

***REPORT OF THE OFFICE OF PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA***

**Submitted to the Human Rights Council for the 10th session of
Universal Periodic Review**

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Tbilisi, Georgia

Introduction

1. Office of Public defender of Georgia (hereinafter PDO) is mandated by the Constitution and the Organic Law of Georgia to oversee the effective observance of human rights and freedoms on the territory of Georgia and to identify and assist in redressing the violations of human rights. It is an independent body, which acts to promote human rights and to protect and safeguard individuals from maladministration of administrative organs of the State.
2. Public defender submits to the Parliament a biannual report, in which he provides a general assessment of the human rights situation in the country, a summary of the findings and recommendations to address the identified problems. Public Defender also prepares and submits to the Parliament special reports dealing with the situation in any particular field of human rights.

Executive summary

3. Public defender of Georgia welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review. In this submission information is provided under sections B and C as stipulated in the General Guidelines for the Preparation of the information under the Universal Periodic Review.
4. The following submission is based upon the periodic reports of Public defender issued in the time period of 2008-2010. The most common problems and conclusions will be included therein. PDO would like to highlight four major issues for this submission which, by its consideration and observance, are the most problematic in Georgia. We will refer to certain violations, unfairness and non-compatibility with the law and universal standards with regard to the following issues and human rights:
 - Situation in penitentiary institutions;
 - Right to fair trial;
 - Freedom of speech and expression;
 - Freedom of assembly and manifestation.
5. Public defender, has addressed State authorities of Georgia with number of recommendations regarding above-mentioned issues. Some were totally or partly implemented, however number of recommendations lack compliance form the state institutions. For that reason, we would like to draw your attentions to the problems below.

Situation in penitentiary institutions

6. From July 2009, upon introduction of the appropriate amendments to the legislation, the Office is designated as a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture. The present part of the report covers the findings of a special preventive group that monitors all closed institutions on the territory of Georgia. The group is established for effective implementation of functions entrusted by designation as an NPM.

7. General situation in penitentiary establishments can be described as complex. The comprehensive reform of the penitentiary system has commenced in 2004/5 and is still ongoing. It has been high in the agenda of the government. However, as for today there are number of systemic problems across all institutions that need to be urgently tackled.
8. Public defender on number of occasions throughout last 5 years has been stressing these problems:
9. Overcrowding: It is one of the most serious problems in the penitentiary system. This problem is caused by the rapid increase in the number of prisoners and the lack of relevant infrastructure. Public defender has already stated in his previous reports that the problem of overcrowding is directly related to the State's criminal justice policy of "zero tolerance" for any offence regardless of its level of threat for the society. It was stressed number of times that there is a need to review existing policies and approaches with regard to criminal justice system.
10. Notwithstanding requirements of Georgian legislation, some of the penitentiary establishments do not comply with the standards and do not provide each convict with at least a separate bed, which is the violation of the convicts' rights.
11. Conditions of detention: Due to increase in the number of prisoners coupled with outdated infrastructure, drastically degraded conditions at closed institutions. There were instances when the special preventive group of the PDO came to the conclusion that in some of the penitentiary establishments, living and sanitary-hygienic conditions were as poor as may sufficient to consider prisoners of those establishments to be kept in inhuman and degrading conditions
12. Although new penitentiary establishments have been constructed and are operational,¹ the establishments that were recommended to be closed down by Public Defender remain to be a problem.²
13. Healthcare in the penitentiary system is regarded to be the focal problem of the system which finds its reflection in lack of professional medical staff, lack of adequate resources and infrastructure and lack of system of documentation based on the requirements of the Ministry of Labour, Health and Social Protection.
14. Medical services available at local medical sections of penitentiary institutions are unable to provide comprehensive emergency services. As per various types of manipulations and procedures such as intravenous transfusions, injections, bandaging, minor surgical manipulations, dental manipulations, etc. it should be noted that these minor services are provided unequally in geographical plane, which should be considered as violation of right of relevant consumers to healthcare.
15. Cases of ill-treatment: Though this is not a systemic problem in the penitentiary institutions of Georgia anymore, special monitoring group had identified several individual instances of ill-

¹ In 2010 in 2 penitentiary institutions, namely in Ksani N7 and in Rustavi N1, new housing blocks were put in operation.

² These establishments include Prison No. 1 in Tbilisi, Prison No. 3 in Batumi, Prison No. 4 in Zugdidi, and the General and Strict Regime Establishment No. 9 in Khoni

treatment. Gathered information together with recommendations were submitted to the relevant bodies. According to our information on all these cases the investigation is launched and pending.

16. Based on the above, Public Defender submits following recommendations:

- Adapt criminal prosecution policy to possibility of frequent use of alternative, milder punishments over deprivation of liberty in case of crimes posing less dangerous threat to the public;
- Take, in the shortest possible period, adequate measures to ensure maintenance of an adequate living and sanitary-hygienic situation in all penitentiary establishments;
- Ensure prompt and effective investigation of the facts of every case of ill-treatment detected within penitentiary establishments.

Right to fair trial

17. In the past several years there have been significant changes in the judiciary: institutional reorganization of the system, increase the number of judges, creation of the system of in-service training of judges, etc. However, from a thorough examination of the judiciary, PDO points to persistence of some problems. This report intends to draw the attention to the ill-practice established by criminal and administrative courts of Georgia.

