

Georgia

Public Defender (Ombudsman) of Georgia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Georgian NHRI was reaccredited with A status in October 2018. The SCA encouraged the NHRI to continue to advocate for amendments for a more transparent and broader selection and appoint process of the Public Defender. It also raised the need for the NHRI to be provided with sufficient funding to carry out its multiple mandates effectively.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Since 2015, the Public Defender's Office (hereinafter PDO) has been repeatedly emphasizing the need of strengthening the Public Defender's mandate as equality body. In response, in May 2019, under the Organic Law on the Public Defender of Georgia, the entities of private law became subject to the same legal regulation as public entities. In particular, the law obligated the legal entities of natural and private law to provide the Public Defender with information necessary for the examination of alleged discrimination. At the same time, the Public Defender has been empowered to apply to courts against the private legal entity or the association of entities, like public agencies, with the request to comply with the Public Defender's recommendation. In addition, the deadline for applying to the court concerning alleged discrimination increased from three months to a year.

As to the environment in which PDO operates, it should be noted that on 21 January 2020, the Public Defender (Ombudsman) presented its special report to the Georgian Parliament's Committee on Human Rights and Civil Integration to raise its concerns that some prison administrations were allowing systems of "informal governance" by inmates, resulting in risk of violence and ill-treatment. During this parliamentary hearing, and as a response to these findings, the Minister of Justice discredited the report and questioned the professionalism of the Public Defender's Office.

The Minister of Justice also exposed two video recordings of meetings between the Georgian Public Defender's representatives and prisoners, and the same videos were

published on the social media of the Ministry of Justice, without any regard to privacy or confidentiality safeguards. Days later, penitentiary staff notified the media and announced online and on social media the names of prisoners with whom the Ombudsperson had met. It is noteworthy that the Organic Law of Georgia on the Public Defender of Georgia prohibits any kind of video-audio surveillance of a meeting between the Public Defender's representatives and prisoners by the Ministry of Justice.

As the video footage depicting the meeting between one of the representatives of the Public Defender and an inmate shows no unlawful action and as the purpose of archiving the video is not clear either, the Public Defender believes that archiving videos without legitimate purpose and retaining them for a long time evidently represents violation of the norms of the Organic Law of Georgia on the Public Defender. In addition, the disclosure of identifiable video footage of two representatives of the Public Defender violated the requirements of the Law of Georgia on Personal Data Protection.

These unfortunate developments clearly demonstrate attempted Interference with and influence on the Public Defender's Activities.

References

- Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality, 2019. - <https://bit.ly/2Kp0RYA>
- Public Defender Addresses State Inspector to Study Lawfulness of Actions of Minister of Justice - <https://bit.ly/3aq7bK0>
- Public Defender's Special Statement on Attempted Interference with and Influence on Public Defender's Activities - <https://bit.ly/2RXHnhZ>
- ENNHRI Statement in Support of the Georgian Public Defender (Ombudsman) - <https://bit.ly/2Kl8lqa>
- Public Defender Responds to Fining of Ministry of Justice and Special Penitentiary Service - <https://bit.ly/3anDXLW>

Human rights defenders and civil society space

The Public Defender of Georgia drew attention to the challenges faced by the human rights defenders working in non-governmental organizations or independently in various countries, including within Europe as well as to the recent developments in Georgia. The Public Defender decided to dedicate a separate chapter to such an important topic in her annual report of 2018 and 2019. (1)

In recent years, a number of statements were made by high ranking officials to discredit non-governmental organizations and their managers working on topics necessary for the democratic development of Georgia, such as prevention of corruption, protection of human rights, monitoring of proper functioning of state institutions and elections. This was accompanied by a large-scale smear campaign, in particular on social networks, against chairpersons of non-governmental organizations. Eka Gigauri, Executive Director of Transparency International Georgia, for example, has pointed to the likelihood of involvement of the ruling political party in the attacks(2). Defamatory and insulting posts are spread on social media, in particular on Facebook, by a number of individuals and groups, although these come from seemingly fake accounts preventing the identification of specific individuals. Despite the diversity of the authors, the posts are very similar in content and a large part of them seem to be sponsored. In April 2020 Facebook removed 511 Pages, 101 Facebook accounts, and 122 Groups, and 56 Instagram accounts for engaging in coordinated inauthentic behaviour in Georgia. (3)

