

Questionnaire on the use of legislation, including criminal legislation, to regulate activities and work of human rights defenders

Legislation of Georgia envisages the legal framework, which regulates the activities and work of human rights defenders. First of all, it should be clarified that the term “human rights defender” includes person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world’s largest cities to individuals working within their local communities. Human rights defenders are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.

Q.1 (a) Organic Law of Georgia on the Public Defender of Georgia (*hereinafter* – PDO) sets out the powers, the basic principles and types of the activities of the Public Defender.

Apart from this, Georgian Law on Lawyers regulates the activities of lawyers/advocates, which are considered to be one of the most important human rights defenders. Code of Ethics of Advocates/Lawyers establishes the special regulations for the activities of lawyers.

It is worth to be mentioned that, In July 2007, the Legal Aid Service (*hereinafter* - LAS) was established and currently covers nearly the whole territory of Georgia with its 11 bureaus and 4 consultation centers. The LAS is a state funded organization, ensuring free legal aid consultations on any legal problems drafting of legal documents (applications, motions and other legal documents); as well as in case of socially vulnerable population free legal representation in courts on criminal cases for accused and convicted persons; lawyer’s assistance on the cases of compulsory psychiatric defense; lawyer’s assistance on the cases of administrative offence entailing administrative imprisonment. It is worth to be mentioned that legal consultation is accessible to everyone without any distinction.

Q.1 (b) The main principles of the Declaration on Human Rights Defenders, such as protection and realization of human rights at the national level, ensuring the access to justice and defense of every citizen/non-citizen to Georgia, etc. are reflected into the legal acts indicated in Q1 (a).

PDO

The mandate of the Public Defender is prescribed by Constitution of Georgia and the Organic Law on Public Defender of Georgia. Public Defender is authorized to reveal facts of the violation of human rights and freedoms and to report on them to corresponding bodies and officials.¹

Moreover, Public Defender oversees observation of human rights and freedoms on the territory of Georgia and within its jurisdiction.² The Public Defender:

¹ Article 43 (2) of Constitution of Georgia

² Article 2 of the Organic Law on the Public Defender of Georgia;

- ✓ supervises that the state and local self-government bodies, public entities and officials observe and respect the rights and freedoms recognized by the state for all persons within its territory and jurisdiction regardless of race, color, language, sex, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence or other status;
- ✓ reveals facts of violations of human rights and freedoms and facilitates redress of violated rights and freedoms;
- ✓ undertakes educational activities in the field of human rights and freedoms;
- ✓ exercises the functions of the National Preventive Mechanism (NPM) under OPCAT;
- ✓ cooperates with the respective bodies and mechanisms of the United Nations as well as international, regional and national institutions or organizations working on the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment in the places of arrest, detention or other places of restriction of liberty.

Lawyers/advocates

The Law on Lawyers/Advocates determines the objectives of the lawyers:

- represent the rights and freedoms of the client;
- protect the interest of the client;
- recall/ask for the information or other factual materials related to the case proceedings;
- Meets with a detainee or any person deprived of liberty anytime without restriction.

Q.1 (c) The national legislation of Georgia envisages the liability for the advocates/lawyers for their misconduct. Namely, Law on Lawyers/Advocates envisages the disciplinary sanctions for violation of the main principles and requirement of the Law and Code of Ethics of Lawyers/Advocates.³ Disciplinary sanctions are as follows: warning, deprivation of advocacy permission for 6 months to 3 years, termination of the membership of Georgian Bar Association⁴. It should be mentioned that legal aid lawyers are subject to the GBA's Code of Ethics and disciplinary proceedings. Legal Aid lawyers are not released from liability for their misconduct.

