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Техническая помощь и создание потенциала

Письменное представление аппарата Народного защитника (Омбудсмена) Грузии*

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Annex

Written statement by the Public Defender's Office of Georgia

Submission to the OHCHR pursuant to the Human Rights Council Resolution on "Cooperation with Georgia"

The present written submission by the Public Defender's Office of Georgia (hereinafter PDO) focuses on the human rights and humanitarian situation in Georgia's occupied regions of Abkhazia and South Ossetia/Tskhinvali region, as well as human rights issues on the rest of Georgia's territory.

1. Administration of justice

In annual report dated 12 July 2022, OHCHR recommended the Government of Georgia to take legislative steps to ensure the independence of the judiciary. The Public Defender of Georgia has also proposed to the Parliament of Georgia to take legislative steps for judicial reform.¹

Some of those proposals which until now have not been positively resolved concern the following issues: 1) The need to change the decision making rule in the High Council of Justice (hereinafter HCJ) into the principle of double majority (with the support of 2/3 of judge members and 2/3 of non-judge members) for any decision; 2) The need to prescribe by law that, for the review of a case by a panel/chamber, the composition of a panel/chamber be determined by an electronic case distribution system, rather than a court chairperson.² 3) The need to reform the current procedure of electing presidents of courts (or of a section or a chamber), so that they are elected by individual judges instead of the HCJ, etc.

2. Combatting discrimination

The government has not taken effective steps to improve equality policy in 2022. On the contrary, the 2022-2030 National Strategy for Protection of Human Rights and the State Gender Equality Concept do not mention the LGBT+ community at all and completely ignore the needs of this minority.³ In terms of freedom of assembly and expression, the Public Defender believes that due to threats by far-right groups, there is no public space left for the realization of these rights of LGBT+ people.

As to investigating and punishing hate crimes, in cases, when an offence committed with discriminatory motive is classified as an administrative offence the discriminatory motive remains unrecorded as the Administrative Offences Code of Georgia does not include such a motive as an aggravating circumstance. The Public Defender recommends that the law enforcement consider, case by case, classifying such offences as a less serious crime under the Criminal Code (such as crime under article 142).⁴

The Law enforcement agencies still fail to meet the standards of effectiveness and timeliness of investigation of hate crimes, thereby decreasing the trust of vulnerable groups towards the law enforcement.⁵ A clear example of this problem is the response to the 5 July violence as, to this day, neither investigation nor prosecution for organizing group violence and publicly calling for violence has been launched.

¹ Public Defender Calls on Parliament to Consider Recommendations relating to Judicial Reform, available at: <https://bit.ly/3NIXUEe> [last accessed 05.05.2023].

² Ibid, pages 113-114.

³ Ibid, page 192.

⁴ Ibid, pages 181-182, 186.

⁵ The Public Defender of Georgia, 2022 Special Report on Combating and Preventing Discrimination and the Situation of Equality, page 15, available at: <https://bit.ly/3Lb0FLD> [last accessed 26.04.2023].

3. Combatting gender-based violence

The number of cases of murders/attempted murders of women increased in 2022 in comparison to the 2021 statistics.⁶

The femicide monitoring illustrates that qualification of killings and attempted killings of women as gender-based crimes, signing a plea bargain with a light sentence, and using a conditional sentence without assessing the risks in the cases of attempted femicide are still problematic.⁷ It is also a serious problem that the relevant criminal legislation is not fully compatible with the Istanbul Convention as it fails to correctly define rape and to provide the opportunity to remotely question the victim or temporarily remove the accused from the court room.⁸ Moreover, launch of administrative proceedings in cases of early marriage or engagement is also problematic. Cases of early marriage show that coordination between state agencies is ineffective. It is particularly difficult for the authorities to respond to child marriage cases not containing signs of crimes.⁹

4. The mandate of the Special Investigation Service

The Special Investigation Service (SIS) established to replace the State Inspector has a flawed mandate. The SIS jurisdiction does not cover crimes committed by the Prosecutor General, the Minister of Internal Affairs and the Head of the Security Service.¹⁰ Moreover, intentional killing, infliction of serious harm to health, violence, rape, trafficking and threat committed by prosecutors fall outside the SIS jurisdiction.¹¹ Priority placed on serious crimes committed by law enforcement may be reduced due to extension of the SIS mandate to crimes less important for purposes of this body.¹² The relevant legislation fails to provide the SIS with investigative guarantees, such as guarantees to ensure gathering, protecting and storing evidence in a timely manner and without hinderance, the authority to enter temporary detention centers without limitations, etc.¹³

The harmful practice of unjustified administrative arrests of assembly participants and imposition of administrative sanctions on them continued in 2022.¹⁴ Such arrests are based on the seriously flawed Administrative Offences Code adopted during the Soviet period and incompatible with modern human rights standards.¹⁵ The arrests are usually carried out under the pretext of petty hooliganism or disobedience of a lawful order of the police in violation of freedom of assembly and expression.¹⁶

