The Situation of Human Rights and Freedoms in Georgia

First half of 2013

Contents

Introduction

The given document represents the report of the Georgian Democracy Initiative, an independent, non-governmental organization, on the situation of human rights and freedoms in Georgia, of the first half of 2013. The report covers those events related to the human rights situation and the protection of the rule of law principle, which took place in Georgia during the first half of 2013. Simultaneously, the document covers some events beyond the reporting period; due to their ultimate importance those were included into the report below.

Georgian Democracy Initiative welcomes positive steps undertaken in the field of the protection of human rights. At the same time, in the presented report the emphasis is made on those challenges and problems, which are of the utmost importance for the prevention as well as the solution of problems present in the field and necessary for establishing the rule of law in Georgia.

1. Rule of law principle and amnesty of persons convicted on a political grounds

On December 28, 2012, the Parliament of Georgia adopted the Amnesty Law. Georgian Democracy Initiative welcomes any humane steps undertaken by the Georgian Government. However, it is of the supreme importance to focus attention on some problematic issues related to this topic.

By the Amnesty Law adopted by the Parliament of Georgia, the amnesty of persons convicted on a political basis, as well as of persons criminally persecuted on political grounds was carried out (discharge of the abovementioned persons from any criminal liability). Mentioned process was carried out neglecting basic legal requirements, thus creating obstacles to the protection of the rule of law principle in the country. The process of adoption of the Amnesty Law by the Parliament of Georgia, which took place on December 28, 2012, was preceded by the adoption of the Resolution of the Parliament of Georgia of December 5, 2012, according to which particular groups of persons convicted/accused were declared either convicted or being criminally persecuted on political grounds (further declared as political prisoners). By this Resolution the Parliament of Georgia defined concrete individuals being persecuted based on political grounds and eventually, based on the law adopted, granted amnesty to those.

Rules of Procedure of the Parliament (a document having force of the law) clearly define those concrete conditions and procedures, when and under which the Parliament can adopt a resolution. Adoption by the Parliament of the resolution of such nature is not envisaged by the Rules of Procedure of the Parliament. Thus, by adoption of the Resolution as of December 5, 2012, the Parliament exceeded its own competence envisaged by the Rules of Procedure.

Besides, the amnesty granted by the Parliament of Georgia to the so called "political prisoners" contradicts the constitutional order as well as the legislation of Georgia due to the following circumstances: based on the section n), Article 73 of the Georgian Constitution, only President is authorized to grant pardon to convicted persons. Powers and regulations of granting an amnesty are not envisaged by the Constitution of Georgia, however, amnesty and pardon issues are described in another legal document, which is the Criminal Code of Georgia. Based on Article 77 of the Criminal Code of Georgia, amnesty can be granted to indefinite number of persons, while according to the Article 78 of the same law, pardon can be granted by the President to definite number of persons.

Based on its own contents, the Rules of Procedure of the Parliament as of December 5, 2012, while defining persons as political prisoners, rested upon Resolution #1900 of the Council of Europe (2012), which determines criteria for the formation of the definition of a political prisoner. Based on information on hand, the Committee for Human Rights and Civil Integration of the Parliament of Georgia, formed a special group of experts, which had to examine relevant criminal cases and to take decisions on granting applicable convinced/accused persons status of political prisoners based on the determined criteria of the mentioned Resolution of the Council of Europe. Based on the disseminated information, the group of experts managed to study up to 200 cases in the 2-week period as well as to make decisions on those cases. This fact indeed gave rise to doubt the full-fledged nature and transparency of the process. It is also worth mentioning that two non-governmental organizations, members of the group of experts, left the group due to the inadequate and rapid nature of studying the cases; those were "Georgian Young Lawyers Association" and organization "Article 42".

On March 11, 2013, the European Commission for Democracy through Law (further, the Venice Commission) published its opinion on the process of granting amnesty to political prisoners, implemented by the Parliament of Georgia[1]. The Commission highlighted several key issues which, according to the experts involved, contradicted main principles of the rule of law and the protection of human rights. The Venice Commission noted in the opinion the non-transparency of the process of adoption of the Amnesty Law of the political prisoners by the Parliament, explaining this by the fact that the criteria for selecting the cases were not disclosed to the public[2]. Based on the opinion of the Commission, participation of the Parliament in the release of the political prisoners contradicted the principle of the separation of powers. By doing so, the Parliament exceeded its powers of a legislative body and, practically, replaced the Judiciary[3]. The Venice Commission stated that the process of the selection of cases for the list was biased and inappropriate as concrete persons did not have an opportunity to appeal to the Parliament with the request of the consideration of their cases[4].

[1] Opinion #710/2012, CDL-AD(2013)009;
[2] *ibid*, par. 38-39;
[3] *ibid*, par.43;
[4] *ibid*, par.51.

The Opinion of the Venice Commission once again confirms the fact that the process of granting amnesty to political prisoners contradicted principles of the rule of law.

2. State response to the crimes related to the torture and inhuman treatment

Based on the section 2, Article 17 of the Constitution of Georgia, torture and other cruel, inhuman and degrading treatment and punishment are prohibited. The given provision implies positive obligation of the state to conduct thorough and effective investigation in case of such findings, as well as to impose legal liability when violations of this right are detected.

According to the Article 3 of the European Convention on Human Rights, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Prohibition of torture is not the right recognized by the European Convention only, but rather a customary norm acknowledged by the international legislation.

Precise definition of torture is given in the Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (further, the UN Convention). Both, European Convention on Human Rights and the UN Convention demand effective investigation of such facts and due punishment of the perpetrators; on the other hand, relevant rehabilitation and compensation of the victims of torture. The sanctions imposed on perpetrators should be commensurate with the gravity of the offence.

Proceeding from its substance, the Article 17 of the Constitution of Georgia implies positive obligation of the state to conduct effective investigation for establishment of facts and further lawful punishment, in case obligations envisaged by the constitutional norm are violated. The Constitutional Court of Georgia ruled that the right to personal dignity and security is an absolute right and the Constitution does not allow any restrictions thereof[5].

According to the information disseminated, on June 14, 2013, Tbilisi City Court ruled on complete release from the criminal liability of the accused Vladimer Bedukadze, which was based on the plea bargain "On Special Cooperation", concluded between the Prosecutor General of Georgia, Archil Kbilashvili, and Vladimer Bedukadze. Under special circumstances, the Criminal Procedure Code of Georgia allows the Prosecutor General, on the basis of plea bargain, to completely release the convicted/accused person from either the criminal liability or punishment[6]. However, section 8 of the same Article prohibits full discharge from punishment when it comes to the crimes envisaged by Articles 144(1), 144(2) and 144(3) of the Criminal Code of Georgia. Thus, the plea bargain agreement mentioned above caused certain legal

[5] Decision of the Constitutional Court of Georgia #2/1/241 on "Akaki Gogichaishvili vs. the Parliament of Georgia", March 11, 2004
[6] Article 218, Criminal Procedure Code of Georgia

misunderstanding, as the contradiction between and the ambiguity of the norms of the procedural and substantive code give grounds to the divergent interpretation of the stated above prohibition.

According to the Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature." According to the Article 6 of the Constitution of Georgia, an international treaty (unless in contradiction with the constitution) shall take precedence over the Criminal Procedure Code of Georgia, so the norms of the Code as well as the practice of their implementation shall be in full compliance with the international standards.

Early in 2005, the UN Special Rapporteur on torture, Manfred Novak, was discussing in his report an absolute necessity of the abrogation of the plea bargain agreement when the latter protects representatives of the law-enforcement agencies from criminal liability in cases of the torture and/or ill-treatment. In the same report, an emphasis was made on the unequivocal annulment of such agreement by the Prosecutor General in case there is well-grounded suspicion of the facts of torture and ill-treatment.

Proceeding from the above stated, it is obvious that the Prosecutor General exceeded the powers granted by the law by completely releasing the person accused of the facts of torture from the criminal liability, which contradicted the universal international standards. Thus, on one hand, this decision of the Prosecutor General is in conflict with the stated above international standards as well as poses a threat of further encouragement of such crimes, while, on the other hand, such practice applied by the state violates rights and legitimate interests of the victims.

Considering an absolute nature of the prohibition of torture, it is essential to discuss the investigation of facts of torture and inhuman treatment, launched in the penitentiary establishments in autumn 2012. We find it of the utmost importance that the state conducts effective investigation of the cases mentioned and imposes liability upon all persons involved in the facts of torture and ill treatment. Actions, which have been undertaken by the state in this direction, can apparently be evaluated as unsatisfactory and inadequate.

Facts of the timely identification of the victims of torture, their psychological rehabilitation, restoration of the rights violated as well as further compensation of those persons is of no less importance. There is no doubt that the public broadcasting of videos containing facts of private life of citizens should not have taken place. Public interest towards such events is understandable. However, the rights of victims are of the paramount importance, so the state shall take no steps to further infringe these rights by revealing facts of private life of individuals, thus, causing more negative impact on their mental state. Besides, it is unclear whose legal interests are protected by the fact of making these videos public.

We strongly believe, by broadcasting these videos, the rights of victims and their families were once again violated; moreover, these facts subjected them to additional psychological stress.

Simultaneously, we strongly believe, all videos of such type should be considered in close relationship with concrete criminal cases only, while their further impartial evaluation shall be conducted by an independent court. Moreover, the process of investigation shall be entirely transparent and all persons involved in the facts of torture, as well as those who by either their silence or inaction further contributed to the perpetration of similar crimes, shall face charges.

3. Right to liberty and security

Article 18 of the Constitution of Georgia protects the right to personal liberty and declares arrest of a person or restriction of his/her liberty without a court decision impermissible. The same Article of the Constitution[7] further affirms the permissibility of an arrest of an individual by a specially authorized official and in the cases determined by the law only. In one of its decisions, the Constitutional Court of Georgia rules the following: prohibition of a person's relocation is a clear sign of interference in his/her right to freedom[8].

The object of Article 5 of the European Convention on Human Rights guarantees liberty of the person, provides guarantees against arbitrary arrest or detention and seeks to achieve this object by excluding any form of arrest or detention without lawful authority and proper judicial control. Section 1 of the Article 5 on the European Convention speaks about a presumption, which guarantees right to liberty and security of the person. In one of the decisions, the European Court of Human Rights "stressed that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of the Article 5, namely to protect the individual from arbitrariness[9]". At the same time, the Court stresses the importance of the Article 5 of the Convention by the "protection of the individual against arbitrary interference by the State with his or her right to liberty" and states that the "judicial control of interference by the executive with the individual's right to liberty is an essential feature of the right embodied in Article 5, which is intended to minimize the risk of arbitrariness and to ensure the rule of law[10]". Also, according to the section 2, Article 5 of the Convention, "everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him[11]".

According to the Article 170 of the Criminal Procedure Code of Georgia, "a person is considered to be detained from the moment his/her freedom of movement is restricted". According to the same norm, "a person shall be considered as indicted from the moment of his/her detention."

[7] Section 3, Article 18, Constitution of Georgia
[8] Decision #2/1/415 of the Constitutional Court of Georgia, April 6, 2009
[9] Kurt v. Turkey
[10] Aksoy v. Turkey
[11] X v. the United Kingdom

Based on the Georgian legislation, an official detaining the person is obliged to promptly give the latter reasons for his/her detention, to explain what crime he/she is indicted for, and to inform him/her on the right to remain silent when questioned[12].

On June 27, 2013 the Ministry of Finance of Georgia disseminated information on the pending criminal case related to the misappropriation and defalcation of funds of the Tbilisi City Hall. Employees of the Tbilisi City Council (Sakrebulo) were interrogated as witnesses. Broadcasting of the given statement was preceded by the dissemination of information of the detention of the employees of the Tbilisi City Hall.

