

## Georgia 2024

### Information from: Public Defender's Office of Georgia

## Follow-up to last year's rule of law recommendations

### State authorities' follow-up to regional actors' recommendations on rule of law

State authorities' follow-up to regional actors' recommendations on rule of law

The [previous Rule of Law Report](#) of the Public Defender's Office (hereinafter PDO) mentioned that the Parliament of Georgia drafted the amendment to the Organic Law on Common Courts in order to fulfil the EU candidacy requirement regarding the judiciary. [The legislative changes](#) were adopted in June 2023, and, in November, the European Commission published a report assessing the progress made by Georgia. It regarded the progress as limited. The report reads as follows: "In June 2023, Parliament adopted amendments to the Law on Common Courts and drafted additional amendments in September 2023 implementing some of the Venice Commission's recommendations. However, the most important recommendations of the European Commission and of the Venice Commission as stated in its consecutive opinions (of March 2023 and October 2023), notably regarding reforming High Council of Justice (HCJ) and recommendations regarding the Supreme Court were not addressed. Namely, further broader reforms to ensure the full independence, accountability and impartiality of all judicial and prosecutorial institutions, especially the HCJ need to be undertaken in line with European standards and the recommendations of the Venice Commission. In particular, improvements and additional safeguards concerning the functioning and powers of the HCJ are needed and an effective right of appeal for the selection of Supreme Court judges should be ensured by clarifying the binding nature of the Supreme Court decision for the HCJ. A broad justice reform remains outstanding. In particular, reforms to ensure the full independence, accountability and impartiality of all judicial and prosecutorial institutions, especially the Supreme Court, the Prosecutor General and the High Council of Justice (HCJ), need to be addressed. These Reforms need to be undertaken in line with European standards and the recommendations of the Venice Commission (Venice Commission)" ([The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 20](#)).

## NHRI's follow-up actions supporting implementation of regional actors' recommendations

NHRI's follow-up actions supporting implementation of regional actors' recommendations

As noted in [the previous Rule of Law Report](#), the PDO's representatives engaged with the judicial reform working group established within the Parliament to address the EU candidacy requirement regarding the judicial system. Unfortunately, most of the PDO's recommendations were not followed when drafting the amendment to the Organic Law on Common Courts. In December 2022, the PDO [asked the OSCE/ODIHR to prepare a legal opinion](#) on PDO's proposals that had not been taken on board. In response, the OSCE/ODIHR published its "Note on Several Issues relating to Judicial Reform" in June 2023. According to the Note, "the questions raised by the then Public Defender of Georgia primarily aim at promoting greater legitimacy and credibility of the work and decisions of the High Council of the Judiciary (HCJ) in a context of allegations of lack of transparency and/or risk of corporatism, self-interest or cronyism within the said body. They also aim at enhancing the status, credibility, legitimacy, integrity, accountability and independence of judges, including of high-level judicial office-holders" ([OSCE ODIHR, Note on Several Issues relating to Judicial Reform, June 2023, page 2](#)). Moreover, the PDO engaged with various stakeholders to discuss challenges in the judicial system. The (former) Deputy Public Defender attended, for example, [the 12th session of the EU-Georgia Parliamentary Association Committee](#) in Brussels in June 2023 and spoke about, inter alia, the PDO's involvement with the judicial reform working group. In September 2023, the Public Defender and the Deputies of the Public Defender held meetings with [the officials from the U.S. Department of State and Department of Justice](#) and [representatives of various international organizations](#) and discussed matters relating to the judiciary with them. Moreover, the Public Defender and First Deputy Public Defender took part in the [Regional Conference on Improving the Rule of Law and Access to Justice for All](#) in December 2023. At the event, they talked about topical issues pertaining to the judiciary. It is also noteworthy that, on February 20, 2024, the Deputies of the Public Defender took part in a [working meeting held in Brussels](#), in the European Parliament, which dealt with the issues of the rule of law, democracy and human rights in the EU enlargement countries. The deputies provided Members of European Parliament with information about the PDO's work in the area of the rule of law.

## State authorities' follow-up to NHRI's recommendations regarding rule of law

State authorities' follow-up to NHRI's recommendations regarding rule of law

As already mentioned, the amendment to the Organic Law on Common Courts that was adopted in June 2023 did not reflect most of the PDO's recommendations. Only one recommendation was partially taken into account in the amendment. In particular, the PDO suggested reintroducing prosecution against a judge and his/her dismissal by decision of the Disciplinary Panel of Judges of Common Court as grounds for recusing a judge from hearing a case under article 45 of the Organic Law. The aforementioned amendment only provides for criminal prosecution as a ground for recusing a judge ([paragraph 1 of article 45 of the amended Organic Law on Common Courts](#)).

Furthermore, the PDO's recommendation to the Parliament to appoint non-judge members of the High Council of Justice has been partially implemented. Although all non-judge members were appointed, it seems doubtful that the newly selected members adequately, fully acknowledge fundamental problems within the judiciary (please view [the video of the hearing of the Legal Issues Committee Part 1](#) from 2:34:53, in particular, 2:34:53-2:37:24, 2:37:26-2:40:03, 2:40:03-2:41:49, 2:41:49 – 2:44:57, 2:44:59-2:46:19, 2:46:20-2:48:24, 2:48:30, :50:43-2:53:50; [the video of the hearing of the Legal Issues Committee Part 2](#) from 8:06, in particular, 8:06-20:50; [the video of the hearing of the Legal Issues Committee Part 1](#) from 2:30:54, in particular, 2:30:54-2:32:34, 2:33:24-2:35:03, 2:35:04 – 2:37:37) and the appointments were carried out in a polarized environment.

## Georgia 2024

### Information from: Public Defender's Office of Georgia

## Independence, effectiveness and establishment of NHRIs

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### International accreditation status and SCA recommendations

International accreditation status and SCA recommendations

The Office of the Public Defender of Georgia was last [re-accredited with A-status in October 2018](#).

Regarding its mandate, the SCA noted that the Anti-discrimination Law did not oblige private entities to provide information to the Public Defender and that the UN Committee on the Elimination of Racial discrimination expressed concerns that this may impact the PDO's ability to effectively examine cases of discrimination. The SCA also encouraged the PDO to continue to advocate for

amendments to the law to make the provision of information by private entities and individuals mandatory.

