



Human Rights Center

ENP ACTION PLAN
IMPLEMENTATION REPORT

GEORGIA

Tbilisi, 2009

The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country. **HRIDC** implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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In 2009 Georgia continued to progress on its way to implementation of the ENP Action Plan. Nevertheless, serious challenges remain in the areas of rule of law, political freedom and pluralism, freedom of expression and association, media freedom, etc.

- **Persecutions on political grounds, fighting the dissent**

In 2009 International Federation for Human Rights (FIDH) recognized existence of political prisoners in Georgia following its fact finding mission to Tbilisi in February 2009.¹

Although, political prisoners have been released by this date, (none from the FIDH list), many still remain behind the bars.

Persecutions on political grounds took a specifically widespread character during spring demonstrations in Tbilisi this year when the demonstrators demanded resignation of President Saakashvili. Public Defenders (hereinafter PD) and local NGOs have documented tens of cases of physical and verbal abuse of political activists and ordinary participants of the peaceful demonstrations, including the cases of torture, as well as arrests of political activists on ill-grounded charges and/or fabricated evidence (planted drugs or weapons).²

As a result of numerous calls from the PD and the public, formal investigations have been started in those cases, however none of the perpetrators have been identified and brought before justice until now. While at the same time the authorities were prompt to prosecute those demonstrators who were involved in violent clashes with the police. In some instances, there were allegations that such clashes were incited by the law enforcement officials; however, again, the charges were brought only against the demonstrators.³

In a number of instances police used excessive force against the demonstrators, as well as means prohibited by the law, e.g., during May 6 clashes between the police and the demonstrators, the police used plastic bullets and other means (e.g., stones) against the demonstrators which was prohibited by then the Law on Police; several people, including journalists and policemen themselves were seriously injured as a result. The President publicly apologized for the injuries caused only to the journalists. No one has been brought before justice for this illegal action.

In some instances, the police who was involved in violence with or against the demonstrators was wearing civilian cloths.⁴

When asked about “excessive use of force by the police” on June 15 outside the Tbilisi police headquarters, president Saakashvili said that one should “not be surprised if these people [policemen] exaggerated” as policemen were sworn at by protesters “night and day.”⁵

¹ After the Rose, the Thorns: Political Prisoners in Post-Revolutionary Georgia, FIDH, 2009

² Repressive Democracy?! (Chronicles of State Sponsored Violence in Georgia during the spring 2009), Human Rights Center, 2009 (pp.18-22) and an Appeal by South Caucasus Network of Human Rights Defenders to Georgian Authorities dated by 23 June, 2009, see at <http://www.humanrights.ge/index.php?a=announce&id=76&lang=en>

³ Repressive Democracy?! (Chronicles of State Sponsored Violence in Georgia during the spring 2009), Human Rights Center, 2009 (pp.18-22) and an Appeal by South Caucasus Network of Human Rights Defenders to Georgian Authorities dated by 23 June, 2009, see at <http://www.humanrights.ge/index.php?a=announce&id=76&lang=en>

⁴ see e.g., Civil Georgia, Tbilisi / 15 Jun.'09 / 19:23 at <http://www.civil.ge/eng/article.php?id=21108>

- **Excessive use of force in combating crime**

In 2009 no steps have been taken by the government to eradicate the problem of excessive use of force by law enforcement officials in the context of combating crime and impunity for such use of force which has been a long-standing problem in Georgia. In 2009 Human Rights Center has studied the cases of excessive use of force resulting in loss of life from 2004 till 2009 and concluded that “impunity is not the result of certain structural or legislative setbacks or the lack of training and qualified human resources that much, but of political will openly condoning and encouraging impunity of state agents. In the same way, excessive use of force by law enforcement officials in Georgia is not a matter of exceptions and accidents but an integral part of the state policy.”⁶

Actions and statements taken by the political leadership in 2009 give further ground to conclude that the state continues to condone and encourage excessive use of force by executive.

Girgvliani Case: pardoning and release of the convicts⁷

Girgvliani's case is the most notorious criminal case in the recent history of Georgia which concerns abduction and severe torture of a young man by four high ranking officials of the Constitutional Security Department (Ministry of Interior). There were mounting allegations that top-ranking officials of the Ministry of Interior and the wife of the Minister himself were those who had 'ordered' the crime.

