

# State of the Rule of Law in Europe in 2022

Reports from National  
Human Rights Institutions

Georgia



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# Georgia

## *Public Defender (Ombudsman) of Georgia*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

The Public Defender of Georgia notes with concern that there has been no significant progress made by the authorities to address problematic issues reported in the previous ENNHRI rule of law report. As illustrated in this report, important challenges remain in terms of the efficiency of the justice system and the rule of law in general. On April 19, 2021, Georgia's ruling party and the opposition reached an agreement through EU mediation to end a months-long political crisis in the country. The proposed agreement laid the basis for significant elections and judicial reforms. The proposed agreement was unfortunately, annulled by the Georgian ruling party on July 28, 2021. Therefore, the Government did not reform the judiciary and the electoral system in accordance with the political agreement. This once again indicates the Government's reluctance to carry out important reforms in the justice sector.

#### References

- A way ahead for Georgia's Proposal by President of the European Council Charles Michel to the representatives of Georgian political parties, p.5:<https://bit.ly/3JfmilM>
- On February 8, 2022, NGOs published a Monitoring Report on the Implementation of the Agreement, which describes all activities carried out by political actors: <https://bit.ly/3MwAQEp>

#### Impact on the Institution's work

For the Public Defender's Office (PDO) of Georgia, the issues raised in the previous ENNHRI rule of law report have been addressed as a priority in its work for years. Voicing them in the ENNHRI reports represents another important opportunity to bring them to the attention of regional and international actors working on advancing the rule of law and democracy across the region.

## Follow-up initiatives by the Institution

The PDO has been following up on the developments on issues addressed in the previous ENNHRI report by means of different types of activities that fall within its mandate. In particular, the activities that took place in connection with the Ninotsminda Boarding School case were especially significant. The Ninotsminda Boarding School is a large residential childcare institution providing 24-hour service to juveniles under state care.

The Ninotsminda Boarding School has been repeatedly fined for violating the provisions of the Technical Regulation on Child Care Standards and license conditions. Moreover, the Public Defender's monitoring results have also indicated systemic violations of the rights of the child and inadequate living conditions in the Boarding School over the years. The monitoring also revealed that, although there were issues concerning beneficiaries' mental health, they were not properly assessed or provided with necessary services. As to relatively more recent alarming events, a social worker of the State Care Agency was unable to conduct monitoring in the facility for 11 months, from June 2020 to April 2021 due to the decision of the (now former) head of the Boarding School. Moreover, the Public Defender's representatives were also not allowed to monitor the Ninotsminda Boarding School on April 15 and May 19, 2021 despite the Public Defender's statutory authorization to conduct monitoring.

After April 2021, the PDO appealed to all the relevant state agencies, court and international organizations in order to protect the interests of the beneficiaries of the Boarding School. The PDO examined up to ten individual cases of alleged violations of the rights of the child in the Boarding School, as well as the matter of protection of the rights of current and former beneficiaries of state care. The Institution issued two individual recommendations and one proposal on the protection of the rights of former beneficiaries. It also submitted its opinion on the lawsuit filed by a non-governmental organization - NNLE Partnership for Human Rights - to the Tbilisi Court of Appeal. As third-party intervener, the Institution addressed the UN Committee on the Rights of the Child, where the complaint of the Partnership for Human Rights is currently being considered. In addition, the PDO applied to the UN Committee against Torture in writing and informed it of alleged cases of ill-treatment, possibly amounting to torture and inhuman treatment of children living in the Ninotsminda Boarding School.

On June 17, 2021, the Public Defender of Georgia met with the new head of the Ninotsminda Boarding School. Both parties agreed that social workers would work intensively to assess the needs of children remaining in the Boarding School, while the Public Defender would monitor the process. During a visit on June 28, the Public Defender met with the head of the facility, inspected the building and talked to children, while Public

Defender's representatives examined the documentation of the facility and talked to children together with a psychologist. Further monitoring visits were conducted on September 13 and November 22, 2021. The Public Defender's representatives also examined in detail the full materials of each criminal case relating to alleged violence against children in the Ninotsminda Boarding School. Currently, 4 criminal cases are being investigated 3 of which are being investigated under Article 126 of the Criminal Code, and one is being investigated under Article 137 of the Criminal Code.

Through the efforts of the Public Defender and civil society, several children living in this institution have been reunited with their biological families or placed in other forms of state care, while some of them continue to live in the institution. Positive changes have been observed in the treatment of children, provision of food and health care. However, it should be underlined that the institution, due to its size and institutional arrangement, still fails to meet the best interests and individual needs of children. In particular, the closed nature and large size of the Institution fail to provide a family-like environment, create an unhealthy attachment of the children to the facility and hinder socialization of children. The environment hinders the development of skills needed for independence and readiness to leave state care. Children living in the institution need continuous involvement of specialists of supportive professions, including a psychologist, which has not been ensured so far. The psychologist invited by the Boarding School has visited the institution twice in total. The State Care Agency failed to meet children's needs as regards provision of psychological or psychiatric services, despite the fact that the Agency itself identified such needs.

### **References**

- Public Defender's Statement, International Human Rights Day, 10.12.2021: <https://rb.gy/2fshn4>
- Public Defender's Statements on Human Rights Violations during Pre-Election Period: <https://rb.gy/ohyshz>, <https://rb.gy/pi2bes>
- Public Defender's Special Report on the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School: <https://bit.ly/3NYBBHw>
- Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021: <https://bit.ly/3rNxoh6>

### **NHRI's Recommendations to National and European policy makers**

- Continue to support NHRIs through public statements and/or by raising concerns with the Government/Parliament on the issues reported by NHRIs to facilitate the

impacts of NHRIs work. Such statements can demonstrate to the Government/Parliament, the regional and international support and indicate what standards the Government/Parliament should follow.

- Continue trainings and/or workshops on ways to engage with the EU and the Council of Europe (CoE) on human rights and rule of law related issues.

## **Independence and effectiveness of the NHRI**

The Institution believes that the situation in terms of the independence and effectiveness of the Institution remains worrying. In 2020, the Institution noted that it had become dangerous for the representatives of the Public Defender's Office to carry out visits and monitoring of penitentiary establishments due the verbal attacks, threats and aggression against representatives of the Public Defender's Office perpetrated by certain groups of prisoners managed by the administration of the establishments and the so-called 'prison watchers'. The term "prison watchers" refers to privileged prisoners who attempt to establish an illusory order within a prison facility.

While such attacks have fortunately not occurred since January 2021, there were particularly frequent instances of various politicians questioning the functions and duties of the Public Defender in 2021. Some also showed disrespect for the Public Defender's mandate. For example, the leader of the parliamentary majority, Irakli Kobakhidze, has repeatedly accused the Public Defender of lying and political bias. Several other politicians have also spoken out about the Public Defender's "politically motivated" activities. Tbilisi Mayor Kakha Kaladze's cynical reaction to the Public Defender's statement was also noteworthy.

The situation became especially tense after the Public Defender made statements about the legal status of the President of Georgia, Mikheil Saakashvili. Following the publication of the conclusion on Mikheil Saakashvili's health condition, Irakli Kobakhidze even raised the possibility of the Public Defender being held liable for spreading false information, which does not have legal ground.

