



“Georgian Democracy Initiative” (GDI)

Report on Human Rights and Freedoms

2014, First Half-Year

Table of Contents

1. Introduction.....	3
2. Right to respect for private life.....	4
3. Case of Shalva Tatukhashvili.....	5
4. Allegedly politically motivated assaults.....	8
5. Allegedly politically motivated criminal cases.....	10
Case of Gigi Ugulava.....	10
Prosecution of former President of Georgia, Mikheil Saakashvili.....	11
6. Election of local self-government.....	12
Pre-election environment.....	12
Ballot day.....	15
7. Discrimination.....	18
Religious discrimination.....	19
Racial and ethnic discrimination.....	23
Discrimination based on sexual orientation.....	24
Right to equality and the Law of Georgia on Elimination of All Forms of Discrimination.....	25
State regulation of religious affairs.....	26
8. State of the penitentiary system	28
Rights of prisoners in penitentiaries.....	28
Amendment to the Prison Code of Georgia.....	30

Introduction

Georgian Democracy Initiative (hereinafter “GDI”) presents the report for the first half of 2014 on the state of protection of human rights and freedoms in Georgia. The report covers the events, which are related to the issues concerning the state of protection of human rights and the rule of law, as they unfolded during the reporting period.

The report reviews the incidents of infringement of the right to respect for private life and allegedly politically motivated assaults and violence occurring in the reporting period, as well as the case of Shalva Tatukhashvili; the report refers to the incidents of discrimination on various grounds, as well as to those violations and infringements that took place during the local elections held in the summer of 2014. The report covers the allegedly politically motivated criminal cases pending in the first half of 2014. The report also analyses the state of the penitentiary system and the amendments made to the Prison Code of Georgia during the reporting period.

Considering the seriousness of the human rights breaches revealed in the reporting period, it could be observed that there are still many problems in terms of human rights protection that need to be addressed. There is a need for increased efforts and judicious systemic changes in future in order to strengthen the rule of law and to ensure the protection of all individuals from the violation of their rights by the state.

Right to respect for private life

Article 20 of the Constitution of Georgia guarantees the right to respect for private life of an individual and imposes the obligation of ensuring the effective realisation of this right on the state. At the same time, under the Constitution, the state has a negative obligation not to infringe the right to respect for private life and not to allow the violation of this right by public authorities and officials.

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees everyone's right to respect for his/her private and family life, home and correspondence. It is established by the case law of the European Court of Human Rights that Article 8 of the Convention obligates states to protect the right to respect for private life and not to allow arbitrary interference by public authorities.¹

For the effective protection of the right to respect for private life, the state is obligated to efficiently improve the legislation and ensure its compatibility with both the Constitution of Georgia and international standards.

The reports presented by GDI in 2013 depict numerous incidents of the violation of the right to respect for private life.² In almost all cases, the follow-up from the state was inadequate and gave rise to serious misgivings about the impartiality of the conducted investigation.

On 6 May 2014, the representatives of the TV company Rustavi-2 announced that through a confidential source they had obtained certain audio and video recordings stored with the Ministry of Internal Affairs.³ The video clippings aired by Rustavi-2 show the meetings held in the offices of Director General of the TV Company, Nika Gvaramia, and anchorwoman of the TV programme "Position", Nino Shubladze. Furthermore, Eka Kvesitadze in her programme "Different Emphases" played the recordings of telephone conversations with President of the Parliament, David Usupashvili, Defence Minister, Irakli Alasania, former Secretary of the Security Council, Giga Bokeria, former Mayor of Tbilisi, Gigi Ugulava, and Leader of the Parliamentary Majority, David Saganelidze, as well as the conversations with various businessmen.⁴

The above incidents make it clear that the interference by public authorities with the right to respect for private life still remains a serious problem in Georgia. It is extremely alarming that a journalist

¹Case of *Airey v. Ireland*, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420#>.

²<http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf>.

<http://gdi.ge/wp-content/uploads/2014/03/ანგარიშის-სრული-ვერსიის-ჩამოტვირთვა.pdf>.

³http://www.youtube.com/watch?v=DxqE1taN_d0.

⁴<http://www.youtube.com/watch?v=CykQY7r9F04>.

becomes the object of audio and video surveillance. This amounts to direct and serious interference with journalists' activities. The latter warrants special protection from political pressure in a democratic society. The Georgian legislation exhaustively defines those instances where audio or video surveillance is allowed. This measure must be linked to a particular criminal case, adequately justified and carried out in accordance with the relevant procedures. Failure to comply with statutory procedures damages democratic processes, the state of protection of individuals' rights and creates a feeling of insecurity in the society.

It is alarming that the follow-up from the civil society to the above-mentioned incidents was followed by an unexpected public statement of Prime Minister, Irakli Gharibashvili, wherein he criticised the campaign of the non-governmental sector against surveillances, assessed the campaign as "damaging the country's interests" and called it "sabotage".⁵

GDI believes that the state must carry out effective measures with regard to the above-mentioned problem. It is important that objective and impartial investigation is conducted with regard to every incident of illegal surveillance in order to ensure that the offenders are held responsible and punished in strict application of law. It is also necessary that effective preventive measures be taken in order to avoid the violation of the right to respect for private life.⁶

Case of Shalva Tatukhashvili

One of the topical issues of the reporting period was the suspicious death of a former high-ranking official of the Constitutional Security Department (hereinafter CSD) of the Ministry of Internal Affairs of Georgia, Shalva Tatukhashvili. There were allegations that he had been subjected to physical and psychological pressure from law-enforcement officials. A few months before the death of Sh. Tatukhashvili, his family had made numerous public statements to this effect. Despite the persistent requests from the family of the deceased and the civil society,⁷ the Parliament did not consider it necessary to set up an investigative commission to study the suspicious circumstances surrounding the case of Sh. Tatukhashvili.

On 24 February 2014, Sh. Tatukhashvili was summoned to the Prosecutor's Office for the first time. He was requested to appear as a witness concerning the so-called Navtlughi special operation. On 25

⁵<http://civil.ge/geo/article.php?id=28136>.

⁶On 1 August 2014, after several unsuccessful attempts initiated in July 2013, the amendments to the Law of Georgia on Operative and Investigative Activities came into force. The amendment concerns the audio and video surveillance procedures.

⁷ <http://gdi.ge/?p=609>.

February, Sh. Tatukhashvili's father, General Gogi Tatukhashvili made a public statement.⁸ According to the General, after the interrogation that had taken place on 24 February, lasted for ten hours and ended at the dawn, his son was abducted by the law-enforcement officials.

According to the same statement, Sh. Tatukhashvili was tortured in Prosecutor's Office and was forced under the influence of drugs to make a statement favourable for the prosecution. The statement made by Sh. Tatukhashvili's family also mentions physical violence and psychological terror exerted by law-enforcement officials on Sh. Tatukhashvili.⁹ After this, approximately during ten days, the location of Sh. Tatukhashvili remained unknown to his family.¹⁰

On 24 March 2014, information about the death of Sh. Tatukhashvili was made public. The family of the deceased and their lawyers linked the death of the former high-ranking official of CSD to his ill-treatment and accused the law-enforcement officials for being responsible for it. According to the statement made by the family of the deceased, published by lawyer I. Zaqareishvili, law-enforcement officials had twice abducted Sh. Tatukhashvili and subjected him to physical and psychological pressure with the view of obtaining his statement against former Head of CSD, Data Akhalaia.

Along with the family statement, the lawyer of Sh. Tatukhashvili published photographs showing the injuries on the body of the deceased.¹¹ The injuries included the traces of alleged burns, which gave rise to a serious suspicion that Sh. Tatukhashvili had been subjected to ill-treatment. The authenticity of the photographs is confirmed by the body examination report.¹² The report describes the injuries and is signed by an Inspecting Investigator of Police, a forensic expert, the lawyer of the deceased, and a family member.

According to the statement made on 24 March by the Chief Prosecutor's Office, in response to the statements made by the family of Sh. Tatukhashvili, after the interrogation of 24 February, Sh. Tatukhashvili requested to be enrolled in the special witness protection programme, which would imply keeping his location confidential, even to his family members. However, this measure, according to the Prosecutor's Office, was shortly discontinued. According to the same statement, "Shalva Tatukhashvili was summoned to Tbilisi Prosecutor's Office for additional interrogation. The

⁸ <http://newposts.ge/?l=G&id=31962-%E1%83%92%E1%83%94%E1%83%9C%E1%83%94%E1%83%A0%E1%83%90%E1%83%9A%E1%83%98,%20%E1%83%92%E1%83%9D%E1%83%92%E1%83%98,%20%E1%83%97%E1%83%90%E1%83%97%E1%83%A3%E1%83%AE%E1%83%90%E1%83%A8%E1%83%95%E1%83%98%E1%83%9A%E1%83%98>.

