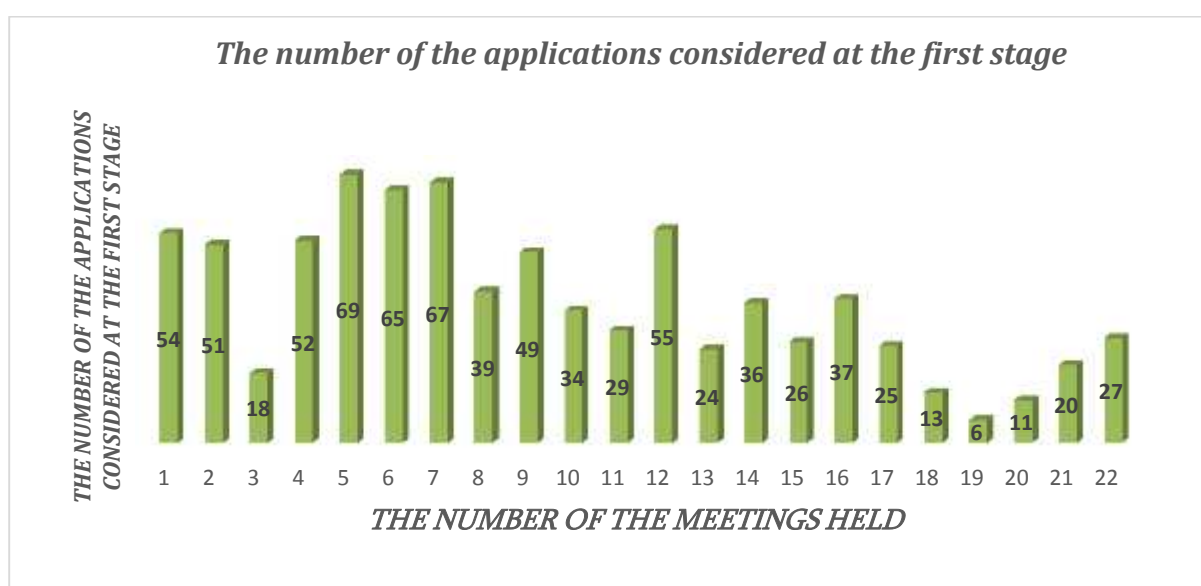
<http://mes.gov.ge/content.php?t=srch&search=%E1%83%A6%E1%83%98%E1%83%90%20%E1%83%99%E1%83%90%E1%83%A0%E1%83%98%E1%83%A1%20%E1%83%93%E1%83%A6%E1%83%94&id=4406&lang=geo>

<http://mes.gov.ge/content.php?t=srch&search=%E1%83%A6%E1%83%98%E1%83%90%20%E1%83%99%E1%83%90%E1%83%A0%E1%83%98%E1%83%A1%20%E1%83%93%E1%83%A6%E1%83%94&id=4464&lang=geo>

scrupulously clarified to the applicants the operation and competence of the commission and the presumable list of documents which would help the commission while making a decision. The informational meetings were attended by 356 people dismissed from the education system.

The results of the initial review of applications

The initial review of applications lasted from the time of the formation of the commission – December 14³, 2012 until May 16, 2013. At the stage of the initial review the commission held 22 sessions during 5 months, studied 830⁴ applications and informed each and every applicant about the decision in a written form.



As a result of the initial review of applications:

- 500 applications were found flawed, and the commission required the applicant to present additional evidence to confirm particular factual circumstances.
- 279 applications were reported as inadmissible, since their examination was not within the competence of the commission. Correspondingly, these applications were delivered to the Ministry to take further action.
- 28 applications, presented along with additional documents, were recognized as admissible for thorough analysis.

Out of the 500 applications which were deemed flawed, 223 applicants did not present additional evidence, and as a result their applications were not dealt with. On the other hand, 277 applications had their inconsistencies rectified and they were correspondingly admitted to the stage of thorough analysis. The commission analysed 305 applications, in total.

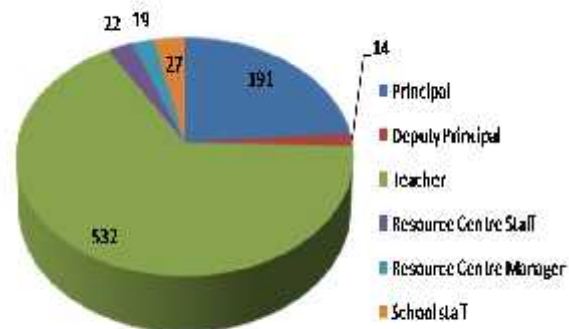
³ Decree №1375 of Minister of Education and Science of Georgia, December 14, 2012.

⁴ 830 applications contained joint applications as well as different letters sent from Non-governmental and governmental organizations, such applications reached number of twenty three.

The results of the initial review



The occupations of the applicants



The thorough analysis of applications

At the stage of thorough analysis of applications the commission carefully studied the documentation presented by the applicants. As a result of the evidence present in the case, for the purpose of an oral interview, the applicant and/or other persons involved in the case that held any kind of information in relation to the circumstances of the dismissal of the applicant were invited to a meeting by the commission. It should be remarked that the commission did not take decisions on the basis of the explanations given by only one party. The opposing party was also given an opportunity to completely present their opinions and arguments about each case.

The credibility of the information provided to the commission by the applicants/persons concerned with the case was confirmed by signature. Additionally, in agreement with the aforementioned persons, oral interviews were recorded on audiotape. The information stored on the tapes was confidential and was only used by the members of the commission and Secretariat lawyers in the process of the preparation of corresponding documents (protocol, resolution, reply, etc.).