Further, the SCA acknowledged that the PDO conducts follow-up activities to monitor the extent to which their recommendations have been implemented and encouraged the PDO to continue to do so. Further, the SCA encouraged the PDO to continue to ensure pluralism and diversity through its staff and cooperation with civil society.

Moreover, acknowledging that the PDO had reported that there were efforts underway to amend the Rules of Procedure of the Parliament to provide detailed procedures for the selection of the Public Defender, the SCA encouraged the PDO to continue to advocate for amendments for the formalisation and application of a selection process that is fully compliant with SCA standards.

Finally, the SCA encouraged the PDO to continue to advocate for the funding necessary to ensure it can effectively carry out its mandate, including their mandated capacities as the NPM under the OPCAT, and as monitoring mechanism under the CRPD.

The Office of the Public Defender of Georgia has its re-accreditation scheduled for October 2024.

## **Follow-up to SCA Recommendations and relevant developments**

Follow-up to SCA Recommendations and relevant developments

The Office of the Public Defender (Ombudsman) of Georgia (hereinafter referred to as “PDO”) was re-accredited with “A” status in 2018. The SCA made 5 recommendations for PDO to further enhance its effectiveness and independence. Below is a short summary of the work and efforts made by PDO to ensure compliance with the SCA recommendations.

### **Anti-Discrimination Mandate**

*The SCA acknowledged that PDO has a broad mandate to promote and protect human rights, and that it exercises this mandate in practice, however, it was noted that the Anti-discrimination Law obliged public agencies to provide information to the Public Defender while private entities and individuals provided information to the Public Defender only on voluntary basis, and that the UN Committee on the Elimination of Racial Discrimination expressed concern that this may impact the ability of PDO to effectively examine cases of discrimination (CERD/C/GEO/CO/6-8). Therefore, the SCA encouraged PDO to continue to advocate for appropriate amendments to the Anti-discrimination*

*Law to make mandatory the provision of information by private entities and individuals.*

Organic Law on Public Defender was amended in 2019. According To amendments, in cases of discrimination Public Defender is entitled to request and immediately on no later than 10 days receive documents from natural persons, legal persons, other organizational entities, entities of persons without the status of legal person and entrepreneurs. Even though amendments were not made directly in Anti-Discrimination law, incorporating this provision in the Organic Law on Public Defender ensures that private entities and individuals are also obliged to provide requested information.

### **Recommendations by NHRIs**

The SCA acknowledged that PDO prepares and publishes annual reports and conducts follow-up activities to monitor the extent to which the recommendations are implemented. The SCA encouraged PDO to continue to do so. Recently, a web system for monitoring the state of implementation of the recommendations/proposals issued by the Office of the Public Defender of Georgia has been developed and it works in test mode until December 2024. The primary purpose of the web system is to make the process of monitoring the implementation of the recommendations and proposals issued by the Public Defender of Georgia more flexible. The web system also aims to strengthen the accountability of public institutions to comply with the Public Defender's recommendations and proposals. In addition, one of the purposes of the web system is to provide complex statistical data on the Public Defender's recommendations and proposals. It is also worth noting the creation of an exhaustive institutional memory on the recommendations and proposals. An additional purpose of the web system is to raise the level of knowledge among the employees of the Parliament of Georgia about the state of implementation of the tasks enshrined in the resolution adopted by the Parliament based on the Public Defender's annual report.

### **Pluralism and Diversity**

*Considering that PDO is a single member NHRI, the SCA considered that pluralism and diversity should be used by such means, as ensuring a diverse staff complement and cooperation with diverse societal groups. Therefore, SCA encouraged PDO to continue to ensure pluralism and diversity through its staff complement and cooperation with civil society.*

Staffing and cooperation with civil society will be discussed in detail respectively in chapters 4.2 and 8.1, however, to sum up, it should be noted that staff of PDO consists of members from different social groups and recruitment process excludes any possibility of discrimination based on any ground. In addition, ethnic and religious minorities are represented in the work of the tolerance center, which has been operating under Public Defender since

2005. Apart from that, cooperation with Civil Society is ensured with formal and informal means. Civil Society is represented in all advisory councils established under PDO and is also involved in our work through ad hoc meetings that are held to discuss various issues related to PDO. Most recent example of this is the meetings that were organized by the Public Defender to discuss the future priorities of PDO and hear views and proposals from civil society, as well as meetings in the process of developing the strategy of PDO to ensure that the views and expectations of civil society is adequately incorporated in the future work of the Office.

## **Selection and Appointment**

*The SCA noted that the process of the selection and appointment of the Public Defender that was enshrined in the law in 2018 was not sufficiently broad and transparent and PDO needed to continue to advocate for amendments to ensure compliance with Paris Principle B.1.*

Since 2018, Organic Law on the Public Defender and the Rules of Procedure of the Parliament has been amended several times.

On June 3, 2018, the Parliament officially launched the deliberations on the new draft version of the Rules of Procedure of the Parliament. Public Defender of Georgia was actively working with the committees and with respective MPs to include comprehensive procedure for the selection and appointment. As a result, the procedure of the election of the Public Defender was removed from the Organic Law on Public Defender and incorporated in the Rules and Procedures of the Parliament. New Rules of Procedure of the Parliament was approved on 14 December 2018. The law incorporated amendments made during constitutional reform in 2017 stipulated that the Public Defender is elected by three fifths of the total number of members of parliament which ensures that the candidate is not elected by just one political group. In addition, in 2017 the term of office of the Public Defender was lengthened to 6 years and reelection of the same person for two consecutive terms is no longer possible.

PDO has been advocating the necessity of relevant amendments in the regional and international fora as well. In particular, PDO has been actively involved in the work of the Council of Europe Steering Committee for Human Rights (CDDH) in drafting the Recommendation on the development and strengthening of effective, pluralist, and independent national human rights institutions. At the meeting held in Strasbourg in September 2019 PDO was represented by the First Deputy Public Defender who emphasized the issue of the lack of selection criteria for Public Defender in Georgian legislation. Namely, she underlined that the election of the Public Defender is a purely political process, ensuring participation of political parties only, therefore in order to safeguard the principle of pluralism in the selection process, the



process itself should be formalized and include the following set of requirements:

- Publicizing vacancies broadly;
- Maximizing the number of potential candidates from a wide range of societal groups and educational qualifications;
- Promoting broad consultation and/or participation in the application, screening, selection, and appointment process;
- Setting pre-determined, objective and publicly available criteria.