## **International accreditation status and SCA recommendations**

The Office of the Public Defender of Georgia was re-accredited with A-status in October 2018 (1).

The SCA noted that the Anti-discrimination Law does not oblige private entities to provide information to the Public Defender and that the UN Committee on the Elimination of Racial discrimination expressed concerns that this may impact the NHRI's ability to effectively examine cases of discrimination. The SCA encouraged the NHRI to continue to

advocate for amendments to the law to make the provision of information by private entities and individuals mandatory.

The SCA acknowledged that the NHRI conducts follow-up activities to monitor the extent to which their recommendations have been implemented and encouraged the NHRI to continue to do so.

Further, the SCA encouraged the NHRI to continue to ensure pluralism and diversity through its staff and cooperation with civil society.

Acknowledging that the NHRI has reported that there are efforts underway to amend the Rules of Procedure of the Parliament to provide detailed procedures for the selection the Public Defender, the SCA encouraged the NHRI to continue to advocate for amendments for the formalisation and application of the selection process.

Finally, the SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure it can effectively carry out its mandate, including their newly mandated capacities as the NPM under the OPCAT, and as monitoring mechanism under the CRPD.

## **References**

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20October%202018-Eng%20FINAL%20.pdf>

## **Regulatory framework**

The Institution functions on a constitutional basis. The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts and awareness-raising.

The national regulatory framework applicable to the Institution has not changed since the last report but needs to be strengthened.

The Public Defender's Office of Georgia faces considerable obstacles concerning the examination of casefiles of criminal cases in a timely and effective manner. Under the legislation in force, the Public Defender does not have access to the casefiles in ongoing investigations (the Organic Law of Georgia on the Public Defender of Georgia, Article 18.e). On 29 November 2018, the Public Defender made a proposal to the Parliament of Georgia and requested to extend the mandate under Article 18.e of the Organic Law of Georgia on the Public Defender of Georgia with a view to grant access to casefiles of ongoing investigations into ill-treatment and/or deprivation of life. The Parliament of Georgia rejected this legislative proposal. The Public Defender maintained this request in her Parliamentary reports of 2019 and 2020.

## References

- Tabula, Kobakhidze: Nino Lomjaria shows why the National Movement cannot take a position, 09.11.2021, : <https://rb.gy/iszv6x>
- LibertyRadio, "Politically Motivated" - How Georgian Dream Assesses Council Conclusion, 18.11.2021, : <https://rb.gy/c37lzb> ; Commersant, Gia Volski - According to Nino Lomjaria, the "Georgian Dream" was formed as a political opponent rather than a government to be criticized, 10.12.2021, : <https://rb.gy/kdppdx>; PostTV, Gia Volski: Nino Lomjaria is not a Public Defender; she is a "Defender of the National Movement," and she will have to live with that pseudonym for the rest of her life, 23.02.2021, : <https://rb.gy/gvntsv>; Nino Lomjaria is a National Movement Defender, not a Public Defender," says Aluda Ghudushauri, 17.09.2021: <https://rb.gy/w2bwbe>
- Palitraneews, 25.10.2021: <https://rb.gy/zbc7s5>
- LibertyRadio, 18.11.2021: <https://rb.gy/helfqc>
- The Committee's Conclusion no. 2-6694/19 of 12 April 2019: <http://bit.ly/2J9lyq1>

## Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role.

The NHRI does not have adequate access to information and to policy makers and is not involved in all stages of legislation and policy making with human rights implications.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply.

According to 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 are obliged to examine them and report in writing on the results of the examination to the Institution within 20 days. The recommendations of the Public Defender do not have binding force, except in the case of recommendations related to discrimination as laid down in. The binding nature can be decided by a court, particularly in cases of non-compliance.

However, the Public Defender faces challenges in accessing information within the scope of its activities. One clear example is that, due to a lack of information made available by public institutions, the assessment of a number of tasks reflected in the parliamentary decree (issued on the basis of the Public Defender's parliamentary report) is sometimes impossible.

The Public Defender of Georgia is authorised to apply to the court as an interested person, according to the Administrative Procedure Code of Georgia and request the issuance of an administrative legal act or performance of an action. The Organic Law on the Public Defender of Georgia entitles the Public Defender to apply to the court as a plaintiff according to the Civil Procedure Code of Georgia, if the private entity did not respond to its recommendation and there is sufficient evidence proving discrimination. These two procedures are of the same nature. The first provides for the Public Defender to have an impact on public units, and the second - on the private sector.

The Parliament of Georgia adopts a resolution on the basis of the Annual Report of the Public Defender of Georgia. With this resolution, the Parliament evaluates the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms and instructs state agencies to implement the recommendations offered in the report, thus putting the implementation of the recommendations issued under parliamentary supervision. To this end, the Parliamentary Committee on Human Rights and Civil Integration monitors the implementation of tasks to be performed by the public agencies. The Public Defender annually prepares a special report on the state of implementation of parliamentary tasks. At this stage the Institution has prepared only the draft of the special report for 2021, which is not finalized and figures may be subjected to revision. The assessment is the following: only 17.1% of tasks were implemented.

Measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place. Following the attacks in semi-open establishments as detailed below, the European Committee for the Prevention of Torture paid a special visit to Georgia to inspect the situation. Following the visit, it was publicly announced by the Minister of Justice that representatives of the Public Defender's Office would not face any problems in carrying out their activities.

### **References**

- The Special Report of the Public Defender of Georgia on Implementation of Tasks Reflected in Parliamentary Resolution of June 29, 2020, 5: <https://rb.gy/eim7nf>

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

The Council of Europe (CoE) Committee of Ministers has adopted a Recommendation to its member States on the development and strengthening of effective, pluralist and independent national human rights institutions (NHRIs) back in March 2021. The importance of the implementation of this Recommendation has been raised by the Public

Defender and First Deputy on numerous occasions during meetings with CoE high level representatives, specifically with regards to the standards on the selection and appointment of the Public Defender. The PDO has been actively involved in the work of the Council of Europe Steering Committee for Human Rights (CDDH) in drafting the Recommendation. At the meeting held in Strasbourg in September 2019, the PDO was represented by the First Deputy Public Defender, who emphasized the issue of the lack of selection criteria for Public Defender in Georgian legislation. Namely, she underlined that election of the Public Defender is a purely political process, ensuring participation of political parties only, including the majority and minority present in the Parliament of Georgia. Therefore, during the meeting, she underlined that in order to safeguard the principle of pluralism in the selection process of the Public Defender, the selection process of the Public Defender should be formalized and include the following set of requirements:

- Publicizing vacancies broadly;
- Maximizing the number of potential candidates from a wide range of societal groups and educational qualifications;
- Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
- And setting pre-determined, objective and publicly-available criteria.