In 2022, the PDO recorded multiple cases of alleged crimes committed against media representatives, such as illegal interference in professional activity, attacks, threats, damage to an object, breach of private life.¹⁷ Unfortunately, investigations into past crimes have been conducted ineffectively.¹⁸ Other obstacles faced by the media in 2022 included alleged illegal eavesdropping, a discriminatory dismissal due to difference in opinion, restriction of attending government sittings, verbal attacks by the MPs and a growing number of SLAPPs.¹⁹ Furthermore, amendments to the Law on Broadcasters increased powers of the National Communications Commission, thereby risking more interference in media freedom by the body which lacks media's trust and has been criticized due to its activities.²⁰

During the reporting period, the law enforcement officials used excessive force against participants of the assemblies held on March 7-9 to protest the so-called "foreign agents"

⁶ Supra note 2, page 203.

⁷ Ibid, page 20.

⁸ Ibid, page 203.

⁹ Ibid, page 205.

¹⁰ The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 43, available at: <https://bit.ly/41HSA8d> [last accessed 26.04.2023].

¹¹ Ibid.

¹² Ibid, page 44.

¹³ Ibid, pages 44-45.

¹⁴ Supra note 2, pages 162-164.

¹⁵ Ibid, page 162

¹⁶ Ibid.

¹⁷ Ibid, page 149.

¹⁸ Ibid, pages 151-152.

¹⁹ Ibid, pages 150-154.

²⁰ Ibid, pages 154-155.

draft law.²¹ According to the Public Defender's assessment,²² at the time of the warning by the Ministry of Internal Affairs of Georgia in the evening hours of March 7, 2023, the assembly had a peaceful character and there was no reason to disperse it or to use force. As for the cases of violence by individual participants in the rally, if any, individual - necessary and proportionate - measures should have been taken against them. Contrary to this, law enforcement personnel used special equipment against participants, including peaceful demonstrators, in violation of the standard of necessity and proportionality. According to the Public Defender, such unjustified use of force in similar situations always contribute to artificial escalation of the situation, which law enforcement officials are obliged to prevent. Moreover, before and during the dispersal of the assemblies, law enforcement officials actively applied the well-established practice of mass administrative arrests of demonstrator.²³ Relevant footage shows that in some cases, arrests did not aim to stop an ongoing offense, therefore and failed to meet the requirement of necessity and constituted an unjustified interference.

5. Rights of persons with disabilities

Protection and fulfillment of rights of persons with disabilities still suffers from various shortcomings. They include: inadequate access to and lack of continuity of inclusive education; lack of meaningful participation in decision-making at various levels; insufficient access to physical environment, information, communication means and different services, etc.²⁴ Persons with disabilities also face obstacles in labor market as some employers have stereotypical attitudes due to lack of information.²⁵ The government had not approved the national accessibility plan and standard to ensure access to information, communication means, websites, mobile applications while the national standards of accessibility in the technical regulation are not being implemented effectively.²⁶ Awareness on these standards/documents among public and private service providers is low due to absence of a large-scale information campaign.²⁷

6. Social rights

In terms of right to social protection, 1,176,588 individuals and 369,515 families (respectively, 31.5% and 34.7% of the whole population) were registered in targeted social support programme in 2022.²⁸ Unfortunately, shortcomings in this programme's methodology of assessment of social-economic conditions of families remain unsolved and a lengthy period of several months is still prescribed for determination and allocation of social support.²⁹ As to right to adequate housing, the state still has not developed a unified data base of the homeless, minimal standards for design and establishment of social housing for the homeless, a government strategy and action plan for the homeless, a comprehensive legislative definition of a homeless person and a legislative framework for realization of the right to adequate housing.³⁰

7. Children's rights

In 2022, protection and fulfillment of children's rights still faced serious challenges including: insufficient and inadequate programmes to address needs of children from families living in poverty, a lack of pre-school educational facilities, a high rate of dropping out from schools, a need to improve prevention of violence against children and to ensure sufficient number of support specialists and rehabilitation services for children victim of violence, etc.³¹

²¹ February 17, 2023 Statement of the Public Defender's Office on Draft law of Georgia on Transparency of Foreign Influence is available at: www.bit.ly/3FtNiUE [last accessed 24.03.2023].

²² March 13, 2023 statement of the Public Defender of Georgia is available at: www.bit.ly/3FuG4zQ [last accessed 24.03.2023].

²³ According to the Ministry of Internal Affairs of Georgia, 133 individuals were detained as a result of operational measures and investigative activities carried out on March 7-8, information is available at: www.bit.ly/3Tpv8t9 [last accessed 24.03.2023].

²⁴ Supra note 2, page 248.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid, page 238.

²⁹ Ibid.

³⁰ Ibid, page 241.

³¹ Ibid, pages 262-276.