The Public Defender is protected with immunity; he/she may not be prosecuted, arrested or imprisoned; not to be searched without the approval of the Parliament of Georgia. The inviolability of the Public Defender does not apply to the case of being caught in the act of committing an offence which must be immediately notified to the Parliament.⁵

Q.2 (a) Legislation of Georgia does not restrict the activities of the lawyers based on the national security-related laws. For instance, Organic Law on the Public Defender of Georgia prohibits any influence or interference with the Public Defender's activities. Moreover, such unlawful interference is punished by law.⁶ Pursuant to Article 11 of the mentioned legal act declaration of a

³Article 31 of the Law on Lawyers/Advocates;

⁴ Article 34 of the Law on Lawyers/Advocates;

⁵ Article 10 (1) of the Organic Law on the Public Defender of Georgia;

⁶ Article 4 (2) of the Organic Law on the Public Defender of Georgia;

state of emergency or martial law does not suspend the activities or restrict the powers of the Public Defender.

Also, the Law on Legal Aid as well as the Law on Lawyers/Advocates⁷ ensures the independence of the advocates/lawyers – “Any influence on its activities is impermissible.⁸ The lawyer works in accordance with the Law and Code of Ethics.

As for the question related to the restriction of the activities of advocates based on the national security, the Government of Georgia clarifies that there is no such specific law/regulation limiting the activities of lawyers.

On the other hand, the activity of lawyer is not absolute. Namely, the work of the lawyer is limited with the principles established under the Code of Ethics – principles of independence, trust, confidence, collegiality and conflict of interests as well.

Q.2 (b) Constitution of Georgia provides the freedom of expression⁹ and opinion¹⁰. Furthermore, the Law on Freedom of Speech and Expression guarantees the right to freedom of expression and opinion; on the other hand, paragraph 4 of Article 24 of the Constitution envisages the grounds for limitation of the right to freedom of opinion. Namely, exercise of the rights to impart his/her opinion may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice. Furthermore, the Law on Freedom of Speech and Expression establishes particular exceptions when the freedom of expression is the subject of restriction. Pursuant to Article 8 of the Law limitation of the right to freedom of expression is justified if such restriction/limitation is prescribed by law and the restriction of the right outweighs the damages (the good protected by the restriction exceeds the damage caused by it).¹¹ The law establishes the limitations for the freedom of expression which should be motivated to serve legitimate purposes; also it should be necessary for the democratic society, non-discriminatory and proportionally restrictive.¹² Pursuant to Article 9 of the said Law, freedom of expression might be restricted if it includes defamatory, offensive/insulting, coercive or indecent statements, incitements to crime, etc.¹³

Q.3 (a) Criminal Code of Georgia ensures that any crime conducted by using official position is regarded as the aggravated circumstance. The Code does not necessarily refer only to the governmental officials. The term “official” includes the representatives of public and private

⁷ Article 1 (2) of the Law on Lawyers/Advocates;

⁸ Article 8¹ of the Law on Legal Aid;

⁹ Article 19 of the Constitution of Georgia;

¹⁰ Article 24 of the Constitution of Georgia;

¹¹ Article 8 (1) of the Law on Freedom of Speech and Expression;

¹² Article 8 (2) of the Law on Freedom of Speech and Expression;

¹³ Article 9 (2) of the Law on Freedom of Speech and Expression;

sector. Accordingly, if lawyer or any other human rights defender conducts criminal act, his/her criminal act will be qualified as the crime conducted by using official position.

Q.3 (b) Constitution of Georgia prohibits any kind of discrimination.¹⁴ Legislation of Georgia does not include any discriminatory approaches based on which the human rights defenders will be arbitrated or handed down of disproportionate sentences.

Apart from this, it should be noted that the Criminal Procedure Code of Georgia (CPC) ensures the equal opportunities to the party during proceedings.¹⁵ Furthermore, the court is obliged to provide the parties with equal opportunities to protect their rights and legitimate interests, without granting preference to any party.¹⁶

As for the safeguards, legislation of Georgia envisages the compensation of damages in criminal cases. Namely, Article 81 (2) of Criminal Procedure Code of Georgia (CPC) ensures that disputes about material evidence shall be resolved through civil proceedings. If such a dispute arises prior to enactment of a court decision, the material evidence shall be stored with the criminal case. Moreover, Article 81 (3) of CPC provides financial/monetary compensation for the owner or possessor in case of damage, losing or destruction of the material evidence. This rule is not applied to property subject to procedural confiscation, destruction, or property that is to be applied to cover procedural costs.