The investigation of the case and the trial of the cases were characterized by numerous violations and caused huge public outcry. In 2009 President of Georgia issued an amnesty and halved the sentence to those convicted for Girgvliani's murder. Later on, the murderers were released by the procedure of preterm release. Both, the amnesty as well as the preterm release technically speaking, were in line with the law; however in the light of the information above and taking into account that several aggravating circumstances were present in the case (collective crime, committed by law enforcement officials in excess of their authorities, with particular severity, etc) pardoning and release of the convicts clearly went contrary to the principle of fairness and the interest of the public and further sent out the message of impunity.

President's statement on Aprasidzes' case⁸

On the 24th of March, 2004 special operative activity was carried out in Svaneti, district of Mestia against the family of Afrasidze's. The special operative activity started at around 7 a.m. in the morning: The police attacked house in which children and women were sleeping and started shelling it. The special operative activity was conducted by using 12 helicopters and around 1000 men while Afrasidze's family showed no resistance to law enforcers. The father of the family and his two sons were killed by the Special Forces.

Before the special operative activity, the Afrasidzes' family had been demonized in the media as 'bandits', 'kidnappers', 'killers', etc. starting from before the Rose Revolution. However, the special operative activity to apprehend them was carried out while officially charges had not

⁵ Civil Georgia, Tbilisi, June 20, 2009, Saakashvili: These are Times of Government's Firmness, Maturity

⁶ License to Kill issued in Georgia: 2004-2009, Human Rights Center, 2009

⁷ *I.d.*

⁸ *I.d.*

been brought against them. Neither had they been called in by the law enforcers to appear for giving testimonies, etc.; Therefore, the legal basis – and first and foremost the necessity - for the special operative activity carried out Afrasidze’s remains highly contested.

Recently, President Saakashvili commented publicly in relation to Aprasidzes’ case: “I want to confirm that Ia gave the order to exterminate the Mestian bandits and I do not regret that. This was Afrasidzeebi’s gang, which was controlling the whole Svaneti region and fortified in a high tower from the Soviet times. By my order, the helicopters opened fire, and in a result were destroyed these bandits and tower. This was right decision - the whole Svaneti breathe out after that. Who wants can say that it was brutality, however I feel sorry for every human being and I do not wish bad to anybody. There not exists development in Georgia without order. No compromise will be from our side in this issue.”⁹

Judicial Independence

There were several important positive steps made in the course of the judicial reform, e.g., in terms of maintaining order in the court hearings, provision of social guarantees to judges, etc. Important amendments were introduced to legislation regarding procedure, in particular, the procedures for adjudicating cases became simpler; judges got the opportunity to use flexible and effective legal mechanisms to avoid delay in hearing cases, etc. However, despite the positive trends, judicial independence still remains a crucial concern.

It is a problem that judges fail to be impartial in their verdicts. The monitoring carried out by the Human Rights Centre demonstrated that judges mostly render independent verdicts in civil cases but they subordinate to the pressure from the executive branch of government and the prosecutor’s office when it comes to administrative and criminal cases. Independent court decisions in criminal cases are an exception rather than a rule. This allegation can be proven by the very small number of acquittals and the verdicts that mostly match the request of a prosecutor. Application of plea bargain procedure remains problematic.

The monitoring carried out by the Human Rights Centre in 2009 has revealed the following areas of concern:

Pretrial detention has become a norm in Georgia. Today there are very few court hearings which do not end up with pretrial detention of a suspect. We recommend to revise the “Zero Policy” of the government; It is not necessary to hold all suspects in pretrial detention, especially when they do not create problems for investigation;

Torture and inhuman treatment is frequent in pretrial detention cells. Despite the fact that NGOs often indicate this and present facts of torture and inhuman treatment to relevant institutions, very few police officers have been charged with torture and convicted under the Criminal Code of Georgia.

Different forms of physical abuse and physiological pressure, including torture, is often used during the pretrial detention in order to obtain confession. Investigation in these cases are ineffective, perpetrators are rarely brought to justice.