After the oral interview, should the commission deem it necessary, sensible deadlines would be set for the respective party to show the documentation needed for a decision to be made.

After having studied the case, the commission had power to make one of the following resolutions:

- Resolution about the existence proof of a reasonable doubt of the dismissal of a person due to his/her political views and about recommending the Minister.
- Resolution about the non-existence of proof of a reasonable doubt of the dismissal of a person due to his/her political views.

While making a decision the commission followed the principles of non-discrimination in international law and domestic legislation acts, in particular: International Covenant on Civil and Political Rights (Article 26) adopted by the United Nations in 1966, the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14), the Constitution of Georgia (Article 14), and the Organic Law of Georgia 'Labour code of Georgia' (Article 2).

All the aforementioned normative acts confirm the principle of equality and establish that it is inadmissible to discriminate against a person on the basis of sex, skin colour, language, religion,

Final Report of the Commission

political or other views, social or national background, belonging to a national minority, property status, birth place or other signs.

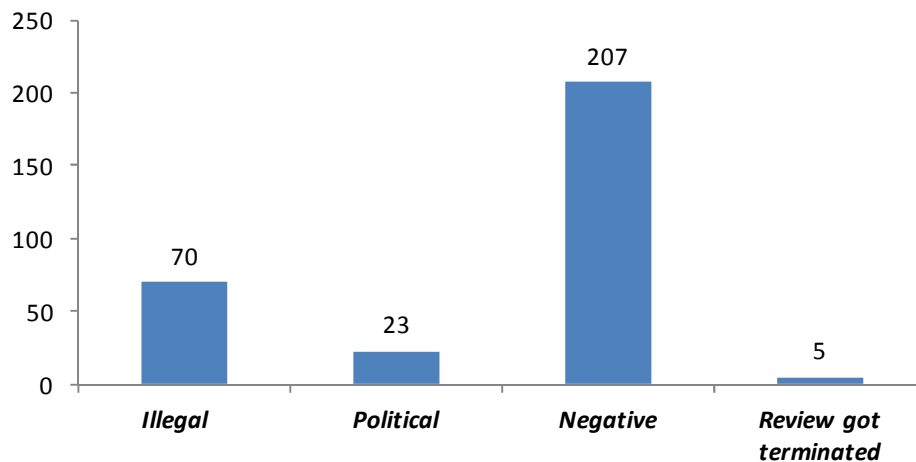
While making a decision the commission also followed the three criteria they had devised:

- If the employer was treating the dismissed employee differently;
- If a different attitude from the employer was caused by the political views of the employee or a person related to said employee;
- If there is a correlation between the dismissal of the employee and the political views of his/a person related to him.

The commission analyzed 305 applications. In order to study/review the applications, there were 62 sessions held in Tbilisi and 4 visits paid to regions of Georgia. The commission interviewed 259⁵ applicants and 654 people concerned with the case.

After having reviewed the aforementioned cases, the commission terminated review⁶ in 5 cases, in 23 cases the commission came to a decision that there was proof of a reasonable doubt of the dismissal of the person due to political views, and regarding 70 cases, the commission considered that there were signs of violation of law in the dismissal of the applicant. In 207 cases no proof of a reasonable doubt or signs of violation of law were detected.

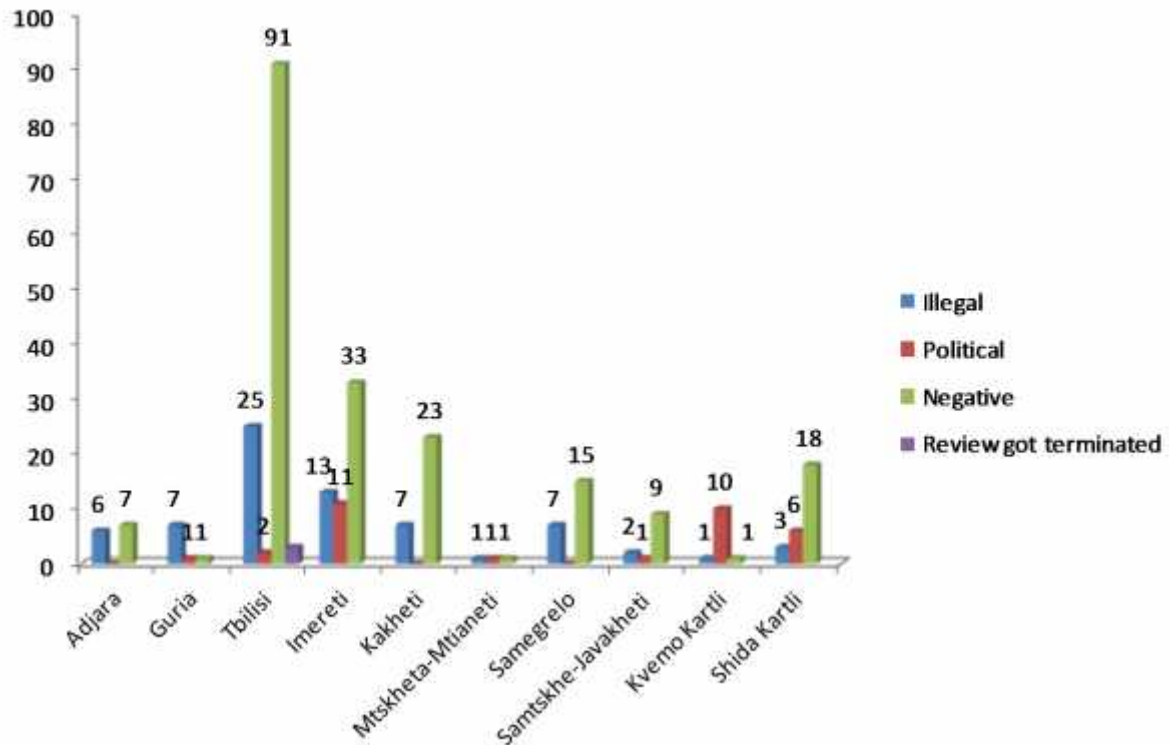
Distribution of Decisions



⁵ In connection with the so called CAT case, on the basis of the materials presented to support 46 applications, a joint decision was made.