Investigation Service refused the fact of the detention of the mentioned above persons and explained their displacement in the premises of the Service by the necessity of the interrogation procedures. Based on the information disseminated, employees of the Tbilisi City Council were summoned to the Investigation Service with the purpose of their interrogation, and were kept in the premises thereupon[13].

During the interview with the representative of the GDI, the employees of the Tbilisi City Council reiterated that in the morning of June 27, 2013, while driving to the office, they were unexpectedly stopped by persons in civilian clothes, who informed them of the fact of their detention. The detainees were handcuffed upon detention (or several minutes after the detention), their cellular phones were confiscated and they were transferred to the Investigation Service of the Ministry of Finance. It should be noted that Mamuka Akhvlediani , the First Deputy Head of the City Council, was driven around Tbilisi for almost an hour and was later released directly from the vehicle.

As the detainees declare, the employees of the Investigation Service did not explain to them at the time of detention what crime they were accused of, as well as they failed to inform them on their rights. According to them, after the employees of the Investigation Service had taken them to the Investigation Service building, they started drawing up protocols on detention and explained to a part of them that they were accused of the crime provided for in Article 182 of the Criminal Code of Georgia, though after the persons who had drawn up the protocols received an instruction, presumably from their superiors, they discontinued the detention procedure and destroyed the documents they had drawn up.

Majority of the detainees declared that after this, the employees of the Investigation Service formally drew up protocols on their interrogation as witnesses where they simply indicated the detainees' personal information and work experience. Later all the detainees were released without any additional explanations.

Thorough analysis of this situation demonstrates clear violation of rights of the employees of the Tbilisi City Council guaranteed by the Constitution of Georgia as well as recognized by the

[12] Section 1, Article 174, The Criminal Procedure Code of Georgia
[13] http://www.is.ge/news/2310; http://www.netgazeti.ge/GE/105/News/21051/

international law. Investigation Service of the Ministry of Finance made a statement in which mentioned above facts were explained not as the detention of the employees of the Tbilisi City Hall, but rather as a mere necessity of their interrogation. This indeed contradicts with recognized international human right standards, also with the Criminal Procedure Code of Georgia. According to the section 3, Article 149 of the latter, transfer of the witnesses can be carried out in order to ensure their participation in the investigative or other procedural actions in case they refuse to cooperate voluntarily. According to the Georgian legislation, the transfer of witnesses can be carried out only upon existence of an appropriate court decision[14]; also, taking a witness to an investigatory body under coercion requires corresponding grounds and a judge's order, and information about the existence of the latter was neither communicated to the detainees nor disseminated by the investigatory body. The transfer of witnesses implies restriction of freedom and elements of coercion. Thus, the Criminal Procedure Code entails obligatory condition for the witness to refuse to voluntarily participate in the investigative procedures. Let us assume the witnesses were transferred without their consent. In such case, they should have known in advance an exact location of their interrogation, as well as procedures they could have undergone in case of failure to appear. Only under such circumstances the involuntary transfer procedures can be applied. Neither in information disseminated by the means of mass media, nor in the statement allocated at the official website, did the Investigation Service of the Ministry of Finance explained that the employees of the Tbilisi City Council had received notification to present one selves in the investigation bodies.

According to the Criminal Procedure Code of Georgia, the restriction of one's freedom shall be the measure of last resort. The Criminal Procedure Code unequivocally prohibits the compulsory transfer of individuals summoned for interrogation to the relevant state bodies in cases when the latter were not given a chance to appear there voluntarily. The statement of the Investigation Service of the Ministry of Finance that the "investigation body has a right to inform an individual *in person* of the fact that he/she is summoned for interrogation and that there are several legal forms of summoning individuals to the interrogation and the Investigation Service has chosen this very measure[15]", indeed, contradicts the Georgian legislation. Thus, the enforcement measures applied by the Investigation Service of the Ministry of Finance were illegal.

The misunderstanding was even more aggravated by the fact that all persons detained early in the morning were released soon thereafter, while later the same day some of them were once again detained[16]. This fact presents clear violation of the section 1, Article 18 of the Criminal Procedure Code of Georgia; the latter prohibits "repeated detention of a person based on the same evidence or information".

[14] Sections 4 and 5, Article 149, Criminal Procedure Code of Georgia
[15] www.netgazeti.ge/GE/105/News/21063/
[16] www.is.ge/News/2303

On May 21, 2013, the Prosecutor's Office of Western Georgia detained former Prime Minister of Georgia, Vano Merabishvili and the Governor of Kakheti region (former Minister of Labor, Health and Social Affairs of Georgia), Zurab Chiaberashvili. Based on the official information, detained persons were charged with bribing the electorate in favor of the political party "United National Movement" (UNM) before October 1, 2012 Parliamentary elections. Vano Merabishvili was also charged with the illegal appropriation of the luxurious villa, which belonged to the Ltd. "International Investment Company", which took place in May 2009. According to the charges, the fact of appropriation lacked any legal basis and was conducted through intimidation and against the will of the owner.

Prosecution requested the court to apply pretrial detention as a measure of restraint against Vano Merabishvili, while Chiaberashvili was released on bail.

Leaders of the UNM claimed there were political grounds for the detention of the former Prime Minister. Based on their statements, Vano Merabishvili, whenever summoned to the investigative bodies, never violated any rules prescribed, thus his detention could be explained by political motive only.

At the same time, the Prosecutor's Office did not present credible evidence, which could have proven the intentions of Merabishvili to either exercise any pressure on witnesses or to hide from the justice. Such evidence, if presented, would have proven the suspicions of the opponents on the political motivation of Merabishvili's detention less well-grounded.

Moreover, statement of the prosecution on the detention of Vano Merabishvili and Zurab Chiaberashvili was made in affirmative format, which indeed presented clear violation of the presumption of innocence.

Georgian Democracy Initiative will continue observation of this case and will present further information on it in its future reports.

4. Legitimacy of the actions of the law-enforcement bodies

Lawful actions of the law enforcement bodies are indeed an important manifestation of the rule of law principles. Concept of a modern state is based on the following: on one hand, the state determines its law and legal order, on the other hand, provides for the implementation of the latter. Pubic servants and, first of all, representatives of the law enforcement bodies, shall be at the forefront of observing the law.

On March 28, 2012, in Batumi, an incident between the representatives of the Georgian Young Lawyers Association (GYLA) and the Head of Adjara Internal Affairs Department, Valerian Telia, took place. Based on the video recording, the employee of the GYLA clearly violated traffic rules while driving the vehicle. Another person involved in the incident was Valerian Telia.

Video recordings on hand show the development of incident and it completely coincides with the statements of the GYLA representatives. Based on the information disseminated, due to some physical clash, one of the GYLA's employees was injured. Patrol police was called by other employees of GYLA[17]. Based on the information from the Ministry of Internal Affairs, the General Inspection instantly started inquiry and made the subsequent statement[18] as of April 2, 2012. The description of the incident in the statement of the Ministry was biased and the whole responsibility for the incident was placed upon the GYLA employee. The issue became even more acute when the video surveillance materials from the time and place of the incident were destroyed by the employee of the Ministry of Internal Affairs, while the same person, who supposedly destroyed video materials, was entrusted with the investigation of this case.

In the statement released as a result of the investigation, the General Inspection stated the following: "Police officer – G.S. – came to the commercial facility "Batumi House", the location from where the video surveillance was made and from which the video materials should have been withdrawn. While withdrawing the materials, the latter were destroyed by negligence by G.S. and so their further restoration appeared impossible".

According to the General Inspection, the administrative responsibility were imposed on the individual mentioned above. As to the Ministry of Internal Affairs, there was no further information on any additional actions undertaken by the Ministry.

Given incident proved failure of the law enforcement bodies to conduct fair investigation of the case, particularly when the employee of the Ministry of Internal Affairs represented a party to the conflict. Moreover, the mere fact of entrusting the person who had supposedly destroyed video materials with the conduct of investigation of this very case was a clear sign of biased and inefficient investigation.

Representatives of the youth wing of the United National Movement were apprehended by the police and were accused with damaging the facade and exterior of the building. According to the persons detained, they were sticking posters to the wall of the building, preparing so for the meeting planned for April 19, 2013. Immediately after their detention, these persons were taken first to the Ortachala Police Division while later moved to the Department of the Patrol Police. Eventually, all five of them were released: three were asked to write letters of explanations,

[17] www.netgazeti.ge/GE/105/News/18119/
[18] www.police.ge/index.php?m=&&newsid=4033

while one of them was fined. The Ministry of Internal Affairs confirms detention of only one person. Administrative proceedings were commenced and one of the detained persons was fined 50 GEL based on the Article 150 of the Administrative Violations Code of Georgia.

On June 19, 2013, police officers detained three students which were accused with writing slogan "Leave the universities alone" on the wall of the underground passage. Eventually, the students were released, although, based on the section 1, Article 150 of the Administrative Violations Code of Georgia, fined 100 GEL each[19].

On June 25, 2013, five students were detained next to the #1 Gymnasium in Tbilisi, later on they were released[20]. Students were detained by the law enforcement representatives while planning to place s poster with a text "Leave the autonomy of the universities alone" on the monument of Ilia Chavchavadze and Akaki Tsereteli. They were taken to the Ortachala District Investigation Service. The Ministry of Internal Affairs made statement related to this fact and disseminated information of the detention of two students during the meeting on Rustaveli Avenue. Based on the statement of the Head of the PR Department of the Ministry, two students were arrested by the police at the moment of placing a poster in front of the gymnasium. Proceedings were initiated under the Article 150 of the Administrative Violations Code of Georgia implying fine of 50 GEL each[21]. According to the information disseminated by media outlets, the students planned to hang their poster on the monument and later take a picture of it, thus, there was no intention or possibility to damage the monument. One of the students was released as he held neither the rope, nor the poster.

These facts illustrate exceed of power by the representatives of the law enforcement bodies. The Article 246 of the Administrative Violations Code of Georgia enumerates grounds for the detention of an administrative offender and it says nothing about the grounds mentioned above. Therefore the actions of the Police can be assessed as the breach of law and violation of the right of freedom of expression, while the detention of the students can be considered illegal.

5. Presumption of Innocence

The presumption of innocence is protected by the Article 40 of the Constitution of Georgia, according to which an individual shall be presumed innocent until his/her offence is proven in accordance with the procedures prescribed by law and under a final judgment of conviction. This provision does not exclude the possibility of public to be informed by the relevant state bodies on the criminal case proceedings, however, this procedure shall be in full compliance with relevant legislation and shall not violate the presumption of innocence of a detained individual.

[19] www.myvideo.ge/?video_id=2072588
[20] www.youtube.com/watch?v=0RF8lnvWx7c
[21] www.youtube.com/watch?v=884OCcbE1Mg

Section 2, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the following: "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". In the Salabiaku v. France, the European Court on Human Rights ruled that the presumption of innocence, as the general principle of the fair trial, "aims at the protection of fundamental principle of the rule of law".

The presumption of innocence presents a guarantee by means of which, first of all, the powers of judiciary are being limited in order to avoid declaring an individual under criminal proceedings guilty[22] unless there is a final ruling of the court on the particular case[23]. The same applies to those prosecutors and other[24] public servants, who make statements on the crime/s of particular persons[25][26].

In the first half of 2013, cases of the gross violation of the presumption of innocence by different public officials were rather frequent[27]. In several statements, the President of Georgia often openly mentioned different individuals as being law offenders[28]. It should also be mentioned, that both Ministry of Internal Affairs and the Financial Police often made statements of such nature, namely, informing wide public on the proven guilt of a suspect, thus, grossly violating the principle of the presumption of innocence[29]. Certain data disseminated by different means of mass media (on a basis of information from different investigative bodies), directly pointed out concrete individuals being law offenders[30].