The abovementioned meeting was attended by the representatives of the Georgian Government, as well as communicated with the relevant Ministry. The aforesaid opinion was also shared directly via official communication with the CoE's Director General and Secretary to the Committee of Ministers. In addition to that, issues on the selection and the appointment criteria for the NHRIs have been included in the draft text of the Recommendation, namely, the appendix to the recommendation states that "selection and appointment of the leadership of a national human rights institution should be merit-based, transparent and participatory to guarantee the independence and pluralist representation of these institutions as one of the criteria for strengthening the NHRIs".

In terms of raising this matter and engaging with state officials, the Parliament of Georgia started to work on the Open Parliament Action Plan 2020-2021 in 2020. On 14 April 2020, the Public Defender of Georgia proposed to integrate "Increasing the Transparency of the Selection of the Public Defender" in the action plan as an independent activity. Respective information and legal justification were sent in writing. During oral discussions organized around the draft Action Plan, the Chair of the Open Governance Permanent Parliamentary Council supported this idea. The Parliament adopted the Open Parliament Action Plan 2021-2022 last year. However, the PDO's proposal to increase the transparency of

Ombudsman's election process was not reflected in the document as the Open Governance Permanent Parliamentary Council alleged that it went beyond the Council's functions to address this matter.

### **References**

- Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions: <https://bit.ly/3xeSHKt>

### **NHRI's recommendations to national and regional authorities**

- Ensure that the Public Defender, its Office, and associated experts can operate in an environment that allows them to carry out their mandate independently, effectively, and safely, in accordance with the Committee of Ministers of the Council of Europe's Recommendation (2021) on the development and strengthening of effective, pluralist, and independent national human rights institutions.

### **Human rights defenders and civil society space**

The number of attacks on human rights defenders (HRD) increased in 2021, which became more concerning given the state's particular inability to protect their rights.

#### **Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The monitoring carried out by the Public Defender revealed a number of unfortunate attacks on human rights defenders. Verbal attacks included statements made by high officials aimed at discrediting NGOs working on issues of crucial importance for democratic development.

The Public Defender considers that the measures taken at the national level to ensure the protection of HRDs remain insufficient. Law enforcement agencies do not take adequate precautionary measures to prevent attacks on HRDs. This particularly affects organizations defending the rights of LGBT+ persons. The Public Defender believes that the tendency of radical groups (both political parties and groups/organizations of like-minded citizens) to obstruct the freedom of expression of LGBT+ people has been growing in recent years. These groups are mostly similar in their radical, ultra-orthodox ideology and homophobic views. In some cases, such associations exist in an organized manner and are, to some extent, characterized by consistent actions. It is noteworthy that individuals from the extreme right, through their actions and statements, promote homophobic attitudes, fuel discrimination, and carry out actions that amount to violations of the law. For their part,

the Government is not taking the necessary preventive measures, nor is it responding effectively to specific cases, which poses an even greater threat to the equality of LGBT + people and the safety of defenders.

The events of July 5th, 2021 are a clear manifestation of the above conclusions and findings. On July 5th, 2021, members of a hate group brutally assaulted a journalist of TV Pirveli, and cameraman Alexander Lashkarava during a "Pride" celebration which led to serious physical injuries. Lashkarava sustained a concussion and broken bones in his face, and underwent surgery as a result of the attack. He left a hospital on July 8th and was found dead at home on July 11th. This episode demonstrates the failure of the Government of Georgia to prevent and respond properly to violence by private individuals against LGBT+ community members, activists, journalists and citizens more broadly, inflicting serious injuries and threatening their health and lives. Discriminatory statements by state high officials do not help the situation and contribute to creating a fertile ground for those violent acts.

The situation is complicated by the fact that the legislation does not define the concept of human rights defenders, which creates a number of problems in terms of fully identifying offences committed against them and maintaining the relevant statistics.

### **References**

- Public Defender's Statement on International Human Rights Day, 10.12.2021: <https://rb.gy/uaobnq>
- Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021: <https://bit.ly/3rNxoh6>
- Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022: <https://bit.ly/3vKfM8g>

### **Access to and involvement of civil society actors in law and policy making**

Legislation related to freedom of information in Georgia has gaps and needs in-depth reform. While reform attempts started almost 9 years ago, no concrete progress has been made. The Public Defender's Office observed that in a number of cases the information is not issued timely as mandated by existing regulations. The existing regulations provide that the person requesting information should be able to get it within 10 days from the request. Timely access to public interest information is often prevented by the lack of appropriate recording and archiving of relevant data, documents and information by public agencies.

Based on the foregoing, civil society actors, as well as other citizens, face the challenge of obtaining the necessary information in a timely manner. This unduly hinders them from carrying out their activities, including fully participating in the policy making process.

Although they may be given the formal opportunity to participate in the process, they are denied, in some cases, the opportunity to present in-depth opinions and analysis on relevant documents since they are not given adequate time to review documents and prepare opinions.

For example, the Parliament of Georgia considered extremely controversial changes in 2021 relating to the judiciary in a hastened manner, without sufficient discussion or prior consultation with civil society. The Public Defender considers it inadmissible to devote only 2-3 days to the discussion of such issues, to schedule a committee meeting without publishing the bill and to deprive stakeholders of the opportunity of an informed participation in the discussion on a such an important reform.

Another example is the legislative package concerning the reform of the State Inspector's Service (SIS). The draft law was prepared in a non-transparent manner and without prior consultation with stakeholders, even without consulting the State Inspector herself. Within three days of submitting the bill, the Parliament of Georgia adopted the draft law on December 30. The Public Defender maintains that the rapid adoption of such an important draft law, consisting of more than two hundred pages, in the absence of any explanation for the rushed adoption (the Parliament having failed to explain why it was necessary to implement this reform in an expedited manner) is not in line with the rule of law and democratic principles. The reform will be discussed in depth under another section.

### **References**

- 2020 Parliamentary Report of the Public Defender of Georgia, 197-198: <https://rb.gy/fq76q9>
- Public Defender's Statement, Public Defender Negatively Evaluates Bill relating to Judicial System, 30.12.2021: <https://rb.gy/ahyuz0>
- Public Defender's Statement on Attempt to Abolish State Inspector's Service, 27.12.2021: <https://rb.gy/npuzhi>

### **Threats and attacks, including strategic litigation against public participation (SLAPPs)**

The Public Defender has observed persisting limitations of the right to freedom of peaceful assembly such as violence and hate acts during protests and against demonstrators, as mentioned in the previous section. Furthermore, the Public Defender was made aware of several instances where activists were denied permission to set up tents during protests by

police officers, leading to the arrest of over 20 activists in one case. In this case, activists were trying to put tents in front of the Parliament building in Tbilisi when the police officers, mobilized in large numbers, intervened and did not allow them to place tents. The Defender has repeatedly responded to the restrictions on the placement of tents by demonstrators, explaining that the erection of such temporary constructions is protected by the freedom of assembly and deprivation of this opportunity is unjustified unless the tent blocks a building or traffic. No such danger is evident on the wide sidewalk in front of the Parliament building and the possession of tents does not create any risk of commission of illegal actions by their owners in the given case. The possibility of putting up tents and other non-permanent constructions as part of a demonstration is emphasized in the OSCE Guidelines on Freedom of Peaceful Assembly. The possibility of putting up a tent in the context of a peaceful demonstration has also been recognized as legitimate by the national court.