⁶ The review of the case was terminated due to the applicant's refusal to proceed or death of the applicant.

Regional Distribution of Decisions



As a result of the sessions held in Tbilisi and visits paid to regions, the commission reviewed the following number of applications, in particular:

- Tbilisi – 121 applications
- Shida Kartli – 27 applications
- Kvemo Kartli – 12 applications
- Mtskheta-Mtianeti – 3 applications
- Samtskhe-Javakheti – 12 applications
- Adjara – 13 applications
- Guria⁷ - 8 applications
- Imereti – 57 applications
- Kakheti – 30 applications
- Samegrelo – 22 applications

The applications reviewed in Tbilisi

At the stage of thorough analysis, at the sessions held in Tbilisi they reviewed applications received not only from Tbilisi but also from the following regions: Shida Kartli – 27 applications, Kvemo Kartli – 12 applications, Mtskheta-Mtianeti – 3 applications, and 12 applications sent from Samtskhe-Javakheti. The

⁷ In Guria, in one of the applicant's case were found signs of violation of law (the so called CAT case), as well as proof of a reasonable doubt in the dismissal of the person due to political views

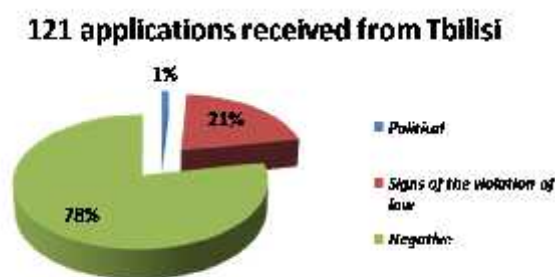
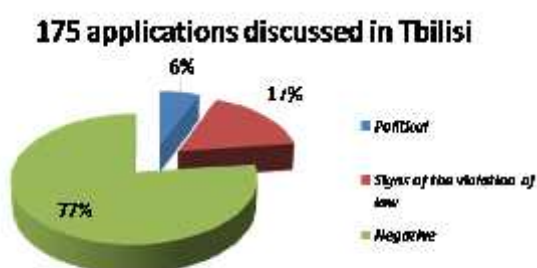
Final Report of the Commission

commission held 62 meetings in Tbilisi and reviewed 175 cases. During the process of discussing the designated cases 525 people were invited to interviews. After the discussion of the indicated cases, the commission made the following decisions:

- Regarding 11 cases proof of a reasonable doubt of the dismissal of the person due to political views was identified.
- Regarding 30 cases signs of violation of law were identified in the dismissal of the person.
- Regarding 134 cases, proof of a reasonable doubt of the dismissal of the person due to political views was not identified.

After the reviewing 121 application received from Tbilisi commission took the following decisions:

- Regarding 2 cases proof of a reasonable doubt of the dismissal of the person due to political views was identified.
- Regarding 25 cases signs of violation of law were identified in the dismissal of the person.
- Regarding 94 cases, proof of a reasonable doubt of the dismissal of the person due to political views was not identified.



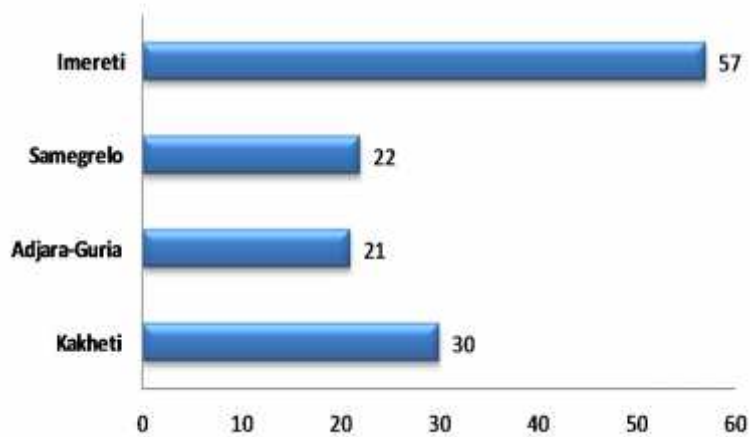
The visits paid to regions

At the stage of thorough analysis, the commission went on business trips to Imereti, Samegrelo, Adjara-Guria and Kakheti, in order to study the factual circumstances and shown evidence about the dismissal of the person designated in the application, and to interview applicants and witnesses.

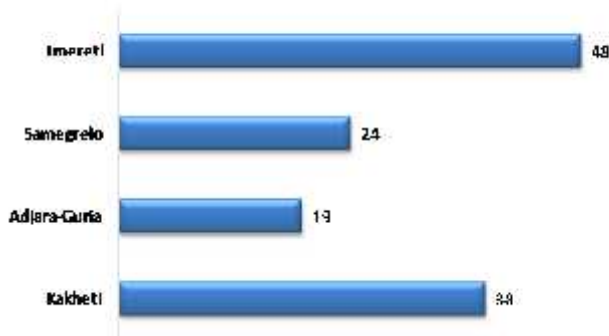
Within the framework of the regional visits the commission essentially reviewed 130 cases in total and interviewed 129 people in the process of studying the designated cases:

- In Imereti the commission discussed 57 cases and interviewed 48 people;
- In Samegrelo the commission discussed 22 cases and interviewed 24 people;
- In Adjara-Guria the commission discussed 21 cases and interviewed 19 people;
- In Kakheti the commission discussed 30 cases and interviewed 38 people.