It should be underlined that the abovementioned meeting was attended by the representatives of the Georgian government. The aforesaid opinion was also shared directly via official communication with the CoE's Director General and Secretary to the Committee of Ministers. The Council of Europe Committee of Ministers adopted a Recommendation on the development and strengthening of effective, pluralist, and independent national human rights institutions back in March 2021. Issues on the selection and the appointment criteria for the NHRIs have been included in the text of the Recommendation, namely, the appendix to the recommendation states that selection and appointment of the leadership of a national human rights institution should be merit-based, transparent and participatory to guarantee the independence and pluralist representation of these institutions as one of the criteria for strengthening the NHRIs. The importance of the implementation of this Committee of Ministers [Recommendation on NHRIs](#) has been raised by the Public Defender and First Deputy on numerous occasions during the meetings with CoE high level representatives, especially with regards to the standards on the selection and appointment of the Public Defender.

PDO has been advocating this issue with state officials as well. In 2020 the Parliament of Georgia started to work on the Open Parliament Action Plan 2020-2021. On 14 April 2020 the Public Defender proposed to integrate "Increasing the Transparency of the Selection of the Public Defender" in the action plan as an independent activity. Respective information and legal justification were sent in writing. During oral discussions organized around the draft Action Plan, the Chair of the Open Governance Permanent Parliamentary Council supported this idea. The Parliament adopted the Open Parliament Action Plan 2021-2022 in 2021. However, the PDO's proposal to increase the transparency of Ombudsman's election process was not reflected in the document as the Open Governance Permanent Parliamentary Council considered that it went beyond the Council's functions to address.

In 2022 temporary procedure for the election of the Public Defender of Georgia was included in the Rules of Procedure of the Parliament. This amendment was made to address the recommendation of the European Commission, which, after deliberations regarding the Georgia's application for the membership of the European Union, recommended that Georgia be granted candidate status

after addressing key priorities, including to ensure that an independent person is given preference in the process of nominating a new Public Defender and that this process is conducted in a transparent manner to ensure the effective institutional independence of PDO. The temporary procedure included rule for the nomination of the candidates, their evaluation by 9-person working group consisting of representatives of civil society and academia (candidates were evaluated based on these criteria: honesty, impartiality, independence, high reputation, relevant professional knowledge, and practical experience in the field of human rights and fundamental freedoms), and extensive interviews by the Committee of Human Rights and Civil Integration of the Parliament which were broadcast live. This procedure was applied in 2022 and will be discussed in detail in chapter 3.2.

In 2022 the Public Defender was not elected, because none of the nominated 19 candidates received votes from the three fifths of the total number of members of the Parliament. Considering that this procedure was temporary and could have been used only in 2022, the Parliament reverted to the existing rules for the election of the Public Defender.

In the beginning of 2023 extensive consultations were held among parliamentary groups regarding the candidate for the election. Considering that the public defender has to obtain endorsement from three fifths of the total number of Parliament members, the ruling party and the opposition have to reach consensus and substantive participation of the political minority has to be ensured. The need for the consensus was even more evident considering the pressure from the European Union to conduct the elections in a manner that would ensure the fulfillment of the recommendations of the European Commission and show that the goal for the State to have an independent and impartial Public Defender and political compromise can be reached. As a result of the consultations, on 28 February 2023 one of the political groups in the parliament (named “Citizens”) nominated the candidate for the elections - Mr. Levan Ioseliani, who was one of the leaders of the said group. Mr. Ioseliani was elected as a public defender on 7 March 2023 and will occupy this position until March 2029.

The Public Defender continues to advocate for the changes in the selection and appointment procedures. In October 2023 amendments in the Rules of Procedure of the Parliament were initiated pertaining to the election procedures of the various officials. The initiated amendments were technical in nature and did not include any substantial changes. The Public Defender addressed Parliament with the proposal to make substantial changes to the rules. The proposal refers to a number of international standards emphasizing the need to create more open, inclusive, and transparent rules for selection and appointment. The proposal refers to the SCA recommendation in detail, as well as the Paris Principles, Belgrade Principles, Venice principles, and 2019 Recommendation of the Committee of Ministers to Council of Europe member



States on the development of the Ombudsman institution. The proposal also emphasizes that the practice of using similar procedures already exist in Georgian legislation pertaining to the selection and appointment of the board of trustees of the Public Broadcaster and State Inspector, which can be used as an example to amend the selection and appointment procedures for the Public Defender. Unfortunately, parliament did not consider the proposal and made only technical amendments to the rules. The Public Defender continues to further advocate necessary amendments.

## **Adequate Funding**

*The SCA encouraged PDO to continue to advocate for the funding necessary to ensure that it can effectively carry out its broad mandate.*

The Public Defender has an independent budget and there is a separate budgetary article in the state budget of Georgia. Annually, usually in spring season, the Office starts preparing draft budget and submits it to the Ministry of Finances of Georgia.

The practice of numerous years shows that, when elaborating the budget, there have been no restrictions or control in this regard of any kind on the Public Defender's Office by financial institutions and the Public Defender independently drafts the Office's budget for the next year based on needs.

## **Regulatory framework**

Regulatory framework

The Parliament adopted [a new Law on Personal Data Protection](#) in June 2023. This new law will have negative implications for performance of the PDO's functions.

The new regulation, like the previous one, allows the PDO to process personal data not belonging to sensitive information to carry out its mandate. However, the processing of personal data belonging to sensitive information (special categories of data) requires the PDO to receive the data subject's written consent from him/her. The issue mentioned above could potentially impede the systematic monitoring activities of the PDO and hinder its ability to conduct proactive inquiries. For instance, when monitoring the situation of asylum seekers at the border, the PDO may be unable to obtain consent from asylum seekers who have already left the country. Therefore, the PDO will likely be unable to or find it more difficult to process their personal data needed to examine the border authorities' compliance with relevant human rights obligations.