Notable is the statement of the Head of the Public Relations Department of the Ministry of Internal Affairs of Georgia, Nino Giorgobiani, at a briefing held on May 1, 2013, where she informed the public about the detention of several high-ranking officials of the Ministry of Agriculture of Georgia.

In a statement which was published on the official website of the Ministry of Internal Affairs, the charges against the defendants were given in the affirmative form. Specifically, the statement said that "In January 2013, the Ministry purchased tractors and the necessary equipment, at which time the officials, acting criminally, embezzled GEL 2,500,000 allocated from the state budget to help the population. With the aim of concealing the crime, the persons who had been exposed exerted pressure on a group of experts working on the criminal case, in order to obtain a conclusion that would be suitable for them and to avoid criminal responsibility."

[22] www.gyla.ge/geo/newsinfo=798
[23] Decision on the case "Public Defender of Georgia v.Parliament of Georgia", par. 64
[24] ECHR decision on Baars v. the Netherlands, par. 28, October 28, 2003
[25] UN Committee on Human Rights, June 18, 2000 opinion on Mr.Dimitry L.Gridin v. Russian Federation, par. 8.2
[26] UN Committee on Human Rights, general statement #32, par.30
[27] www.poice.ge/ge/shss-m-meuglisa-da-shvilis-mkvlelobashi-braldebuli-erti-piri-daakava/4967
[28] www.police.ge/shss-m-arasrultslovnis-mimart-garkvnili-qmedebis-braldebit-erti-piri-daakava/4969
www.police.ge/ge/shss-m-gansrakh-mkvlelobis-faqtze-erti-piri-daakava/4943
www. police.ge/ge/news-archive4925/4925
[29] inter alia, live broadcast of the statement of the President of Georgia, Mikheil SAakashvili, February 26, 2013, www.youtube.comwatch?v=IdlUmwW5aZx
[30] Information is available at www.netgazeti.ge/GE/105/law/19288, www.netgazeti.ge/GE/105/law/18477

Another statement of the Investigation Service of the Ministry of Finance concerned high officials of the Tbilisi City Council. In the information released detained officials were referred as members of some criminal group[31] at the moment when the court had not yet ruled on their case. The Georgian Constitution as well as the Criminal Procedure Code of Georgia declaratively recognizes the presumption of innocence, however, regrettably, there are no efficient legal regulations providing prevention of offence described in this chapter, neither any effective ways of controlling such actions.

6. Dissemination of recordings containing materials on private life

Article 20 of the Constitution of Georgia refers to the respect of private life as well as requests the state to provide for effective exercise of this right. Simultaneously, the state has a negative obligation not to get involved into the exercise of this right and to guarantee the protection of individuals from an arbitrary interference of either state institutions or officials into their private life[32].

Based on the Article 8 of the European Convention on Human Rights, "everyone has the right to respect for his private and family life, his home and his correspondence". Proceeding from the main principle of this Article, the state is obliged, under certain circumstances, to act positively in order to provide for the respect for the right to private life. The European Court of Human Rights in Airey v. Ireland ruled that "although the object of Article 8 (art. 8) is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life". This right, *inter alia*, implies the right of an individual to live as he/she wishes and so his/her lifestyle is protected from being made public.

There were several facts related to the protection of the right to private life, which attracted public attention during the reporting period. On January 14, 2013, the Office of the Prosecutor General disseminated criminal case related information, based on which it became clear that employees of the Ministry of Defense were illegally and secretly recording private life of persons belonging to the sexual minorities. Eventually, under the threat of the dissemination of these videos, individuals recorded were forced to cooperate with the law enforcement bodies[33]. The Prosecutor's office provided means of mass media with relevant recordings, which, eventually, were broadcasted[34].

[31] www.is.ge/News/2303, www.is.ge/News/2304
[32] Decision #1/3/407 of the Constitutional Court of Georgia, December 27, 2007
[33] www.liberali.ge/ge/liberali/articles/113633
[34] www.youtube.com/watch?v=9sJ0NAr11WU

In recordings made public by the Prosecutor's office on January 14, 2013, faces of the abovementioned individuals were covered, however, due to the poor quality of the film, at some points these individuals could be easily identified. The constitution, color of hair and clothes of the individuals recorded were also easily identifiable[35]; thus, once again, the identification of those individuals could be possible for the certain circle of other individuals. Taking all above-mentioned into the consideration, it can be concluded that the actions of the Prosecution Service subjected those individuals to further victimization. We strongly believe that the broadcasting of such videos shall be prohibited.

There is no way public interest shall prevail over the obligation of the state to protect individual's right to private life.

On May 3, 2013, secretly recorded video, disclosing details of the private life of an individual, was made public through Internet; supposedly, this individual was journalist Giorgi Paresishvili. The journalist denied the authenticity of these recordings, however, accused several high ranking officials in the dissemination of the video. Moreover, he linked the fact of the release of recordings of his private life to his active journalistic activities and to the fact of dissemination of information of public interest on the mentioned above officials. Giorgi Paresishvili accused Gela Khvedelidze, First Deputy Minister of Internal Affairs, Lasha Natsvlishvili, Deputy Prosecutor General and Gia Khukhashvili, Advisor to the Prime Minister, in the release of video on his private life. As a motive of such action of those officials, the journalist stated the fact of publication materials on their common business interests discovered by him.

Later, the Ministry of Internal Affairs made public the information on the case proceedings. At the same time, journalist Eliso Kiladze, made statement on the possession of the audio recording in which the particular high ranking official speaks of existence of such recordings and his intention to make them public. In several hours following this statement, the Ministry of Internal Affairs detained First Deputy Minister of Internal Affairs, Gela Khvedelidze[36], who was accused of the release of these video recordings. GDI finds this fact rather important, however, considers that actions undertaken were not sufficient and it is of the utmost importance to finalize the investigation so the individuals involved assume full liability for their actions.

Based on official information of the Ministry of Internal Affairs, up to 17000 illegal recordings are stored in their database and most of those contain discrediting evidence on different individuals. The Ministry states part of this information was discovered by them in the archive of the Ministry after handover of power, while another part was found in special depositories. Georgian legislation[37] obliges the Ministry of Internal Affairs to immediately destroy the archive containing the materials on private life of citizens; however, the Ministry has not yet taken any

[35] www.ombudsman.ge/index.php?page=1001&lang=o&id=1627
[36] Charged according to the section 3, sub-section d), Article 157 of the Criminal Code of Georgia
[37] Article 6.4, Law of Georgia on Operative and Investigative Activity

steps. Until now, Ministry officials have made several statements claiming these materials are to be destroyed, yet nothing has been done so far.

With respect to violation of right to private life the events that took place in December 2012 are to be highlighted. Namely, there was an attempt to blackmail one of the assistants to the judge of Tbilisi City Court with recordings containing materials on her private life. According to information at our disposal, the investigation on this case has not yet been completed.

Dissemination of the materials containing information on private life of the citizens once again directed the attention of civil society towards the shortcomings of the legislation regulating this right. It is obvious, the Georgian legislation regulating right to private life needs thorough revision in order to avoid in the future the facts described. In this respect we deem it important to create efficient mechanisms of civil control, as well as increasing criminal sanctions for these crimes.

Section 2, Article 41 of the Constitution of Georgia provides for the following:"information existing on official papers pertaining to individual's health, his/her finances or other private matters, shall not be accessible to anyone without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others". Based on the opinion of the Constitutional Court of Georgia, this provision defines negative obligation of the state not to publicize information from official recordings without consent from a particular individual, thus, constitutes a specific component of the protection of one's right to private life[38]. Again, this provision binds the state to provide for maximum protection of the respect for the private life and to limit the very right only in case when protection of other, equally valuable interests, is necessary.

During the first half of 2013 several facts of the release of data containing information on private life of individuals occurred. All these facts constituted clear violations of section 2, Article 41 of the Constitution of Georgia.

Also, throughout the reporting period a number of facts of disseminating private information of particular groups of citizens took place during TV interviews with some high ranking officials. Namely, during his press conference, the Prime Minister of Georgia publically discussed health issues of the Chairman of the Supreme Court of Georgia[39]. Later on, the Head of the Legal Committee of the Parliament of Georgia, Vakhtang Khmaladze, made a clarification on the compliance of the above-mentioned statement with the legislation. According to this clarification, "when it comes to the high-ranking officials, the society has a right to have

[38] Decision #2/3/406,408 of the Constitutional Court of Georgia on "Public Defender of Georgia and Georgian Young Lawyers Association v. Parliament of Georgia", October 30, 2008

[39] http://saqinform.ge/index.php?option=com_content&view=article&id=13744:2013-03-15-09-53-38&catid=98:politics&Itemid=457#axzz2T4R71al6 , http://www.gurianews.com/home/2010-11-25-16-57-25/8869-2013-03-19-11-55-35.html >

information about their state of health[40]". Information of the state of health of the citizen was also disseminated by Ms. Eka Beselia, Head of the Human Rights and Civil Integration Committee of the Parliament of Georgia. E. Beselia linked the information published in the local media outlet and the question of a journalist towards the Prime Minister to the fact of the refusal of financial aid by local self-governance bodies to the family member of the mentioned journalist[41].

The law of Georgia on the Protection of Personal Data defines the notion of "special categories of data", which includes information on state of health of individuals. Article 6 of the law prohibits processing of "special categories of data", which implies prohibition on public release of such information[42]. Therefore, the dissemination of personal data cannot take place unless according to the paragraph 2, Article 6 of the law of Georgia on Protection of Personal Data. In one of the judgments the European Court on Human Rights affirmed that any case related to the release of information on the state of health of an individual shall fall under strict scrutiny of the European Court[43]. Despite the fact that the ECHR provides the states with particular margin of appreciation on different rights, when it comes to the dissemination of information on the state of health, this margin decreases and the state is obliged to present rather solid arguments on an absolute necessity of releasing such data.

We strongly believe, in cases described the obligation to protect well-grounded public interest, which would overweight the right to protect private life and to make such information public, was non-existent. Therefore the law was breached by public officials.

7. Freedom of assembly and association

Exercise of the right of assembly and association is one of the fundamental principles of the democratic society[44]. The state is not only prohibited from the ungrounded intrusion into the exercise of this right, but also has positive obligation to apply all efficient measure to provide for the unimpeded exercise of the latter[45]. Once again, the state has to apply all potential measures to allow citizens to freely exercise their freedom of assembly and to protect them from the possible aggression from others[46]. As to any assembly or association which exceeds legitimate format, disturbs the public order and has elements of violence, it shall be restrained.

[40] http://www.gurianews.com/home/2010-11-25-16-57-25/8869-2013-03-19-11-55-35.html
[41] http://qartli.ge/web/10906
[42] Section d, Article 2, Lof Georgia on the Protection of Personal Data
[43] Z v. Finland, Opinion of the ECHR, 25 February, 1997
[44] Decision of the Constitutional Court of Georgia on "Citizens' political union "Movement to independent Georgia", citizens' political union "Conservative party of Georgia", citizens of Georgia Zviad Dzidziguri, Kakha Kukava, Georgian Young Lawyers Association, citizens of Georgia Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia", April 18, 2011.
[45] inter alia, decision of the ECHR on Plattrorm Arzte fur das Leben v. Austria, par. 34, June 21, 1988
[46] inter alia, decision of the EHCR on Alekseyev v. Russia, October 21, 2010

ECHR case law is a clear example of the fact that the European Convention on Human Rights not only obliges official bodies of its member states to respect rights and freedoms envisaged by the Convention, but also requests the state to prevent any possible violations of these rights and in case of the latter, to take all measures to restore those. ECHR affirms that the member states have positive obligation to use all rational and respective measures in order to facilitate legal manifestation[47]. In particular cases, the Article 11 of the European Convention on Human Rights obliges member states to apply all necessary means in order to avoid violation of this right as well as any potential threat to the latter. This obligation has an utmost importance for persons with diverse point of view or those representing a minority group.