⁹ <http://www.netgazeti.ge/GE/105/News/29821/>.

¹⁰ <http://pirveliradio.ge/?newsid=21463>.

¹¹ <http://newposts.ge/?l=G&id=34974-%E1%83%97%E1%83%90%E1%83%97%E1%83%A3%E1%83%AE%E1%83%90%E1%83%A8%E1%83%95%E1%83%98%E1%83%9A%E1%83%98,%20%E1%83%A8%E1%83%95%E1%83%98%E1%83%9A%E1%83%98,%20%E1%83%A4%E1%83%9D%E1%83%A2%E1%83%9D%E1%83%94%E1%83%91%E1%83%98>.

¹² <http://www.liberali.ge/ge/liberali/news/118132/>.

notice was handed to his brother Mikheil Tatukhashvili. On 18 March 2014, Sh. Tatukhashvili was questioned again as a witness in accordance with the relevant procedural norms. Sh. Tatukhashvili voluntarily stated during each interrogation that he wanted to cooperate with investigation and that he had not been abducted; during all this time he was in his own house.”

The Prosecutor’s Office made another statement on 28 March that branded the allegation made by Sh. Tatukhashvili’s family and their lawyer as a lie and an attempt to discredit the Prosecutor’s Office. These statements clearly show the biased position of the Chief Prosecutor’s Office towards the case at stake. The Chief Prosecutor’s Office’s decision to brand the statements made by Sh. Tatukhashvili’s lawyer and family members about the injuries found on the body and their origin as absurd, when (according to the statement itself) the forensic examination was still pending, is devoid of any logical reasoning. It was impossible to make conclusions before the end of the examination about the circumstances surrounding the injuries, the time of their infliction and the cause of the death. The statement made by the Prosecutor’s Office on 28 March is also problematic in terms of the failure to presume Sh. Tatukhashvili innocent.

Furthermore, there are questions concerning other circumstances of the case at stake, *inter alia*, with regard to the inquiry into the alleged abduction of Sh. Tatukhashvili. According to the statement made by the Prosecutor’s Office on 24 March, the inquiry was conducted by the Inspectorate General of the Chief Prosecutor’s Office, which established that Sh. Tatukhashvili had not been abducted. This finding was presumably based only on the information gained from Sh. Tatukhashvili’s questioning.

The Chief Prosecutor’s Office, with its numerous statements, instead of clearing up the allegations, gave rise to additional questions with regard to the case of Sh. Tatukhashvili.

The legal ground for the arrest of Sh. Tatukhashvili at Lilo nightclub on the night of 17-18 March and his transfer to the Chief Prosecutor’s Office is unclear. Since, according to the statements of the Prosecutor’s Office, the family had not reported to the law-enforcement authorities about the disappearance of Sh. Tatukhashvili, he had been struck out from the special witness protection programme. However, the reason for bringing him to the Prosecutor’s Office was Sh. Tatukhashvili’s inclusion in this very programme. The pressure exerted on Sh. Tatukhashvili is also shown by the fact that, according to the interrogation reports published by the Prosecutor’s Office, a sleep-deprived and intoxicated Sh. Tatukhashvili was first questioned by an investigator for an hour and a half, and later by the Inspectorate General of the Chief Prosecutor’s Office.

Despite the high interest of the public in the case of Sh. Tatukhashvili, the investigation failed to answer the questions about the alleged pressure and the range of circumstances surrounding the

death. In the light of the facts given above, this failure gives rise to misgivings about the thoroughness and impartiality of the investigation.

Allegedly politically motivated assaults

Incidents of assaults and violence against citizens have become more frequent in the reporting period. These incidents are allegedly related to either political activities or political opinions of the victims. The measures taken by the law-enforcement bodies in such cases are usually ineffective. The acts are not adequately categorised under criminal law and appropriate sanctions are not imposed on the culprits. Such tendencies damage both the interests of safeguarding the life, health and security of an individual, as well as unimpeded realisation of civil and political rights and freedoms.

The viewpoints expressed by authorities with regard to these incidents are similarly alarming. The GDI and several other NGOs issued a joint statement concerning one of the incidents. The statement reads as follows:

“Timely and effective investigation into such incidents and imposing adequate sanctions on offenders are necessary preconditions for the prevention of violence. It is no less important to condemn such acts unequivocally and unconditionally in public discourse, which is, first of all, the responsibility of the representatives of the authorities.

Hence, we are deeply concerned by the attitude of some of the representatives of the authorities towards such incidents. They, the representatives, try to justify criminal acts and even relate attacks and violence against people to “restoration of justice, because the victims are members or supporters of an opposition party.”¹³

On the night of 30 March 2014, Member of the Parliament from an opposition party, Nugzar Tsiklauri was attacked. According to the victim, 7-8 men waiting for him near his home tried to kidnap him and even tried to give him an electric shock. Investigation into this allegation is pending under Article 120 of the Criminal Code of Georgia, which envisages minor damage to health.

In our opinion, the reported crime has to be given a graver categorisation under the Criminal Code; according to the MP’s statement, a group subjected him to violence and there was an attempted

¹³ <http://gdi.ge/?p=692>

kidnapping. Lenient categorisation of violence against a Member of the Parliament amounts to encouragement of violence against political opponents.

It is noteworthy that the above-mentioned case has not been investigated and no one has been held responsible to date. This amounts to the failure of the fulfilment of positive obligation of the state to conduct an objective, impartial and effective investigation.

On 3 May 2014, David Kodua, brother of a former Head of Special Operative Department of the Ministry of Internal Affairs, Irakli Kodua, was attacked. According to the victim's family, D. Kodua was attacked by four masked individuals; D. Kodua passed out from an electric shock given to him after which he was beaten. With regard to this violent incident, the attacker, Noshrevan Namoradze was charged with the less grievous intentional damage to health inflicted as part of a group.¹⁴

On 18 September 2014, detention on remand was replaced by bail set at GEL50, 000.00, after which N. Namoradze was freed from the courtroom. As it has become known to the lawyers of the accused, it was not established that there had been a group attack which made it possible to release N. Namoradze on a bail.

In our opinion, the Chief Prosecutor's Office gave a lenient categorisation to the incident. This constitutes the violation of the state to conduct an effective investigation into any violation and impose an appropriate sanction on those responsible. The above approach taken by the state encourages political persecution and prevents from maintaining safe environment in the country.

On 27 May 2014, members of United National Movement, Zurab Tchiaberashvili and Nodar Ladarua were attacked by Rezo Tabukashvili and Giorgi Mgeladze at "Literaturuli Café".¹⁵ The Court set the amount of bail at GEL2000.00 with regard to R. Tabukashvili.¹⁶ It is reported that no charges were brought against G. Mgeladze and he was questioned as a witness during the investigation.¹⁷

¹⁴Article 118.3 of the CPC.

¹⁵ https://www.youtube.com/watch?v=T_h5_5eaxNM.

¹⁶ <http://www.interpressnews.ge/ge/samartali/283962-rezo-thabukashvils-aghmkveth-ghonisdziebad-2000-lariani-girao-sheefarda.html?ar=A>.

¹⁷ <http://medianews.ge/ge/rezotabukashvilschiaberashvilzetavdaskhmisfaqdze2-ataslarianigiraosheefarda/78051>.

Allegedly politically motivated criminal cases

Case of Gigi Ugulava

The reports presented by Georgian Democracy Initiative depict a number of criminal cases conducted against former high-ranking officials following the change of the government as the result of the Parliamentary elections in 2012.^{18&19}

The trial of former Mayor of Tbilisi, Gigi Ugulava was particularly significant in terms of guarantying the due process rights during the reporting period. In our opinion, the right to a fair trial guaranteed by Article 42 and the right to a hearing within a reasonable time by an impartial and independent tribunal, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms were violated in the case of G. Ugulava.

Based on the judgment of the Constitutional Court, G. Ugulava motioned before a court to be restored in his capacity as the Mayor. However, due to unjustified delay of the court proceedings, the former Mayor eventually decided to withdraw his motion.

