

# ANNUAL REPORT



STATE OF HUMAN RIGHTS IN GEORGIA, 2018



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State of Human Rights in Georgia, 2018



Tbilisi, 2019

## **The Report was prepared by Human Rights Center**

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Non-governmental organization the Human Rights Center, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate peace building process in Georgia. To achieve this goal it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, increase awareness and respect for human rights among the people in Georgia.

Human Rights Center is member of following international networks:

- International Federation of Human Rights (FIDH); [www.fidh.org](http://www.fidh.org)
- World Organization against Torture (SOS-Torture – OMCT Network); [www.omct.org](http://www.omct.org)
- Human Rights House Network; [www.humanrightshouse.org](http://www.humanrightshouse.org)
- Coalition for International Criminal Court; [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)

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## INTRODUCTION

The 2018 annual report of Human Rights Center on the state of human rights in Georgia reviews the events which took place in Georgia in 2018 in the legal context, in the light of human rights, civic and political rights, equality and rule of law. The goal of the report is to assess the level of response of different state organs towards human rights violations, as well as the efficiency of the judiciary and the legal and systemic changes which should aim for the implementation of international human rights standards on the national level.

During 2018, positive legislative and systemic changes were made in concrete directions, specifically, in terms of the prevention of domestic violence and violence against women. However, the state still faces serious challenges when it comes to ensuring equality for all. The legislation has not improved in 2018 for the concrete vulnerable groups. The rights of persons with disabilities are still not well protected. They have to live in an environment which is not adapted to their needs. Several facts of suicide of prisoners were observed in the penitentiary establishments. The reasons were not studied timely and effectively. Ethnic and religious minorities are experiencing inequality. The LGBT community faces extraordinary aggression and discrimination. The state is obliged to ensure the principle of equality and prohibition of discrimination on legislative and policy levels. Moreover, the state does not take effective steps in order to raise awareness within the society. The granting of victim status to the victim/assignee by the Office of Chief Prosecutor of Georgia has been problematic<sup>1</sup>. The independent investigative mechanism which would objectively investigate the facts of exceeding official powers was not created in 2018. The environment has not improved in order to better ensure the objective and comprehensive investigation. The judiciary did not meet the standards of independence and impartiality in 2018. The procedural rights of the victims have not improved. In 2018, the fundamental rights of assemblies and manifestations and freedom of expression have been violated several times. The facts of the use of excessive force have been observed from the side of the law-enforcement.

The statements made by the Minister of Justice and the Chairperson of the Parliament targeted human rights defenders and they aimed to discredit the work of non-governmental organizations (NGOs) in 2018. The statement made by the Minister of Justice, Tea Tsulukiani at the international anti-corruption conference against the head of the Transparency International Georgia is noteworthy in this regard. This statement was predeceased by the statement of the Chairperson of the Parliament, Irakli Kobakhidze at the press conference held on October 8, where he

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<sup>1</sup> See statement of Human Rights Center  
<http://humanrights.ge/index.php?a=main&pid=19659&lang=eng>

verbally attacked the head of the NGO International Society for Fair Elections and Democracy (ISFED). At the same press conference, Irakli Kobakhidze stated that NGOs are defending fascism and therefore they are the partakers in it<sup>2</sup>. According to the assessment of the NGOs, “the coordinated attack against the civil society by the government harms democracy in Georgia”<sup>3</sup>. The aggressive rhetoric from the side of the representatives of the government singlehandedly shows the lack of openness towards the critical views. The aggressive rhetoric towards the civil society by the government raises alarm on international level as well<sup>4</sup>.

## **CHANGES AND FLAWS IN THE LEGISLATION**

### **The Definition of Marriage according to the New Constitution**

According to the new Constitution, since 2018, the paragraph I of the Article 30 states that marriage is a union between a woman and a man with the aim of creating family. The recommendation of the European Commission for Democracy through Law (hereinafter: Venice Commission) is noteworthy in this regard which highlighted that this provision should in no case be interpreted as prohibiting same-sex partnerships<sup>5</sup>.