Moreover, the police not only hindered the activists from placing tents but, according to the released footage, the officers cordoned off the area around the Parliament as well. This represented an unjustified restriction on the right to peaceful assembly in public space and contradicted the State's positive obligations to ensure the full realization of this right. According to a statement issued by the Public Defender, police are required to refrain from artificially escalating the situation during assembly and should instead negotiate and engage in dialogue with demonstrators in order to avoid the risks of confrontation.

### **References**

- Public Defender's Statement, Public Defender Responds to Events Developing in front of Parliament of Georgia, 19.02.2021: <https://rb.gy/ukvzth>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

Throughout the year, the Public Defender monitors the challenges facing human rights defenders and responds to cases of alleged human rights violations in a timely and effective manner. This include making statements and calling on investigative bodies to investigate attacks on human rights defenders in a timely and effective manner, as well as identifying and holding all relevant persons accountable for previous criminal incidents, in order to prevent the creation of an environment of impunity.

On December 9, 2021, the Tbilisi Human Rights House held an event on the occasion of International Human Rights Day, where the Public Defender emphasized the special role of human rights defenders in promoting human rights and the rule of law in a democratic society. The Public Defender spoke about the challenges facing human rights defenders,

reviewed the Human Rights Manual developed by the Public Defender's Office, which aims to define the definition of a human rights defender and to outline the obligations of the State to protect and promote the activities of human rights defenders.

During her official visit to Strasbourg, the Public Defender of Georgia, met with Dunja Mijatović, Council of Europe Commissioner for Human Rights. The Public Defender stressed the importance of the Commissioner's support to human rights defenders and media representatives, who have been particularly pressured and attacked in recent years.

### **References**

- Public Defender's Statement on International Human Rights Day, 10.12.2021: <https://rb.gy/uaobnq>
- Public Defender Meets with Council of Europe Commissioner for Human Rights in Strasbourg, 26.01.2022: <https://rb.gy/tjywfz>

### **NHRI's recommendations to national and regional authorities**

- In order to better protect and support civil society actors, including human rights defenders, the Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia should ensure the timely investigation of crimes committed, bring charges against perpetrators of the crimes and to inform the public about the ongoing investigation.
- It is critical that political officials adhere to internationally recognized democratic standards and refrain from engaging in campaigns to discredit human rights defenders, including journalists, in order to make their work as easy as possible.
- Officials should remember that they are obliged to refrain from engaging in negative campaigns against human rights defenders and their activities, to publicly acknowledge the need to protect them, and to emphasize the importance of their activities even when they are critical of the authorities.

### **Checks and balances**

New challenges have emerged concerning the State Inspector's Service (SIS). The State Inspector's Service has the mandate to: monitor lawfulness of personal data processing; monitor covert investigative actions and activities performed within the central databank of electronic communications identification data; ensure impartial and effective investigation of specific crimes committed by a representative of law enforcement bodies, by an official, or a person equal to an official.

## **Legislative package concerning the State Inspector's Service (SIS) reform**

As mentioned previously, the Bureau of the Parliament of Georgia supported the expedited review of the legislative package concerning SIS on December 27, 2021. The draft law was prepared in a non-transparent manner and without prior consultation with stakeholders, even without consulting the State Inspector herself. The discussion of the bill in an expedited manner - 4 days - made it impossible to involve the public in the process. Within three days, on December 30, the Parliament of Georgia adopted the draft law.

In accordance with the reform's legislative changes, the State Inspector's Service and the position of State Inspector will be abolished from March 1, 2022. Two independent state agencies are established: (1) the Special Investigation Service and (2) the Personal Data Protection Service. Prior to the amendments, oversight of personal data protection and the exercise of independent investigative powers were carried out under a single mandate - the mandate of the State Inspector.

The law adopted by the parliament does not envisage any substantial novelty regarding the investigative functions of the Special Investigation Service. While the investigative power of the Special Investigation Service has been slightly expanded to encompass a range of new crimes compared to the State Inspector's Service, no changes were made as regards its dependence on the Prosecutor's Office. The dependence on the Prosecutor's Office is one of the major problematic issues affecting the State Inspector's independence. According to the OSCE/ODIHR, the abolition of the State Inspector's Service by the Parliament is a dangerous precedent as it poses a threat to the rule of law and effective functioning of independent institutions. The legislative change and its outcome may affect the quality of human rights protection in the country, as well as investigation of cases of ill-treatment and death of prisoners, as the effectiveness of an independent institution is at stake.

As a result, under the current new law, the Special Investigation Service remains largely dependent on the prosecutor in the investigation process. The requirement to obtain the prosecutor's consent for all important investigative actions limits the ability of the Special Investigation Service to conduct an independent investigation.

It should be underlined that prior to the amendments, the State Inspector's Service was an independent state body and its Head, the State Inspector, was elected for a 6-year term by the Parliament of Georgia. Although there were shortcomings in the legal framework of the SIS, such as the SIS's reliance on the prosecutor in the investigation process, the SIS was institutionally independent of the branches of government, and the State Inspector made decisions independently. With the adoption and entry into force of the draft-law, the Parliament of Georgia terminated a term of office of a Head of an independent state body

elected for a fixed period and that will have a chilling effect in future on other state bodies. State Inspector Ms. Toloraia, along with civil society organizations in Georgia, consider that these changes are a form of punishment of the State Inspector for an independent and professional decisions taken by the service.

## **Elections**

In 2021, local self-government elections were held in a highly polarized electoral environment, as in previous years. According to the information available to the Public Defender's Office, 69 persons were dismissed or harassed, allegedly in a discriminatory manner, due to their political views; 59 opposition candidates were allegedly pressured and intimidated to make them withdraw their candidacies. As a result, with a few exceptions, they filed applications to withdraw their candidacies. Sixteen cases of alleged vote-buying were reported. In addition, the Public Defender became aware of 4 cases, where the employment contracts of acting public school principals were not renewed for alleged political reasons. The Public Defender shares the assessments of local and international observer organizations that the incidents of alleged pressure and intimidation of voters, and the intimidating environment have most likely affected the free will of some voters. Unfortunately, there were also many cases when journalists were prevented by criminal actions from carrying out their activities effectively.

## **Alleged uncontrolled eavesdropping**

Alleged uncontrolled and large-scale eavesdropping by the State Security Service constitutes a major concern in terms of lack of checks and balances and gaps in accountability of this body and other law enforcement authorities. In particular, material allegedly obtained by the State Security Service by means of covert surveillance and interception of personal communications was disclosed on several occasions in 2021. The files were temporarily posted on a public platform, and were open for view and download by anyone for a period of time. They contained unprecedented amount of data about personal life, information about the communications of the clergy, civil society sector representatives, diplomats, politicians and other individuals. Numerous citizens concerned by the surveillance attested to the authenticity of the information depicted in the disseminated materials, including the staff of the PDO. The materials also contain alleged facts of sexual violence against minors, alleged failure to report offences and instances of alleged abuse of power by the representatives of law enforcement authorities. The Prosecutor's Office of Georgia swiftly launched an investigation into the disclosure of the aforesaid files. However, no specific individual was recognized as an accused person or a victim by the investigation as of 2021, according to the information received by the PDO from the General Prosecutor's Office.