It should also be noted that women and those LGBT+ rights defenders who self-identify with the LGBT+ community are under increased risk of violence. The analysis of the cases examined by the PDO shows that cyber-threats and cyber-bullying are the major forms of violence. The response of law-enforcement agencies to these crimes is not effective and fails to respond to the scale of the problem. According to the information supplied by the Prosecutor's Office of Georgia, in 2018-2019, criminal prosecution was instituted against 4 persons for alleged crimes committed against human rights defenders.

The Public Defender's Office has examined cases involving alleged violence against women and LGBT+ rights defenders. One case involved physical assault, cyber-attack and threats in relation to an LGBT+ rights activist on the International Day against Homophobia and Transphobia at an anti-homophobic rally. In another case, there were cyber-threats against an activist who openly criticized voicing anti-homophobic messages by a public figure. The Public Defender also examined a case against a woman human rights defender who received cyber-threats because she had recorded and posted educational videos on sexual and reproductive health and rights.

The Public Defender of Georgia addressed these cases with a statement and expressed concern that this worrying trend threatens the democratic development processes in the country. At the same time, the Public Defender called upon the authorities to be guided with internationally recognized democratic standards for the protection of human rights defenders.

In 2019, following the request from Public Defender, representatives of PDO participated in a three-day intensive training conducted by the OSCE / ODIHR. During the training, international human rights standards were discussed, as well as effective monitoring and reporting methods. In addition, taking into account the existing challenges in terms of the proper protection of human rights defenders, PDO developed a guiding document that analyses the international standards of the notion of human rights defender; highlights the basic obligations imposed on governments for their protection; defines the role and functions (including the Marrakesh Declaration) of NHRIs and with that in mind, prescribes the measures, which PDO will implement for the purpose of creating a safe and supportive environment for human rights defenders.

References

- (1) The Situation in Human Rights and Freedoms in Georgia 2018 - <https://bit.ly/2VFoLUU> p.120; p.141; The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0> p.250
- (2) Available at: <https://bit.ly/2tRPPTw> .
- (3) Available at: <https://about.fb.com/news/2020/05/april-cib-report/>

Checks and balances

The PDO within its mandate observed all stages of the selection of Supreme Court judicial candidates and actively participated in the hearings of the selected 20 candidates at the Parliament of Georgia. During this process the main focus of the Public Defender's monitoring concerned the respect of procedural rules, the practical application of the principles and safeguards enshrined in domestic laws and compliance of the process with international standards.

In particular, the observation of the selection process of Supreme Court judges in the High Council of Justice (hereinafter HCJ) by the Public Defender identified many problems that had an essential impact on the fairness of the process, including: arbitrariness of decision-making in the High Council of Justice, lack of safeguards to avoid conflicts of interest, lack of transparency and full publicity of the process, absence of the opportunity of appealing against the decisions made by the Council.

Furthermore, PDO requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter ODIHR) to issue opinion on the controversial draft amendments relating

to the appointment of Supreme Court judges of Georgia. In its opinion ODIHR confirmed PDO's concerns and noted that the modalities for the HCJ to select candidates by secret ballot undermines the merits-based selection system and should be replaced by a procedure whereby the HCJ would adopt a summary of majority justification for the ranking of candidates and their nomination in light of the clearly defined selection criteria. Moreover, the Draft Amendments should specifically regulate the issue of conflict of interest in the context of nomination of candidates to Supreme Court judgeship by the HCJ. Finally, unsuccessful candidates should have the possibility to challenge the HCJ decision before a judicial body.