### **Changes in the Law on Assemblies and Manifestations**

In 2018, the changes were made in the Law of Georgia on Assemblies and Manifestations. According to the changes, the range of individuals implied to be the “members of the bodies responsible for the state or public security” was specified. These individuals will no longer be able to realize the right to assemblies and manifestations. The employees of the relevant services who fulfill administrative functions were also subjected to the new restrictions. It should be noted that in parallel to the changes made in the Law on Assemblies and Manifestations, the Code

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<sup>2</sup> See information regarding the statement of the Chairperson of the Parliament: <http://liberali.ge/news/view/39941/kobakhidze-samtsukhara-rom-NGOebis-natsili-fashizmis-tanamonatsilea> (available only in Georgian)

<sup>3</sup> Statement of NGOs: <http://www.humanrights.ge/index.php?a=main&pid=19711&lang=eng>

<sup>4</sup> The address of the International Network of Human Rights Houses towards the Georgian government: <https://hrht.ge/en/political-leaders-in-georgia-must-stop-slandering-civil-society-organisations/>

<sup>5</sup> CDL-AD(2017)023, Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June 2017, Adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017), § 38 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e)

on Administrative Offenses was not revised. This Code does not present procedural guarantees in line with the Law on Assemblies and Manifestations. Although the Georgian government made an announcement that it was going to conduct systemic revision of the Administrative Code, this was not realized in 2018. The sanctions for the administrative offenses tightened in this period<sup>6</sup>. Specifically, the amount of the fine for minor hooliganism which used to be 100 GEL was raised up to 500-1000 GEL. As for the fine for disobedience to the legal order of the police or another kind of illegal act against it, it increased to 1000-4000 GEL whereas it used to be 250-2000 GEL.

The drug policy became the matter of controversy between the state and the citizens multiple times. The state must realize that it is essential to have a non-repressive drug policy of preventive character which requires legislative amendments in order to be implemented. According to the July 30, 2018 Decision<sup>7</sup>, the Constitutional Court of Georgia found the administrative sanctions against the use of marijuana unconstitutional. As for the legislative body, the Parliament of Georgia is unable to ensure the adoption of the draft law initiated by the Drug Policy National Platform of Georgia. The draft law aims to improve the rights of drug users and strengthening of treatment and rehabilitation programs. Despite the support from the civil society and international organizations, the Parliament has still not made a concrete decision regarding the draft law.

### **Property Rights on Agricultural Land for Foreign Citizens**

According to the new Constitution, agricultural land can belong to the ownership of foreign citizens only under special circumstances (The Organic Law will specify the special circumstances). The Parliament of Georgia did not share the decisions of the Constitutional Court fully which found the foreign citizens subjects of the property right. Also, according to the new Constitution which went into effect on December 16, 2018, the property rights of foreign citizens on agricultural land significantly worsened without the relevant evidence and grounds. On December 7, 2018, the Constitutional Court of Georgia made decision which once again revoked the restriction existing in the Georgian legislation in terms of purchase of agricultural land by foreign citizens. The decision of the Constitutional Court of Georgia was topical only for a short period, until December 16, 2018, that was followed by a negative response from the part of the society. The group of citizens held a protest action in

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<sup>6</sup> The statement of the Coalition:

<http://humanrights.ge/index.php?a=main&pid=19504&lang=eng>

<sup>7</sup> See information provided by the Constitutional Court of Georgia:

<http://www.constcourt.ge/ge/news/saqartvelos-moqalageebi-zurab-djafaridze-da-vaxtang-megrelishvili-saqartvelos-parlamentis-winaagmdeg-konstituciuri-sarcheli-1282.page>

(available only in Georgian)

front of the Justice House. According to the protestors, they would not allow the appropriation of the Georgian land by the foreigners in the remaining period (until the activation of the new Constitution).