A similar problem arises when it comes to minors under 16 whose personal data can be processed only with their legal representative's consent unless

exceptions established by law apply. In cases of underage marriage, for instance, parents themselves are often violent towards their children and the requirement to receive parents' consent will hinder the PDO from obtaining information and protecting children's rights.

Analogously, upcoming regulations will pose challenges to carrying out NPM functions.

The PDO's [previous Rule of Law Report](#) noted the need to strengthen its regulatory framework by granting it access to the case files of ongoing investigations into alleged ill-treatment and/or deprivation of life (individuals who died under the state control). The previous ENNHRI's Rule of Law Reports provided relevant information concerning this issue, but there have been no significant updates since then.

## NHRI enabling and safe environment

### NHRI enabling and safe environment

In terms of timely and reasoned response and follow-up to the PDO's recommendations, the Parliament adopts resolutions based on recommendations issued in the PDO's yearly parliamentary reports on situation of human rights and freedoms in Georgia. The resolutions constitute a form of response to the PDO's recommendations as they assign tasks to different state agencies to fulfil the recommendations. The Parliament's [2022 resolution](#) contained 292 tasks for different bodies. [Only about 19% of the tasks were fully completed, 24% - partially completed and 36% - unfulfilled \(the fulfilment of the 2023 resolution of the Parliament will be presented in the report of the Public Defender's Office in coming months\).](#)

Unfortunately, the Parliament's oversight over the level of fulfilment of the tasks is weak. This can be inferred from the fact that the same tasks are repeated in the Parliament's resolutions, i.e., remain unfulfilled by the authorities year after year. Although the Human Rights Committee of the Parliament is obliged, under its statute, to adopt a conclusion on the fulfilment of the tasks, the Committee has not adopted such a conclusion since 2020. It has also not held a parliamentary committee hearing on the reports of different agencies on the fulfilment of the assigned tasks in 2023 despite being obliged to do so under its statute.

## NHRI's recommendations to national and regional authorities

NHRI's recommendations to national and regional authorities

The Public Defender's Office recommends to:

- Amend the Organic Law on Public Defender of Georgia to grant the PDO access to the casefiles of ongoing investigations into alleged ill-treatment and/or deprivation of life (individuals who died under the state control, for example, in penitentiaries, psychiatric centres, etc.) before the end of investigations.
- Ensure effective follow-up to the PDO's parliamentary recommendations and strengthen parliamentary oversight over the level of fulfilment of the tasks enshrined in Resolutions of the Parliament of Georgia.

## Georgia 2024

### Information from: Public Defender's Office of Georgia

## Checks and balances

### Separation of powers

#### Separation of powers

The PDO would like to note the shortcomings in the mandate of the Special Investigation Service (SIS) which is an independent state investigation authority of utmost importance to ensure accountability of law enforcement and public officers. The amended SIS Law and the amended Personal Data Protection Service Law adopted on 30 December 2021 abolished the State Inspector's Service, a body established in 2018 with the mandate to monitor the lawfulness of personal data processing and covert investigative activities as well as to carry out the investigation of alleged crimes by law-enforcement agencies. Instead, two separate institutions were created: the Personal Data Protection Service (hereinafter, the "PDPS") and the Special Investigation Service (hereinafter, the "SIS"). This reorganisation resulted in the early termination of the State Inspector's mandate. The new legislation was swiftly adopted by Parliament through an expedited procedure. No consultations, discussions, or public forums were initiated; similarly, no human rights impact assessment was provided.

It is concerning that the SIS jurisdiction was expanded to encompass crimes (e.g. encroachment upon freedom of speech and violation of the right to private life committed by any individual, etc.) which are relatively less important for the core function of the SIS. The extension of the SIS mandate risks diminishing the focus on serious crimes committed by law enforcement and may decrease the effectiveness of investigations. Furthermore, the SIS

mandate does not cover crimes committed by the Prosecutor General, the Minister of Internal Affairs and the Head of the State Security Service (SSS). Moreover, if certain crimes, such as intentional killing and rape, are committed by prosecutors, they fall outside the SIS jurisdiction as the law stands now. To advocate for the improvement of the SIS mandate, the PDO recommended to amend the regulatory framework applicable to the SIS in [its parliamentary report](#) and [the rule 9 communications](#) submitted to the Committee of Ministers of the Council of Europe in 2023 and 2024. In this connection, the PDO welcomes [a recently initiated draft law](#) extending the SIS mandate to certain crimes committed by prosecutors. The PDO hopes that the bill will be adopted by the Parliament and that other shortcomings in the SIS jurisdiction will be resolved as well.

As for the State Security Service (SSS), [the PDO's previous Rule of Law Report](#) mentioned alleged illegal covert surveillance and interception by the SSS of a vast amount of personal information of civil society actors, diplomats and other individuals. The investigation launched into this case has not been completed, no one has been prosecuted and the number of officially recognized victims has remained the same, according to the latest information available to the PDO. Similarly, investigations into covert surveillance of an MP and other political figures have yielded no results yet. Such shortcomings in the investigations raise concerns regarding lack of accountability of the SSS. To help address this issue, the PDO has monitored the investigations and published its findings in its [2021 and 2022 parliamentary and special reports](#).

## The process for preparing and enacting laws

The process for preparing and enacting laws

In September 2023, [a draft law](#) amending the Law of Georgia on Assemblies and Demonstrations was initiated in the Parliament. The text of the draft law envisaged new grounds of restriction of the freedom of assembly by prohibiting putting up a temporary construction if: 1) it poses a threat to the participants in the assembly or demonstration or other persons, 2) it hampers normal functioning of an enterprise, institution or organization, 3) the assembly or demonstration is not substantially impeded without such a construction, 4) such a construction is not related to holding an assembly or demonstration, 5) it hampers the police from maintaining public order and security. The PDO issued [a statement](#) on the draft law, criticizing it as an unproportionate restriction of freedom of assembly and expression and noting that no weighty interest was put forward to justify the draft law.