In addition, a person who has suffered from an unlawful disclosure of data regarding his/her personal life shall be entitled to fully recover damages in accordance with the procedure established by law.¹⁷

A defendant shall be entitled to claim and receive damages resulting from any unlawful procedural action through civil/administrative procedure.¹⁸

CPC ensures that everyone has a right to request and receive compensation for damages incurred due to illegal procedural actions or illegal decisions, via civil/administrative claim procedure. Moreover, person may also claim compensation for damages, via civil procedure.¹⁹ The Code does not necessarily emphasizes the type of compensation (whether material or moral recovery) (Article 81 (3) of CPC). This covers both moral and material damages.

Q.4 (a) National legislation of Georgia foresees regulations governing registration, functioning and funding the non-governmental organization/associations. Namely, Constitution of Georgia, the Civil Code of Georgia, the Law of Georgia on Entrepreneurs, Law of Georgia on Public Registry, Organic Law on Georgia on the Suspension of Activities and Prohibition of civil society

¹⁴ Article 38 (1) of Constitution of Georgia;

¹⁵ Article 9(1) of the Criminal Procedure Code of Georgia. "From the moment of the initiation of criminal prosecution, criminal proceedings shall be carried out based on the equality of parties and the principle of adversarial proceedings";

¹⁶ Article 25(1) of the Criminal Procedure Code of Georgia;

¹⁷ Article 7 (3) of the Criminal Procedure Code of Georgia;

¹⁸ Article 38 (11) of the Criminal Procedure Code of Georgia;

¹⁹ Article 92 of the Criminal Procedure Code of Georgia;

organizations and Organic Law on the political Associations of Citizens provide the regulation for the non-governmental organization.

Q.4 (b) Georgia is the member state of ECHR and ICCPR which provide the right to freedom of association. Benefits and limitations established under these international treaties are totally reflected to the legislation of Georgia. The legal acts indicated in Q4 (a) governs the establishment, functioning, funding and termination of the associations.

The registration of the civil societies has been simplified. On December 25, 2009 Parliament of Georgian adopted considerable amendments to the legislation on the registration of non-profit organizations aimed at further simplifying registration procedures for Non-profit organizations. The amendments also addressed registration procedures for the regional branches of a Non-profit organization, the registration of international association in Georgia, as well as the registration of Georgian branches of the non-profit organizations registered abroad. According to the amendments:

1. the deadline for consideration of an application for the registration of a new Non-profit organization has been reduced to 1 working day and the list of necessary documentation to be provided for the registration has been simplified;
2. no distinction exists between the registration procedures for local and foreign or international organizations.

As a result, new Non-profit organization registration statistics show a tremendous growing speed of the sector. More than one thousand NGOs are registered every year. Some 15970 non-profit organizations are registered in Georgia as of January 2011.

Since January 1, 2010, the National Agency of Public Registry (NAPR) under the Ministry of Justice of Georgia is responsible authority for registration of non-profit legal entities. Registration service may be received in any registration office, from any authorized persons throughout Georgia (Banks, other authorized companies), or via internet.²⁰

Q.5 (a-b) Legislation of Georgia does not restrict the lawyers/advocates to undertake an activity on an individual bases even if the association he/she represents is unregistered. Advocates/lawyers are not limited to carry out individual advocacy but they should not act in conflict of interests.²¹

On the other hand, LAS advocates/lawyers cannot carry out advocacy individually, as they are hired by the Legal Aid Service which is the legal entity of public law (LEPL).

Also, the mandate of Public Defender of Georgia is restricted by law. He/she cannot undertake activities on his/her private/individual basis. His/her duties are prescribed by law.

²⁰<http://www.napr.gov.ge/>, <http://www.napr.gov.ge/?m=316>;

²¹ Article 6 of the Code of Ethics of Georgia;

Q.6 - Q.7 The legislation of Georgia envisages the right to seek, receive and impart information in writing or by in any other means.²²This right is not the absolute one and might be restricted in certain circumstances. Article 24 (4) of the Constitution of Georgia emphasizes this right may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice.