## **Femicide**

The Georgian Parliament has still not introduced the definition of femicide in the Criminal Code of Georgia (CCG) which is defined by the international human rights standards in the following way: “intentional murder of women because they are women”. One of the challenges in practice is the identification of gender motive in cases of femicide. According to the Article 53<sup>1</sup> of CCG, the gender-bias represents an aggravating circumstance increasing the responsibility for the criminal act. However, it is still a challenge for the investigative and prosecution bodies to reveal this motive in practice. Besides, the judge has restricted rights under the existing legislation and he/she cannot change the qualification to a more severe charge. Therefore, it is evident that the state is unable to pass the relevant sentence for the crime committed under aggravating circumstances due to the current flaw existing in the legislation.

## **Reform of the Office of Prosecutor**

In 2018, the legislative amendments were actively discussed in the Parliament through the involvement of NGOs. The amendments envisaged the reforming of the Prosecutorial Council and increasing its independence, as well as depoliticizing the Office of Chief Prosecutor of Georgia. The Parliament of Georgia adopted the Organic Law on the Prosecutor’s Office through its third and final hearing on November 30, 2018. The development of the law was predeceased by the constitutional reform which took place in 2017-2018. The reform created a new legislative framework for the organizational arrangement and functioning of the Office of Prosecutor. The goal of the reform in the system of the prosecution is to ensure independent and politically neutral management. According to the assessment of the NGO Coalition for an Independent and Transparent Judiciary, despite the active involvement of the interested groups at the initial stage of the reform and exchange of the opinions in different formats, the Parliament initiated the draft of Organic Law which did not reflect the main suggestions which had decisive meaning for the constitutional reform. Unfortunately, unlike the initial stage of the reform, the next stages went in closed format and were accelerated. On October 31, 2018, the Legal Issues Committee of the Parliament held the second and most important hearing on the draft law without publishing preliminary information regarding the hearing and subsequently depriving the members of the society to take part. The draft law passed through the third hearing in the period between the plenary sessions in the Parliament in Kutaisi. The announcement regarding the Committee hearing was

never disseminated within the timeline set by the Rules of Procedure of Parliament of Georgia<sup>8</sup>.

In 2018, the NGOs, including the Human Rights Center registered a draft law which envisaged the selection of the chief prosecutor by the reformed prosecutorial council. The draft law also envisages the number of prosecutors in such way that they will not be able to block the decisions of the prosecutorial council like it happens in the High Council of Justice by the sitting judge members. The Venice Commission published an opinion regarding this issue in December 2018<sup>9</sup>, which talks about the arrangement and the functions of the prosecutorial council. The opinion clearly reflects the need of implementing significant reforms in the system of the judiciary. It talks about the necessity of depoliticizing the Office of Prosecutor, as well as the rule of formation of Prosecutorial Council thus it resonates with the draft law presented by the NGOs and clearly formulates a recommendation according to which there should be a strong presence of the civil society representatives in the Prosecutorial Council.

### CASES OF HATE MOTIVATED HUMAN RIGHTS VIOLATIONS

In the recent period, various groups which are motivated by hate and prejudice against those who think differently, have multiplied.

In October 2017<sup>10</sup>, when the soccer player and vice-captain of national soccer team of Georgia, Guram Kashia wore a rainbow armband in support of LGBT individuals at the soccer match held in Netherlands at a Dutch football league match, the act was followed by homophobic statements and aggressive actions from the fascist and extremist groups, as well as some political parties. On August 22, 2018, Guram Kashia became a recipient of UEFA #EqualGame award for the solidarity expressed towards the LGBT individuals. This news was met with aggression by the members of the movement “Georgian March” in Georgia. One of their public threats is related to the

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<sup>8</sup> See full statement of Coalition:

<http://www.humanrights.ge/index.php?a=main&pid=19752&lang=eng>

<sup>9</sup> Opinion of Venice Commission:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)029-e)