Gigi Ugulava brought the case before the Constitutional Court and challenged those provisions which provided for the dismissal of officials, who are elected for local self-government posts based on universal, equal and direct suffrage by secret ballot, on the one hand and, on the other hand, allowed the adoption of such decisions on dismissal without an oral hearing. Based on the application of the impugned provisions, Tbilisi City Court had suspended Gigi Ugulava's mayoral authority on 22 December 2013.²⁰

On 23 May 2014, the Constitutional Court upheld Gigi Ugulava's constitutional claim and declared the impugned provisions as unconstitutional. The Court observed that suspension or discontinuation of the authority of the officials elected by people amounted to the suspension or discontinuation of a popular mandate and represented one of the most serious interferences with the autonomy of self-government.

Moreover, the Constitutional Court found that it was impermissible to consider a motion on dismissal from a position without an oral hearing and to adopt a decision only based on the information adduced by the prosecution, without notifying the other party and allowing it to defend itself.

¹⁸ <http://gdi.ge/wp-content/uploads/2014/03/ანგარიშის-სრული-ვერსიის-ჩამოტვირთვა.pdf>.

¹⁹ <http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf>.

²⁰ Article 159 of the CPC. The second sentence of Article 160.1.

Gigi Ugulava motioned before Tbilisi City Court and requested the annulment of the ruling through which his authority had been suspended. The prosecution did not uphold the motion and stated that Tbilisi City Court lacked jurisdiction *ratione materiae* and it was the prerogative of the Court of Appeal to decide about the issue at stake.

On 5 and 10 June 2014, the scheduled court hearings on Gigi Ugulava's case were adjourned due to the failure of the prosecution to appear before the Court. According to the official version, the failure to appear was due to the prosecutors' participation in training sessions held in Batumi.

The decision about the restoration of Gigi Ugulava's official authority was supposed to be announced on 25 June in Tbilisi City Court. Justice Maia Shoshiashvili extended the deliberation term and set 26 June as the date for the announcement of the ruling. However, Gigi Ugulava had withdrawn the motion before the ruling was announced. He explained his action by his lack of trust in the Court.

The progress of the case makes it clear that the adjournment of the court hearings did not stem from the statutory requirements and it served the purpose of undue delay of the proceedings.

Four prosecutors supported the state prosecution in this case. Their simultaneous and long-term business trip out of the city, which prevented them to appear before the Court, raise doubts that the real purpose was to artificially delay the trial.

Furthermore, the Code of Criminal Procedure allows adjournment of a court hearing when a party fails to appear before the court due to a good reason. The law gives the following interpretation: "the failure of a party to criminal proceedings to appear before the court shall be considered due to a good reason if it is caused by illness, death of a close relative or other objective circumstance beyond his/her control, which makes it impossible for the party to appear."²¹ The Georgian legislation, therefore, does not refer to a business trip as a good enough reason to justify the failure to appear before the Court. Accordingly, the Court was entitled to not adjourn the hearings, especially, in the light of the considerable public interest in the timely examination of the case.

Prosecution of former President of Georgia, Mikheil Saakashvili

On 28 July 2014, former President of Georgia, Mikheil Saakashvili, was summoned to the Office of the Chief Prosecutor of Georgia as a witness. After he did not appear before the Office as a witness, it became known that he was charged for abuse of official power.

²¹ Article 3.18 of the CPC.

The institution of criminal proceedings against the former President gave rise to numerous questions in terms of political neutrality and independent investigation. The US State Department, the US Senators, representatives of the European Union and the Ministry of Foreign Affairs of Poland issued statements in this regard expressing their concern for possible political connotations.

It is noteworthy that Mikheil Saakashvili was charged right after his failure to appear before the Prosecutor's Office as a witness. It is impermissible to question a person as a witness if the file of the evidence gathered by investigative authorities is sufficient for charging this person with a crime. Therefore, summoning an accused as a witness is in violation of international human rights standards and runs counter to public interests of investigation.

GDI, jointly with other NGOs issued a special statement regarding institution of criminal proceedings against the former President. The statement reads as follows: "We are concerned that the events unfolding around former high-ranking officials give rise to questions about the legality of the proceedings. There are frequent occurrences that officials holding political positions make statements about arrests of or institution of criminal proceedings against particular persons before the due procedures take place. Furthermore, the presumption of innocence is systematically violated. All this raises questions in terms of the rule of law, protection of human rights and freedoms and democratic development of the country, which may be a serious impediment to Georgia's European integration. We call upon the Georgian authorities to refrain from making statements about the guilt of any person, especially when politicians are concerned."

Election of local self-government

Pre-election environment

On 15 June 2014, the elections for legislative and executive bodies of local self-government units were held in Georgia. The election day was fixed by the presidential order and a counter-signature by the Prime Minister.²² The ballot was preceded by a rather stressed two-month pre-election campaign. The Election Code has been violated multiple times by the ruling party and public officials. Most significantly, several representatives of the opposition party were physically assaulted. Furthermore, those opposition party candidates who voluntarily pulled out, prior to the ballot in suspicious circumstances, from the elections, confirm being subjected to pressure exerted by law-enforcement

²²<http://www.interpressnews.ge/ge/politika/277911-mthavrobam-archevnebis-tharighthan-dakavshirebith-prezidentis-gankarguleba-moitsona.html?ar=A> [last visited 21.06.2014];

authorities. It is worth mentioning that unprecedented number of candidates withdrew from the elections in various regions. Under Article 5.1 of the Constitution of Georgia, the people shall be the source of state power in Georgia. The state power shall be exercised through various forms of democracy *inter alia* by representatives. Article 28 guarantees the right to elections and safeguards free expression of the will of voters. Therefore, the state has the obligation to ensure transparent and democratic elections, to create equal opportunities and fair participation in pre-election environment for all political parties enabling them to conduct election campaign without any obstacles.

The pre-election period witnessed rather significant changes being introduced into the Election Code of Georgia. Under the amendments, “the candidate having obtained more than 50% of the votes of those constituents having participated in the election shall be considered to be elected in the election of a Mayor/*Gamgebeli*.”²³ 4% threshold was introduced for all *Sakrebulo*’s elections.²⁴ The amendment also addressed political parties’ funding and certain media regulations.²⁵

State authorities expressed their readiness to fulfil their positive obligation and to ensure free and fair elections. The Inter-Agency Commission for Free and Fair Elections was set up based on the Election Code of Georgia. For the purpose of eradicating pre-electoral violations, the Commission was entrusted to issue recommendations to various state agencies and political parties regarding revealed violations of law; a moratorium on legal procedures was announced with regard to those persons involved in election campaign.²⁶

Despite all above measures, various violations were registered during the pre-election period, mostly on the part of the ruling party and public officials. According to NGOs, in total up to 15 incidents of preventing campaigning and four incidents of allegedly politically motivated physical assault took place. Furthermore, according to NGOs, many candidates from six opposition parties withdrew from the election in 15 districts of nine different regions, allegedly as the result of pressure.²⁷

In this regard, those regions and towns are particularly to be mentioned, where an opposition party was believed to have more supporters. E.g., in the village of Ude, Adigeni Municipality, the representatives of all opposition parties pulled out from the election. According to the Office of the Chief Prosecutor of Georgia, they investigated 80 incidents involving pressure on candidates. During interviews, in 76 out of 80 cases, the candidates did not confirm the information about pressure from

²³The Elections Code of Georgia, Article 149.

²⁴*Ibid.*, Article 148.

²⁵In details: The Organic Law of Georgia no. 2093-IIS on the Amendment to the Elections Code of Georgia, https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2277882; <http://transparency.ge/en/node/4102> [last visited 22.06.2014].

²⁶http://www.government.gov.ge/index.php?lang_id=GEO&sec_id=380&info_id=41753 [last visited 22.06.2014].