General Administrative Code of Georgia

General Administrative Code of Georgia foresees access to public information.²³The definition of public information is given in the Code. Namely, public information is an official document protected in public agency, adopted, issued, sent or processed by the public agency/official.²⁴ The Code also defines the secret information - information stands for the secret if it contains information protected in public agencies or State, commercial or private information adopted, issued or processed by the public agency or it is related to the official/service activity.²⁵Administrative body is obliged to ensure the applicant with required/asked information within 10 days.²⁶

The Code emphasizes the restrictions for the access to information. The Code establishes the certain limitation to the private, commercial, professional and State information. Furthermore, the Code provides to close public information, if it is prescribed by law, falls within the scope of the requirements established to protect the secrecy of the information and contains the whole list of secret information.

Apart from this, the legislation of Georgia ensures the right to access the case materials to the parties of the case proceedings both in civil and criminal cases.

Law on Freedom of Speech and Expression

The Law on Freedom of Expression guarantees the right to freedom of speech and expression of every person. Apart from this, the Law establishes the certain limitations for the implementation of this right, in order to protect state security, the rights and legitimate interest of others.

Also, the Law prohibits disclosure of the professional information. The source of professional information is confidential and is protected by absolute privilege. No one is entitled to ask for the disclosure.²⁷The person is liable for the damages which were caused by disclosure of the confidential information.²⁸

²² Article 24 (1) of the Constitution of Georgia;

²³ Article 10 (1) of the General Administrative Code of Georgia;

²⁴ Article 3 (1) (l) of the General Administrative Code of Georgia;

²⁵ Article 3 (1) (m) of the General Administrative Code of Georgia;

²⁶ Article 40 (1) of the General Administrative Code of Georgia;

²⁷ Article 11 of the Law on Freedom of Speech and Expression;

As for the issue related to the defamation, the Law on Freedom of Speech and Expression provides the civil liability for spreading defamatory information, if applicant approves that the respondent has represented the essentially false facts against the applicant, which has caused the damages to the applicants.²⁹ Also, the person is liable for the public defamation of public official.³⁰ The person is not liable for the imparting the defamatory information if he/she is not aware about defamation.³¹

The law provides the prevention of censorship, ensures the independence of media and pluralism, provides the rights of the journalists and protects sources of the information to be undisclosed.³²

Law on Data Protection

The Government of Georgia has adopted the Law on Data Protection which entered into force in May 2012. The Law ensures the protection of human rights and freedoms including the right to privacy during the data processing.³³

Organic Law on the Public Defender of Georgia

Also, it should be mentioned that the Organic Law on the Public Defender of Georgia envisages that the Public Defender and a member of the Special Preventive Group are under the obligation to maintain the confidentiality of the secret information and the information declared as confidential, as well as information on torture, or any other cruel, inhumane or degrading treatment of a person unless this person has explicitly expressed consent for such disclosure. Any information containing state, commercial or other secret material required to be kept confidential by law shall be provided to the Public Defender in accordance with the relevant requirements of law.³⁴ Furthermore, every national or local authority, public official or legal person shall be obliged to fully cooperate and to provide without delay all materials, documents and other information as shall be required by the Public Defender.

Q.8 Activities of the human rights defenders are regulated under the following legal acts:

- ⇒ Constitution of Georgia;
- ⇒ Criminal Procedure Code of Georgia;
- ⇒ Law on right to Freedom of Speech and Expression;
- ⇒ Organic Law on Public Defender of Georgia;
- ⇒ General Administrative Code of Georgia;
- ⇒ Code of Ethics of Lawyers/Advocates;
- ⇒ Law on Lawyers/Advocates;

²⁸ Article 12 of the Law on Freedom of Speech and Expression;

²⁹ Article 13 of the Law on Freedom of Speech and Expression;

³⁰ Article 14 of the Law on Freedom of Speech and Expression;

³¹ Article 16 of the Law on Freedom of Speech and Expression;

³² Article 3 (2) (d) of the Law on Freedom of Speech and Expression;

³³ Article 1 of the Law on Data protection;

³⁴ Article 20 of the Organic Law on Public Defender of Georgia;

⇒ Law on Legal Aid.