<sup>10</sup> See article “Guram Kashia Expresses Solidarity to LGBT Community”:

<https://on.ge/story/15219-%E1%83%92%E1%83%A3%E1%83%A0%E1%83%90%E1%83%9B-%E1%83%99%E1%83%90%E1%83%A8%E1%83%98%E1%83%90-%E1%83%9A%E1%83%92%E1%83%91%E1%83%A2-%E1%83%97%E1%83%94%E1%83%9B%E1%83%A1-%E1%83%A1%E1%83%9D%E1%83%9A%E1%83%98%E1%83%93%E1%83%90%E1%83%A0%E1%83%9D%E1%83%91%E1%83%90%E1%83%A1-%E1%83%A3%E1%83%AA%E1%83%AE%E1%83%90%E1%83%93%E1%83%94%E1%83%91%E1%83%A1> (available only in Georgian)

match that was held on September 9, at Dinamo Stadium, between the national soccer teams of Georgia and Latvia. They were protesting against the participation of Guram Kashia in the match. At the same time, the civic activists and human rights defenders expressed solidarity to Guram Kashia and came to the match wearing LGBT symbols. The members of Georgian March were threatening that they would not allow the bringing of LGBT symbols of support in the stadium. In this context, the law enforcement censored the LGBT symbols of support. The civic activists who came to the match were deprived of such items. This case shows that the State is not able to solve the systemic problems related to the inequality. Despite the positive legislative changes which are related to the introduction of Article 53<sup>1</sup> in the Criminal Code of Georgia, in practice it is still problematic for the representatives of the investigative and the prosecution bodies to identify motive in such cases. This norm is not applied in practice as needed that demonstrates the lack of qualification as well as the absence of political will to realize the international obligations imposed on the state and to create effective mechanism in order to ensure equality in the society.

Xenophobic statements were heard also in December 2018, at the action held in front of the Justice House where part of the citizens protested against the decision of the Constitutional Court of Georgia passed on December 7, 2018. The platform “No to Phobia” responded to this event with a public statement<sup>11</sup> and called on the law enforcement authorities to swiftly take appropriate measures in order to prevent the blocking of the entrance of the administrative building as it hindered its functioning and use of services offered by the Justice House. The extract from the statement reads: “During the organization and holding of an action, it is prohibited to make calls which incite national, regional, religious and social hatred and creates clear, direct and substantial danger of the act envisaged by this paragraph”. In case of violating these provisions, the law enforcement bodies are obligated to take appropriate measures and stop the illegal manifestation, including arresting of those individuals who do not obey to the legal order of the law enforcement officers.

## JUDICIARY

According to the Consultative Council of European Judges, “the existence of independent and impartial courts is a structural requirement of a state governed by the rule of law”<sup>12</sup>. According to the Organic Law of Georgia on Common Courts, the goal of the High Council of Justice is to ensure judicial independence, as well as effectiveness and quality of the judiciary. Considering the goals of the High Council of

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<sup>11</sup> See the statement of platform “No to Phobia”:

<http://humanrights.ge/index.php?a=main&pid=19753&lang=eng>

<sup>12</sup> Opinion 10 of Consultative Council of European Judges, Paragraph 8:

<https://rm.coe.int/168074779b>

Justice, it is important to comprehensively support the independence of the members of the Council and the critical views. The independence of the council for judiciary does not mean that it is outside the law and exempt from judicial supervision<sup>13</sup>.

In 2018, the aggressive attitude towards the non-judicial members of the High Council of Justice who hold different opinions was especially intensive from the side of the sitting judge members. Several non-judicial members in the High Council of Justice often talked about the powerful group in the judiciary who posed danger both to the judiciary as well as the individual independence of judges. It should be noted that in 2018, the public trust towards the judiciary has not increased. The level of reasoning in the Council decisions has not improved either. The practice of ungrounded closure of the Council sessions continues<sup>14</sup> that significantly violates the accountability before the public.