It is worth mentioning, that the first half of the year 2013 was rather problematic from the point of realization of the freedom of assembly and manifestation.

Events of February 8

On February 8, 2013, the rally was organized in front of the National Library to protest the speech of the President of Georgia to be delivered at the library.

Members of the Georgian Parliament, as well as representatives of the local self-government bodies, who came to attend meeting with the President, became victims of violent and aggressive actions from the side of participants of the rally[48].

It was clear that the rally in front of the National Library went beyond frames of protected rights and came in contradiction with the Law of Georgia on Assembly and Manifestation. Participants of the rally violated the public order and physically assaulted several individuals. The Police appeared to be unable to fulfill their obligations, separate parties of the conflict and prevent violence. Moreover, the police was unable to facilitate the exercise of freedom of assembly and manifestation to the particular group of individuals.

In order to identify and further impose adequate sanctions on the offenders, the Ministry of Internal Affairs of Georgia detained several individuals[49]. This fact can indeed be considered as a positive step; however, charges imposed shall duly correspond with the gravity of the offense committed as timely response to and the adequate sanctions upon such violations can play an important role in the future prevention of such crimes.

We believe, sanctions imposed by the relevant state bodies upon the offenders were rather insignificant, and were not adequate to the offences committed[50]. Promotion of the impunity not

[47] Plattrorm Arzte fur das Leben v. Austria
[48] http://www.civil.ge/geo/article.php?id=26540
[49] http://www.police.ge/index.php?m=8&newsid=3903
[50] http://www.police.ge/index.php?m=8&newsid=3897

only triggers other violent actions in the future, but can also become an issue of the responsibility of the state on an international level.

The state shall take effective measures to provide the society with comprehensive background on unacceptability and prohibition of violence, so each citizen – despite his/her political group belonging – is able to exercise his/her right in full compliance with existent legislation. It is important that the high ranking politicians are able to fully comprehend their responsibilities, so their official statements and assessments are not used as a basis for further promotion of similar offenses.

Events of May 1

On May 1, 2013 the police detained several participants of a demonstration organized by the organization Laboratory 1918 on Rustaveli Avenue. Among other administrative offenses, Police claimed that blocking of traffic was the reason for their detention.

Indeed students could have breached single instances of administrative rules in the the course of the demonstration, however, the video recording containing facts of dispersal of the demonstration clearly shows that Police has acceded its powers and detention of participants of the action was unlawful.

We believe that in such cases the police could have stopped violations of law applying less painful methods (than detention). It is unacceptable that persons in civilian clothes again took part in the detention process and a part of the police officers used insulting words against the protesters. Several participants of the protest also indicated that they were assaulted physically after being detained. We consider it impermissible to detain journalists when they are carrying out their professional activity. We consider the following statement of the Minister of Internal Affairs inadequate: “The police could not have found out who was a journalist on the ground; students can also hold microphones.” Such a statement is dangerous and may encourage representatives of the law enforcement bodies to ill-treat journalists in the future.

It is also important to make a legal assessment of the fact of who exactly decided to clear the traffic part of the road and, in general, how compatible was this decision with the requirements of the Georgian legislation. According to the statements of the rally participants, the large number of the protesters caused blocking of the traffic part of the road. In accordance with paragraph 2 of Article 11^1 of the Law of Georgia on Assembly and Manifestations, “It shall be impermissible to make a decision on clearing the traffic part of the road “if it is impossible to hold the assembly or manifestation otherwise, considering the number of participants of the assembly or manifestation…” According to the Georgian legislation, the authority to make a decision of this type goes beyond the competence of the Ministry of Internal Affairs, and the Tbilisi City Hall or the Government of Georgia must have made the decision. It has to be noted

that none of the aforementioned agencies disseminated public information about making the said decision.

Events of May 17

On May 17, 2013, NGO "Identoba" and other non-governmental organizations planned rally dedicated to the International Day against Homophobia and Transphobia. The meeting should have taken place in front of the former Parliament building. Representatives of Georgian Democracy Initiative were observing the rally.

Simultaneously, the counter action aimed against already planned rally, was taking place. The Ministry of Internal Affairs was in timely manner informed about the location of original rally, its timing and the alternative location. The Ministry was also well informed on the chances of disruption of the initially planned rally and possible inability of its members to exercise their constitutional rights due to the expected acts of the counter action.

On May 17, after the original location of the rally – pavement in from of the former Parliament building - was taken over by the members of the counter action, the rally was moved to its alternative location – Pushkin square. Despite the fact that police forces were mobilized at the location of the rally, they were unable to guarantee the peaceful holding of the latter.

The security strategy developed by the police forces with the purpose of provision of peaceful holding of the rally, appeared to be inadequate and inefficient due to the number of the members of counter action and their uncontrollable behavior. It became clear at the very beginning of the rally that small number of mobilized policemen as well as measures undertaken would not have been sufficient.

According to the information received from our observers and based on recordings released, counter demonstrators managed to break through the police cordon without obstacles. Police gave possibility to the group of priests (representing counter demonstrators) to enter the venue of the rally dedicated to the Day against Transphobia and Homophobia.

Counter demonstrators started moving towards the participants of the rally and managed to occupy entirely the venue designated for the demonstration; there were a large number of them and they were rather aggressive. Only part of the participants managed to leave the place safely. Eventually, representatives of the Ministry of Internal Affairs put participants of the demonstration into the buses and drove them away from the rally location. Based on the information on hand, 17 individuals were injured; 12 were taken to the hospital.

Policing operation was not coordinated and police was unable to defend the citizens' freedom of expression; impression was that the police was more focused on evacuation of rally

participants rather than defending the rally itself. Police did not take any measures to ensure security of the participants in the process of the rally.

Police became totally inactive after the counter demonstrators had managed to occupy the territory, therefore the counter demonstrators were able to move freely. This increased the risk of individual abuse and retaliation, which actually took place.

The attitude of police towards the participants of the rally on the Day against Transphobia and Homophobia was extremely alarming. All observers confirmed that policemen in private conversations referred to the participants in an abusive and cynical manner and to some extent were supportive of counter demonstrators. Such stance was also felt in their action.

After dispersal of the demonstration, thousands of counter demonstrators were still in the streets. They were exceptionally aggressive towards the people whom they perceived as the participants of the initial rally. Regrettably police activities were again inadequate and were limited to the attempts of defusing the conflict.

Obvious is the fact that actions undertaken by radical groups exceeded frames of "peaceful manifestation" and turned into violent and unlawful actions undermining public order and creating threat to health, security and life of individuals.

We think that it is important to ensure effective investigation into the facts of massive violence that took place on May 17 and to identify and impose appropriate punishment on all violators of law, especially the organizers of the disorder. Finding four persons guilty of administrative offences and bringing charges against two members of the clergy and two citizens means that the state took certain steps in terms of holding the offenders responsible, though we believe that, in order to conduct an effective and complete investigation, it is important that this process continues and the public is informed about its results in a timely manner. Despite the statements of the Prime Minister, the Chairman of the Parliament and several politicians that the state must respond adequately to the aforementioned events, unfortunate is the fact that the reaction of the state was limited to these statements only.

Punishment of the offenders by the state, first of all, serves to prevent facts of violence that are common in the society, while leaving the events that took place without an adequate response creates a danger that such massive violent behavior may assume an increasing and continuous character and be manifested in extremely severe forms. After May 17, the cases of violence and assault on representatives of the LGBT community and persons with different-looking clothes prove that the aforementioned dangers are real.

Proceeding from all stated above, it can be assumed that the day *against* homophobia and transphobia in Georgia appeared to be the day *for demonstration of* homophobia and transphobia itself.

8. Religious intolerance

Article 19 of the Constitution of Georgia sets the right to freedom of religion and prohibits the persecution of a person on religious grounds. Freedom of religion implies, *inter alia*, the rights of an individual to manifest, deny or change his/her religion without interference of the state. The state shall take no actions which might force individuals to change their concrete religious beliefs. Freedom of thought, religion and belief, proclaimed by the Article 19 of the Constitution of Georgia, not only creates the negative obligation on the state not to intervene in to this sphere, but also establishes the positive obligation to provide all individuals with freedom of speech, though and religion[51]. The Constitutional Court of Georgia considers freedom of religion as a foundation for personal development and independence[52]. This right predetermines the level of democratic development of the society as religious pluralism has an essential meaning for the democratic society. Freedom of religion implies possibility of an individual to independently decide on his religious views.

Article 155 of the Criminal Code of Georgia imposes responsibility for the interference into the religious worship: ”interference in the performance of religious service or other religious rituals or practices with the use or threat of violence, or if it was committed with an insult to religious feelings of a believer or religious servant – shall be punished by a fine or correctional work for a term of up to one year or imprisonment for a term of up to two years.” By criminalization of the interference in the performance of religious service, the state took responsibility for prevention of such actions and intervention in case of rights violated. However, neither on November 2, 2012 in Nigvziani village, nor in December, 2012 in Tsintskaro village, managed the state to efficiently implement its positive obligation. As a result, another clash on religious grounds – this time in the village Samtatskaro, municipality Dedoplistskaro – took place.

On November 2, 2012, conflict between Muslim and Christian population of Nigvziani village took place. Main reason of the clash was the fact of establishment of a worship place for Muslims in one of the private houses. Part of the village population perceived this fact as violation of their interests, so Mufti of Administration of Muslims of Georgia and several other persons were deprived of the right to take part in religious service, which had to take place in the house mentioned above[53]. Similar incident took place in December 2012 in village Tsintskaro[54].

In both cases, majority of village population, Orthodox Christians, insulted the minority, Muslims, and verbally abused them. Orthodox population of Nigvziani explained such actions by unacceptability and impermissibility of Islam in Georgia.

[51] http://www.legalportal.ge/index.php?option=com_content&view=article&id=56
[52] Decision #1/1/477 of the Constitutional Court of Georgia, December 22, 2011
[53] http://news.ge/ge/news/story/35912-nigvzianshi-martlmadideblebi-musulmanebs-samlotsveloshi-ar-ushveben
[54] http://news.ge/ge/news/story/38636-tsintsyaroshi-muslimebis-lotsva-politsiis-datsvis-qvesh-chatarda

With all due respect to the presumption of innocence, we still would like to state that events which took place on villages of Tsintskaro and Nigvziani included elements of interference into the performance of religious service. Despite the fact of clear violations of the rights of Muslim population in both mentioned above cases, the state did not fulfil its positive obligation and played a mediator function only. The Chairman of the Committee on Human Rights and Civil Integration of the Parliament of Georgia supported peaceful dialogue between the parties as a mean of conflict regulation, while actions of the law enforcement bodies in this specific situation were limited to mediation only.

The first confrontation between the local Christian and Muslim population of Samtatskaro took place on May 24, 2013 when the Muslim community which gathered to perform a prayer was assaulted verbally; the objects needed for the ritual were taken out of the building, and the Muslims were forced to leave the house of worship. The aforementioned fact was witnessed by officers of the local police who took no measures to prevent the interruption. On May 31, 2013, representatives of the Georgian Democracy Initiative visited village Samtatskaro. Local Muslims were again prevented from performing the traditional Friday prayer (*jumu'ah*) together, which was preceded by a confrontation at the entrance to the village during which the local Christian population blocked the road and prevented representative of the Administration of Muslims, the Mufti of Kvemo Kartli, and persons accompanying him on the way to the village to attend the prayer, from entering the village. The incident was accompanied by verbal assault on the representatives of the Administration of Muslims and physical assault on the Mufti of Kvemo Kartli, Jemal Adadze. Police officers mobilized at the entrance tof the village, were not able to provide right of Muslim population of free movement and freedom of religion.