Despite the criticism, the draft law was adopted in first, second and third readings pursuant to an accelerated procedure in the Parliament before being vetoed by the President of Georgia in October 2023. The application of the expedited legislative review was negatively assessed by the ODIHR in its

Urgent Opinion prepared in response to [the PDO's request](#) to review the proposed amendments. The ODIHR's opinion reads that "the accelerated legislative procedure should not be used to amend the Law on Assemblies and Demonstrations, and should it be nevertheless used, special oversight should be in place, including a review clause" ([ODIHR, Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code, November 2023, paragraph 69](#)). The ODIHR also criticized paragraph 3 of article 117 of the Rules of Procedure of the Parliament of Georgia that provides for an expedited legislative process. According to the ODIHR, this provision does not stipulate "precisely and narrowly defined circumstances when the use of such a procedure may be invoked" (ibid, paragraph 66).

## Access to information

### Access to information

The current legislative framework on the right to access public information is flawed. In particular, the General Administrative Code is outdated and does not meet modern standards and needs ([the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, pages 197-199](#)). For example, the General Administrative Code fails to set standards for disclosure of classified information and contains a flawed definition of a public agency (Ibid, pages 197-198).

Despite serious shortcomings in the legislative framework, the government has yet to implement a comprehensive legal reform (e.g., by adopting a separate law on the right to access information). The obstacles to accessing information are also mentioned in the European Commission's 2023 Report on Georgia. According to the Report, "access to public information is ensured by the legal framework. Its enforcement is mixed across various government institutions. The long-awaited review of the overall framework needs to be carried out to enhance the administrative capacity for effective enforcement. Publication of information – including publishing monitoring and activity reports – is uneven and needs to be significantly improved. The legal framework to effectively guarantee citizens' rights to access to public information should be reviewed" ([The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 19](#)). The Report also reads that "Considerable delays and a recurring refusal to access public information pose a serious challenge for media and CSOs, affecting the timeliness, accuracy and quality of their work and reporting" (ibid, page 37).

In its [annual parliamentary reports](#), the PDO repeatedly recommended the Government of Georgia to finalize and initiate the draft law regulating the

freedom of information and the accompanying legislative changes and to apply to the Parliament for ratification of the Council of Europe Convention on Access to Official Documents of 18 June 2009.

## **Independence and effectiveness of independent institutions (other than NHRIs)**

Independence and effectiveness of independent institutions (other than NHRIs)  
The PDO studied the activities conducted by SIS in 2023. The PDO examined 55 criminal cases (46 terminated and 9 ongoing) investigated by the SIS. The examination reveals that investigations usually satisfy the effectiveness standards. Nevertheless, the following shortcomings in investigations should be singled out: considerable delays in interviewing public officials who are alleged perpetrators or witnesses, failure to check the reasons for non-existence of recordings of video surveillance at police facilities, failure to timely document inspections of obtained video recordings and mistakes in classifying ill-treatment. In particular, the PDO's study of both terminated cases and ongoing criminal cases investigated by the SIS in 2023 focused on incorrect classification of ill-treatment. In one of the cases, for example, the victim who had been arrested claimed that police officers beat him and burnt a cigarette onto his body. The investigation was incorrectly launched under subparagraph "b" of paragraph 3 of article 333 of the Criminal Code of Georgia (exceeding official powers by using violence or a weapon) instead of a specific provision criminalizing ill-treatment (such specific provisions are contained in articles 1441-1443).

To support the effectiveness of the SIS, the PDO has repeatedly recommended amendments to legislative framework applicable to the SIS in [its parliamentary report](#) and [the rule 9 communications](#) (please view pages 11-12 above). Moreover, to support the adequate functioning of the SIS in practice, the PDO addresses the SIS with proposals about shortcomings and steps to be taken within investigations and refers alleged cases of ill-treatment to this body (55 cases referred in 2023). Furthermore, the PDO has also been engaged in preparation of internal documents of the SIS, e.g., [the instruction on the use of handcuffs](#) and a recommendation on reacting to crime notifications. In addition, to help improve the aforementioned flawed practice of ill-treatment classification, the PDO published [a special report](#) identifying problems in legislation and practice and proposing recommendations to address them.

As mentioned before, the independence and impartiality of the High Council of Justice (HCJ) as well as the independence of individual judges is questionable. It is noteworthy that the Venice Commission referred to the possibility of vetting the HCJ for the first time in its October 2023 opinion ([European Commission for Democracy through Law, Follow-up Opinion, CDL-AD\(2023\)033, par. 11](#)).



Similarly, the European Commission report states that a system of extraordinary integrity checks for candidates and persons currently appointed to all leading positions in the judiciary should be established ([The European Commission, Georgia 2023 Report, pages 20-21](#)). Moreover, institutional problems within the judiciary are indicated by statements of former judges about attempts to interfere in their work ([the PDO's 2022 parliamentary report, pages 82-83](#)) and [a rejection of a life-term appointment of judge](#) that was allegedly motivated by her decision and opinions being unacceptable to the HCJ. Finally, the PDO notes the Office of the Independent Inspector responsible for examining disciplinary misconducts of judges. Considering its importance, the PDO finds that the quorum for appointment of the Independent Inspector should be increased to 2/3 of the HCJ members. Moreover, the Independent Inspector must become obliged to publish financial declarations to minimize corruption risks.

## Enabling environment for civil society and human rights defenders

Enabling environment for civil society and human rights defenders

The PDO's [previous Rule of Law Report](#) mentioned the initiation of the draft law on "Transparency of Foreign Influence" in the Parliament in 2023. The draft law was criticized by [the PDO](#), [hundreds of CSOs](#) and [international stakeholders](#). The bill was withdrawn after large protests on 7-9 March 2023. Unfortunately, the law enforcement engaged in [mass \(administrative\) arrests of protesters](#) and used [unjustified, disproportionate force](#) against peaceful demonstrators.

After the aforementioned protests, the officials have continued to discredit civil society. In July 2023, the (now former) chairman of the ruling party made [a statement](#) targeting the transparency of NGO funding. Moreover, the Parliament Speaker [stated](#) that "multimillionaire NGOs serve the interests of "their donors, not of the Georgian people". The PDO finds that such discreditation damages civil society space and human rights defenders (HRDs). Unfortunately, the parliamentary majority reintroduced the aforementioned draft law on "Transparency of Foreign Influence" in April 2024. This has been met with large scale protests by the society and criticism by the international stakeholders (for examples, please view: "[March for Europe – Protest against the "Foreign Agents" law: Stano: Agents Law Not in Line with European Values, EU Expectations](#)"). The draft law once again risks stigmatizing of CSOs and media organizations and hindering their activities.