²⁷<http://transparency.ge/post/general-announcement/arasamtavrobo-organizatsiebi-tertmet-sarchevno-olkshikandidatebze-zetsol>; <http://transparency.ge/post/press-release/tsinasaarchevno-garemos-shefaseba-2014-tvitmmartvelobis-archevnebi> [last visited 22.06.2014];

law-enforcement authorities or other persons; various personal reasons (family, age, work-load, etc.) were cited for pulling out from the election. Investigation was instituted with regard to four incidents under Article 150 of the Criminal Code of Georgia. According to investigation authorities, the investigation is pending in order to establish the sources of threatening telephone calls and other persons that may have any information regarding the incidents.²⁸

The violations of campaigning rules, the incidents of dismissal from office and misuse of administrative resources were established as well.²⁹

The decisions taken by Marneuli Regional Election Commission and Central Election Commission with regard to candidate of Marneuli *Gamgebeli* from United National Movement, Akmed Imamkuliev are particularly noteworthy. Marneuli Regional Commission annulled Akmed Imamkuliev's registration. According to President of the Central Election Commission, Tamar Zhvania, the candidate had failed to meet the statutory requirement of having resided in Georgia for the last two years. It is noteworthy that Rustavi and Poti Mayoral candidates from the coalition "Georgian Dream," who were in the same situation, maintained their registration. In their case, the respective provision of the Election Code was interpreted more liberally. The most significant issue in this incident is that, according to the candidate of Marneuli Gamgebeli and other representatives of United National Movement, the representatives of Georgian Dream tried to convince them to pull out A. Imamkuliev from the election. After their refusal, the representatives of Georgian Dream applied to the election administration. However, eventually, the court upheld A. Imamkuliev's motion and restored his registration.³⁰

Incidents of blocking election campaign and violence against the members of United National Movement and their supporters also took place in Ponitchala on 31 May and 14 June 2014.³¹

At the same time, against this background, the Ministry of Internal Affairs announced, without having conducted an investigation, that there had been no pressure exerted by police on the candidates of the political parties participating in local self-government election.³² Meanwhile, the Prime Minister announced that Georgian Dream would not allow another political party to win in any of the regions or towns.³³

²⁸ www.interpressnews.ge/ge/politika/285854-prokuratura-saarchevno-subieqtebma-80-shemthkhvevidan-76-shi-zetsolis-shedegad-kandidaturis-mokhsna-ar-daastures.html?ar=A [last visited 12.06.2014];

²⁹ <http://gyla.ge/geo/news?info=2160> ;<http://gyla.ge/geo/news?info=2122> [last visited 22.06.2014];

³⁰ <http://www.netgazeti.ge/GE/105/News/32451/> [last visited 22.06.2014].

³¹ <http://www.tabula.ge/ge/story/84445-nacionaluri-modzraobis-aqtivistebz-zemo-fonichalashi-fizikurad-gaustsordnen> [last visited 22.06.2014].

³² <http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/6671> [last visited 22.06.2014].

³³ <http://www.interpressnews.ge/ge/politika/284224-irakli-gharibashvili-qqarthuli-ocnebaq-arc-erth-regionsa-da-qalaqshi-ar-daushvebs-skhva-politikuri-dzalis-gamarjebas.html?ar=A> [last visited 22.06.2014].

The activities of the Inter-Agency Commission during the pre-election period were attached much significance. Despite the range of recommendations elaborated by the Commission, according to NGOs, the work of this agency would have been far more effective in terms of preventing violations and timely follow-up.³⁴ It is to be pointed out that in some cases, the recommendations and statements of the Commission were not properly enforced. Moreover, the creating of the Commission was delayed in violation of the statutory term.³⁵

Ballot day

Despite the information submitted by NGO representatives that the elections on 15 June 2014 were mostly conducted in a peaceful environment,³⁶ considerable violations were registered at some of the polling stations; altercations between various party representatives marked the course of election. Furthermore, the follow-up from law-enforcement authorities to such incidents was often tardy or inadequate. Due to these incidents and violations, the Central Election Commission decided to annul the results from 14 polling stations and therefore, re-polling was held at these precincts on 29 June 2014.³⁷

According to the information disseminated by United National Movement, on 15 July 2014, several considerable violations were registered several days before the ballot, in Martvili. Several representatives of ruling coalition tried to bribe the population and stole election items (bulletins and stamps) from Martvili polling station no. 16. The stolen items were later found in a dumpster.

Similarly, violations were registered at polling station no. 32 (Anaklia) of Zugdidi Electoral District, where voting was disrupted due to the intrusion by the relatives of late Abuladze³⁸.

There was an attempted disruption of voting at polling station no. 36 in the village of Akhalsopeli of Zugdidi Electoral District.

³⁴<http://transparency.ge/post/press-release/tsinasaarchevno-garemos-shefaseba-2014-tvitmmartvelobis-archevnebi>.

³⁵ The Inter-Agency Commission was supposed to be set up no later than 24 March. However, the Inter-Agency was in fact created on 6 April 2014.

³⁶ <http://gyla.ge/geo/news?info=2181> ; <http://transparency.ge/post/general-announcement/2014-tslis-adgilobrivi-tvitmmartvelobis-archevnebis-shemajamebeli-gancxadeba>.

³⁷<http://www.cesko.ge/ge/mediisatvis-4-ge/pres-relizebi-13-ge/29-ivniss-tvitmmartvelobis-archevnebis-ganmeorebiti-kenchisyra-14-saarchevno-ubanze-gaimarteba.page>.

³⁸ <http://news.ge/ge/news/story/85080-ori-tslis-tsin-gauchinarebuli-gogita-abuladzis-ojakhis-tsevrebma-saavtomobilo-gza-gadaketes>.

At polling station no. 20 of Martvili Electoral District, for a considerable period of time constituents voted without their UV markings being inspected, as the UV markings inspection flashlight was out of order.

There were two representatives of the same candidate at four polling stations (polling stations nos. 26 and 64 of Zugdidi Electoral District; and polling stations nos. 11 and 27 of Martvili Electoral District) whereas the Law allows only one representative to be present at a polling station.

Out of 14 voters eligible for the use of the mobile ballot box at polling station no. 14 of Isani Electoral District, ten could not vote as the voters' list contained inaccurate data. After the box was returned, the Election Commission of the polling station, in agreement with Isani Electoral District, decided to send out the box with the corrected list.

At Didube Electoral District no. 31, the procedures to be conducted from 19:00 to 20:00 had already been completed by 19:00.³⁹

Various kinds of procedural violations such as those related to UV markings, voting, presence of unauthorised persons, etc., were registered at some polling stations.⁴⁰

Similar incidents took place at several polling stations of Dedoplistskaro. At Khoni polling station no. 22., unidentified persons intruded and broke the ballot box. The Ministry of Internal Affairs of Georgia already instituted an investigation with regard to this incident and several persons have been arrested.⁴¹

It is noteworthy that the Ministry of Internal Affairs arrested two persons on the account of an incident at polling station no. 16 in Martvili. Investigation was instituted under Article 162 (obstructing participation in election, referendum or plebiscite). On 26 September 2014, the court found the persons responsible for the incident guilty under Article 162.2 paras. a),c) and d). Each person was sentenced to two years of imprisonment - one year to be served in a penitentiary and the other suspended.⁴²

³⁹<http://www.tabula.ge/ge/story/84469-ti-kvelaze-meti-darghveva-zugdidis-da-martvilis-sarchevno-olqebshigamovlinda>.

⁴⁰ <http://gyla.ge/geo/news?info=2181> ; <http://transparency.ge/post/general-announcement/2014-tslis-adgilobrivi-tvitmmartvelobis-archevnebis-shemajamebeli-gancxadeba>.

⁴¹ <http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/6737>.

⁴²http://www.gurianews.com/view_left_wide.html?item=22079&title=%E1%83%A1%E1%83%90%E1%83%90%E1%83%A0%E1%83%A9%E1%83%94%E1%83%95%E1%83%9C%E1%83%9D+%E1%83%91%E1%83%98%E1%83%A3%E1%83%9A%E1%83%94%E1%83%A2%E1%83%94%E1%83%9C%E1%83%94%E1%83%91%E1%83%98%E1%83%A1+%E1%83%98%E1%83%90%E1%83%A0%E1%83%90%E1%83%A6%E1%83%98%E

Investigation of the Marneuli incident was also ongoing under Article 164 of the Criminal Code of Georgia.³ The outcome of the investigation is unknown to date.