The Public Defender issued 13 public statements concerning the flaws in the selection process; dedicated sub-chapter to this topic in the Parliamentary Report of Public Defender of Georgia; voiced concerns on the irregularities in the procedure of the appointment of judges at the plenary session of the Parliament of Georgia; studied a plethora of materials to shed light on qualifications of candidates and published special Monitoring Report on the Selection of Supreme Court Judicial candidates by the High Council of Justice of Georgia.

On 1 November 2019, Public Defender filed a constitutional lawsuit with the Constitutional Court of Georgia and requested that the rule of selection of Supreme Court judicial candidates by the High Council of Justice be declared unconstitutional. In the constitutional complaint PDO asserts that the regulations in force fail to ensure that the most competent, conscientious and impartial candidates are selected for the office of judge of the Supreme Court of Georgia thus violating the principle of fair trial.

References

- Public Defender of Georgia's Monitoring Report on the Selection of Supreme Court Judicial Candidates by the High Council of Justice of Georgia - <https://bit.ly/3akM0sU>
- Opinion on draft amendments relating to the appointment of Supreme Court judges of Georgia, OSCE/ODIHR, April 17, 2019, Warsaw. - <https://bit.ly/2VrUkmj>
- The report of ODIHR on the First Phase of the Nomination and Appointment of Supreme Court Judges in Georgia: <https://bit.ly/2PYzxUX>

Functioning of justice systems

The right to a fair trial, which incorporates numerous components, was violated in various aspects in recent years and systemic and individual problems were identified by PDO: delay in examination of cases; sentences adopted in violation of the principle of legal certainty; the use of inadmissible evidence; shortcomings related to the direct examination of evidence due to the breach of the principle of the court composition and denial of the right to a fair trial in the examination of administrative violations.

The legislation in force does not provide for the possibility of exemption from court fees for socially disadvantaged convicts placed in a penitentiary institution, which, according to the Public Defender, is contrary to the right to have access to the court. As a result of the activities of the PDO, specific cases have been revealed which are proceeding in violation of the principle of legality.

Moreover, the analysis of applications filed with the Office of the Public Defender of Georgia shows that in separate district courts, translators were unable to provide appropriate services to the accused. They could not translate perfectly, which prevented the accused from receiving information in a language he could understand.

There are also challenges with juvenile justice system. The current legislation does not provide for free legal assistance to juvenile witnesses involved in criminal proceedings. Besides the fact that the legislation directly provides for the obligation to specialize the psychologists (procedural representatives) involved in criminal justice, the agency responsible for specialization is not currently designated.

The Public Defender's Office has received numerous applications concerning illegality and lack of reasoning of judgments.

Considering PDO's mandate, the Office often resorts to the amicus curiae procedure and submits briefs to the courts.

Apart from the respect of fair trial standards, the Public Defender of Georgia is concerned about institutional problems of the judiciary since they are closely related to human rights. In particular, as illustrated above, the Public Defender independently observed the selection of Supreme Court judges in the High Council of Justice of Georgia, based on which a special report was prepared. In the report, it is indicated that independence of the judiciary still represents a significant challenge in Georgia.

References

- The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0>
- Monitoring Report on the Selection of Supreme Court Judicial Candidates by the High Council of Justice of Georgia 2019 - <https://bit.ly/2M0RrDo>

Media pluralism

In 2019, as in the previous years, existence of a free and pluralistic media environment remained problematic. Pressing questions arose regarding the attempt to change the critical editorial policy of Adjara TV and Rustavi 2 broadcasting. Last year was marked by the number of criminal proceedings initiated towards the owners of the TV stations that are independent from the government, which raises questions about attempts to interference in the work of critical media in the country.

In particular, the PDO intervened in criminal proceedings brought against Nika Gvaramia, the former General Director of Rustavi 2 Broadcasting Company Ltd. and the founder of the newly established channel – Mtavari Arkhi. The Public Defender started to study the case on her own initiative on August 29, 2019; the Office has fully analysed the criminal case materials submitted by the defence.