18. ***Inadequate Reasoning in criminal Court Decisions.*** Applications and complaints referred to the Public Defender's Office show that inadequate reasoning of interim and final decisions taken by a court represents one of the most problematic issues in the work of the judicial system. This problem is persistently present in many criminal proceedings, which suggests that inadequate reasoning of decision by courts has become a systemic problem. Moreover, this problem can be seen at all stages of the proceedings from extension of remand as pre-trial restraint and dismissal of motions, till reasoning of final decision.

19. European Court of Human Rights in number of its decisions indicated that this is the area where Georgian court system needs improving.

20. **Right to Defence:** It is important to note that reasoning of judicial decisions has a direct bearing on effective exercise of the right to defence, *per se* an important element of the right to a fair trial guaranteed by the Art. 42 of the Constitution of Georgia.

21. **Further need of strengthening of the principle of equality of arms** between parties is necessary. Especially, this is the challenge with the putting into operation the new Criminal Procedure Code of Georgia, therefore, additional attention should be drawn to the issue of training of all actors in the criminal process.

22. **Problems Related to Examination of Cases Concerning Administrative Offences:** With a view to examine the case law on adjudication of administrative offences, PDO obtained number of judicial decisions from administrative court of Tbilisi, which later were scrutinized. As a result of assessment following problematic topics were identified:

23. Need to analyze cases more carefully and not to use always standard template forms. Most of the decisions analysed (including descriptive and substantive provisions) are overly general and uniform. Such rulings would easily fit with any case. On the other hand, lack of entries on specific circumstances lead to the problem of shortage of evidence and inadequate reasoning. Hence, it is difficult to prove that the decision was based on comprehensive and complete examination of circumstances.
24. Apart from shortage of information concerning the impugned administrative offence, the orders analysed by PDO suggest clear shortage of evidence. The task in proceedings concerning administrative case is comprehensive, complete and unbiased clarification of the circumstances of a case. It is such clarification of the circumstances of the case that should underlie the decision of the court concerning imposition of an administrative penalty or dismissal of a case.
25. Proceedings on cases concerning administrative offences are not as significant as proceedings on criminal and civil cases; however, they definitely prevail in terms of numbers. This cannot be invoked to justify the superficiality typical of the proceedings on cases concerning administrative offences.
26. Based on the above, Public defender recommends:
 - To guarantee protection of rights enshrined in the Georgian legislation in the process of court consideration both in criminal as well as in administrative cases;
 - To continue further training of judges with regard to legal drafting as well as standards and case-law of the European Court of Human Rights.

Freedom of Speech and Expression

27. Right to Freedom of Speech and Expression is guaranteed by the Constitution. It underscores that mass media is free. It includes right for a journalist to be free from any pressure so that (s)he can duly perform duties the public has vested in them. Moreover, Criminal code in Art. 154 criminalizes illegal interference within professional activity of a journalist. Notwithstanding these safeguards, in 2008-2010, PDO has identified several instances of physical and verbal assault as well as threats issued to journalists.
28. There can be identified several main problematic areas connected with the interference with the professional activities of journalists:
29. Inadequate response to the instances of physical abuse or illegal interference in journalist's professional activity: there were instances, when though Criminal procedure code establishes obligation to open a criminal case and launch an investigation upon receiving an information about alleged crime, this principle was not satisfied.
30. Inadequate qualification of a crime: PDO has identified cases when the fact of threat/assault took place in connection with the professional activity of a journalist, however instead of making a qualification under Art. 154 of the Criminal code, which would be *lex specialis* provision, a case

was opened under other articles of the code. This approach makes difficult to analyze level of protection of individual journalists as well as actions taken by the Government.

31. Public defender recommends:

- To strengthen protection of journalists on practical level;
- To promptly, objectively and adequately investigate any fact of violation of rights of journalists.

Freedom of Assembly and Manifestation

32. At the level of national legislation, relationships pertaining to the right of assembly and manifestations are governed by the Constitution of Georgia, together with the Law on Assembly and Manifestations (hereinafter Law). Besides, some norms are contained in the Code of Administrative Offences and the Law on Police. On 17 July 2009 amendments were introduced to the Law. Office of Public Defender sees existing wording of the law to have several shortcomings. Among others:

33. The Law establishes a special purpose for the assemblage – either solidarity or protest. Accordingly, any gathering that, in essence, is an assemblage or manifestation, but does not pursue the purpose of expressing solidarity or protest, will be left beyond protection. It contravenes Article 25 of the Constitution of Georgia which affords the right to hold a public assembly and manifestation without prior permission to every individual. Hence, the Constitution does not make the exercise of this right conditional on any circumstance or a requirement (e.g., goal, motive, etc.).

34. Paragraph 2 of Article 5 of the Law is somehow discriminatory. It states, “Citizens under 18 years of age and persons who are not citizens of Georgia shall not have a right to act as such responsible persons”.

35. According to article 47 of the Constitution of Georgia, “Foreign citizens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law”. As per Article 25 of the Constitution, everyone has the right to public assembly. This article allows no restriction by citizenship. As regards the exception provided in Article 47, it only imposes restriction on political activity of foreign citizens and stateless persons.

36. Article 9 of the Law bans the holding of assemblies and manifestations in certain buildings and within their 20-meter radius of their territory. Regarding the so-called “20-meter rule”, in many instances, such a limitation strips sense from holding any meeting or procession, inasmuch as observing such a condition in a densely spaced area will make the right practically in exercisable .

37. Public defender recommends:

- To further refine Georgia’s legislation on assembly and manifestation and bring in conformity with international standards.