Polling related violations were also registered at Marneuli polling station no. 57, where two persons entered the cabin in order to vote. Voters were admitted to vote without their IDs at the same precinct. With regard to polling stations nos. 5 and 25 of this electoral district, the video recording submitted by United National Movement shows one and the same person N. Aliev placing marked ballot papers in the ballot box.⁴³

Especially noteworthy is the rather high indicator of disqualified votes.⁴⁴ This number, in comparison to the local self-government election of 2010,⁴⁵ has increased by 4% and amounts to 5% on the national scale. According to the data of International Society for Fair Elections and Democracy (ISFED), the highest average by percentage of the disqualified votes was in Kvemo Kartli and Samtskhe-Javakheti, and Sagarejo regions. At some polling stations of the aforementioned regions, the indicator of disqualified votes is higher than 15%. At hundreds of polling stations, more than 1000 shortcomings and violations have been registered in the summary reports on the voting results. Up to 500 reports lack the necessary requisites and the accurate equation (the number of the votes obtained by candidates plus the number of disqualified votes is either more or considerably less than the number of the signatures by the voters). Furthermore, there were one or two entries altered in more than 50 summary reports.⁴⁶ ISFED called upon the Central Election Commission, before summing up the results, to recount the votes from those polling stations where the number of disqualified votes was unusually high and where considerable imbalance and alterations were shown in the summary reports.⁴⁷ The summary reports of International Transparency - Georgia showed significant inaccuracies; in particular, at three polling stations, the votes obtained by the mayoral candidate from United National Movement, Nika Melia, were missing, 100 votes at each precinct.⁴⁸ However, at the later stage, the Central Election Commission redeemed this shortcoming.⁴⁹

[1%83%A1+%E1%83%9B%E1%83%A3%E1%83%A5%E1%83%90%E1%83%A0%E1%83%98%E1%83%97+%E1%83%92%E1%83%90%E1%83%9B%E1%83%A2%E1%83%90%E1%83%AA%E1%83%94%E1%83%91%E1%83%9A%E1%83%94%E1%83%91%E1%83%98%2C+%E1%83%AA%E1%83%98%E1%83%AE%E1%83%94%E1%83%A8%E1%83%98+%E1%83%94%E1%83%A0%E1%83%97+%E1%83%AC%E1%83%94%E1%83%9A%E1%83%A1+%E1%83%93%E1%83%90%E1%83%B0%E1%83%A7%E1%83%9D%E1%83%A4%E1%83%94%E1%83%9C&cat_id=74&lang=ka.](http://www.isfed.ge/main/726/geo/)

⁴³ <http://www.youtube.com/watch?v=RKW6WmSCkHY>.

⁴⁴ <http://transparency.ge/post/general-announcement/kenchisqris-shedegebis-shemajamebel-okmebshi-kvlav-bevri-kharvezia> ; <http://www.isfed.ge/main/726/geo/>.

⁴⁵ The average indicator of disqualified votes in 2010 constituted 1%.

⁴⁶ <http://www.isfed.ge/main/726/geo/>.

⁴⁷ *Idem*.

⁴⁸ <http://frontnews.ge/ge/news/44856>.

⁴⁹ http://results.cec.gov.ge/meri_tbilisi.html.

According to the data of the Central Election Commission, in eight out of twelve self-governing cities, no candidate was able to get past the 50% threshold. The same situation was witnessed with regard to the *Gamgebeli* candidates in 11 out of 59 municipalities. Accordingly, on 12 July 2014, the second round of election was held in these cities and municipalities.⁵⁰

According to NGOs, on 12 July, voting and counting of the votes were conducted in a peaceful environment. The second round of the election was positively evaluated by International Republic Institute (IRI) as well.⁵¹ At the same time, one significant tendency was revealed. Names of 104 voters were missing from the voters' list at 53 polling stations out of 19 electoral districts. Out of this number, 53 voters stated that they took part in the first round of the ballot.⁵² It is noteworthy that incidents of verbal and physical altercations among activists belonging to various political parties were registered outside polling stations at various electoral districts. During voting, coordinators and activists of political parties, similar to the previous elections, registered the number of voters at precincts.⁵³ According to United National Movement, the elections were "not free" and "clearly one step backwards for the country's democracy". This statement attains significance especially against the background of the arrest of the head of the election headquarter of United National Movement, Gigi Ugulava, several days prior to the second round of the election.⁵⁴

Discrimination

One of the major tasks of a democratic state is to ensure the equal realisation of rights and freedoms for everyone within its jurisdiction. The Constitution and numerous international instruments that Georgia is a party to safeguard the fundamental principles of equality and non-discrimination. It is the state's duty to take effective and efficient measures for the eradication of discrimination.

Numerous incidents of discrimination on the account of religion, race, ethnicity and sexual orientation were registered during the reporting period. Those incidents were not duly followed up by the authorities. Moreover, lenient and neglectful attitude of the state towards the problem and ineffective follow-up to reported incidents have been shaped up as a dangerous tendency. In some

⁵⁰ <http://www.cesko.ge/ge/mediisatvis-4-ge/pres-relizebi-13-ge/sainformacio-brifingi-ceskoshi12258.page>.

⁵¹ <http://www.imesi.ge/index.php?pg=nws&id=34452>.

⁵² <http://www.isfed.ge/main/750/geo/> ; http://transparency.ge/post/general-announcement/2014-tslis-adgilobrivi-tvitmmartvelobis-archevnebis-meore-turis-shepaseba?fb_action_ids=10202154536325613&fb_action_types=og.like. <http://gyla.ge/geo/news?info=2223>.

⁵³ *Idem*.

⁵⁴ http://www.myvideo.ge/?video_id=2375131.

occasions, high-ranking officials were even witnessed encouraging discrimination, e.g. with the use of hate speech and discriminatory statements towards various minorities.

In those rare occasions when law-enforcement authorities follow-up the reports of incidents of discrimination, the motives of discrimination are usually completely ignored. Such an attitude only encourages a sense of impunity amongst those persons guilty of discriminatory behaviour and results in increased incidence and more virulent forms of expression.

Oppression of religious minorities and discriminatory practices against them are particularly noteworthy. Such incidents have become rather intense during the last two years and continue to date. It is caused by a culture of intolerance, which is encouraged by vague and ineffective state policy mainly shaped by the attitude of the country's dominating religious group, the Georgian Orthodox Church. The discriminatory statements and open aggression towards religious and other minorities are often encouraged and supported by high-ranking officials.

The existing situation is unfavourable for the future development of Georgia as a free state; it needs adequate attention from the relevant authorities, planning and implementation of effective and efficient measures. The adoption of the Law of Georgia on Elimination of All Forms of Discrimination needed active support and lobbying of the civil society due to considerable objection from the Georgian Orthodox Church and numerous public officials. Unfortunately, the Law was eventually adopted only formally and fails to afford effective legal instruments for the eradication of discrimination.

Religious discrimination

Several incidents of restriction of the right to freedom of religion and religious discrimination were registered in the first half of 2014.

Festival of Hope

The biggest evangelical congregation, the Festival of Hope, was supposed to be held on 6-8 June 2014, at the Sports Palace, in Tbilisi. Representatives of more than 150 churches were involved in the organisation of the activity. The organisers of the festival faced considerable obstacles that made it impossible for them to carry out the planned congregation in a public space.

According to the statement issued by NGOs, including GDI, regarding the difficulties faced by the organisers of the congregations, the obstruction of holding the festival amounted to the restriction of

the right to freedom of religion of those religious associations organising the activity and those participating in it, and contained elements of religious discrimination.

It is the opinion of the NGOs that the facts surrounding the disruption of the Festival of Hope, within the mandate provided for by the Law of Georgia on Elimination of All Forms of Discrimination, warrant a comprehensive investigative assessment by the Public Defender and investigation authorities.⁵⁵

According to the official version, the festival could not be conducted in the Sports Palace due to the fire erupted on 3 June 2014. Despite the statement of the Head of the Service of Emergency Situations that the fire was promptly extinguished and did not result in any significant damage, the Director of the Sports Palace, without having evaluated the condition of the building, decided not to allow the organisers of the festival to hold the congregation in it. The organisers could not find an alternative public space.⁵⁶

According to NGOs, the organisers of Festival of Hope maintained communication with various representatives of the authorities, including the State Agency for Religious Affairs. However, these meetings did not result in any tangible results and it has turned out to be practically impossible to hold the festival in an appropriate public space.⁵⁷ Eventually, the festival was held at the Evangelical Faith Church, in Didube. At the same time, there was a protest, the organisers of which, including Giorgi Gabedava, were protesting against the festival and called upon citizens not to enter the churchyard.⁵⁸

It needs to be pointed out that the extremist, freed from prison with the status of a political prisoner and the candidate for majoritarian membership of Tbilisi *Sakrebulo*, Giorgi Gabedava, made statements as far back as on 2 June making it known that “together with friends” he would try to disrupt the planned festival.⁵⁹

The organisers of the festival had also faced considerable obstacles regarding the placement of outdoor advertisements ahead of the planned congregation. A few days prior to the festival date, the advertisement company “Outdoor.ge”, with whom the organisers had concluded a contract and paid

⁵⁵ <http://gdi.ge/?p=707>.

⁵⁶ <http://www.tabula.ge/ge/story/83949-sportis-sasaxleshi-imedis-festivalis-teqnikuri-motskobiloba-daitsva>.

⁵⁷ <http://gdi.ge/?p=707>.

⁵⁸ <http://www.netgazeti.ge/GE/105/Life/32328/>. <http://www.youtube.com/watch?v=B24kIKwK1yg>.