The government has continued the practice of administrative arrests and trials of civil society actors and protesters under the pretext of petty hooliganism and non-compliance with a lawful order of a law-enforcement officer, i.e., offences under the outdated and flawed Administrative Offences Code of

Georgia. Civil society representatives were arrested, e.g., during a protest [on 2-3 June, 2023](#). The police claimed that texts of their banners criticizing the government were offensive and violated public order. The PDO [submitted amicus curiae opinions](#) on these arrests to the courts. The PDO found that the protesters should not have been held liable, as freedom of expression protects political messages not posing a real and immediate threat of violence. However, the national court fined protesters and recognized them as offenders.

Unfortunately, LGBT+ rights defenders are still unable to fully enjoy their freedom of expression and assembly. In particular, the Pride Festival was [disrupted](#) by hate groups on 8 July 2023. As it can be inferred from [the MIA's statement](#), the MIA was aware of the risk of violence but it still failed to ensure the safety of the festival.

The PDO actively supports HRDs by reacting to violations against them, voicing their needs and engaging with various actors. In particular, the PDO discussed the situation of HRDs in Georgia at meetings with, for example, [UN Special Rapporteur](#), [the CoE Commissioner for Human Rights](#), [U.S. Department of State representatives](#) and [other international organizations](#). The PDO also facilitated a [roundtable](#) between the authorities and CSOs where the need to establish effective ways of cooperation and decision-making was discussed. While [meeting the Ministry of Internal Affairs representatives](#), the Public Defender addressed developments at protests of civil activists and the MIA's reactions thereto. The PDO also [met CSOs](#) separately to discuss pertinent human rights issues. To uphold HRDs' rights, the PDO prepared various documents, e.g., the aforementioned amicus curiae and the input for the UN Special Rapporteur on the situation of HRDs. Moreover, the PDO participated in [the First Anti-SLAPP Conference](#) in Georgia. Finally, the PDO issued [public statements](#) in support of HRDs.

## NHRI's recommendations to national and regional authorities

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Amend the SIS mandate/legislative framework in accordance with the PDO's recommendations;
- Carry out a proper reform of the judicial system in accordance with the recommendations of the PDO and relevant international actors (such as the EU, the Venice Commission, the OSCE/ODIHR);
- Adopt a new Code of Administrative Offences in compliance with international and constitutional human rights standards.

## Georgia 2024

### Information from: Public Defender's Office of Georgia

## Securitisation's impact on the rule of law and human rights

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The main security threat to human rights in Georgia is the Russian occupation of the Georgian territories. In November 2023, the SSS reported about [a murder of a Georgian citizen and illegal detention of another Georgian citizen](#) by the occupying forces on the occupied territory. In December 2023, [alleged murder of a Georgian citizen](#) by the occupying forces was again reported. Moreover, the de facto regimes in Tskhinvali and Abkhazia have continued illegal detentions of Georgian citizens (see, for example, the following articles: [Two Georgian Citizens Illegally Detained by Russian Occupation Forces](#); [Georgian Citizen Illegally Detained by Russian Occupation Forces](#)).

The de facto regimes also impose prohibitions or regulations on crossing the so-called crossing points. For example, Enguri Bridge and the so-called crossing point of Saberio-Pakhulani were closed in April 2023. The PDO issued [a statement](#) noting that the Enguri bridge and the so called crossing point of Saberio-Pakhulani are a vital means for Georgians living in Abkhazia to access education, better-quality medical services, cheaper products, pensions and to visit family members and relatives. As for the right to education, teaching in Georgian at schools is completely prohibited in Gali and restricted in Akhagori. This constitutes ethnic cleansing of Georgians in the occupied territories as parents have had to move to the Georgian controlled territories to enable their children to study in Georgian. The PDO emphasizes that Russia, as a state exercising control over the occupied territories, is responsible for these human rights violations and for bringing perpetrators to justice.

In the context of securitization and limits to freedom of assembly, the PDO would like to again refer to [the amendment](#) to the Law on Assemblies and Demonstrations that was adopted by the Parliament but vetoed by the President and that envisaged new grounds of restriction of the freedom of assembly. [The explanatory note](#) of the amendment mentioned information obtained by the SSS about an alleged plan to destabilize the country and ensuing security risks as problems the amendment claimed to address. However, [the PDO's assessment](#) found that the interests (e.g., protection of public order) allegedly served by the amendment were ensured through legislative acts already in force and, therefore, the amendment lacked justification. Moreover, the ODIHR's Urgent Opinion reads that the proposed amendments "seek to address an alleged security risk that is temporary in

nature – October-December 2023 as indicated in the Explanatory Note – by introducing restrictions that will continue to apply even after the potential security risks will cease, thereby questioning the proportionality of the contemplated measures. [...] It is also unclear why the existing legal framework which already contains some provisions regarding the “artificial” blocking of the roadway by assemblies and police powers to deal with suspected explosive devices are deemed insufficient” ([ODIHR, Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code, November 2023, page 3](#)).

As for the issue of secret mass surveillance, please view the section on separation of powers for information on investigations into alleged surveillance by the State Security Service.