On June 7, 2013, Muslim population of Samtatskaro once again was prevented from performing the traditional Friday prayer. At 12:30 afternoon, the leader of local Muslims, Suliko Khozrevanidze, was picked at his house and by 14:00 brought to the local worship house, where traditional prayer was to take place[55]. This incident was again accompanied by verbal assaults on local minority Muslim population from the Christian majority. The following Friday – June 14 – Muslims were able to perform their traditional prayer at the place of worship; however, local Muslims did not participate in this event. The same day Samtatskaro was visited by the State Minister on Reintegration, Paata Zakareishvili. Muslims were able to perform their prayer the following Friday – June 21 – as well, but again local Muslim population did not participate.

Inability of the state to adequately react to the actions of the offenders further instigated the aggressive Christian population of the village. On June 28, 2013, around 200 people stormed into the private property of Suliko Khorzevanidze and assaulted him and his family. Police officers again took no measures to prevent this fact, to detain offenders or to impose charges upon them. Complete absence of any relevant actions from the law enforcement bodies triggered vulnerability of Suliko Khorzevanidze and his family members and created daily threat to their health or life.

Actions undertaken by the offenders contained clear signs of the violation of the relevant Georgian legislation. On June 28, 2013, due to the poor health condition Suliko Khozrevanidze

[55] http://live.ge/video-88443

left the village and temporarily moved to Adjara region. Since then, the Friday traditional prayer (*jumu'ah*) has never taken place in Samtatskaro.

Georgian Democracy Initiative believes, prevention of religious population from performing their traditional prayer 3 weeks in a row, constitutes clear violation of the freedom of religion provided by thr Article 19 of the Constitution of Georgia. Effective realization of this right cannot be implemented by the state by non- interfering in its performance only. It is a positive obligation of the state to order its relevant bodies to apply all possible measures in order to prevent the violation of the exercise of the right. Complete inertness of the state in cases stated above, constituted endorsement of both violence and intolerance. Analysis of actions of municipal authorities and police engaged in the processes proved they perceived themselves as a party to the conflict and fail to observe the principle of religious neutrality in discharging their powers. We believe such passive approach of the state conflicts with its positive obligation to ensure effective protection of rights of religious minority, putting already disadvantaged population in a less favourable position. Dynamics of recent religious conflicts (in villages of Nigvziani and Tsintskaro) illustrated that the state's failure to act further, encourages religious conflicts in these communities and contradicts the idea of secularism.

Another similar fact took place on April 14, 2013, in the village of Tsikhisdziri of the Kobuleti municipality. Based on explanations received from the victims, they were insulted both verbally and physically based on religious ground by the representative of Senaki Military Police.

According to the information disseminated by means of mass media, several residents of Tsikhisdziri village were stopped by the Military Police, their personal belongings were checked and they were asked to present identification documents[56]. One of the individual stated that police put a gun to his neck and threatened him in case he did not come out to be Christian. Further details of this case showed the police officers threatened the individuals by death, called them "Tatars" and requested to show them their crosses worn on necks. Based on information from victims, police officers used their official status to insult individuals on religious grounds. Such actions of employees of the Military Police contradict both existent Georgian legislation and rights and obligations of a military servant. The Ministry of Defence of Georgia reacted to the aforementioned fact in a timely manner, dismissed three persons involved in the incident from the military serves and launched criminal proceedings against them.

The given case is an example of insult on religious grounds, which is a violation of one of the fundamental rights of an individual. In order to further effectively prevent such violations, relevant punishment shall be imposed on the offenders. Based on statement of the Office of the Prosecutor General of Georgia, the criminal case was initiated based on charges of hooliganism[57] and excess of official powers[58]. Again, based on testimony of the victims, there was clear violation of the Criminal Code of Georgia by the representative of the Military Police, conducted on religious grounds. Therefore, investigative bodies should have also taken into consideration the following charges – intentional damage of health based on religious grounds[59], less serious

[56] http://www.youtube.com/watch?v=Ue0kW5ClTM8&feature=share
[57] Article 239, Criminal Code of Georgia
[58] Article 333, Criminal Code of Georgia
[59] Article 117, Criminal Code of Georgia

damage to health[60], violence[61] and violation of equality of humans[62]. As freedom of religion constitutes one of the fundamental individual rights, it is very important to give the exact qualification to offences committed.

Frequent conflicts between different religious groups demonstrate existence of serious systemic problem, which, *per se*, confirms the need of implementation of the positive obligations by the state. Based on the Article 53 of the Criminal Code of Georgia, in case one the motives of a crime proved to be religious intolerance or hatred, the court shall consider this as aggravating circumstance for all such crimes committed. In particular case, in order to prevent acts of religious intolerance, the court should have applied Article 156 of the Criminal Code of Georgia, which speaks of persecution of an individual for his conscience, religious denomination, faith or creed.

On incident in the village Tsikhisdziri of the Kobuleti municipality, the Batumi City Court ruled the following: release of the employees of the Military Police on 15000 GEL bail and imprisonment to absconded Onise Khubulava. One of the arguments on the satisfaction of the motion, was the fact that accused persons showed up at the investigation bodies and did not hide from the justice.

9. Pressure on local self-governance bodies

Paragraph 1 of the Article 101 (1) of the Constitution of Georgia states the following: "the rule of creation and activity of representative and executive bodies of local self-government is defined by the Law. The executive bodies of the local self-governments are accountable to the local representative bodies."

Based on paragraph 2 of the Article 101 (1), the representative body of local self-government – the City Council (Sakrebulo) is elected by the Georgian citizens registered within the self-government unit area based on direct, universal, equal suffrage and clandestine voting. According to paragraph 2 of the Article 101(2) of the Constitution, "the self-government unit independently and on own responsibility exercises its duties in compliance with the rules determined by Georgian Legislation. Own authority defined by the Law is exclusive."

Abovementioned article of the Constitution implies the separation of local and central authorities and their independence from each other. Central and local authorities are separately elected and change of the one shall not affect the other one. Also, Article 169 of the Criminal Code of Georgia provides for the punishment for dismissal of an individual from work based on his/her own written request made under coercion.

Change of power which took place on October 1, 2012, was followed by rather alarming processes in local self-government bodies, namely, massive dismissals of the employees of the local authorities. In several local self-government bodies newly appointed heads were dismissing

[60] Article 118, Criminal Code of Georgia
[61] Article 126, Criminal Code of Georgia
[62] Article 142, Criminal Code of Georgia

their employees without any official justification[63]. This process touched upon all levels of public service and in majority of instances the dismissal of officials was triggered by political motives. Moreover, based on information spread, big number of public officials was dismissed based on their own written requests compiled under pressure.

On April 23, 2013, the International Society for Fair Elections and Democracy (ISFED) publicized monitoring report, which presented statistics on number of employees of local authorities resigned[64]. Based on this statistics, employment contracts of 50 head of local self-governance (Gamgebeli) were terminated, 48 out of this based on letters of resignation. Also, 25 chairpersons of local municipalities (Sakrebulo) were changed. Based on the ISFED's information, in the period from October 1, 2012 to February 28, 2013, 1877 employees of the local self-governance bodies were dismissed. Georgian Young Lawyers Association also publicized information on dismissal of particular public officials on the basis of letters of resignations during maternity leaves[65].

Public Defender also highlighted the developments in local municipalities in his annual report. The Ombudsman's report cites ISFED's data on replacement of Gamgebelis and Sakrebulo Chairpersons, saying that "after the replacement of Gamgebelis and Deputy Gamgebelis in local self-governments following the 2012 parliamentary elections, employees of these self-governments massively resigned by submitted letters of resignation for personal reasons, which raised suspicions about appropriate and politically motivated decisions"[66].

Public statement of the Prime Minister, made on April 15, 2013, proved that processes which took place in local self-government bodies "were often meagre attempts of interference[67]" with the work of these authorities. In their public statements, representatives of the parliamentary majority also referred to such interferences several times.

Analysis of these events makes it clear that despite the existence of the relevant constitutional provisions, local self-governance bodies nonetheless fall under the influence of central authorities. Simultaneously, incitement and inspiration to such actions from the central authorities does not facilitate the establishment of the principles of rule of law; moreover, it hinders democratic development of the country.

10. Dismissal of individuals from the public service

Article 29 of the Constitution of Georgia states that "every citizen of Georgia shall have the right to hold any state position if he/she meets the requirements established by legislation". Same Article requests an undiscriminated and equal access to the public service for all individuals[68].

[63] http://netgazeti.ge/GE/105/News/15587/
[64] http://www.isfed.ge/pdf/2013-04-22.pdf
[65] http://gyla.ge/geo/news?info=1398
[66] Parliamentary report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia (2012), p. 414, available at www.ombudsman.ge
[67] http://www.geotimes.ge/index.php?m=home&newsid=39980
[68] Decision #2/33/1 of the Constitutional Court of Georgia on "Nino Ioseliani v. Governor of Samtske-Javakheti region and the Ministry of Education of Georgia, November 4, 1997

According the practice of the Constitutional Court of Georgia the operation of the Article 29 of the Constitution of Georgia also covers cases of undue dismissals of the public officials from their service and so guarantees the right of these individuals to hold their posts and to be protected from unlawful dismissals[69]. Besides, the Article 24 of the Constitution guarantees freedom of expression, which implies the impermissibility of dismissal of individuals from their positions on political grounds. Article 10 of the European Convention also covers public servants and imposes certain limitations only on those individuals who either hold political positions or, proceeding from their official ranks, are requested to hold political neutrality[70].

During the reporting period, there were several facts of appointment of individuals to particular positions without any fair competition held[71]. Idea of the fair competition is immanently implied by the Article 29 of the Georgian Constitution, so cases of direct appointments of the individuals to public positions are in direct contradiction with the provision mentioned. Based on different sources of information, number of the public officials dismissed during the first half of the year 2013 reached several thousands[72].

Peaceful change of power on October 1, 2012, was followed by mass dismissals of the public officials from their positions, which indeed generates profound suspicions on political motives and grounds of their dismissal. In several cases, the dismissed officials openly spoke of political motivation of such actions, which make abovementioned suspicions even more credible[73]. According to the practice of the Constitutional Court of Georgia, such approach towards the public officials challenges the Article 29 of the Constitution. Besides, authorities have to understand there always are specific groups of public servants who cannot be changed in parallel with the transformation of power. Political neutrality, in fact, is an obligation of a particular group of public servants. In all other cases public servants are completely free to express their views, which imply existence of certain political views and freedom of their expression. The Georgian state shall act with full respect to this principle.

During the reporting period, facts of dismissals from those public bodies, which do not fall under the operation of the Georgian Law on Public Service, also took place. There exists a well-grounded doubt, that facts of these dismissals are directly linked to the open expression of the political views by the abovementioned officials. For instance, on March 18, 2013, three employees of the Legal Department of the Public Registry (M.B., M.N. and I.A.) were fired from the office. According to the statement of the First Deputy Minister of Justice made on February 17, the Minister of Justice herself sent M.B. the letter of warning. In the letter she asked this individual to refrain from undermining the reputation of the Public Registry in his/her public speeches and to act correctly in accordance with the requirements of the position held. As it appeared, M.B. disregarded the letter of the Minister.