The applications reviewed within the framework of regional visits



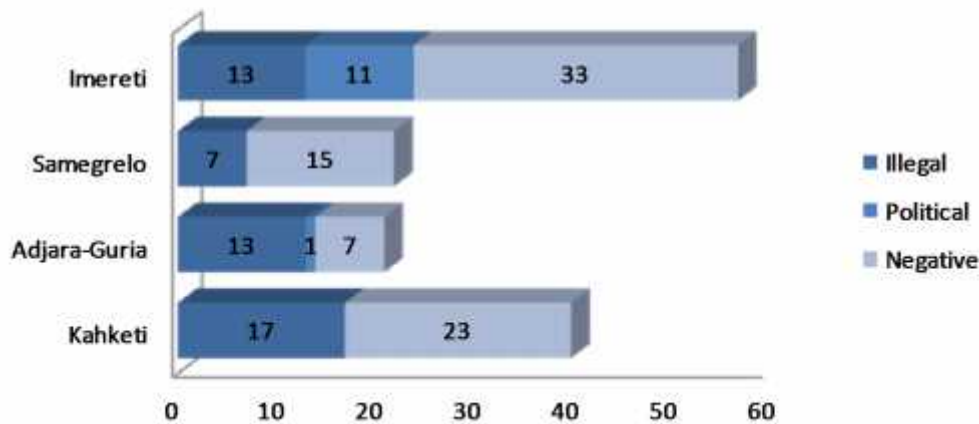
The statistics of the people invited to oral interviews (sorted) according to regions



As a result of the discussion of the aforementioned 130 cases the commission made the following decisions:

- In 12 cases proof of a reasonable doubt of the dismissal of the person due to political views was identified.
- In 40 cases signs of the violation of law were identified in the dismissal of the person.
- In 78 cases, proof of a reasonable doubt of the dismissal of the person due to political views was not identified.

Statistics of Decisions Taken after the review of 130 Applications



Visit to Kutaisi

The commission went on a business trip to Kutaisi on August 1-3, 2013. During the meeting the commission analysed **57** cases, among which were:

- **29** applications submitted by teachers;
- **25** applications submitted by principals;
- **3** applications submitted by the employees of education resource centres.

The commission received 99 applications from Imereti Region. 61 applications were deemed flawed and the remaining 38 applications were delivered to the Ministry for further action. Out of the 61 flawed applications, 57 cases were completed by the applicants and were admitted to the stage of thorough analysis.

Within the framework of the visits to Kutaisi, the commission interviewed 48 people, namely applicants and other persons concerned with the case that could provide the commission with information about the pending issue.

Out of the reviewed 57 cases, in connection with 11 of them, were detected Reasonable belief about a sacking because of political views, and signs of wrongdoings during sacking of complainant – in connection with 13 cases.

Visit to Samegrelo

In August 23, 2013 the Commission conducted the second working meeting during a visit to Zugdidi. In the framework of a visit commission examined 22 cases, among them:

Final Report of the Commission

- 15 requests from the school directors;
- 5 requests from the teachers;
- 2 requests from the employees of Educational Resource Centers.

From Samegrelo-Zemo Svaneti region in the first stage 52 requests were received. For this amount flaws were determined for 37 applications, and 15 requests were transferred to the Ministry, for the purpose of further reaction. From the 37 requests flaws were corrected for 22 of them and they proceeded to the next stage. During the visit in Zugdidi the Commission had interviews with 24 persons.

From examined 22 cases:

- In 7 cases signs of wrongdoings were revealed during a sacking of persons (facts of sacking of certain directors with the consideration of Certificate Exams results, so called “CAT”⁸ cases);
- 15 cases did not confirm reasonable belief about political motivation behind person’s sacking.

Visit to Adjara-Guria

In August 24, 2013, the Commission had a working visit to Batumi. Here the Commission examined 21 applications from Adjara and Guria regions, among them: from Guria – 8 requests, from Adjara – 13 requests. From the 21 applications 13 were submitted by the school directors and 8 – by the teachers.

In the first stage 27 requests were submitted to the Commission from Adjara and Guria. From this amount flaws were determined for 19 requests, and 8 requests were transferred to the Ministry, for the purpose of further reaction. 2 requests, considering completeness of submitted materials, were allowed for examination in substance. Thus, in Adjara-Guria regions the Commission substantially examined 21 cases and for the purpose of comprehensive study of facts recorded in given cases, interviewed 19 persons.

From reviewed 21 cases in one case a reasonable belief of political motivation behind person’s sacking was determined. In 13⁹ cases signs of wrongdoings during a sacking of person were revealed (so called CAT¹⁰ cases), and in 7 cases reasonable belief about political motivation behind a decision to sack a person were not confirmed.

⁸ School certificate exams.

⁹ In case of one applicant signs of wrongdoings were apparent (so called CAT case), as well as reasonable belief about sacking because of political views.

¹⁰ School certificate exams.

Visit to Kakheti

In November 1-2, 2013 the Commission held 2-days long working meeting in Kakheti. In the framework of meetings in Kakheti, the Commission examined 30 cases, among them:

- 12 requests from the directors;
- 17 requests from the teachers;
- 1 request from the employee of Educational Resource Center.