## **NHRI’s actions to promote and protect human rights and rule of law in the context of national security and securitisation**

NHRI’s actions to promote and protect human rights and rule of law in the context of national security and securitisation

The PDO regularly monitors the situation of the conflict-affected population. In 2023, the PDO representatives visited several villages near the occupation line (for example, the villages [Khurcha and Tskou](#), [Zardiantkari](#), [Ergneti and Chorchana](#), [Gugutiantkari](#), [Odzisi and Gremiskhevi](#), [Kirbali and Nikozi](#)) and received information about the locals’ needs. The PDO advocates for addressing the needs of the conflict affected population. For example, the PDO submitted its [annual input to the OHCHR](#) pursuant to the Human Rights Council Resolution on “Cooperation with Georgia” in 2023. The PDO’s submission contains information on the human rights and humanitarian situation in Georgia’s occupied regions. Later, the Public Defender made a speech based on the submission during the presentation of the report of the United Nations High Commissioner for Human Rights on Cooperation with Georgia held in Geneva in 2023. Moreover, the Public Defender has raised the issue of occupation at meetings with various stakeholders, such as the [CoE Commissioner for Human Rights](#) and the [UN Resident Coordinator in Georgia](#). It should also be noted that the Public Defender held [a working meeting](#) on the rights situation of conflict-affected population in October 2023. The meeting was attended by representatives of the Office of the State Minister for Reconciliation and Civic Equality, State Security Service, Ministry of Foreign Affairs, Parliament, international and non-governmental organizations. The participants discussed the rights situation of the conflict-affected population, the main challenges and possible solutions, the main tasks of the peace policy and the role of the Georgian Government, international community, non-governmental organizations and the media in this process.

In regard to the aforementioned amendment to the Law of Georgia on Assemblies and Demonstrations, the PDO issued a statement, criticizing the draft law as an intense restriction of freedom of assembly and expression and noting that no weighty interest was invoked to justify it. Moreover, the PDO [applied to and asked the OSCE/ODIHR](#) to prepare a legal opinion on the amendment in October 2023. Following the PDO's request, the OSCE/ODIHR [published](#) its Urgent Opinion in November 2023.

As for the issue of alleged secret surveillance by the State Security Service, the PDO has monitored investigations into surveillance cases and published its assessments in its [2021 and 2022 parliamentary and special reports](#).

## **NHRI's recommendations to national and regional authorities**

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Refrain from initiating or adopting draft laws, that contravene national and international human rights standards (including the standards of freedom of assembly), under the argument of protecting legitimate interests, such as public order, security or prevention of destabilization.
- Investigate cases of alleged secret surveillance and eavesdropping by the State Security Service effectively, in compliance with relevant international standards.

## **Georgia 2024**

### **Information from: Public Defender's Office of Georgia**

## **Implementation of European Courts' judgments**

As it can be seen from [the statistics](#), there is a space for improving the level of implementation of the ECtHR judgments delivered against Georgia. [According to the statistics](#), there were 31 leading and 49 repetitive cases pending as of 7 December 2023 and the number of both types of pending cases increased in 2023 compared to the number in 2022. The lack of effectiveness of execution of the ECtHR judgments can also be observed from the usual repetition of

problems already raised in previous cases before the ECtHR and noted in the process of implementation of these cases. This issue is clearly illustrated, for example, by the government's continuous failure to ensure the complete realization of freedom of assembly and expression of the LGBT+ community. Although the government should have adopted effective (preventive and reactive) measures to this end in the process of execution of the cases of Identoba group, the government again fell short of this obligation on 8 July 2023 when hate groups [disrupted](#) the Pride Festival.

Moreover, the government has yet to fulfil some of the PDO's repeated recommendations regarding, for instance, the implementation of the Tsintsabadze group of cases. To provide an example, the last 3 rule 9 communications of the PDO called on the government to amend the [Order N633](#) of the Minister of Justice of Georgia to make amendments to the order so that a prisoner's consent to medical examinations is not a precondition for notifying the Special Investigation Service about possible violence/injuries suffered by prisoners. Thus, more efforts are needed from the government to address systemic obstacles to implementing the ECtHR judgments.

A mechanism for the monitoring of the execution of judgments of the ECtHR was first established in 2016 through an amendment by the Parliament to its Rules of Procedure. According to this amendment, the Government of Georgia is required prior to 1 April each year to present a report (the Ministry of Justice (MoJ) prepares this report) on the state of execution of judgments of the ECtHR. The Human Rights Committee of the Parliament of Georgia will, following the submission of the MoJ report, convene a meeting to which representatives of the MoJ are invited. At its meeting with representatives of the MoJ, the members of the Human Rights Committee will engage in discussion with them, ask them questions and seek clarifications and explanations regarding why specific measures have or have not to be taken with regard to the cases concerned. Representatives of the Office of the Public Defender and civil society are invited to hearings of the Human Rights Committee and sends alternate reports to the Human Rights Committee. However, there were no hearings in 2020 and 2021 and the joint hearing of 2020 and 2021 MoJ reports was held on 9 December 2022. Up to this date there was no hearing held at the Human Rights Committee regarding examination of 2022 MoJ report. After the hearing, the Human Rights Committee will discuss the MoJ report in its session and prepare an opinion which is approved by majority of those present at its meeting. The number of Members of the Parliament attending the hearing is very low, which suggests a lack of interest in the work of the Human Rights Committee on the part of MPs.

As for supervising the execution process on the national level, the PDO considers that the parliamentary oversight could be improved in following directions: Parliamentary committees should timely conduct reviews through



hearings and debates, assessing progress and identifying challenges. Legislators should propose laws or amendments to enforce compliance with ECtHR rulings and address human rights issues. Members of parliament need to question government representatives, demanding prompt updates on ECtHR judgment implementation. There is also a need of more effective collaboration with civil society and the PDO which will enable MPs to monitor compliance and advocate for reforms alongside human rights activists. The nature of the opinion prepared by the Human Rights Committee tends to be predominantly evaluating in a positive manner what has been reported to it. Although it reproduces points made in alternate reports, these do not generally feature in actual recommendations made in the opinion of the Human Rights Committee. The value of submissions to the Human Rights Committee could be enhanced by its giving feedback to PDO and other authors of alternative reports as to whether or not they were helpful in those cases where it has not explicitly taken them on board.

## **NHRI's actions to support the implementation of European Courts' judgments**

NHRI's actions to support the implementation of European Courts' judgments To support the implementation of the ECtHR judgments, the PDO [regularly](#) submits rule 9 communications to the Committee of Ministers (CM) of the Council of Europe (CoE). The PDO has submitted 5 new communications (about the cases of [Identoba](#), [Tkhelidze](#) and [Tsintsabadze groups](#) as well as the case of [Merabishvili v Georgia](#)) since 2023. In these documents, the PDO refers to the CM decisions on execution of judgments, comments on the government's action plans/reports and assesses general measures adopted in the course of the execution process. Thereby, the PDO contributes to the supervision of implementation of cases to ensure that the supervision is conducted properly and not closed prematurely. As explained above, the PDO also prepares alternative reports on the aforementioned MoJ reports on the state of execution of judgments of the ECtHR.