[69] *mutatis mutandis*, Decision #1/3/250-269 of the Constitutional Court of Georgia on "Avtandil Chachua v. the Parliament of Georgia", November 3, 1998; decision #1/3/209-276 of the Constitutional Court of Georgia on "Public Defender of Georgia and citizen of Georgia Ketevan Bakhtadze v. the Parliament of Georgia", June 28, 2004
[70] *inter alia*, European Court on Human Rights on Ahmed and Others v. UK, September 2, 1998
[71] http://www.youtube.com/watch?feature=player_embedded&v=xVdsFUoBf5o#at=66, http://opendatablog.wordpress.com/2013/01/17/samsaxuridan_migeba_gatavisuflebis_praqtik/
[72] http://www.imedi.ge/index.php?pg=nws&id=1704
[73] http://www.liberali.ge/ge/liberali/news/113999/

According to the First Deputy Minister of Justice, similar complaints existed towards other two officials, too. Besides, the Deputy Minister stated, the Minister of Justice was against the dismissal of M.N. and I.A., however, changed her decision after these two employees tried to paralyze the work of the Public Registry and agitated their colleagues to strike[74].

Despite the abovementioned statement, as a basis of dismissal from the office sent to the abovementioned three individuals by the Ministry of Justice, the latter referred to Article 37 of the Labour Code (right of an employer to dismiss an individual without any particular motivation) rather than administrative offense/s committed.

It is worth to mention that the Georgian legislation does not restrict employees of the Public Registry of Georgia from either having or expressing their political views. At the same time, according to the legislation, the abovementioned officials had a right to agitate their colleagues to strike, therefore, the statement of the First Deputy Minister of Justice contradicts the law. Moreover, neither the Minister of Justice nor the First Deputy Minister had a right to terminate the contracts as this issue is the sole responsibility of the Head of the Public Registry[75].

The fact of dismissal of the abovementioned employees by the Ministry of Justice was based on the very article of the Labour Code of Georgia which the Ministry itself finds as infringing the rights of employees. Furthermore, the draft law prepared by the Ministry of Justice which included changes to this very article was presented by the Ministry to the Parliament of Georgia for further consideration.

11. Reform of the High Council of Justice of Georgia

The Government of Georgia initiated the draft law, which among other issues, aimed at the reform of the High Council of Justice and the Disciplinary Chamber. Proposed changes indeed constituted rather positive step forward as were targeted at the strengthening of the justice system[76]. At the same time, the draft law implied the termination of the mandate of the members of the High Council of Justice by the time of its adoption by the Parliament. The Venice Commission presented its opinion on the issue on March 13, 2013 and, after particular modifications to the draft, the Parliament of Georgia passed the law. However, the President of Georgia vetoed the law and sent it back to the Parliament with his comments[77]. Eventually, the Parliament managed to overrule the Presidential veto and sent it to the President for signature but he did not sign the law. As a result, the Chairman of the Parliament promulgated the law according to the Georgian law and the Constitution[78].

Organic Law of Georgia on the 'Draft amendments to the organic law of Georgia on Courts of General Jurisdiction', adopted by the Parliament on May 2013, includes several new positive

[74] http://news.ge/ge/news/story/49167-sajaro-reestris-reputatsiistvis-zianis-miyenebisatvis-3-tanamshromeli-gaatavisufles
[75] http://gyla.ge/geo/news?info=1464
[76] http://www.parliament.ge/files/Draft_Bills/18.12.12/saerto_sasamartloebi-2.7.pdf
[77] http://www.parliament.ge/files/Draft_Bills/30.04.13/1.49.pdf
[78] Organic law of Georgia on the 'Draft amendments to the Organic Law of Georgia on Courts of General Jurisdiction', May 1, 2013, available at https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1924526#

provisions. At the same time, we would like to make an emphasis on some negative sides of this process.

Based on changes to the law adopted on May 1, 2013, the High Council of Justice shall compose of 9 members elected by the Judiciary and 6 members elected by the Parliament of Georgia. The Chairman of the Supreme Court of Georgia represents an ex officio member of the Council. Other 8 members of the Council are elected by the Conference of Judges (administrative committee no longer has a right to appoint members of the Council). Judges, members of the Council, are elected by the Conference of Judges by a secret ballot and two-thirds majority of the Conference members. Members elected by the Conference of Judges cannot simultaneously be members of the Disciplinary Chamber of the Supreme Court of Georgia or chairpersons of the court. Such members at the same time cannot be first deputies or deputies to the chairpersons of the court except for cases when these positions are held by them due to the fact of being chairpersons of the Chamber. Out of total number of the members elected by the Conference of Judges, no more than 3 members can be the chairpersons of either court or the chamber.

Changes also applied to those members elected by the Parliament of Georgia and the following criteria of their selection was established – occupation at institutions of higher education or research activities. Also, an individual has to have 10-year long work experience in his/her area, high reputation and has to be well-known professional in the field of law. Under this quota it is prohibited to nominate a member of the Parliament, a judge or a prosecutor. The Parliament of Georgia elects members of the High Council of Justice by the two-thirds qualified majority; each candidate is being elected separately on the plenary sessions of the Parliament. In case a member of the Council is not elected by the two-thirds qualified majority of the Parliament after the first ballot, the following ballots require qualified majority of the member of the Parliament. Simultaneously, the number of members of the Council elected with this quorum shall not exceed four.

Based on the paragraph 3, Article 2 of the abovementioned organic law, the membership of the High Council of Justice Georgia will be terminated to the Chairperson of the Legal Committee of the Parliament of Georgia, members elected by the Parliament and appointed by the President; also to those judges, members of the Council, who currently are or were holding the positions of the court chairpersons, first deputy or deputy to the chairperson, or chairperson of the Chamber as well as to those elected to the High Council of Justice by the administrative committee of the Conference of Judges. Those judges, current members of the Council, whose term of the office are terminated by the adoption of the abovementioned law, are given a possibility of being elected on the positions based on the provisions of the newly adopted law.

Based on the law adopted on May 1, 2013, on the amendments to the Law on "Disciplinary Responsibility and Disciplinary Proceedings of the Judges of the Courts of General Justice of Georgia", the similar reform was applied to the Disciplinary Chamber[79]. Additional criteria to the selection of the members of the Chamber were incorporated and the term of office of current members were terminated.

[79] https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1922274

On March 13, 2013, the Venice Commission publicized its opinion on the draft amendments to the Organic Law on Courts of General Jurisdiction of Georgia[80]. Positive is the fact that the Parliament of Georgia did not pass the law until the opinion of the Commission was publicized; moreover, particular remarks and recommendations were taken into the consideration. For instance, those provisions prohibiting the membership of the Council for the chairpersons of the courts of general justice and the chairpersons of the chambers and prescribing minimal quota according to the recommendations were removed from the draft law[81]. Besides, members of the parliamentary minority were allowed particular influence on the election process of the members of the Council. However, worth mentioning is the fact that the Parliament of Georgia did not take into the consideration the main recommendation of the Commission – on the dismissal of the current composition of the Council.

"An important function of judicial councils is to shield judges from political influence. For this reason, it would be inconsistent to allow for a complete renewal of the composition of a judicial council following parliamentary elections," – is noted in the opinion[82]. At the same time, the Commission underlines the fact that effective legislation did not include explicit basis for the change of the current composition of the Council in case of change of the law[83]. In addition, the Commission stated the following:

"71. The Venice Commission is of the opinion that when using its legislative power to design the future organization and functioning of the judiciary, Parliament should refrain from adopting measures which would jeopardize the continuity in membership of the High Judicial Council.

72. Removing all members of the Council prematurely would set a precedent whereby any incoming government or any new Parliament, which did not approve of either the composition or the membership of the Council, could terminate its existence early and replace it with a new Council…"

Georgian Democracy Initiative fully shares views and recommendations presented in the opinion of the Commission. As the Constitution of Georgia does not include any provisions guaranteeing the structure of the Council or the immunity of its members, each newly elected authority can introduce such changes. Improvement and renewal of the judicial power does not constitute a static process and allows for permanent refinement of the system. Any new political force in power can indeed apply new qualifications to the reform of the High Council of Justice or change the existing regulations. As a result though, we will face the situation when judicial power will fall under influence of each and every new authority elected which is completely unjustified and unacceptable. The main specific of this branch of power is the very fact of its arrangement based on professional criteria and for fixed term which provides for its complete independence. With respect to this, the Commission states the following:

"73. Compliance with the rule of law cannot be restricted to the implementation of the explicit and formal provisions of the law and of the Constitution only. It also implies constitutional

[80] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e, Georgian version http://gdi.ge/?p=176
[81] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e, par. 49
[82] par. 69
[83] par. 70

behavior and practices, which facilitate the compliance with the formal rules by all the constitutional bodies and the mutual respect between them."

The Venice Commission suggested to the Parliament of Georgia several compromise settlements, which the Parliament could have applied as an alternative to the dismissal of the current composition of the Council[84]:

1. Those judges, members of the Council, who at the same time were court chairpersons, should have had a possibility to chose between these two positions;
2. Those judges, members of the Council, appointed by the Administrative Committee, should have had a possibility of being nominated by the Conference of Judges, so the ratification of their appointment was implemented by the latter.

Contrary to these recommendations, the Parliament of Georgia made the decision based on which the entire composition of the High Council of Justice was dismissed. While in the current composition of the Council almost all members elected by the judiciary are either chairpersons of the courts or chambers, there is no possibility to re-elect them; as it was already stated above, out of the total number of members elected by the Conference of Judges, no more than 3 members can be the chairpersons of the courts or the chambers. Based on paragraph 3, Article 65 of the Law on Courts of General Jurisdiction, provides for the opportunity for the abovementioned persons to be re-elected to the Council and eventually resign from the positions of the court chairpersons, however, this is not a solution to the problem. Based on the alternative recommendations proposed by the Commission, the initial composition of the Council should have primarily been proposed by the Conference of Judges and in case of non-recognition of the legitimation, elections of other persons should have taken place. If the basis for the termination of office of a current member of the Council is the fact of his election by the Administrative Committee, there should exist a possibility of his/her predominant legitimation and in case of rejection, another elections should be conducted.

Based on the Law on Courts of General Jurisdiction of Georgia and the Law on Disciplinary Responsibility and Disciplinary Proceedings of the Judges of the Courts of General Jurisdiction of Georgia, the High Council of Justice of Georgia can initiate the disciplinary proceedings against a judge. Further, the case is reviewed by the Disciplinary Chamber which, in this particular case, shall act within the court jurisdiction. In such case the Disciplinary Chamber represents the "special, functional court for the judges", which considers civil law cases for the latter (for instance, dismissals from official positions). Based on the practice of the European Court on Human Rights, a body similar to the Council is considered to be a court, when the Court evaluates standards for the right to fair trial in the sphere if civil legislation. In *Oleksandr Volkov v. Ukraine*, the ECHR underlined the authority of the Council of Justice to decide upon factual and legal issues related to particular cases and granted the status of a court to the Council[85].

In the process of the imposition of disciplinary measures, the Georgian legislative model represents the inquisitorial justice system from the point of view that the High Council of Justice considers the case on its initial level before the latter is being transferred to the Disciplinary

[84] par. 74
[85] Decision of the European Court on Human Rights on Oleksandr Volkov v. Ukraine, January 9, 2013

Chamber; proceeding from the stated above, the model becomes similar to the accusatorial system of justice in the civil law. Both the High Council of Justice and the Disciplinary Chamber represent bearers of the court functions as well as the bodies implementing the judicial processes. This increases their role and standards similar to the rules of dismissal of the judiciary, are applicable in the case of the two abovementioned bodies. This approach was ruled unconstitutional by the Constitutional Court of Georgia with its decision of November 3, 1998[86].