8. Rights of older persons

In 2022, protection and fulfillment of rights of the elderly still faced serious problems, such as: absence of protection and psycho-social services adjusted to the needs of the elderly victims of (domestic) violence, human rights violations and inadequate living conditions in nursing homes, lack of social work in municipalities, etc.³²

9. Human Rights in occupied territories of Georgia

(a) Right to liberty and prohibition of ill-treatment

Illegal detentions continued in 2022 as 42 individuals were detained in the direction of the Tskhinvali region and 13 individuals – in the direction of Abkhazia.³³ As of December 2022, 7 citizens of Georgia remained in illegal detention.³⁴ In terms of this problem, the ECtHR judgment of March 7, 2023 found Russia responsible for violations committed in the occupied territories before the 2008 war.³⁵ In particular, the two applicants were illegally detained between 2001-2007 and 2003-2005 respectively and subjected to ill-treatment in the Dranda prison in the occupied Abkhazia.³⁶

(b) Freedom of movement

Arbitrary restrictions on freedom of movement continue to deteriorate the human rights situation in the occupied territories. Since August 20, 2022, the so-called Akhagori crossing point has become open between 20th and 30th day of each month.³⁷ However, movement of cars and mini-buses is prohibited and transfer of only 50 kg hand-baggage per person is allowed.³⁸ A “permit” is required to cross the so-called Akhagori crossing point and there have been cases when issuance of the “permit” was artificially protracted or unjustifiably rejected.³⁹ The “permit” costs about 10,000-15,000 Rubles.⁴⁰ The population of Gali has been prohibited to cross the so-called Enguri bridge crossing point with the so-called form N9 since 2022.⁴¹ The Gali locals have to pay the so-called fee to the so-called border-guard to transfer products to cross the crossing point. The fee amount is not pre-determined and depends on the individual guarding the so-called border.⁴² Movement across the so-called Enguri bridge crossing point is allowed with: 1. De facto (new) passport; 2. The so-called residence permit; 3. Birth certificate for a person under 14 years old; 4. Georgian passport for those who have the permit to enter Abkhazia (the so-called visa).⁴³ Majority of the Gali population opposes the so-called residence permit as it gives them the status of a foreigner.⁴⁴ Its validity is 5 years and its receipt establishes strict criteria which may be used to pressure the Gali population.⁴⁵ Moreover, the de facto passport is not issued unless a local from Gali rejects Georgian citizenship.⁴⁶ Such arbitrary and illegal restrictions on freedom of movement negatively affect other rights of the people living in the occupied territories, including access to health care and education.

(c) Right to education

Access to education in native (Georgian) language remains a serious challenge in the occupied territories. Since 2021, instruction in Georgian at schools has been completely prohibited in Gali and the teaching of Georgian has become a course/subject similar to

³² Ibid, pages 279-282.

³³ Ibid, page 325.

³⁴ Ibid.

³⁵ Case of Mamasakhlishi and others v. Georgia and Russia, available at: <https://bit.ly/42ttLNr> [last accessed 04.05.2023].

³⁶ Ibid.

³⁷ Supra note 2, page 326.

³⁸ Ibid.

³⁹ Ibid, pages 326-327.

⁴⁰ Ibid, page 327.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid, pages 330-331.

foreign language and literature.⁴⁷ As to Akhgori, there are 6 schools 5 of which teach in Georgian only from 9th to 11th grade whereas teaching in Georgian was allowed from 7th grade in 2020.⁴⁸ The de facto authorities of Tskhinvali have continued the practice of intimidation of teachers and pupils in order to hinder teaching in Georgian.⁴⁹ Thus, such arbitrary restrictions on access to education in Georgian language equals ethnic cleansing of ethnic Georgians in the occupied territories as the parents have to leave these regions and move to the Georgian controlled territories to enable their children to learn in Georgian.⁵⁰ Indeed, the number of pupils in Gali and (Georgian schools of) Akhgori has been decreasing yearly.⁵¹

(d) Right to health

Patients from Akhgori have continued to face obstacles in accessing health care, caused by arbitrary restrictions imposed by the de facto authorities on movement across the so-called boundary line.⁵² Such restrictions on freedom of movement negatively affect the right of health of the locals. Unfortunately, 1,5-year-old girl from Akhgori passed away in 2023 due to absence of timely medical help. Sadly, several individuals died between 2019 and 2021 due to lack of access to medical services.⁵³ Sadly, several individuals died between 2019 and 2021 due to lack of access to medical services.⁵⁴

(e) Civil society

Since 2021, the legislative proposal on “Foreign Agents” has presented a threat to limit the activities of international and local organizations in Abkhazia, especially activities in trust building, education and conflict transformation.⁵⁵ Empowerment of local CSOs is also hindered by scarcity of international donor or non-governmental organizations as the latter face obstacles in accessing the region.⁵⁶

⁴⁷ Ibid.

⁴⁸ Ibid, page 330.

⁴⁹ Ibid, pages 330-331.

⁵⁰ Ibid, page 331.

⁵¹ Ibid, pages 329-330.

⁵² Ibid, page 332.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid, page 333.

⁵⁶ Ibid. Tato, L.(2018) The first ever Mr. and Miss Albinism East Africa available at <https://www.aljazeera.com/gallery/2018/12/26/the-first-ever-mr-and-miss-albinism-east-africa>.