Apart from the rule 9 communications, engagement with stakeholders is another way for the PDO to contribute to the implementation process. In [May](#) and [June](#) 2023, the PDO held meetings with the representatives of the CoE Department of Execution of Judgments of the European Court of Human Rights. The parties discussed the execution procedure and the rule 9 communications of the PDO at the meetings. The PDO finds exchange of information and experiences in such formats to be useful for its participation in the implementation process. Moreover, the PDO's representatives attended a working meeting on the oversight of the execution of the ECtHR judgments and decisions in Georgia in November 2023. The meeting was dedicated to the Draft National Execution Strategy and Action Plan prepared by the CoE experts

and involved stakeholders from the CoE, the public bodies and civil society. The PDO's representative, as one of the speakers, presented the PDO's position on improving the domestic monitoring of execution by the Parliament. Moreover, the PDO's representatives engaged in discussion of matters covered by the Draft National Strategy, such as enhancing cooperation and coordination between the authorities, resolving the backlog of pending cases, etc. Furthermore, the PDO's representative participated in the following events organized by the Council of Europe in March 2024: the Conference on Parliamentary Oversight over the Execution of European Court of Human Rights Judgments in Georgia and the Steering Committee Meeting on the Project "Reinforcing national execution of the European Court's judgments by Georgia". Thus, the PDO contributes to the supervision of the implementation on both national and international levels.

## **NHRI's recommendations to national and regional authorities**

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Consider the assessments and follow/fulfil the recommendations that are expressed in the Rule 9 communications submitted by the PDO;
- Strengthen the implementation process by, inter alia, improving the parliamentary oversight and meaningfully engaging the PDO and civil society in the process.

The PDO recommends to regional authorities:

- Closely monitor the implementation of European courts' judgments in Georgia and publicly issue assessments on the execution process with a view to pressure or prompt the Georgian government to enhance implementation.

## **Georgia 2024**

**Information from: Public Defender's Office of Georgia**

## **Other challenges to the rule of law and human rights**

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## Media freedom

Unfortunately, the challenges affecting media freedom have remained unresolved. This problem is illustrated by the continued assaults on journalists, such as [attacks against journalists of critical media companies “Formula” and “TV Pirveli” in September 2023](#) and [an attack against one of “Formula’s” founders and TV presenter Mikheil Mshvildadze in June 2023](#). The investigation into the latter attack was launched by the MIA under paragraph 1 of article 126 of the Criminal Code of Georgia (beating or another type of violence causing a victim's physical pain). The PDO [called on](#) the Prosecutor's Office to transfer the case from the MIA to the SIS for further investigation in order to determine whether the attack constituted a violent persecution for expressing an opinion. Indeed, indications of such a persecution can be inferred from [the statement](#) made by N.G. who claimed responsibility for the attack. According to the case files examined by the PDO, N.G. explained that he had attacked Mikheil Mshvildadze because the latter, in N.G.'s words, “offended the Patriarchate, referred to the cross as a symbol of violence and protected homosexuals”. Thus, the attack had a hate motive as Mikheil Mshvildadze became its victim because of his publicly held opinions and positions. The PDO finds that violence motivated by hatred or intolerance against a person for expressing an opinion should be classified as a persecution committed with violence and because/on the grounds of an expressed opinion under subparagraph “a” of paragraph 2 of article 156 of the Criminal Code (Persecution committed using violence or threat of violence). However, investigative authorities did not apply this specific provision and did not reclassify the charges in Mikheil Mshvildadze's case, thereby failing to legally assess an alleged discriminatory motive of the attack.

Apart from physical assaults, another negative development in terms of media freedom was [the suspension of accreditation for representatives of critical media](#) by the Parliament's Office. The media representatives claimed that the reason for the suspension was that they had expressed opinions or asked questions unacceptable to the ruling party. In this connection, the PDO considers the Rules for the Accreditation of Mass Media Representatives in the Parliament of Georgia, approved by the order of the Speaker of the Parliament in February 2023, to be partially problematic. In particular, these rules do not provide for an appeal mechanism. Moreover, the decision to suspend journalists' accreditation did not specify the deadline or procedure for appealing it, contrary to the requirement of the legislation. The Public Defender called on the Speaker of the Parliament of Georgia to make changes to the aforementioned rules to ensure that the regulation did not cause an unjustified interference in the activities of media representatives.

## LGBTIQ+ rights

Inadequate protection of rights of the LGBTIQ+ community is a persisting

systemic challenge. Despite its seriousness, the government has overlooked this problem on the policy level. In particular, the National Strategy for the Protection of Human Rights for 2022-2030 was [adopted by the Parliament](#) in March 2023 without including the needs of the LGBTIQ+ community. Although the National Strategy separately refers to (the needs of) other vulnerable groups, such as persons with disabilities, ethnic and religious minorities, the document does not mention the LGBTIQ+ community at all. This has been criticized by the European Commission. According to the latter's report, "the national strategy for the protection of human rights for 2022-2030 does not address LGBTIQ+ rights. The authorities fail to recognise and acknowledge the systemic nature of discriminatory patterns and inequalities affecting LGBTIQ+ persons, and this has resulted in significant gaps in the measures taken to address these concerns. There is an absence of concrete measures to support LGBTIQ+ persons, combating discrimination based on sexual orientation and gender identity" ([The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 40](#)). The European Commission's report called on the Georgian government to "adopt the Human Rights action plan ensuring also the rights of LGBTIQ+ persons" (ibid, page 28). However, there is no reference to the LGBTIQ+ community in [the 2024-2026 Action Plan for Protection of Human Rights](#) that was approved by the government in December 2023. Unfortunately, the new National Concept of Gender Equality also fails to mention the LGBTIQ+ community.

## NHRI's recommendations to national and regional authorities

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Investigate attacks or any other offences committed against media representatives effectively, in compliance with relevant human rights standards;
- Ensure that the specific needs of the LGBTI+ community are properly addressed through measures to be adopted on the basis of the current policy documents and are adequately reflected in future policy documents.