From the Kakheti region 77 applications were submitted to the Commission for examination. During a primary review flaws were determined for 45 requests, and 32 requests were transferred to the Ministry, for the purpose of further reaction. 30 applicants corrected the flaws determined by the Commission and these cases were allowed to the stage of substantial examination. During a process of study of 30 cases the Commission had interviews with 38 persons, including applicants, and also other persons with connections to the cases. Meetings of the Commission were held in Gurjaani and Telavi.

From the examined 30 cases:

- In 23 cases reasonable belief about political motivation behind sacking of certain persons did not confirm;
- In 7 cases signs of wrongdoings were revealed during sacking of certain persons.

I. Facts of sacking because of political opinions

In 23 cases a reasonable belief about sacking because of political views were determined by the Commission, among these cases, 15 teachers, 1 head of Educational Resource Center and 7 directors were sacked.

During the study of requests submitted to the Commission it became clear that sacking for political views mainly took place in the second half of 2011 and at the beginning of 2012. Political pressure on employees of educational system was carried out mainly by representatives of local authorities and law-enforcement

Final Report of the Commission

bodies. At the same time, in 9 cases it was determined that applicants were sacked because of political views of persons related to them.

Certain persons were sacked for their political opinions using an approved in advance method. In case of teachers, pressure on directors of public schools were carried out by the representatives of local authorities and ruling party, so that they (directors) to early break employment relations with the teachers. In many cases there became clear that, as a rule, Educational Resource Center was an intermediate link in execution of pressure. In most cases persons were sacked for their political views without any grounds and termination of labor contract was a legal basis in almost all examined cases¹¹. From 15 teachers sacked because of their political views, in 10 cases labor contract was early terminated.

At the same time, it became clear that politically active teachers were forced to leave a job on the basis of personal application. 2 teachers were sacked on the aforementioned basis.

The Commission mainly found the facts about sacking of certain persons for their political views after a confirmation of information about making such decisions by the persons involved in the cases, so called “confessions”. Particularly, school directors themselves confirmed the facts of pressure on them for the purpose of termination of teachers’ labor contracts.

The Commission positively estimates the fact that after the change of ruling party in Georgia in 2012, 6 directors, with their own initiative, brought back to the schools the teachers sacked for political reasons. M.M, the teacher of one of the public school of Sachkhere municipality, was sacked by the director at the beginning of 2012 because of political views, although after the change of authorities, with the purpose of restoring of violated rights, abovementioned person has been brought back to the school and in the decree of appointment directly indicated about political reasons behind the sacking of M.M.

Similar to the sacking of teachers for their political views, the same method was used for sacking of public schools directors. Particularly, it became clear that directors were receiving tasks of political nature as from local authorities as well as from high-ranking officials of the Ministry. Representatives of government were forbidding directors to have any kind of collaboration with persons having different political views/their related persons, otherwise they were threatening directors with sacking.

On the basis of materials studied by the Commission, following tendency was revealed: those schools directors of which did not comply with political objectives and/or were considered supporters of oppositional political force were checked up by the Internal Audit Department, and the conclusion of Audit Department after revision, in most cases, became a basis for sacking of director. For illustration purposes, we review some cases studied by the Commission.

¹¹ Organic Law of Georgia “Georgian Labor Code”, article 37, par. 1, subpar. “d”.

Facts of sacking of public schools' directors

At the end of 2011 and beginning of 2012, in Sachkhere municipality, directors of public schools were sacked. On the basis of study of applicants' cases and interviews with persons connected to them, in these cases identical factual circumstances were revealed, particularly:

Between non-entrepreneurial (non-commercial) legal person, Association "ATU"¹² (hereinafter referred as "ATU") and directors of public schools grant agreements were signed in various periods. At the end of 2011, this issue caused much interest from the side of high-ranking officials of local authorities (deputy Governor of Imereti region, head of Sachkhere municipality) and during the meetings with directors, representatives of authorities were categorically demanding from the schools to cancel agreements with ATU. As a reason, political views of Bidzina Ivanishvili were named which was considered a person connected with the association. Authorities perceived collaboration of schools' directors with this organization as political support for Bidzina Ivanishvili. In case of non-complying with this demand directors were receiving threats about their sacking.

Despite demands from local authorities of Sachkhere, 5 directors of public schools signed grant agreements with association ATU which became a basis for sacking of abovementioned directors.

Proceeding from similar factual circumstances in aforementioned cases, the Commission determined that during a sacking of directors¹³ there was used selective approach in terms of political motivation.

The commission found that in one case director was sacked because of political views of director's relative. In particular, L. C., relative of applicant N.M., was a candidate in majority constituency of the community of village Jumati (Ozurgeti municipality), from the election block "Alliance Georgia", during local elections in 2010. Representatives of local authorities were demanding from N.M. to persuade N.M.'s relative to withdraw a candidate, otherwise, were threatening applicant with sacking. The applicant refused to comply with this demand which caused applicant's sacking. Internal document from Irakli Andriashvili, acting head of Internal Audit Department of the Ministry, was used as a basis for sacking decree. This internal document was about termination of authority of directors for the unsatisfactory results

¹² Non-entrepreneurial (non-commercial) legal entity "ATU" was a charity organization, that had made agreements with the public schools of Sachkhere Municipalities and was associated with the charity activities of Bidzina Ivanishvili.

¹³ Legal entity of public law (Lepl) №2 public school of Sachkhere, Lepl public school of village Savani of Sachkhere municipality, Lepl public school of village Orghuli of Sachkhere municipality, Lepl public school of village Itavazi of Sachkhere municipality, Lepl public school of village Gamoghma Argveti of Sachkhere municipality.

of schools during certificate exams of pupils, which, in its turn, was illegal, because unsatisfactory results of pupils, according to the current legislation, are not a legal basis for the sacking of director¹⁴.