Current legislation fails to provide sufficient safeguards of privacy and forms the basis for uncontrolled interception by allowing the security agencies to have uncontrolled, direct connection to the servers of mobile operators, rendering illegal wiretapping easier and reducing the possibility of detection of such cases. The Public Defender challenged the constitutionality of these legislative provisions before the Constitutional Court, which completed substantial review of the case in 2018 but the decision is still pending.

In terms of lack of checks and balances, the Parliament of Georgia did not utilize the parliamentary oversight mechanisms to call the heads of the responsible government entities at the Parliament in 2021. Furthermore, the Parliament did not consider the possibility of establishing a temporary investigative commission.

The alleged illegal and massive eavesdropping and surveillance may have considerable negative impact on every stage of the democratic development of Georgia, during elections or another significant processes.

### **References**

- Public Defender's Statement on Attempt to Abolish State Inspector's Service, 27.12.2021: <https://rb.gy/npuzhi>
- "This is a punitive operation, they are fighting against independent, professional employees", Kavkasia TV, video available: <https://rb.gy/rkxm0x> (2:38-2:50, 3:20-4:30); "This is an exemplary punishment for all employees - Toloraia on the dismissal of the state inspector", Formula TV, video available: <https://rb.gy/pqg5pp>; Statement of the State Inspector's Service, 13.01.2022, available: <https://rb.gy/aqf0sj>
- "Fate of the State Inspector's Service", AjaraTV, video available: <https://rb.gy/zqhqus>
- Public Defender's Statements on Human Rights Violations during Pre-Election Period: <https://rb.gy/ohyshz>, <https://rb.gy/pi2bes>
- Public Defender's Statement, Public Defender Negatively Evaluates Bill relating to Judicial System, 30.12.2021: <https://rb.gy/ahyuz0>
- Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021: <https://bit.ly/3rNxoh6>

### **NHRIs as part of the system of checks and balances**

The Public Defender of Georgia has applied to the Constitutional Court of Georgia and requested the declaration of the legislative changes adopted by the Parliament of Georgia on December 30, 2021 on the SIS to be considered unconstitutional.

## References

- Public Defender Applies to Constitutional Court regarding State Inspector's Office: <https://bit.ly/3vpBiiY>

## NHRI's recommendations to national and regional authorities

In order to strengthen the system of checks and balances, the Office of the Public Defender reiterates the following recommendation to the Government of Georgia to:

- Ensure the independence of Special Investigation Service from the Prosecutor's Office – so as the Special Investigation Service has the authority to make decisions on investigative actions independently of the Prosecutor;
- Ensure full constitutionality of all legislative reforms, draft laws and amendments.

## Functioning of the justice system

The Office of the Public Defender identified a number of systemic or individual violations of human rights in 2021, proving that there are still a number of problems in the administration of justice and in terms of respecting the right to a fair trial.

The PDO and civil society in Georgia, as well as international stakeholders, all agree that there is an informal, undemocratic organization of power in the justice sector.

With the aim of eliminating systemic shortcomings, the Public Defender' Office responded within its mandate to alleged violations of the right to a fair trial, appealed to the courts, and provided amicus curiae briefs both to the Common and the Constitutional Courts, also issued recommendations in its special reports.

## Independence and composition of the High Council of Justice

As previously mentioned, the Bureau of the Parliament of Georgia supported the expedited review of the legislative package relating to disciplinary liabilities of judges on December 27, 2021. The draft law was prepared in a non-transparent manner, without prior consultation with stakeholders and was adopted within three days.

It is important to evaluate the bill in light of the organisation of the High Council of Justice. The Public Defender negatively evaluated the bill stating that it aimed at worsening the situation in the judiciary, namely:

- The law makes it easier to remove judges from cases, which creates room for manipulation;

- The number of votes required for decision-making on matters relating to disciplinary liabilities of judges will be reduced, and only the votes of judge members of the High Council of Justice will be sufficient for the above, which contradicts the principle of separation of powers;
- The term of involuntary business trips of judges will be quadrupled, the ban on involuntary sending of judges of the Court of Appeal to the courts of lower instance will be lifted, which creates new punitive levers for the influential group of judges against colleagues with views unacceptable to them;
- The freedom of expression of judges will be restricted by a new ground for disciplinary liability, the definition of which can be problematic in practice;
- Disciplinary liabilities of judges will be tightened;
- The law makes the system of appointment of judges to the courts of first and second instances even less transparent, creates grounds for conflicts of interest, and weakens the selection of judges according to their merits;
- Disciplinary proceedings will be conducted in an expedited manner, which may weaken transparency.

Overall, the recent legislative amendments create the impression that the influential group of judges is getting ready to punish the other group of judges with different opinions to them and to remove them from the judiciary. Evidence has shown multiple times over the past years that the judiciary was managed by an influential group of judges, with the main purpose to expand their influence and pursue corporate interests. With the existing legal arrangements, the members of the Judicial Council can make decisions in such a way that they do not need the votes of non-judicial members.

For instance, on October 31, 2021, at the 30th Conference of Judges, two members of the High Council of Justice resigned and they still have not spoken about the reasons for resignation. They had been elected for a 4-year term. Naturally, their decision raises suspicions concerning the independence, appointment and resignation of judicial members of the High Council of Justice are taken behind the closed door, by others.

This assumption is further strengthened by the fact that the initial bill of the present law adopted on 30 December 2021, envisaged disproportionate limitations to the freedom of expression of judges and stated that expression of opinion by judge in violation of criteria of „balance and moderation“ amounted to disciplinary liability. After harsh criticism from the minority group of judges and the public, this provision was later removed from the bill. The minority group of judges assessed the bill as a substantial threat to the individual independence of judges. Local watchdogs have been regularly reporting that the vast

majority of decisions delivered by HCJ regarding selection and promotion of judges are based not on merit, but on the personal, narrow interests of an influential group of judges.

The fact that the High Council of Justice, the primary constitutional obligation of which is to protect the independence of individual judge, was silent relating to these crucial changes, gave rise to a reasonable suspicion that the bill was pre-agreed with the influential group of judges. The intention to introduce the said changes into the existing law was preceded by the fact that, approximately 20 judges publicly dissociated themselves in November 2021 from the official statement of the Administrative Committee of the Conference of Judges of Georgia that condemned statements made by partner countries and partner international organizations.

The High Council of Justice is comprised of 15 members. Eight members of the Council are elected by the Conference of Judges, and five ones – by the Parliament of Georgia, and one is appointed by the President of Georgia, and the Chair of the Supreme Court is automatically a member of the High Council of Justice.

Currently, only ten members hold positions in the High Council of Justice of Georgia. Since June 2021, there are five vacant positions of non-judicial members in the Council. The HCJ has judges and non-judicial members. The Parliament of Georgia must support the appointment of a non-judicial member of the High Council of Justice by a 3/5 majority. It is unfortunate that the Parliament of Georgia avoids appointing members of the Council, while the Public Defender calls for the immediate election of members of the Council in the conditions of high political consensus. As of today, the ruling political party has not sufficient number of MPs in the Parliament in order to appoint non-judicial members of the HCJ without opposition parties votes.