Proceeding from the abovementioned, the Georgian Democracy Initiative evaluates negatively decision of the Parliament of Georgia on dismissal of the High Council of Justice and the Disciplinary Chamber. We praise several provisions of the law which undoubtedly are aimed at the reviving of the judiciary, however, stated above problems are of the utmost importance, as include potential risks for the future of this system.

Following the legislative changes, the Parliament of Georgia managed to elect only 4 (out of 6) members of the Council as the parliamentary minority did not participate in the election process. With regards to the 10th Conference of judges, 7 candidates were elected and the vacant positions at the Council were filled.

12. Interim elections of April 23, 2013

Transparency and independence of the election process represents one of the foundations of the liberal democracy. During the reporting period, interim elections of the members of the Parliament took place in 3 districts of Georgia. Georgian Democracy Initiative did not observe the elections, however, proceeding from the importance of this event, we would like to present to the public analysis of the situation.

Based on information on hand, several violations were recorded at Samtredia and Baghdadi districts during the aforementioned elections. Among them was illegal utilization of the administrative resources, as well as the fact of pressure on activists of the United National Movement, as stated by the members of this political party[87].

Pre-election period and the law enforcement bodies

During the pre-election period, several facts of summoning representatives of the United National Movement to the law-enforcement bodies took place. Based on information from the UNM, this was perceived as an open psychological pressure on them as well as creating obstacles to their political activities[88].

[86] Decision of the Constitutional Court of Georgia on Avtandil Chachua v. Parliament of Georgia, par. 2, November 3, 1998
[87] http://transparency.ge/post/general-announcement/27-aprilis-shualeduri-saparlamento-archevnebi-tsinasaarchevno-garemos-shep
[88] http://transparency.ge/post/general-announcement/27-aprilis-shualeduri-saparlamento-archevnebi-tsinasaarchevno-garemos-shep

Non-governmental organization Society for Democracy and Legal Development filled a complaint which was presented to the Central Election Commission (CEC). According to the NGO, during the election process, a vehicle with the plate number FXF-382, belonging to the local Head of the Police, Gela Mshvildadze, was parked next to the precinct #10 of the Baghdadi district. Members of the Precinct Election Commission (PEC) were one by one summoned to the vehicle for some discussions. These were clear attempts to affect the work of the PEC[89]. The complaint presented to the CEC contained photo material showing the vehicle and policemen inside or next to it.

Chairman of the Central Election Commission addressed the Minister of the Internal Affairs, Irakli Garibashvili, with the letter regarding this issue.

We believe, there exists well-founded basis to suspect the fact of an open pressure on the members of the Precinct Election Commission, so this information shall be thoroughly examined by the relevant official bodies.

The Central Election Commission approved the Manual for the members of the PECs for the April 2013 midterm elections. The manual sets up rules and procedures for the elections of the Secretaries of the PECs. Based on description provided, the Secretary shall be elected among the candidates appointed by political parties (except for the member/s appointed by the UNM); the candidacy of the Secretary shall be nominated by no less than two members of the PEC appointed by the political parties (except for the member/s appointed by the UNM); the candidacy nominated is elected by individual voting by the members of the PEC appointed by the political parties (except for the member/s appointed by the UNM) with majority of votes[90]. The given provision generated rather diverse public opinion.

Based to the paragraph 15, Article 25 of the Election Code of Georgia, the Secretary of the PEC is elected among the members appointed by the parties except for the winner party of the preceding parliamentary elections. Based on the resolution of the Central Election Commission as of February 26, 2013, the United National Movement was declared a party with the best results at the preceding parliamentary elections. Therefore, based on the abovementioned provisions, the United National Movement was limited in its right to nominate the candidacy for the position of the PEC Secretary.

We believe, in this particular case there was no violation of any legal provision from the side of the Central Election Commission. However, the original meaning of the change to the norm of the Election Code of Georgia in 2009 – limitation on the nomination of a candidacy for the PEC secretary position by the winner party – was not properly reflected in the norm. Therefore, we strongly believe, the Parliament of Georgia gets back to the discussion of this very issue and finalizes the process of refinement of this legal norm.

Pre-election agitation and free political advertising

[89] http://pirweli.com.ge/index.php?menuid=8&id=31943
[90] http://netgazeti.ge/GE/105/News/18524/

Based on information on hand, in the pre-election period the political union "United National Movement" orally addressed the Ltd. "Studio Maestro", Ltd. "Teleimedi" and Ltd. "Channel 9" with the request of the provision of the free political advertisement before April 27, 2013 elections. The mentioned broadcasters refused to do so and substantiated their decision by the argument that according to the paragraph 14, Article 51 of the Georgian Election Code, only regional broadcasters are bound by the obligation to provide free political advertisement before interim parliamentary elections.

The term "regional broadcaster" became starting point in this argument. According to the United National Movement, due to the fact that abovementioned broadcasters do not meet the requirements applicable to general broadcaster under Georgian law, they should be considered as regional broadcasters. Therefore, the provisions of the relevant Georgian legislation related to the regional broadcasters should have been applicable in this particular case.

The given situation once again proved the ambiguity of the provisions regulating abovementioned case. On the one hand, validity of the arguments of the United National Movement is obvious; on the other one, there is an impression that a legislator put a different meaning into this provision. Obviously, the Parliament has to accelerate the process of the refinement of particular provisions so to avoid their vagueness and ambiguity.

With regards to the interim elections, another fact is noteworthy: during the election period, the election commission of the Samtredia PEC compiled two protocols on administrative violations: one against the head of Khoni Police on the violation of pre-election campaign and agitation; and the other one against the local newspaper on the violation of the preparation of agitation materials.

13. Amendments to the Criminal Procedure Code of Georgia

On June, 2013, the Parliament of Georgia overruled the Presidential veto and adopted amendments to the several provisions of Criminal Procedure Code of Georgia. From the human rights perspective, we deem it necessary to point out those amendments, which touched upon Articles 84 and 111 of the Code. Based on the changes introduced, the right of the defence to submit a motion to the court with a request to conduct investigative activities was postponed until September 1, 2014. Namely, according to this change, the defence is not authorized to submit a motion to the court to conduct a search or seizure. At the same time, conducting particular investigative activities as well as submitting a motion and further equal evaluation of the evidence, represent one of the legal means of allowing the defence to protect its positions.

It should be noted that in October 2009 the Parliament of Georgia adopted a new Code of Criminal Procedure that is systemically different from the 1998 Code of Criminal Procedure which, had been in force until October 2009. Whereas the 1998 Code of Criminal Procedure was based on the principle of inquisitorial justice, the new Code is oriented to the introduction of the principle of equality of arms and adversarial justice. Thus, postponing the operation of the norm until September 1, 2014, will negatively impact the human rights situation in the country and threaten the principles of equality of parties.

Another negative aspect of these changes is that from September 1, 2014, the right of a defense to conduct investigative activities that constitutes important guarantee will be abolished[91]. Namely, based on this norm the defense side is authorized to submit during main court proceedings one piece of evidence that is of utmost importance for exercise of defense, and that will not result in rejection of such evidence. This exclusive right is one of the means for balancing of parties' equality and competition, the abolition of which seriously restricts interests of the defense side.

We believe changes to the Articles 84 and 111 of the Code will put a defence and a prosecutor in rather unequal positions, which, in itself, contradicts the principles of the fair trial set by the European Convention and the Georgian legislation. The right to fair trial protects the principle of the rule of law and accessibility of the court. Limitation of rights protected by the Article 6 of the European Convention on Human Rights is allowed in strictly prescribed cases. At the same time, the fair trial provides for the protection of all other rights on a national level. Equality of parties constitutes one of the fundamental principles of fair trial which provides for the adversarial system of justice.

14. Media coverage of the Courts' proceedings

With the law adopted by the Parliament of Georgia on January 18, 2013, the Criminal Procedure Code of Georgia was amended by the Article 182(1), which defined rules of the media coverage of the courts' proceedings. On March 6, 2013, this regulation was reflected in the Article 13(1) of the Organic Law of Georgia on the Courts of General Justice.

Abovementioned provision changed the existing procedure, which prohibited audio and video coverage of the courts' proceedings and introduced the number of novelties. This indeed was a commendable step from the perspective of the provision of transparency of courts' hearings. However, the mentioned legislation includes several omissions which we would like to discuss further.

On March 13, 2013, the Venice Commission publicized its opinion on the draft amendments to the Organic Law on Courts of General Jurisdiction of Georgia, which, among other matters, covered the issue of audio and video recording of the court hearings[92]. Together with praising positive developments with regards to the publicity of the court proceedings, the Commission expressed several concerns on new provisions; Georgia Democracy Initiative fully shares the latter. According to the Commission, particular difficulties with regards to the recording of the court hearing are as follows: the behavior of the actors in the courtroom may change as a result of broadcasting; victims of crime and witnesses, not to mention the parties, may feel intimidated by the presence of cameras; the respect for private and family life of the public is much more difficult to ensure with a video recording than with an audio recording. Live recording of

[91] Article 84 of the Criminal Procedure Code of Georgia
[92] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e

criminal proceedings will allow witnesses to be informed of other witnesses´ statements, which might hinder the process of criminal proceedings[93].

The Commission also presented its remarks with regards to the dissemination of the recorded materials from the court hearing. The Commission stated that the provision which allows the court to provide the audio and video recording "upon request" to the parties and "other people" might contradict with the obligation to ensure the right to respect for private and family life. The Commission considers the extension of this obligation only to persons who have a legitimate interest in obtaining the recordings[94]; otherwise the intrusion into the sphere of the protection of the right to private life will occur without any specific legitimate interest or justification[95].

Proceeding from all abovementioned, it is of the utmost importance the Parliament of Georgia is able to refine the legislation in a way that, on one hand, the right to private life and due execution of justice are protected, while on the other hand, the coverage of court proceedings is implemented in appropriate manner.

15. Amendments to the Organic Law of Georgia on the Constitutional Court of Georgia

On April 19, 2013, the new wording of the paragraph 4(1) of the Article 22 of the organic law of Georgia on the Constitutional Court of Georgia started its operation. According to the current regulations, the Constitutional Court has the authority to suspend the law until the court makes a final decision. If the Court decides to suspend the disputed legal norm, then it will have to decide on a case within 30 days; in case it considers that a legal act can cause irreparable consequences to each of the involved parties, the Court suspends the operation of the disputed norm by 45 days.

Before introduction of these changes, the Constitutional Court had an authority to suspend the legal norm under question until its final ruling in cases when the Court considered the very norm could cause irreparable consequences for any of the parties involved.

Georgian Democracy Initiative believes the norm in operation is inaccurate and requires the improvement. The Constitutional Court deals with a very difficult task to produce authentic interpretation of the constitution. Based on the public interest it is important that the interpretation made is complete, reasonable and of descent quality. Taking into account limited practice and scarce resources available to the Constitutional Court, this term should be reasonably extended based on the consultations with the Court itself.

Proceeding from the practice of the Constitutional Court, in case the disputed legal norm can possibly violate the rights of third parties, the Court does not suspend such norm[96]. Worth mentioning is the fact that the Court has suspended only two disputed legal norms during the last 2 years. This practice shows the Court suspends the disputed provision in exceptional cases only;

[93] *ibid*, par. 11
[94] *ibid*, par. 29
[95] *Ibid*, par. 34
[96] Citizen of Georgia Sophio Ebralidze v. the Parliament of Georgia

only when the violation of the constitutional rights of the plaintiff by the operation of such norm becomes inevitable.