VI. Revealed systemic violations

During the process of examination of cases by the Commission, following problems were revealed:

- Structural problems – interference of officials of Ministry’s Administration, Internal Audit and Educational Resource Centers in the labor relations;
- Methods of pressure – body search during the entry in administrative buildings, forcing to quit a job on a basis of personal application;
- Under the pretext of unsatisfactory results in pupils’ certificate exams (so called “CAT” exams) sacking of certain directors;
- Interference of local authorities and law-enforcement bodies in the school activities;
- Interference of Ministry in the distribution of academic hours;
- Pressure because of membership in the labor union.

Structural problems

According to the acting legislation, public school is a legal entity of public law or entrepreneurial or non-entrepreneurial (non-commercial) legal person, established on the basis of Georgian Law which¹⁵ has administrative and financial autonomy¹⁶. This means that school is independent in the execution of powers under the legislation.

Despite the autonomy of school, materials studied by the Commission revealed that different structural units of the Ministry / representatives of legal persons established in given Ministry were carrying out pressure and threatening public schools’ directors which can be described as following:

¹⁴ Detailed information about practice of sacking because of unsatisfactory results during certificate exams see on the page 28.

¹⁵ Georgian Law “On General Education”, article 2, subparagraph “r”; article 3, par. 3, subparagraph “v”.

¹⁶ Self-rule of institution of general education: school board, directorate, pedagogical council, self-rule of pupils, disciplinary committee and appellate committee (if exist).

Final Report of the Commission

- Officials of the Ministry and legal entities established in the Ministry assigned a task to the directors of schools to sack teachers with different political views;
- Internal Audit of the Ministry was carrying out selective revisions, without pre-defined criteria, of public schools and on the basis of reports of these revisions directors were sacked¹⁷. Revision by the Internal Audit, in most cases, was preceded by the assignment of task to the directors from the side of various officials (representatives of Educational Resource Centers and local authorities) about sacking politically unreliable teachers and/or taking a part in the pre-election events of then ruling party – United National Movement by the directors and school employees.

Except summoning to the Ministry, pressure and threats, directors were receiving tasks in the offices of ruling party and local self-governing bodies. In those cases when directors refused to carry out a task or were considered politically unreliable persons, they were ultimately sacked on the basis of Internal Audit Department's conclusion.

During the sacking process the Ministry was actively using a procedure defined by the Georgian Law “On General Education”¹⁸: school board was receiving a conclusion of Internal Audit and an order of the Minister according to which the school board had to make a decision in a defined time limit to terminate authority of school director. In such cases school boards did not have a possibility to use legal power¹⁹ and justify their decision to refuse termination of director's authority because this process in most cases was carried out amid pressure and threats from the Ministry. The pressure mainly was executed by the Educational Resource Centers, local authorities and representatives of law-enforcement bodies which, in some cases, were confirmed by the members of school boards.

In certain cases, school board, despite the pressure, refused to sack directors after which the Minister was using his legal power²⁰ and was sacking a director by the decree. During the examination of cases also revealed a fact of sacking a school board by the Minister when school board did not cancel an authority of the director, despite the demand from the Minister.

As for acting directors, their sackings were carried out directly by decrees of the Ministry, on the basis of Internal Audit conclusion. Although in some cases, this process also was accompanied by the pressure on directors.

¹⁷ According to current legislation, internal audit of the Ministry is a controlling body of school, structural unit, which carries out supervision on legality, feasibility, efficiency and financial-economic activity. Although revision of schools by internal audit is carried out subjectively, particularly, only those schools were monitored, which did not comply with political tasks assigned by the Ministry.

¹⁸ Georgian Law “On General Education”, article 49, par. 6-6¹

¹⁹ Georgian Law “On General Education”, article 49, par. 6¹

²⁰ Georgian Law “On General Education”, article 49, par. 6¹

Final Report of the Commission

The fact of pressure on the members of family of applicant was also revealed. In particular, on the second day of school board session of one of the public schools in Sagarejo, after that school board did not terminate director's authority, the applicant's husband was arrested by the administrative procedure. At the same time, it became clear that in case of refusing to quit a job, director received a threat from the head of local governing body that her son will be arrested. Simultaneously, director's son also received threats about arrest and was under the pressure to force his mother to quit a job.

Cases of pressure

The Commission revealed that on certain persons employed in the Ministry, were put a pressure by the direct instructions²¹ of high-ranking officials of the Ministry, and these persons, while summoned to the Ministry, were subject of the thorough checkup, so called "search", before the entry to the administrative building. Particularly, pressure and threats to the applicants were carried out with the purpose that they would quit a job on the basis of personal application. Abovementioned method was mainly used against school directors and heads of Educational Resource Centers. Such facts revealed in 17 cases.

The cases of 9 public school directors should be noticed. The pupils of given schools took part in November 2010 in the protest action against certificate exams for which school directors left a job under the pressure of acting head of Internal Audit Department of the Ministry (I. Andriashvili), on the basis of personal applications.

After the studying of submitted materials and explanations of applicants/witnesses there was determined that sacking procedure of abovementioned directors was following:

Acting head of Internal Audit Department of the Ministry (I. Andriashvili) was summoning school directors to the Ministry. Before the meeting with Andriashvili, summoned directors were checked (searched) and personal belongings were removed. After the search, security employee escorted directors to the cabinet of Irakli Andriashvili. There the head of Internal Audit Department himself was receiving directors and asking them to submit personal application about quitting a job. In many cases applicant was given already prepared application about quitting a job which s/he had to only sign. To persuade director (applicant) to leave a job on the basis of personal application, the head of Internal Audit Department was using a threat or in other way was putting a pressure on directors.