### **Need for a reform of the system of appointment of judges**

In 2021, as a result of lengthy mediation process led by the President of the European Council, political parties in Georgia, amongst them the ruling party, agreed on the need to reform the system of appointment of judges of the first and second instances. The relevant signed document read as follows: “To increase the independence, accountability and quality of the judicial system, the Georgian authorities will, in line with two packages of judicial reforms adopted in 2017 and 2019: a) further enhance transparency and merit-based selections in the appointment of judges to first instance and appeal courts, notably by publishing written justifications for appointments of judges with reference to integrity and competence criteria” Unfortunately, on July 28, 2021, the ruling political party annulled the April 19 agreement and this issue was removed from the agenda.

Furthermore, contrary to the agreement, the Recommendations of the Venice Commission and the OSCE/ODIHR, the selection of Supreme Court judges had not been suspended

until the implementation of the fundamental reform of the judiciary. Unfortunately, the Parliament of Georgia elected 10 judges to the Supreme Court for life, following the procedure, on July 6 and December 1, 2021, thus completing the selection process.

In a recent report, OSCE/ODIHR noted that there were no clear or predictable standards in the selection process of Supreme Court judges, which should have been a prerequisite for providing equal opportunities for all candidates. The report also addressed conflicts of interest and various gaps in procedures that did not allow merit-based candidates to be selected.

In fact, according to the adopted legislative changes, the HCJ will be able to take a decision on disciplinary issues by a majority of votes instead of the 2/3 majority previously required. Additionally, the grounds allowing for the removal of a judge are significantly widened. Furthermore, the term of involuntary transfer of judges is increased from 1 year to 4 years, and the ban on involuntary transfers of judges of the Court of Appeal to the courts of lower instance is lifted. This would allow influential groups of judges to take punitive measures against colleagues with different views to them. The number of votes required for decision-making on matters relating to disciplinary liabilities of judges is equally reduced, and only the votes of judges members of the High Council of Justice will be sufficient, in violation of the principle of separation of powers. Disciplinary liabilities of judges is tightened, disciplinary proceedings will be conducted in an expedited manner, which may weaken transparency.

### **References**

- Statement of 11 organization about the justice system: <https://bit.ly/3xIPd9f>
- EU Condemns 'Fifth Setback' in Georgian Judiciary: <https://bit.ly/3H7oVfe>
- Public Defender's Statement, Public Defender Negatively Evaluates Bill relating to Judicial System, 30.12.2021: <https://rb.gy/ahyuz0>
- Extract from the 2021 Annual report of the Public Defender; pages 96-97: <https://bit.ly/3MaUMgP>
- PDO Special Report on Monitoring of the Selection of the Supreme Court of Georgia Judicial Candidates by the High Council of Georgia, 5-29: <https://bit.ly/3oRD9Jo>
- TI : Judicial Promotions: Systemic and Practical Challenges: <https://bit.ly/3aEbnf4>
- GYLA : "Judicial reforms in Georgia 2013-2020", p.33: <https://bit.ly/3JKRuz7>
- OSGF "Checking compliance with the position of judges In theoretical and comparative perspective", p.106: <https://bit.ly/3h2xifY>

- U.S. Embassy Statement following the appointment of two members of the High Council of Justice: <https://bit.ly/3sBmln1>
- Remarks by EU Ambassador following the appointment of two members of the High Council of Justice: <https://cutt.ly/qPSB8IW>
- Article of “Netgazeti” Available at: <https://bit.ly/35mtP9y>
- Statement of the Administrative Committee. Available at <https://bit.ly/3Hb5qB1>
- A way ahead for Georgia’. Proposal by President of the European Council Charles Michel to the representatives of Georgian political parties: <https://bit.ly/3JfmilM>
- <https://bit.ly/3O60tNu>
- <https://bit.ly/3aLIHID>
- <https://www.osce.org/files/f/documents/3/4/496273.pdf>
- <https://bit.ly/3xloli>
- <https://bit.ly/3O6KogK>

### **Role of the NHRI in contributing to the effective functioning of the justice system**

According to the Constitution of Georgia, the Public Defender of Georgia has the authority to apply to the Constitutional Court when the basic constitutional rights of certain persons are violated.

The Public Defender of Georgia has used this power and applied in 2021 to the Constitutional Court to demand the abolition of norms pertaining to the conduct of operative investigative activities violating human rights standards i. An operative-investigative measure is an action carried out by a state body or an official duly authorised under this Law, who/which, within the scope of his/her/its powers, ensures the fulfilment of the objectives specified in article 7 of Law of Georgia On Operative Investigatory Activities. In particular, the Public Defender requested the declaration of operative measures of control procurement and delivery provided for in the Law of Georgia on Operative-Investigative Activities to be considered unconstitutional. The Institution believes that these measures do not provide adequate safeguards against provocation of crime, which makes it procedurally impossible to admit evidence obtained on the basis of provocation of crime inadmissible. In accordance with the standard set by the European Court of Human Rights, the above is contrary to the right to a fair trial. It should be noted that in a judgment delivered against Georgia - Chokhanelidze v. Georgia - the relevant violation was established due to the lack of legislative safeguards.

The Law of Georgia on Operative-Investigative Activities provides for an operative measure - collection of information and visual control, which does not require judicial control. The cases reviewed by the Public Defender revealed that this measure causes intensive interference in the private life, but does not require appropriate judicial control, which is contrary to the requirements of the Constitution.

The change is necessary to ensure the effective defence of the accused. Based on the appeal of accused persons placed in penitentiary institutions, the Public Defender's Office found that due to the flawed legislative regulation, penitentiary institutions do not allow the accused to communicate with their lawyers by telephone, if the investigator/prosecutor has restricted their right to make calls. It should be noted that by the decision of the investigator/prosecutor, the restriction of the right to make phone calls may last for the entire period of the defendant's custody - up to 9 months. According to the information provided by penitentiary institutions, during 2020-2021, the restriction of the right to make phone calls was applied against 908 defendants by the decision of the investigator/prosecutor, which indicates the importance of this issue.

The Public Defender proposed to the Parliament of Georgia to make legislative changes in order to enable accused prisoners to call their lawyers any time, even when their right to make calls is restricted. The right to make phone calls is the fastest and most effective way for a defendant to contact a lawyer, agree on a defence strategy, or take specific steps. This is especially important in the light of the fact that the procedural law strictly stipulates the time limits for the submission of evidence by the parties before the consideration of a case on its merits, and the evidence submitted in violation of this time limit is usually no longer considered by the court.

It is welcome that the Prosecutor General's Office shares the position of the Public Defender and considers that the restriction of the defendant's right to make calls does not imply a ban on communication with his/her lawyer. The Public Defender hopes that the Georgian Parliament will endorse the proposal so as to allow inmates to contact their lawyers by telephone.