⁵⁹ <http://www.tabula.ge/ge/story/83905-eqstremistebi-sportis-sasaxleshi-dagegmili-imedis-festivalis-chashlas-gegmaven>.

the charges in advance, breached the contract terms and removed most of the outdoor ads. The advertisement was restored after media and various organisations got involved in the issue at stake.⁶⁰

It should be pointed out that the Ministry of Internal Affairs has not instituted investigation into the causes of the fire in Sports Palace. It is likewise noteworthy that on 9 June 2014, the Agency for Religious Affairs did not discuss the matter at the meeting with religious associations and representatives of diplomatic corps. According to the Agency Head, Zaza Vashakmadze, discussion and solution of religious affairs will take place in an individual format in future.⁶¹ As for the Office of the Public Defender of Georgia, they started studying the problems related to evangelical congregation “Festival of Hope”.⁶² However, no concluding remarks have been published by the Office of the Public Defender to date.

Prosecution of Jehovah’s Witnesses

According to NGOs, there is a considerable increase in the number of incidents of violence towards Jehovah’s Witnesses in 2013-2014; among them, the number of assaults on individuals is higher.⁶³

In 2013, 45 incidents of religious persecution and oppression of Jehovah’s Witnesses were registered.⁶⁴ On 24 March 2014, Christian Organisation of Jehovah’s Witnesses of Georgia applied to the competent authorities and requested timely follow-up as well as prevention of similar incidents in future.

In January-March 2014, 25 incidents of violence against Jehovah’s Witnesses were registered. Out of this number, 20 cases concerned obstruction of religious practice; nine cases involved physical assault; and eleven cases concerned verbal abuse.⁶⁵ Similar to the previous years, the follow-up by the police towards incidents involving religious hatred was inadequate in most of the cases.⁶⁶

A violent incident against the Jehovah’s Witnesses took place on 1 January 2014, in Ozurgeti. The attackers smashed the windows of the Jehovah’s Witnesses’ vehicle and pelted the building, where

⁶⁰ <http://gdi.ge/?p=707>.

⁶¹ <http://www.netgazeti.ge/GE/105/News/32408/>.

⁶² <http://www.netgazeti.ge/GE/105/News/32229/>.

⁶³ http://transparency.ge/sites/default/files/post_attachments/angarishi,%20shinagan%20saqmeta%20saministros%202013%20tslis%20mushaobis%20shfaseba,%2026%20aprili%202014.pdf [last visited 29.06.2014].

⁶⁴ <http://www.netgazeti.ge/GE/105/law/24789/>; <http://www.tabula.ge/ge/story/77497-iejovas-motsmeebs-goris-raionshi-saxlis-msheneblobas-ushlian>; <http://main.imedi.ge/index.php?pg=nws&id=18562> [last visited 29.06.2014].

⁶⁵ *Idem*.

⁶⁶ *Idem*.

the victims administered religious rituals, with stones.⁶⁷ It is noteworthy that the Ministry of Internal affairs instituted proceedings under Article 187 of the Criminal Code of Georgia (damage or destruction of an object) ignoring the religious connotation of the violence.

Another incident of discrimination and interference with the right to freedom of religion of Jehovah's Witnesses was registered in Terjola, where they were not allowed to build a chapel. On 24 May 2014, the respective *Sakrebulo* issued a construction permit that was followed by local residents' protests.⁶⁸ On 4 June, construction was halted based on the application of one of the local residents. Regarding this incident, Terjola *Gamgebeli*, Malkhaz Gurgenzidze, told the TV Maestro that "the opinion of the majority, i.e., Georgian Orthodox Christians, was taken into consideration."⁶⁹

It is noteworthy that protests took place during school hours with the participation of pupils, teachers and the Director of Terjola Public School no. 2. This expressly violates the Law of Georgia on Secondary Education that obligates the school to establish tolerance and respect for all faiths and prohibits discrimination as well as the use of school resources for non-curriculum purposes.⁷⁰

Discrimination of Catholics in Samtskhe-Javakheti

According to NGOs, in the villages of Samtskhe-Javakheti region, the Catholic churches are used by the Orthodox Church and therefore the Catholic parish is deprived of the possibility to hold its Mass. Furthermore, schoolchildren are subjected to religious discrimination in schools.

The video footage disseminated by an NGO shows the restriction of the right to freedom of religion, and the discrimination against local Catholic community in the villages of Samtskhe-Javakheti (Ivlita, Vale, Ude, and Arali).⁷¹

Despite the fact that the majority of the population in these regions are Catholics, they are unable to hold Mass in historically Catholic churches. These churches are used by the Orthodox Church. According to a Catholic priest, they face problems in terms of obtaining construction permits for new Catholic churches. According to them, some of the problems they encounter include difficulties in evangelical activities, proselytism and discrimination against Catholic pupils in public schools, in which Orthodox clergymen are actively involved.⁷²

⁶⁷<http://www.newposts.ge/?id=27421> [last visited 29.06.2014].

⁶⁸<http://www.youtube.com/watch?v=s0RZBnEV7KY> [last visited 29.06.2014].

⁶⁹http://m.pia.ge/show_news.php?id=15676;
<http://www.liberali.ge/ge/liberali/multimedia/119072/https://www.youtube.com/watch?v=ZhDZ-ZKHhE0> [last visited 29.06.2014].

⁷⁰Article 13, the Law of Georgia on Secondary Education.

⁷¹ <http://www.youtube.com/watch?v=EN8dgOMs8Zc#t=11> [last visited 02.07.2014];

⁷²<http://www.youtube.com/watch?v=EN8dgOMs8Zc#t=11> [last visited 02.07.2014];

Statement of Armenian Diocese

Diocese of Armenian Apostolic Orthodox Holy Church in Georgia too speaks about discriminatory practice. The Diocese addressed Georgian Orthodox Patriarchate and the authorities urging them to take adequate measures against certain Georgian Orthodox clergymen to end discriminatory treatment towards the parishes of Christian churches.⁷³ According to the Head of the Legal Department of the Diocese, the incidents of discrimination are frequent. One such incident involved a ten-year old girl, who was requested by clergymen to leave the church during a school trip.⁷⁴

Racial and ethnic discrimination

Incidents of allegedly racial and ethnic persecution and oppression were revealed in the first half of 2014.

According to the statement of a British national, residing in Tbilisi, Aaron Charles, he has been subjected to racial discrimination at the supermarket Smart and a McDonald's restaurant. On both occasions, he was approached by strangers who tried to physically assault him on account of his race. A McDonald's employee in order to defuse the situation asked the victim himself out of the building.⁷⁵

On 2 June 2014, on Rustaveli Avenue, some ethnic Georgians came into disagreement with four men of African origin. According to the disseminated information, the verbal exchange among the Georgians and Africans was caused presumably due to the origin of the latter.⁷⁶ The incident escalated into a physical altercation. The Ministry of Internal Affairs instituted proceedings under Article 166 of the Code of Administrative Violations on minor hooliganism.

On 26-27 April 2014, according to a representative of Start Airline, the Iraqi nationals who arrived by an Iraq-Georgia flight were denied entry into Georgia by the officials of Customs Patrol. The authorities extorted money and physically assaulted the Iraqi nationals. Ethnic discrimination was

⁷³<http://news.ge/ge/news/story/93095-somekhta-eparqia-sapatrariqos-da-khelisuflebas-mati-mrevis-diskriminatsiis-aghsakvetad-zomebis-mighebis-tkhovnit-mimartavs>[last visited 02.07.2014];

⁷⁴<http://news.ge/ge/news/story/93088-sasuliero-piris-mier-10-tslis-bavshvis-diskriminatsiis-sheakheb-sotsialur-qselshi-tseren> [last visited 02.07.2014].

⁷⁵<http://www.tabula.ge/ge/story/85185-aaron-charlzi-mis-mimart-ganxorcielebul-diskriminaciaze-saubrobs> [last visited 01.07.2014].

⁷⁶<http://www.epn.ge/archives/22431>[last visited 01.07.2014].

also noticeable in the actions of the patrol police who were called to the spot.⁷⁷ The Ministry of Internal Affairs of Georgia started enquiry into this incident, the results of which are unknown at this stage.

Discrimination based on sexual orientation

Discrimination based on sexual orientation and violence towards sexual minorities is one of the most serious problems in Georgia. This problem was evidenced most clearly and openly on 17 May 2013 on the International Day Against Homophobia and Transphobia. Peaceful demonstrators celebrating the day suffered a mass attack, verbal and physical assaults. Among the attackers particular aggression was displayed by the clergymen of the Georgian Orthodox Church. The police deployed on the site did not prevent the incident and limited their efforts to escorting the demonstrators from the scene, which too was accompanied by verbal abuse and attempts of physical assault from the crowd.