In certain cases similar pressure was carried out by representatives of the Administration. In such cases applicants were summoned to the head of Administration of the Ministry, Genrieta Mumladze which was asking applicant to submit an application about leaving a job.

²¹ Head of the Administration, acting head of the Internal Audit Department

Final Report of the Commission

The Commission revealed a fact when deputy of the Minister of Education and Science, Akaki Seperteladze, asked public school's director, to submit an application about quitting a job. Particularly, in the case of applicant (director), G.K. it became clear that director was summoned to the Ministry on the same day as Internal Audit started revision of the school, and in the Ministry director was received by Akaki Seperteladze and asked to submit an application, otherwise, threatened by reprisal. The director submitted an application on the same day. According to the explanation of applicant, sacking was preceded by the assigning to the director a task to sack teachers for their political views which was received from the acting head of the Internal Audit Department, Irakli Andriashvili and representatives of law-enforcement bodies.

Tendencies revealed during a pupils' certificate exams (so called CAT exams)

After the study of cases it became clear that one of the basis to sack public school directors was unsatisfactory results of the certificate exams in 2011.

In cases when director was elected by the school board, early sacking of director was carried out on the basis of a letter sent by the acting head of the Internal Audit Department, Irakli Andriashvili to the school board. In such a letter it was mentioned that results of school certificate exams were not corresponding to the requirements set by the National Curriculum and a motivation that directors did not carried out appropriate measures to improve academic level of the pupils, was used to ask school boards to sack directors in the course of 24 hours after receiving a letter.

In cases when director was acting, he/she was sacked by the decree of Minister of Education and Science, on the basis of internal memorandum from July 8, 2011 (15978) submitted by the acting head of Internal Audit Department, Irakli Andriashvili. In the internal memorandum of acting head of Internal Audit Department and abovementioned letters sent to the school boards, the same basis is indicated – unsatisfactory results of schools during the certificate exams.

The Commission determined that on the basis of results received by the pupils of public schools during certificate exams of 2011, 46 directors were sacked.

The acting head of Internal Audit Department of the Ministry specified unsatisfactory results of pupils of certain schools in 2011 certificate exams as a motivation for sacking. These results, according to him, were not corresponding to the requirements set by the National Curriculum.

It should be noted that among the directors sacked on the basis of unsatisfactory results during certificate exams are directors of those public schools where 100% of pupils passed minimal threshold. Also, some cases were revealed that directors of certain public schools were not sacked which pupils had lower results than pupils of those schools which directors were sacked.

After the study of given issue, the Commission determined that Georgian legislation did not provide and is not providing a legal basis to sack a director for the unsatisfactory results of pupils in the certificate exams.

Attention should be paid to the circumstance that in the letter of acting head of Internal Audit Department of the Ministry, Irakli Andriashvili, it is not indicated specifically which norm set by the National Curriculum was not fulfilled by the directors and what influence it had on the results of certificate exams which became a motivation for their sacking.

Thus, the motivation, specified by the acting head of Internal Audit Department of the Ministry (unsatisfactory results received by the pupils in certificate exams of 2011 which are not corresponding to the requirements of National Curriculum) which was set as a basis for mass sacking of directors, was illegal, had a selective nature and was used subjectively, and this was a system problem.

Facts of interference of local authorities and law-enforcement bodies in the school activities

During a study of cases, the tendency became clear that high-ranking officials of local self-governing bodies were interfering in the school management. Such actions (interference in the school management) were carried out by the local leaders of then ruling party – United National Movement. This party was actively interfering in the competency of public schools through the abovementioned persons.

In the certain cases examined by the Commission it was revealed that high-ranking officials of local self-governing bodies were summoning directors of public schools and demanding from them to sack teachers, mainly for their different political opinions. In addition, facts were common that directors were receiving a task to bring teachers to the events organized by the United National Movement. In some cases also facts of interference of local self-governing bodies' representatives in the elections of school boards when representatives of United National Movement party were trying to bring in desirable for them candidates in school boards.

In 5 cases reviewed by the Commission facts of pressure on school boards from the side of Educational Resource Centers and local authorities were revealed, and in 1 case – from the side of law-enforcement bodies. The pressure on school boards was carried out for the purpose of terminating authority of elected directors so that they could be replaced by the politically reliable persons.

Interference of the Ministry in the distribution of academic hours

According to the principle of school's autonomy determined by the Georgian Law "On General Education", distribution of academic hours to the teachers was in a competency of school (pedagogical council)²². At the same time, the decree 576 of Minister of Education and Science of Georgia from October 21, 2005 (hereinafter – 576 decree) determined only the rules of calculation of teachers' salaries in public schools and criteria of a rise of salary calculation.

After the study of cases it was revealed that on June 28, 2011, all directors of public schools on a national scale received a letter²³ from the head of Administration of the Ministry, Genrieta Mumladze which assigned a tasks to schools to give to certified teachers a full²⁴ or more than full²⁵ workload in terms of academic hours and pay them a rise of salary in the amount of 75 lari. As a legal basis for request from the head of Administration 576 decree was specified.

By the opinion of the Commission, abovementioned assignment of the head of Administration of the Ministry did not have legal basis and was illegal because of following circumstances:

- According to the Law²⁶, as a closing date for passing of certificate exams, end of 2014 was designated and until this date, absence of certificate could not be a basis for sacking²⁷;
- Abovementioned decree determined only the rules of calculation of teachers' salaries in public schools and criteria of a rise of salary calculation. The decree 576 at the moment of sending a letter by the head of Administration obliged schools to give to teachers full or more than full workload. Although if a teacher had such workload, according to mentioned decree, s/he would receive a rise of salary in the amount of 75 lari²⁸ every month.