In addition, on 24 February 2022, the Public Defender of Georgia submitted a third party intervention before the European Court of Human Rights in the case: Bakradze v. Georgia (Application no. 20592/21). This case raises the important question of whether the applicant suffered discrimination and unfair treatment by the High Council of Justice (hereinafter HCJ), the authority responsible for the recruitment, promotion and dismissal of judges, in the course of a judicial competition.

## References

- Public Defender's Statement, Public Defender Appeals to Parliament not to Restrict Accused Prisoners' Right to Call Lawyer, 19.02.2022: <https://rb.gy/0sixi0>
- Public Defenders statement about Constitutional Law Suit on Declaring Norms Regulating Operative-Investigative Activities Unconstitutional available at : <https://bit.ly/36S2E7a>

## NHRI's recommendations to national and regional authorities

In order to improve the independence, quality and efficiency of the justice system, the Public Defender calls on the Parliament of Georgia to:

- Adopt an ambitious judicial reform;
- Adopt a new Administrative Offences Code of Georgia that is compatible with international and constitutional human rights standards;
- Amend the Criminal Procedure Code setting a clear timeframe for the Supreme Court to decide on admissibility of cassation complaints;

## Media freedom, pluralism and safety of journalists

Attacks on journalists and media representatives have increased, particularly in the reporting year.

In 2021, the Public Defender recorded dozens of cases of physical assault on representatives of the critical media. It was a common practice during the pre-election period to cynically treat journalists, especially representatives of the critical media and to make statements aimed at discrediting them.

As described above in this report, right-wing groups carried out attacks on July 5, 2021 to prevent the Tbilisi Pride march from taking place. The attacks targeted civic activists, members of the community, and journalists. They deliberately attacked, physically assaulted and verbally abused representatives of the media, damaging and destroying their equipment, and obstructing journalistic activities. It was clear from the broadcasting that the number of police officers mobilized at relevant locations was insufficient, as well as the efforts aimed to protect the life and health of dozens of journalists. Journalists that fell victim to these attacks have also pointed out the inaction of the police. The name of deceased cameraman Aleksandre (Lekso) Lashkarava has been added to the list of killed journalists for the year 2021 by the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

On February 25 in Tbilisi, three men attacked Vakho Sanaia, an anchor at the local TV broadcaster Formula. Sanaia sustained bruises on his head, arms, and one of his legs, and was diagnosed with a concussion. The journalist reported that the perpetrators attacked him because they recognized him as the host of a news and talk show. In Sanaia's case, the court found that the accused had committed various violent crimes and also confirmed the fact that crimes were committed on the ground of intolerance – based on the professional activity of the victim. The Court found the accused guilty in committing persecution of V. Sanaia and imposed a minimum sentence of 6 months imprisonment. The Public Defender believes that the sentence imposed is not appropriate to the seriousness of the offence, and creates another negative precedent in terms of the inadequacy of efforts to fight against hate crimes, which may even encourage further violence against journalists.

Attacks and intimidation of this kind jeopardise journalistic operations and may lead to media self-censorship, undermining media freedom in the long run. The Public Defender emphasizes the importance of a free, pluralistic, and critical media environment in a democratic society, as well as its unique role in preserving human rights and the rule of law in the country. The state has a responsibility to defend the rights and safety of journalists, in view of their special role and functions, and to take reasonable steps to prevent attacks from occurring in the future.

### **References**

- Public Defender's Statement, Public Defender Responds to Frequent Attacks on Journalists. 27.07.2021: <https://rb.gy/hfxknr>

### **Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression**

Every year, the Public Defender monitors the media environment to assess the extent to which media freedom and pluralism are respected. Throughout the year, the Public Defender actively studied cases and made statements, responded to challenges and facts of violations, and provided information to the public. For example, in early 2021, the Public Defender described the attack on journalist Vakho Sanaia as an extremely disturbing fact, and requested the Ministry of Internal Affairs to conduct an effective investigation and ensure that those responsible are adequately punished. In addition, on 27 October 2021, the Public Defender submitted amicus curiae brief before the Tbilisi Appellate Court in Sanaia's case.

The Public Defender responded to the July 5th, 2021 event in several ways: making public statements as well as filing proposal before the Prosecutor's Office of Georgia requesting

to initiate criminal proceedings against two persons for organizing group violence on July 5<sup>th</sup>.

According to the Public Defender's statement, political leaders have a unique duty and obligation in a society that has become increasingly politicized and intolerant of opposing viewpoints. It is unfortunate that, rather than condemning such actions, we frequently see their disregard for journalists, interference with journalistic activity, and political justification of similar events, all of which incite violence against media professionals. Furthermore, law enforcement does not respond to all such incidents in a timely, strict, or effective manner.

### **References**

- Public Defender's Statement on Violence against Journalists, 04.05.2021: <https://rb.gy/x0pwpdb>
- Public Defender's Statement on Offences Committed against Representatives of Media, 06.04.2021: <https://rb.gy/ia0xqb>
- Public Defender's Statement on Assault on Journalist Vakho Sanaia. 25.02.2021: <https://rb.gy/uyhh9i>
- Public Defender's Statement on Events Developing on Rustaveli Avenue, 05.07.2021: <https://rb.gy/ssdarj>
- Public Defender's Statement, Public Defender Responds to Frequent Attacks on Journalists. 27.07.2021: <https://rb.gy/hfxknr>

### **NHRI's recommendations to national and regional authorities**

In order to address the above-mentioned problematic issues, Public Defender recommends to the Georgian authorities:

- Ensure that the organizers of July 5th large-scale attacks are held accountable in order to prevent similar incidents in the future and to send the signal to the violent groups that their activities undermining the equality in the country will not be tolerated.
- Respond promptly to any crime against journalists and to make public the results of the identification and prosecution of perpetrators;
- Make sure that public officials refrain from making discriminatory statements and that instead they make unambiguous and clear statements to condemn violence against journalists.

## **Impact of measures taken in response to COVID-19 on the national rule of law environment**

Many of the restrictions on rights adopted in response to the Covid-19 pandemic outbreak were lifted by 2021, particularly those whose proportionality had been called into question in the 2021 report. However, it should be noted that measures taken against Covid-19 by the Government of Georgia are not consistent, did not rely on scientific sources and as a result of ineffective measures taken against Covid-19, the country still has a high rate of virus infection, leading to the overcrowding of the health care sector. Unfortunately, the daily number of deaths is the highest in the region.

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection**

Stringent measures to fight the spread of COVID-19 in the country were implemented during 2021 in two stages: during the state of emergency and after the termination of the state of emergency.

#### **Impact on the freedom of movement**

The government continued to impose restrictions on people's movement, even after the state of emergency was lifted. In particular, an amendment was made to the Resolution of the Government of Georgia N322 of May 23, 2020 "On the Approval of the Rules of Isolation and Quarantine" on November 9, 2020, except for the exceptional cases defined by the Resolution. From 22:00 to 05:00, all movement of people, both on foot and by public transportation, was prohibited in Tbilisi and several other cities. Following that, on November 28, 2020, a new amendment came into effect, which prohibited the movement of people throughout the country from 21:00 to 05:00, except in exceptional cases defined by the decree. Finally, the curfew was lifted at 23:00 on June 30, 2021. Although a number of restrictions were already lifted in March 2021, the Georgian government has not provided a scientifically based rationale for why there was an urgent need to remain restrictions on freedom of movement. It was critical for the Interagency Council to substantiate and provide detailed information to the public about the impact of movement restrictions on coronavirus spread.