On 4 November 2019, the Public Defender filed an amicus curiae brief with the competent Tbilisi City Court in connection with the criminal case stating that the charges filed by the Prosecutor's Office against Nika Gvaramia do not contain enough obvious signs for imposing criminal liability, the Court should consider the issue in depth and assess whether the disputed action is truly a crime or whether it should be discussed in the context of corporate law. It is indicated in the amicus curiae brief that the Court should consider the circumstances of the case and present a reasoned opinion, since the resolution of circumstances surrounding the charges against Nika Gvaramia directly affects both the protection of individual's rights and freedoms and development of further practice of the court.

In addition, the unfortunate trend of legislative initiatives aimed at restricting freedom of expression is still problematic. The Public Defender called on the government and asserted in her parliamentary report that the proposed legislative changes will create the possibility

of interfering in the content of media programs, which will have negative impact on the high standard of freedom of expression in the country.

In addition, it should be noted that after almost three years of disappearance of Azerbaijani journalist Afgan Mukhtarli from the central part of Tbilisi and the whole set of investigative actions that were carried out, the investigation has not brought about any concrete result yet. The Public Defender has been closely monitoring the developments around this case through the years and has periodically requested from the investigative agency information about the progress in this investigation.

References

- The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0>
- Amicus Curiae Brief in connection with Nika Gvaramia's Case - <https://bit.ly/3cDRX5B>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On March 21, 2020 the Parliament convened the extraordinary Plenary Session to authorize the Presidential Decree over State of Emergency throughout the country. State of Emergency was declared throughout country initially until 21st April, though later this term was prolonged twice. At the time of reporting the state of emergency has been prolonged until 22nd May. According to the decree, a number of rights defined by the constitution of Georgia are restricted by the term of emergency on the territory of Georgia.

PDO studies the situation in quarantine spaces which have been created for the mandatory placement of people in order to prevent the spread of novel coronavirus. As of today, more than 5,000 people are in the quarantine zone. Within the framework of the National Preventive Mechanism, PDO studies conditions in the quarantine spaces, provision of health care services, standards of human rights, and needs of vulnerable groups and implementation of other important guarantees in practice.

In connection with the imposition of the special quarantine regime in response to the spread of the coronavirus in the municipalities of Bolnisi and Marneuli, the Public Defender's Office of Georgia and its Kvemo Kartli office provide consultations and legal

assistance to the residents of these municipalities including ethnic minorities for 24 hours, including in ethnic minority languages: the Azerbaijani and Armenian languages.

The Public Defender's Office is in constant contact with the interagency council – the body responsible for the management of issues related to pandemic, local authorities, state agencies, organizations working in the region and the local population. Due to the lack of information in the Azerbaijani language, the population does not have detailed information on the imposed rules, disease prevention or the measures to be taken by them. PDO plays referral functions and helps local population to reach relevant state bodies and receive public services.

Public Defender issued a statement on Issues relating to Violence against Women and Domestic Violence stating that the prevention of and effective response to violence against women and domestic violence in a timely manner should be a priority for the State during the state of emergency. In the statement Public Defender also highlighted the measures that should be taken in order to respond to the increased risks of domestic violence against women and LGBT+ persons.

Moreover, PDO evaluated the situation at the checkpoints set up for the quarantine purposes in Marneuli, Rustavi and Mtskheta. Representatives of the Public Defender's Office visited the checkpoints and monitored the procedures carried out by the military towards citizens at the checkpoints.

PDO also responded to the issue of provision of shelter to people living on the streets during the state of emergency, as well as for the necessity of smooth delivery of medical services to persons enrolled in state programmes on tuberculosis, hepatitis C, dialysis and kidney transplantation.

Most important challenges due to COVID-19 for the NHRI's functioning

From March 13 to date representatives of PDO have visited 60 prisoners. The Public Defender's hotline functions on usual basis and is available for 24 hours as before the COVID-19 outbreak.