Proceeding from the blanket nature of this norm, the proposed amendment applies to all cases considered by the Court. Namely, the Court has to rule on the case within 30 days, regardless whether the suspension of the norm might be damaging for the interests of the third parties or not. This generates unjustified waste of the Court's resources emanating from the accelerated procedure to be applied by the Court. In particular cases the suspension of the disputable norm might not affect the interests of the third parties. In such case the application of the accelerated procedure is unjustified and does not imply the protection of the rights of the plaintiff; while the risks of the violation of the rights are rather realistic.

We consider that the discretion to initiate accelerated procedure should rest with the Court, in case the Court considers that the suspension of the legal norm damages the interests of the third party. The operating norm might question, on the one hand, the issue of the effective protection of the constitutional rights of an individual while, on the other hand, the authority and prestige of the Constitutional Court itself. We negatively evaluate the fact of ignoring the position of the Constitutional Court in the process of norm consideration.

16. Property rights

The right to property is protected by the Article 21 of the Constitution of Georgia which states:" the property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible." At the same time, section 2 of the same article allows the restriction of the rights referred to in the first paragraph for the purpose of the pressing social need in the cases determined by law and in accordance with a procedures established by law.

Protocol 1 of the European Convention on Human Rights in its first article states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

In its several decisions the Constitutional Court of Georgia observes the following: "proceeding from the universally recognized principles and norms of the Georgian Constitution and the international law, the right to property is inherent and supreme human value, universally recognized basic right, cornerstone of the democratic society and the rule of law[97]". In connection with the Article 21 of the Georgia Constitution, the Constitutional Court notes that "this norm expresses existent consent related to the party of the constitutional right to property and establishes the universal nature of the right to property, its acquisition, alienation or inheritance[98]". Protection of the property right remains one of the problematic issues in the

[97] Decision #1/51 of the Constitutional Court of Georgia, 21 July 1997, on Constitutional Submission of Tbilisi Chugureti District Court
[98] Decision #3/1/512 of the Constitutional Court of Georgia, 26 June 1996

country. We would like to make an emphasis on two main events related to the topic, which took place during the reporting period.

Violation of the publishers' property right

On April 8, 2013, the Minister of Education and Science of Georgia made his statement related to the donation of the textbooks to the school pupils[99]. According to the sub-section u), section 1, Article 26 of the law of Georgia on General Education, the Ministry of Education and Science of Georgia establishes the rules for approving textbooks of an educational institution and their costs thereof. The Order of the Minister of Education and Science on "Approving Textbooks of an Educational Institution and the Costs Thereof" establishes the rules for assigning of classification, based on which the Ministry of Education is enabled to transfer the right to exercise the copyright to any interested person on the basis of pressing social need.[100] Based on this norm the Ministry of Education and Science of Georgia decided to itself print the textbooks due to pressing social need (such need was justified based on low purchase power of population and State's obligation to ensure general education free of charge).

With this action the Ministry in fact restricted publishers' property right and appropriated their license in exchange of inadequate compensation.

First of all, it should be mentioned, that the license in general constitutes a good protected by a property right. Based on case law of the European Court of Human Rights the license constitutes an object of a property right when a person owns such license and has a long-term expectation for receipt of profit.[101] Section 1 of Article 21 of the Constitution of Georgia defines the scope of property right, section 2 defines its restriction, and section 3 defines its deprivation. For these last two cases, sections 2 and 3 of Article 21 of the Constitution of Georgia establishe one standard – "pressing social need". Both the restriction and deprivation of the property right have one feature, which is formal request, i.e. existence of the law that authorizes restriction or deprivation.[102] The Constitutional Court considers "eventual violation" of the aforementioned requirement to be acceptable, when the restriction is envisaged in other regulation, but is duplicated in the sub-normative act.[103] The Constitutional Court also considers it acceptable that the right of issuance of the specific sub-normative act is defined by the law that shall also delegate issuance of restrictive decisions (so called blanket provision).[104] However, such cases are exceptions and it is the requirement of the Constitution that the restriction or deprivation of the property right shall in any case be carried out based on the law.

[99] http://www.mes.gov.ge/content.php?id=4543&lang=geo
[100] Annex 1, sub-section "b" of Article 10
[101] Admissibility decision of the European Commission on Human Rights: Pudas v. Sweden, D&R 26 (1985), p. 214; decision of the European Court on Human Rights , June 7, 1989 on Tre Traktorer Aktiebolag v. Sweden, Par. 53.
[102] *Ibid*. Par. 11
[103] Par. 3 of the decision of the Constitutional Court of Georgia #2/70-10, February 23, 1999, on the Vano Sisauri, Tariman Magradze and Zurab Mchedlishvili v. the Parliament of Georgia"
[104] II, par. 1 of the decision of the Constitutional Court of Georgia #1/2/411, December 19, 2008, on the Rusoenergoservice LTD, Patara Kakhi LTD, Gorgota JSC, Individual Enterprise of Givi Abalaki "Farmer" and Energy LTD v. the Parliament of Georgia and the Ministry of Energy of Georgia

The Order of the Minister of Education and Science dated February 25, 2010 is issued on the basis of sub-section u) of section 1 of Article 26 of the Law of Georgia on General Education, that authorizes the Ministry to adopt the rules for approving textbooks and costs thereof. This provision does envisage deprivation or transfer of license. The term "rules for approving of textbooks" does not imply the licensing. As a result, we face the situation when due to pressing social need the executive bodies restrict the property right without relevant legislative act. Based on this, sub-section "b" of Article 10 of Annex 2 of the Order #30/N of the Minister of Education and Science dated February 25, 2010 and actions carried out on its basis, contradict the requirements of the Constitution of Georgia.

Seven Georgian publishing houses plan to apply to the Constitutional Court of Georgia with the request to consider unconstitutional the norm based on which the Ministry of Education and Science appropriated their copyrights.

Based on the Order of the Minister of Education and Science the publishers' property rights were restricted, as in fact the Ministry appropriated their copyrights free of charge. Such rights constitute a good protected by the property right. The European Court and the Commission have defined in several cases, that the license is subject of the property right, if the person owned it and had a long-term expectation for receipt of profit. In a given case, the Ministry with its Order restricted publishers' property right that contradicts the requirements of Articles 21 and 23 of the Constitution of Georgia, based on which the property right can be restricted by the law and not a sub-normative act (the Order of a Minister constitutes a sub-normative act).

Under section 2 of Article 21 of the Constitution of Georgia "the restriction of the rights referred to in the first paragraph shall be permissible for the purpose of the pressing social need in the cases determined by law and in accordance with a procedure established by law". The Ministry decided to use this right, and in fact made meaningless the use of the copyright by its owners, as these works were envisaged for general educational purposes and their use for other purposes is impossible.

The Law of Georgia on Ownership of Agricultural Land

On June 28, 2013 the Parliament adopted amendments to the Law of Georgia on Ownership of Agricultural Land that was initiated by the following members of Parliament: Zurab Tkemaladze and Gigla Agulashvili.[105] These amendments suspend until January 1, 2017 operation of the part of the law, that envisage ownership of agricultural land by foreigners and legal entities registered in foreign countries. Imposed moratorium will not be applicable to agricultural land already owned by foreigners and legal entities registered in foreign countries.

It is noteworthy that with its decision dated June 26, 2012 the Constitutional Court satisfied the claim of Danish citizen and held unconstitutional the norms of the Law of Georgia on Ownership of Agricultural Land, that restricted the ownership of the land by foreigners and legal entities registered in foreign countries The decision of the Constitutional Court was based on the argument that one of the characteristics of the human rights is its universal nature and that it

[105] http://parliament.ge/files/Draft_Bills/29.05.13/miwa-3.90.pdf

should not depend on nationality. The Constitutional Court of Georgia in its decision stated: "considering of individual as a subject of property right is related to a mere fact that he/she is a human and shall not depend on citizenship". According to the Court the Constitutional the right of acquisition of property establishes the negative obligation of the state not to restrict an individual to create his/her property and based on this to ensure his/her welfare.

Based on section 4 of Article 25 of the Organic Law of Georgia on Constitutional Court "after the Constitutional Court recognizes a normative act or a part thereof as unconstitutional it shall be impermissible to adopt/enact such a legal act, which contains the norms analogous to those declared unconstitutional". The restriction established under the above law and the restriction of the norm that was considered unconstitutional is identical and the difference only relates to the period of application.

The correlation between the purpose of the draft and restriction of the property is also vague. According to the purposes described in the draft within 6 months following adoption of the Law, the Government shall ensure working out the unified state policy with respect to the ownership of agricultural land, definition of the usage and regulation of state protection of agricultural land, organization of the unified system of agricultural land cadastre and land usage on the entire territory of Georgia.

Even if we consider the temporary restriction to be constitutional, the draft law establishes unreasonable term for restriction. If within 6 months the state shall work out unified policy, its public law regulation and organize unified system of cadastre and land usage, it is unclear what the reason for intervention in property rights is until 2017. Clearly the degree of intervention envisaged under the draft law exceeds the level necessary for achievement of legitimate goals, which in itself, constitutes a violation of the principle of proportionality.

Therefore, we consider that the amendments are unconstitutional and violate not only the rights of foreigners and foreign legal entities (in the part of acquisition of property), but also the constitutional rights of Georgian citizens (in the part of disposal of property).

17. Right to education and the Agricultural University

Article 35 of the Constitution of Georgia guarantees the right to education. This right belongs to the field of social rights and by its nature creates particular positive obligations for the state to be implemented. At the same time, the state shall refrain from implementing actions which can cause unjustified limitation of this right.

On March 12, 2013, the Authorization Council of the educational institutions made a decision to revoke the authorization of the Agricultural University of Georgia. As a basis for such revocation the violation of different provisions of the legislation related to the education was announced[106]. Based on its practice, the Council allowed the University to adjust the shortcomings within the particular terms. Decision on the revocation of the authorization of the university entered into

[106] http://eqe.ge/geo/news?info=394

force on the last day of the ongoing semester[107]. As a result of particular measures undertaken the license of the University was restored[108].

The right to education is an important right with rather versatile meaning/s. Activities of the state in this sphere have to serve the idea of improvement of the standards of education, while actions aimed at the enhancement of the standards, shall not bring the opposite outcomes.

We believe in this particular case, there was a clear imbalance between the limitation of the constitutional right and the restraint measures applied.

According to Article 56^4 of the Law of Georgia On Higher Education, on the basis of examination of the higher education institution, the Authorization Council is entitled to make a decision on the revocation of the authorization in case it is proved that an institution violated either the standards of authorization or legal norms in the sphere of education, related to the origins, suspension or termination of the student's or professional student's status. Based on section 1, Article 7 (on proportionality of public and private interests) of the same law ,while exercising the discretionary powers, an administrative body cannot issue an administrative act in case such act results in a damage inflicted on the rights and interests of a person which is disproportionate to the legitimate aim pursued by this act. Despite the factual circumstances ascertained by the Authorization Council, the actions undertaken by the state did not constitute the minimal restrictive measure necessary for the interference into the right protected field.

In its decision as of March 12, 2013, the Accreditation Council stated that the Agricultural University was not given additional 15-days term for the adjustment of the shortcomings, as the latter was considered impossible[109]. On a contrary, on March 26, 2013, the same Council took a decision to restore the authorization of the university, as deemed the shortcomings enumerated in their initial decision were restored by the University. This conclusion proves the restoration of the shortcomings was possible within the abovementioned period and once again underlines the inadequacy of the initial measures applied by the Council and the fact that the goal could have been achieved with less stricter restrictive measures.

[107] http://eqe.ge/geo/news?info=395
[108] http://eqe.ge/uploads/Authorisation/gadawyvetilebebi/2013/26_marti/4.pdf
[109] http://eqe.ge/uploads/Authorisation/gadawyvetilebebi/2013/12_03_2013gadawyvetileba.pdf