⁹ Statement of the President Saakashvili at the opening ceremony of the Radisson Hotel” in Tbilisi, September 2, 2009; The full statement is available at <http://www.president.gov.ge/?l=E&m=0&sm=3&st=0&id=3030>

The court approves the plea bargain agreement without having adjudicated the case in detail and investigated many important issues. Courts adjudicate cases mainly in 1-2 court hearings. Cases are discussed on these hearings superficially and then the court endorses a plea bargain agreement. It is noteworthy that the court has never refused the prosecutor's office's motion to endorse a plea bargain agreement. Executive branch of the government and the prosecutor's office puts pressure on the court regarding administrative and criminal cases; Despite the fact that the Georgian Constitution encompasses a large number of civil rights and freedoms, including the right of an individual to apply to the court to protect his rights and freedoms, in practice the role of the court in protecting human rights remains inadequate – it is ineffective to seek assistance from court.

New Procedure Code to enter into force in January 2010 is problematic in several directions, including plea bargaining (Chapter XXI):

1. According to the current Procedure Code, the court can suggest to the prosecution and the defense to make a plea bargain agreement before court debates on the trial. The new draft code does not say that. It only indicates generally that a court has the right to suggest to the prosecution and the defense signing a plea bargain agreement. The draft code does not specify when a judge can suggest a plea bargain agreement. So a plea bargain agreement can be agreed before a judge issues a final judgement;

2. Part IV of Article 6793 of the current Procedure Code prescribes that a court discussion about a plea bargain agreement shall be transcribed word for word in a court hearing on the record. The new draft code does not give such a prescription. This can be considered as a fault because a word for word transcribing creates a possibility to check the objectivity and fairness of a court discussion of a plea bargain agreement;

3. Part III of Article 6797 of the current Procedure Code states that the court judgment regarding whether to endorse a plea bargain agreement shall be reconsidered in accordance with the general rule if a new state of affairs is discovered. This provision is not contained in the draft Procedure Code;

4. According to the new draft Procedure Code, a prosecutor is not obliged to inform a victim that a plea bargain agreement was signed with an accused, though this was prescribed by Part I of Article 6788 of the current Criminal Procedure Code. This amendment seriously violates the interests of a victim. This amendment is only a part of the politics of the authors of the draft code which is to exclude a victim from the list of case sides. These are the four changes that will be introduced into a new Criminal Procedure Code concerning a plea bargain agreement. No gaps regarding plea bargain agreement were filled in with the new code. The legal and political context we have now in Georgia leads us to assume that plea bargain agreements will continue to be used with serious violations of constitutional and international human rights.] The problems we have discussed above will not be addressed by the new Criminal Procedure Code.

Apart from the problems mentioned above, there emerged a new and most important problem which stems from the “politics” of a new draft code. The new draft code increased the rights of the accused in criminal trials. Therefore, some changes have been made in a number of aspects of criminal procedure—eg. a witness is not obliged to testify during a preliminary investigation, only during a trial. The current code makes it difficult for the accused to obtain evidence. According to new draft code material obtained during preliminary investigation is not considered as “evidence” as such - evidence are the facts and information that are presented to and

examined by a court at trial. Under the draft code interrogations may not be held and witnesses shall not be obliged to testify during the preliminary investigation. Accordingly, a preliminary investigation can be held without a comprehensive and objective investigation and study of the crime. The circumstances of the case can not be reproduced exactly during the preliminary investigation because a witness is not obliged to testify then.

Also when a plea bargain is before the court prior to trial a court does not have the right to study a case comprehensively or to interrogate witnesses to obtain additional pieces of evidence or to help the sides to obtain the evidence. Therefore, a judge relies only on the evidence that is presented by a prosecutor in a motion for a plea bargain agreement. The court does not examine that these evidence; it only checks whether the material was obtained legally (and there is no specific article in a chapter of the draft code on plea bargain agreements in which strictly defines an obligation to check the legality of material). This violates one fundamental criminal law principle which says that a court judgment, especially one which convicts a person must be based only on the evidence that is examined during a court hearing. In adjudicating a plea bargain agreement the court does not discuss and examine the evidence. Therefore, two problems might emerge: one – the prosecution might coerce an accused to plead guilty without having violated the law and force him to agree with the case materials which are not investigated comprehensively, plead guilty based on one-sided evidence and sign a plea bargain. For instance, this might happen if prosecution puts an accused in a hopeless situation, gives the accused false information and so on. It is possible that a person might be unable to protect his rights due to an incomplete defense and adversarial trial, might subordinate to the pressure from the prosecution and agree upon “convenient conditions” and term of imprisonment.