Because of the above-mentioned, after one year, it was decided not to mark the day against homophobia and transphobia in an open public space on 17 May 2014.⁷⁸ In response, the Patriarchate of Georgia announced 17 May to be the day of family sanctity and parents and organised mass demonstrations on streets with the participation of the parish.⁷⁹ The Patriarchate called upon the group of believers to only engage in peaceful demonstrations and pray.⁸⁰ However, the demonstrators used many placards with homophobic phrases.⁸¹ During the demonstrations, there were physical altercations among the demonstrators. Furthermore, TV Tabula's crew was attacked. The police only issued the offenders a notice of written warning.

The Police usually do not follow up with such incidents. Investigation that is instituted only in rare cases is delayed and concluded in an unsatisfactory manner. Moreover, the representatives of law-enforcement authorities do their best not to institute an investigation.⁸² This tendency presumably serves registering crimes lower than their actual numbers.

⁷⁷<http://news.ge/ge/news/story/87463-tbilisis-aeroportshi-sasazghvro-patulis-tsarmomadgenlebma-erayis-moqalaqeebze-dzaladobrivi-qmedebebi-ganakhortsieles>; http://www.youtube.com/watch?v=v6_Vv5Yprwc [last visited 01.07.2014].

⁷⁸<http://www.tabula.ge/ge/story/81469-vacharadze-17-maiss-saqartveloshi-aqciis-gamartvas-ar-vgegnavt> [last visited 29.06.2014].

⁷⁹<http://www.tabula.ge/ge/story/83104-ilia-ii-m-17-maisi-ojaxis-da-mshoblebis-pativiscemis-dghed-gamoacxada> [last visited 29.06.2014].

⁸⁰<http://www.tabula.ge/ge/story/83291-sapatiarqo-17-maiss-mortsmuneta-msvlelobebi-unda-ikos-locviti-da-mshvidobiani> [last visited 29.06.2014].

⁸¹<http://www.netgazeti.ge/GE/105/News/31524/> [last visited 29.06.2014].

⁸²<http://www.liberali.ge/ge/liberali/articles/118660/> [last visited 29.06.2014].

Right to equality and the Law of Georgia on Elimination of All Forms of Discrimination

Article 14 of the Constitution of Georgia provides not only for the basic right to equality before law but also the fundamental constitutional principle of equality before law. Under the said provision, “everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.”

While the list of the prohibited grounds of discrimination, at a glance, seems to be exhaustive, the objective of the provision is far wider than the prohibition of unequal treatment based only on the listed grounds. Therefore, we can assume that Article 14 of the Constitution protects a person from discrimination based on any grounds.

On 2 May 2014, the Parliament of Georgia adopted the Law on Elimination of All Forms of Discrimination. Considerable public debates on the draft Law preceded its adoption. The initial version of the draft law was prepared by the Ministry of Justice of Georgia and the majority of NGOs advocating equality issues were actively involved in the debates, presenting their comments and opinions. It is important to point out that the version of the draft Law submitted by the Ministry of Justice to the Government incorporated the comments and opinions of the NGOs.

Unfortunately, the draft Law approved by the Government that was later submitted to the Parliament of Georgia, considerably differed from its original version. Unlike the draft Law prepared by the Ministry of Justice, the draft Law initiated in the Parliament only partially prevents discrimination and contains fewer safeguards.

The creation of the office of Equality Inspector has been taken out from the draft Law. This office was supposed to have a repressive function and, considering the situation existing in Georgia, was expected to be a significant instrument for fighting discrimination. The replacement of the said office by the Public Defender of Georgia in the draft Law was accompanied with a change. Unlike the former, the latter will only have a supervisory function. We believe that the role given to the Ombudsperson in this process does not afford sufficient guarantees for the protection of people. Through the adoption of the new wording, the Public Defender was only given illusory additional functions; at the same time, this contributed to weakening his role in human rights protection and curtailing some of his authorities.

State regulation of religious affairs

In February 2014, the Agency for Religious Affairs was set up under the Prime Minister. The Agency was entrusted to elaborate and direct state policy on religious matters. From the very outset, the civil society was sceptical towards the creation of the Agency. This was due to the risk that the state regulation of religious affairs could be instrumental in the limitation of the rights of religious minorities and discrimination against them. This regulation takes place against the background of affording certain privileges to the Georgian Orthodox Church by the state.

The absence of a pressing need for creating the Agency is evident by the fact that the Inter-Agency Commission had already been in place in order to regulate the same issues. It is also worth mentioning that the decision about the creation of the Agency was practically adopted behind the closed doors without any consultations and participation of religious associations, NGOs and Civil Society in general.

It is also noteworthy that Zaza Vashakmadze, an expert of Orthodox clerical law, was appointed the Head of the Agency. In 2012, Zaza Vashakmadze and his supporters advocated mandatory inclusion of Orthodox dogma in the curriculum of public schools.⁸³ Moreover, he is known for his discriminatory attitude towards religious minorities.⁸⁴

The Constitution of Georgia affirms the principle of neutrality in relation to religions and declares the absolute liberty of belief and religion. However, at the same time, the Constitution recognises the special relation between the state of Georgia and the Apostle Autocephalous Orthodox Church of Georgia, which is consolidated by the Constitutional Agreement concluded between them. Under Article 11 of the Agreement, Georgia confirms the pecuniary and non-pecuniary damage inflicted on the Church in the 19th and 20th centuries and takes up the obligation to partially compensate the pecuniary damage. It is noteworthy that initially Georgia committed itself to such obligation only with regard to the Georgian Orthodox Church.

On 27 January 2014, the Government of Georgia adopted Resolution on Approval of the Procedure for Certain Measures Related to the Partial Compensation of the Damage Inflicted during the Soviet Totalitarian Regime to Religious Associations Existing in Georgia. The very first Article of the Resolution states that Article 38 of the Constitution was the legal ground on which the adoption of the resolution was based. Article 38 of the Constitution is about the equality of the citizens of Georgia.

⁸³ <http://www.netgazeti.ge/GE/91/Life/8091/>.

⁸⁴ <https://www.youtube.com/watch?v=j8B02ADH-QY>.

This procedure applies to the so-called “traditional religions,” in particular, to the religious associations following Islamic, Judaist, Roman-Catholic and Armenian Apostolic Religions that were registered as entities of public law before the adoption of the Resolution. The selection criterion applied is unknown.

It is discriminatory to only authorise four religious organisations to request compensation for damages; there were many other religious associations that fell victim to the persecution and suffered damages in the Soviet Union, among them, Jehovah’s Witnesses, Lutheran Church, etc. Such selective approach to religious organisations and the priority given to the Georgian Orthodox Church gives rise to the feeling of inequality among other religions.

Under the procedure for the compensation of damages approved by the Resolution at stake, it is a duty of the Inter-Agency Commission studying various issues related to religious associations (the Commission was set up by Resolution no. 305 of the Government of Georgia adopted on 29 November 2013) to elaborate recommendations about the amount of compensation for the damages suffered by religious organisations.

The Office of the State Minister of Georgia for Reconciliation and Civic Equality is under a duty to provide logistics for the Commission’s activities. Under Article 3 of the Commission’s Statute, the following constitutes the major tasks of the Commission: analysis of the legal acts related to religious organisations; study of the issues related to the funding and property arrangements of educational activities, practice of religion in public and public religious processions by religious associations; as well as holding consultations, drafting recommendations and relevant legislative amendments.

However, in parallel to the Inter-Agency Commission, the Resolution of 19 February 2014 set up the State Agency for Religious Affairs with similar competencies and slightly extended authorities. The management of disbursement of the sum allocated in the state budget for the four religions was cited as one of the major reasons for the introduction of the Agency. According to the Statute of the Agency, the major function of the Agency is to carry out informational, research, scientific-educational and recommendation activities in the religious sphere. In particular, the major activity of the Agency is to issue proposals and recommendations, conduct research and cooperation with similar administrative agencies of foreign countries, etc. The Statute also elaborates the authorities of the Head of the Agency, Agency’s structure, its funding and property arrangements, etc.

It is unclear why it was necessary to introduce an agency with such competences when there had already been an Inter-Agency Commission entrusted with the elaboration of recommendations, *inter alia*, on the amount of compensation for damages inflicted on religious associations.