#### **Impact on socio-economic rights**

The suspension of certain economic activities and limitations on public transport movement affected the enjoyment of labour rights in the country. The imposed restrictions had a massive impact on the labour rights of individuals employed in the private sector specifically, and they were rendered especially vulnerable due to the absence of the

unemployment benefit. Some of the organizations were compelled to suspend activities and this, naturally, affected the individuals employed there. Furthermore, according to various sources, there were the cases of unjustified dismissal of employees from certain jobs, and/or termination without compensation, laying off on unpaid leave for an unspecified period, assigning overtime work without remuneration, unilaterally amending substantive provisions of labour contract, and other alleged violations.

Although most restrictions on the exercise of economic and social activities have been or will be eased soon, the long-term consequences of the pandemic are devastating to both the country as a whole and the most vulnerable groups in particular. This situation created new challenges for the local governments and state agencies and raised the need for their rapid responses.

The pandemic has further highlighted the challenges existing in Georgia's education sector over the years. Children, who do not have access to the Internet or computers, are not able to fully engage in the remote learning process. Other topics of discussion were the protection of children from violence, as well as domestic violence and reduced living standards for all – but specifically for families living in rural and mountainous regions.

### **Impact on vulnerable groups**

People with disabilities, women, and others should also be given special consideration. The impact on the process of women's emancipation was especially significant. The Public Defender's Office has prepared a study assessing the impact of the novel coronavirus pandemic on the rights situation of women working in the health sector, both in their workplace and social life. The results of the study show that the rights situation of women working in the health sector deteriorated during the pandemic. According to the respondents, the working conditions offered by their employer mostly failed to meet the pandemic challenges. Sometimes nurses had to work several shifts in a row without the interval prescribed by law. It is also noteworthy that high out-of-pocket payments (i.e. using a person's own money) have had a disproportionate effect on the poorest population, giving rise to increased poverty and sometimes catastrophic healthcare costs. Against the background of considerable rise in the number of COVID-19 infected people, better performance of the primary healthcare has become key. Despite a number of measures implemented by the state, among them, designing new protocols, training staff of primary healthcare facilities, reforming primary healthcare and the improvement of management, as well as enhancing well-functioning infrastructure and socio-economic conditions of personnel, remains a challenge.

## References

- Public Defender's Statement on Educational Process, 29.01.2021: <https://rb.gy/a2cqng>
- Special Report of the Public Defender on Impact of COVID-19 on Women Working in Health Sector: <https://rb.gy/gpwkip>

## Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

During the pandemic, the Public Defender's Office operated normally, reviewing incoming applications and conducting preventive monitoring at various facilities. Furthermore, the Office of the Public Defender prepared a study on the challenges faced by women working in the health sector during a pandemic. As part of the study, 90 women were interviewed.

The Public Defender actively responded to the state's pandemic management measures in the form of statements. During the pandemic, news posted on the Public Defender's official website was translated into English, Azerbaijani, and Armenian in order to raise awareness among members of national minorities.

Furthermore, the Public Defender has been holding briefing seminars and discussions on the challenges brought by the pandemic. For example, 7 seminars and discussions were held online, which were attended by about 900 representatives of local self-government bodies and state agencies: law enforcement officers, childcare workers, psychologists, resource center managers, school principals and teachers.

## References

- Meetings on Challenges relating to Protection of Children's Rights during Covid-19 Pandemic, 05.01.2021: <https://rb.gy/gu4znm>

## Efforts by state authorities to mitigate challenges

The Parliament of Georgia is considering an amnesty draft law. The Public Defender of Georgia welcomes the initiative and hopes that the Parliament will consider and adopt an amnesty law soon, which will be in accordance with the basic principles of criminal justice and the positive obligations of the State towards victims and will apply to a large number of prisoners who have been in the penitentiary system during the Covid-19 pandemic.

The Public Defender actively urged the State to use all available mechanisms to reduce the prison population as soon as the pandemic began. Although the rate of implementation of a number of mitigation measures increased in 2020 (for example, statistics on the mitigation of the unserved portion of a sentence), the rate of parole release decreased.

The Public Defender hopes that the Parliament of Georgia will consider the severity of additional restrictions on prisoners' rights in the context of the pandemic and will compensate their situation with amnesty to the greatest extent possible.

### **References**

- Public Defender's Statement, Public Defender Expresses Support for Amnesty Bills, 31.01.2021: <https://rb.gy/txhpwo>

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

The Public Defender's Office has been confronted with new challenges. At first, working remotely caused a number of logistical and technical issues. However, the Public Defender's Office was able to fully and swiftly adapt and to continue operations with no significant delays. Regular visits to closed facilities such as prisons, other detention centres and psychiatric establishments continued among them in order to prevent the spread of coronavirus, while taking all appropriate precautions to prevent the spread of the virus.

### **NHRI's recommendations to national and regional authorities**

There are two most effective measures to prevent the spread of the novel coronavirus: wearing a mask correctly and observing social distance. As a result of the decision taken by the Government of Georgia on the gradual easing of restrictions imposed on February 25, 2021, the mobility of the population has significantly increased in the country. Thus, the Public Defender called on the State and local self-government bodies to ensure effective and real control over the implementation of the novel coronavirus restrictions across the country.

### **References**

- Public Defender's Statement on Deteriorating Epidemiological Situation and Implementation of Preventive Measures, 11.03.2021: <https://rb.gy/5zrluc>

### **Other relevant developments or issues having an impact on the national rule of law environment**

Throughout 2021, the Public Defender continued to work actively to protect the rights of prisoners. The Public Defender has filed a number of constitutional lawsuits with the Constitutional Court to protect the rights of prisoners. In January 2021, representatives of the Public Defender became the object of verbal attacks on the territory of two semi-open establishments. A semi-open prison facility is a specially protected facility, with armed security guards, surrounded by a special protective fence, where convicted persons are under permanent surveillance according to Article 11(1) of the Imprisonment Code. The

incident and said to have been directly or indirectly organized by the prison administration. The incidents could be described as “indirectly organised” as representatives of the Public Defender face real threats from “informal governors” supported by prison administrations during their visits to prisons.

The Public Defender of Georgia has been addressing the problematic issues connected with the existence of informal management and governance structures and practices within prison facilities for years, through the Annual Parliamentary Reports, as well as the Special Reports. However, specific steps to address the Defender’s concerns have yet to be taken by prison administrations and the government as a whole. Prisons are governed with the help of privileged prisoners, known as “prison watchers”. The management model of semi-open establishments is therefore based on an informal hierarchy of prisoners, where the so-called “prison watchers” provide fictitious orders, aiming at preventing prisoners from voicing their concerns and denouncing abuses and wrongdoings.

To address this problematic situation, the Public Defender issued a statement to inform about its decision to temporarily suspend preventive visits to penitentiary establishments. It should be noted that similar facts have not been observed since January 2021.