The second problem that might emerge is that the court might be deceived and interests of justice will be violated, for instance when a person claims to be guilty but in fact he is innocent. The court is deceived with the mere confession of a person and he is convicted for a crime he has not committed. Therefore, execution of justice will be hampered. This might be cause by the fact that for e.g. the defense did not find evidence proving the innocence of the suspect, the suspect created such a situation that his case is not adjudicated comprehensively and the evidence that are obtained prove his guilt. The fact that a plea bargain agreement is inconsistent with the other provisions of new draft procedure code increases the possibility that the prosecution will use a plea bargain agreement improperly which might not only violate the rights of the accuse but also might result in the court making a mistake and thereby infringing public interests because justice would not be executed and a criminal would not receive proper punishment. It is possible that by making a plea bargain agreement, especially under this draft code, “Temida become blind” indeed due to bad practice and amendments to the law because there are gaps in law and also rules regarding plea bargain and amendments to the Procedure Code are inconsistent. This is unacceptable and contradicts the principle of a legal state and a fair trial which is prescribed by our constitution.¹⁰

There are many barriers to establishment of the independent judiciary in Georgia. Among others are legal provisions in the Criminal Code articles 147 and 334 which allow the investigators/prosecutors to open investigation into the case of illegal arrest/release of a person. In this case whether the judge “illegally” detained/released someone or not is determined not by upper judicial body but by the executive authority. Even the simple existence of such a provision

¹⁰ Full report on trial monitoring carried out by the Human Rights Center in 2009 is available at <http://www.humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf>

in the Criminal Code has a chilling effect on judicial independence and is totally incompatible with the principle of separation of powers.

Limitations on the freedom of assembly and expression introduced in law

The recent amendments in the law on assembly and manifestation of Georgia limits the places where public actions can be held, it sets up a distance from an administrative building (20 meters) which should be observed while holding this action, but this regulation is not very clear (it does not specify from which point the distance has to be measured, e.g., from the courtyard, the gate, the door of the building, etc.) This creates a potential situation when the law can be arbitrarily interpreted in detriment of defenders, their freedom and security. For e.g., on the evening of November 23, 2009, Tbilisi patrol police arrested the leaders of “7 November” movement, Dachi Tsaguria, Djaba Djishkariani and Irakli Kordzaia in front of the Parliament building. The leaders were sitting in front of the Parliament building, at the sidewalk, with photos of Amiran Robakidze and Sandro Girgvliani, the young people killed by the policemen, and a poster – “Public TV for People!” They expressed their protest against state policy by a silent action. The patrol police arrived at the Parliament shortly after the action began and arrested the young people. As the chief of Tbilisi patrol police, Giorgi Gegechkori stated, the young people breached the Law on Assembly and Association that restricts any action within a 50m radius of administrative building. He was present at the time of the arrest.

A trial was held against Dachi Tsaguria, Djaba Djishkariani and Irakli Kordzaia shortly after their detention and a fine in the amount of 500GEL imposed on each of them under administrative law.

However the court decision itself makes it clear that the defendants did not breach the law. In particular, the Judge specified in the Court decision that the activists were sitting at a distance of 25-30m from the Parliament building. Meanwhile, the Law on Assembly and Manifestations prohibits an action to be held only within the radius of 20m.

The Court decision also states that the activists restricted citizens’ movement. It is worth mentioning that the Judge’s decision was primarily based on testimony provided by the police. The Judge refused to watch video-material that would annul the above-mentioned accusations.

This incident is one of the first precedents of putting into practice the recent amendments to the Law on Assembly and Manifestations. First, this case shows that neither law enforcement officials nor the judge is aware about the content of the law and have mistakenly referred to 50 meters distance contrary to 20 meters as specified in the law.

Second, this case makes it clearer that the mentioned law poses a threat to protection and implementation of fundamental rights - the right of assembly and freedom of expression. In particular, the Law on Assembly and Manifestations allows the authorities to interfere in the name of freedom of expression when there’s no necessity of protecting a right of higher value, or when there’s no real threat to the rights and freedoms of others. The amendments also vest the authorities with the right to stop the process of expressing alternative opinions through completely non-violent means and impose sanctions against demonstrating persons.

Due to the above reasons, the amended law is not in line with the right of Assembly and Freedom of expression guaranteed by the Constitution of Georgia as well as the European Convention on Human Rights and needs to be revisited.