Proceeding from abovementioned, it became clear that the letter 08-1-20/7371 (28.06.2011) of the head of Administration of the Ministry was an incorrect interpretation of 576²⁹ decree of the Minister from

²² Georgian Law "On General Education", article 46, subpar. "a"

²³ Letter №08-1-20/7371 (28.06.2011).

²⁴ 18-19-20 academic hours in a week.

²⁵ 21 or more academic hours in a week.

²⁶ Georgian Law "On General Education", article 61.

²⁷ Georgian Law "On General Education", article 61, par. 2.

²⁸ Decree №576 of Minister of Education and Science of Georgia, from October 21. 2005, article 5¹, 23.06.2011 redaction.

²⁹ Based on the version of the mentioned date.

Final Report of the Commission

October 21, 2005 which caused redistribution of academic hours in schools and illegal sacking of teachers having partial workload³⁰.

Facts of pressure on the members of labor union

In June 2010, the Minister of Education and Science of Georgia, Dimitri Shashkini³¹, called directors of public schools that school administrations should not pay membership fees to the largest active labor union on Georgia – “Free Labor Union of Georgian Teachers and Scientists”. The Minister explained that the reason for this was an absence of collective agreement between school and labor union and written consent of members of labor union. At the same time, directors of public schools received verbal directive from the Ministry and Educational Resource Centers to transfer teachers to the non-entrepreneurial (non-commercial) legal person “Professional Syndicate of Education” which was established in 2010. Otherwise, school would be put under the revision of General Inspection of the Ministry (hereinafter – General Inspection) which will be followed by the sacking of directors.

According to the existing legislation³² transfer of the membership fee to the labor union was a responsibility of employer (in this case – administration of school) and this issue was not in competency of the Ministry of Education and Science of Georgia.

After the abovementioned statement of the Minister, majority of public schools ceased to transfer a membership fees to the account of labor union. Although, materials studied by the Commission revealed that certain schools did not comply with the assignment of the Minister. The Commission requested information in connection with these cases from the Internal Audit Department of the Ministry and “Free Labor Union of Georgian Teachers and Scientists”. With the help of submitted materials it was revealed that from July 2, 2010 to July 5, the General Inspection of the Ministry carried out selective revision of 6 schools³³. At the same time, it was determined that only these 6 schools paid a membership fees to the account of “Free Labor Union of Georgian Teachers and Scientists”. Directors of all 6 schools were sacked on the basis of Internal Audit’s conclusion.

³⁰ Less than 18 academic hours in a week.

³¹ <http://mes.gov.ge/content.php?id=940&lang=geo>

³² Georgian Law “On Labor Unions”, article 21, par. 5, article 25, par. 3; Collective agreement between Ministry of Education and Science of Georgia and Free labor Union of Georgian Teachers and Scientists, signed April 22, 1998, article 4.13

³³ Lepl №29 public school of Kutaisi, Lepl №37 public school of Kutaisi, Lepl №15 public school of Kutaisi, Lepl №18 public school of Kutaisi, Lepl №38 public school of Kutaisi, Lepl №23 public school of Kutaisi.

VII. Responsive actions of the Ministry on recommendations of the Commission

In parallel with the working of the Commission, and on the basis of recommendations issued by it, the Ministry elaborated two mechanisms of reaction on these recommendations:

- In cases when the Commission confirmed the facts of sacking of certain persons because of their political views and turned to the Minister with respective recommendation, the Ministry offered respective jobs to the abovementioned persons. These cases were also transferred to the Prosecutor's Office of Georgia for examination;
- In cases when the Commission determined signs of wrongdoings during a sacking of certain persons, respective cases were transferred to the Minister for the purpose of further legal reaction. The Minister in turn transferred these materials to the Prosecutor's Office.

In 23 cases of sacking because of political views on which the Commission issued a recommendation to the Minister, applicants were offered jobs in educational institutions, on the position of teacher or director. 3 applicants refused to accept offered job.

In addition, cases of 93 applicants were transferred to the Prosecutor's Office where the Commission determined that there were signs of sacking because of political views and/or wrongdoings (in 23 cases reasonable belief was determined about sacking for political views, in 70 cases – signs of wrongdoings during a sacking of persons).

VIII. Conclusion

On the basis of examining, studying and analyzing of applications submitted on a nationwide scale, different problems became clear in the educational system, in particular:

- ❖ The facts of sacking of certain persons because of their political views;
- ❖ Pressure on the directors of public schools from the side of the Ministry, local authorities and representatives of various bodies, with the purpose to force them to leave a job; Pressure on the directors of public schools for their different political opinions and/or with the purpose of forcing them to sack politically unreliable teachers;
- ❖ During a revision of schools, selective approach of the Internal Audit Department of the Ministry, which was aimed at sacking undesirable directors;

Final Report of the Commission

- ❖ Incorrect interpretation of existing legislation by the Ministry, for the purpose of sacking undesirable persons (taking into consideration results of certificate exams, distribution of academic hours, sacking of teachers without certificates, etc);
- ❖ Restriction of the right of employees in public schools to choose a membership in various labor unions by the Ministry;
- ❖ Violation of the principle of school autonomy by certain bodies.

Thus, it might be mentioned that after the working of the Commission, the facts of sacking of certain persons for their political views were revealed, as well as cases of various wrongdoings which were common in the actions of the Ministry and other governmental bodies. Aforementioned caused, on one hand, violation of human rights, and on the other hand, exerted negative influence on the due fulfillment of main directions of state policy defined in the educational sphere.