A statement regarding the creation of the Agency was made by NGOs, including GDI, and various religious associations. According to the statement, the creation of the Agency is related to certain problems and risks as no prior consultations were held with regard to the introduction of this institution. Moreover, the fact that the Agency is a centralised administrative body under the Prime Minister and not a representative body gives rise to the possibility of the state's arbitrary interference with the autonomy of religious associations. The objectives and the authorities of the Agency do not fully correspond to the challenges existing in the country in terms of equally ensuring religious freedom and secularism.

NGOs and religious organisations called upon the Prime Minister urging him to at least ensure the Head of the Agency was appointed in an open and transparent manner and to consider their active consultations and consensus. However, this recommendation was never taken into account.

Despite the scepticism surrounding the creation of the Agency and the related issues, GDI hopes that the Agency will manage to carry out the entrusted duties in compliance with the Constitution of Georgia and international principles. It is also hoped that the Agency will conduct religious policies towards the end of enhancing religious neutrality enshrined in the Constitution and ensuring respect for the right to religious freedom and equality with regard to all religious associations.

State of the penitentiary system

Rights of prisoners in penitentiaries

For years, the penitentiary system has been one of the most problematic areas in terms of human rights protection. Despite drastic changes effected since September 2012, human rights are still frequently violated in penitentiary institutions. During the reporting period, numerous incidents of prisoners' ill-treatment became public.

The increase in the number of suspicious deaths of prisoners in the places of deprivation of liberty indicates that there is a systemic problem in terms of prisoners' safety. This, in its turn, indicates the necessity for both preventive measures to be taken by the state and timely and effective follow-up to such incidents. Violence among prisoners has become a regular and systemic occurrence. This is related to the nefarious practice of management through the so-called *makurebeli* (Latin transliteration of the Georgian word, which can be translated literally into English as "observer". It means an influential prisoner, either unlawfully favoured or tacitly tolerated by the prison administration, who oversees the activities of other inmates). This practice is particularly alarming when the prison administration uses the so-called *makurebeli* in order to suppress recalcitrant

prisoners or to put an end to the prisoners' complaints about ill-treatment. Many NGOs, including the Georgian Young Lawyers' Association, report how serious this problem is.

The categorisation of the incidents of ill-treatment in prisons still remains to be a problem. As it was pointed out by the Public Defender in his report on the second half of 2013, only those crimes are categorised as torture and inhuman treatment that have been committed under the previous government. The recent crimes are usually categorised as bodily injuries or official crimes.

An independent and impartial agency to investigate these incidents is still absent. Investigation is often confined to official enquiry. However, in those rare cases when investigation is instituted, it is conducted by the Investigation Department of the Ministry of Corrections and Probation. While, the Law of Georgia on Prosecutor's Office provides for the supervision of the Prosecutor's Office over the investigation, an investigator remains to be the main player in practical terms; he/she represents the same agency (the Ministry of Corrections and Probation) and has direct access to evidence and witnesses. Therefore, the investigation conducted within the same agency cannot be deemed either independent or impartial.

Health care in the penitentiary system still remains to be problematic despite the fact that the number of prisoners has been halved and the budget for medical purposes has been increased. These factors certainly facilitated the practical improvement of medical services *inter alia* transfers to civilian hospitals, which have become more frequent. Psychiatric services remain to be one of the most problematic areas that is proved by the increased number of suicides and attempted suicides.

On 23 May 2013, prisoner L. Kortava died in penitentiary no. 14. The Prosecutor's Office investigated the death and arrested several persons, including the officials of the penitentiary institution. However, the court released the former Prison Director, Malkhaz Sinauridze, accused of not reporting the crime, on bail. It is reported that Malkhaz Sinauridze left the territory of Georgia. On October 2013, in Kutaisi prison no. 2, another prisoner passed away, 16 year-old G. Dzvelaia who had been brought to the institution the previous day. According to the official version, G. Dzvelaia committed suicide. The outcomes of the investigation into this incident are unknown to date.

A violent death was reported to have taken place in Geguti penitentiary no. 14 on 4 March 2014. Convict G. Phartenadze died as the result of a serious trauma inflicted during a physical altercation among prisoners. According to his family, G. Phartenadze had been tortured and numerous injuries were found on his body. According to the statement released by the Office of the Chief Prosecutor of Georgia on 26 March 2014, the Prosecutor's Office instituted criminal proceedings against three convicts on account of intentional bodily harm inflicted on G. Phartenadze that resulted in his death.

One more prisoner died in Geguti penitentiary no. 14 on 23 March 2014. NGOs issued a public statement regarding this incident and called upon the Prosecutor's Office to conduct effective investigation.

Another convict died on 29 June 2014 in Rustavi penitentiary no. 6. According to the statement of the Ministry of Corrections and Probation, the prisoner's death was not a result of violence.

Penitentiary no. 7 is especially problematic in terms of prisoners' safety. Prisoners from criminal underworld and other high-risk prisoners are placed in this institution. It is noteworthy that recently this institution, which is absolutely unfit for long-term imprisonment, has been used for punitive purposes for housing recalcitrant and problematic prisoners or those prisoners that complain against prison administration.

Amendment to the Prison Code

On 3 May 2014, the amendment to the Prison Code was enforced. The amendment concerns the new regulation of convicts' accommodation conditions, the rules of visual and audio surveillance and control. Through the amendment, the list of special restraining means was extended as well.

The pardon regulations with regard to convicts were likewise amended. Under the Presidential Ordinance of 27 March 2014, certain changes were moved into pardon regulation, e.g., convicts serving life sentence may be eligible to apply to the Pardon Commission after having served 15 years instead of 25 years.

As mentioned above, one of the crucial issues the amendment concerns is special restraining means. Under the wording of Article 57 of the Code that was in force prior to the changes, only the following restraining means used to be allowed: handcuffs, restraining garment or a firearm. Through the amendment this list has been considerably extended, namely, under Article 57¹, the following items are added to the restraining means: restraining chair, restraining bed, rubber truncheon, tear-gas, pepper-gas, non-lethal weapon, acoustic means, light and sound equipment for psychological impact, water cannon, and trained dog.

The rules of use of special restraining means are particularly noteworthy. It is important that the regulations on the use of special means are drafted in clear and express terms in order not to leave any room for arbitrariness and abuse on the part of authorities that could lead to serious violations of

prisoners' rights and their ill-treatment.⁸⁵ It is particularly important that in parallel to enforcement of the new regulations, only those penitentiary officials who underwent professional training are allowed to use the special restraining means.

Under Article 57.4 of the Code, "after the use of the special restraining means for security reasons, the administration of a respective institution together with the medical personnel of the institution shall immediately conduct medical examination of an accused/a convict [...]." This provision is in clear violation of international and national standards; prison administration not only cannot conduct medical examination, it should not be present at the examination conducted by medical personnel.

Under the amendment to the Prison Code, two new types of penitentiaries have been introduced in terms of the threats the convicts may pose: low-security (Chapter VIII¹) and special-security (Chapter X¹) penitentiaries. Under the Code, the assessment of the threats convicts pose and their assignment to a respective institution will take place in accordance with the individual specifications of a convict, *inter alia*, crime motive, personal traits, conduct in the penitentiary and other personal characteristics. This assessment should be carried out by a multidisciplinary group, the composition and competences of which will be determined under the Order of the Minister of Corrections and Probation.

It is a progressive development to introduce relatively low-security institutions of deprivation of liberty with a more lenient regime. However, certain questions arise about the mandatory character of education and work, as well as rehabilitation programmes for the convicts placed in such penitentiaries, as this can be a source of discriminatory treatment of the convicted persons.

It is also noteworthy that, in contrast with low-risk establishments, convicts in special security institutions do not have the right to work, whereas the inmates of these penitentiaries especially need rehabilitation and re-socialising activities.

The elaboration of the Prison Code of the duties and responsibilities of the penitentiary officials and the state's decision to ensure their social security are positively evaluated⁸⁶⁸⁷

The extension of the list of the persons with whom an accused/a convict may have a short visit is a welcoming change as well.⁸⁸

⁸⁵On 12 September 2014, the Minister of Corrections and Probation issued Order no. 245 on Approving the Categories of Special Restraining Means within the Weaponry of the System of Institutions of Enforcement of Detention and Deprivation of Liberty, the Rules and Terms of their Storage, Carrying and Use as well as Determining the Personnel Allowed to Use Special Restraining Means. The Order contains certain specifications concerning the use of special means.

⁸⁶Prison Code, Chapter II².

⁸⁷*Ibid.*, Article 12⁹.

⁸⁸*Ibid.*, Article 17.2.