In the process of administering justice, the Council must conduct its activity based on the requirements of law. In case of insufficient legislative regulation, it must ensure adoption of effective by-laws and their practical implementation. The rules for decision-making must be clearly defined. It must be separated from the administrative legal proceeding and administrative proceeding. In terms of decision-making, the Council decision passed on April 30, 2018, is interesting. According to this decision, in the chambers of Tbilisi Appeal Court, narrow fields of judicial specialization were introduced. The chair of the Appeal Court, Mikheil Chinchaladze was granted the unilateral power to appoint judges into the narrow fields of specialization in the Appeal Court. The third wave of judicial reforms introduced new rules of case allocation which aimed to protect the judicial process from the external intervention. In the new model of case allocation, the power of the chair of the Appeal Court to unilaterally decide the judicial composition of the narrow fields of specialization is especially problematic and dangerous<sup>15</sup>.

### **The resignation of the Chairperson of the Supreme Court of Georgia**

The sudden resignation of the Chairperson of the Supreme Court of Georgia on August 2, 2018, once again showed the public that there is obscurity and controversy

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<sup>13</sup> Opinion 10 of Consultative Council of European Judges, Paragraph 39:  
<https://rm.coe.int/168074779b>

<sup>14</sup> See statement – The Coalition Responds to the Initiative on Closing the High Council of Justice Sessions to Public  
<http://www.humanrights.ge/index.php?a=main&pid=19531&lang=eng>

<sup>15</sup> The Coalition for Independent and Transparent Judiciary responded to the corresponding issues with a public statement:  
<http://www.humanrights.ge/index.php?a=main&pid=19572&lang=eng>

inside the system of judiciary. The NGOs responded to the fact of the resignation of the Chairperson of the Supreme Court of Georgia with a statement<sup>16</sup>: “During three years of service, the Chairperson of the Supreme Court of Georgia, Nino Gvenetadze insufficiently reacted to the problems existing in the system of judiciary. In the recent period, her positions were in line with the views of the sitting judge members of the Council. Despite this, for the NGOs which conducted monitoring of the work of High Council of Justice, it was evident that there is a confrontation between the Chairperson of the Supreme Court and the representatives of powerful group of judges”. Nino Gvenetadze spoke about this confrontation at one of the sessions of the Council. She accused the Council secretary, Giorgi Mikautadze of pressuring her<sup>17</sup>. It is noteworthy that the Chairperson of the Supreme Court of Georgia who also held the position of the Chairperson of the High Council of Justice left both positions without explanation. The relevant authorities did not show interest to reveal the possible facts of pressure.

Before the activation of the new constitutional amendments on December 16, 2018, the date of the inauguration of the new President, the candidacy of the Chairperson of the Supreme Court of Georgia had to be proposed by the acting President to the Parliament of Georgia. The Parliament was supposed to appoint the Chairperson of the Supreme Court of Georgia. The President of Georgia, Giorgi Margvelashvili refused to propose the candidacy of the Chairperson of the Supreme Court to the Parliament. The President stated that it was desirable that the NGOs proposed the candidacy. Eventually, the President refused to name the candidacy of the Chairperson of the Supreme Court of Georgia<sup>18</sup>. After the new amendments went into effect, the right to propose the candidacy became the competence of the High Council of Justice that significantly increases the risks of the concentration of power under the powerful group of the judges existing in the system of judiciary and further shutting of the system.

### **Lifetime appointments of judges**

In 2018, the flawed practice of the appointment of judges by the High Council of Justice continued. The High Council appointed 44 judges to life tenure on February 22, including those judges who raised distrust and feeling of injustice among the public due to the ungrounded and illegal decisions taken in the past. The process of the appointment of judges mostly went behind closed doors. The non-judicial

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<sup>16</sup> See the statement of the NGOs:

<http://humanrights.ge/index.php?a=main&pid=19673&lang=eng>

<sup>17</sup> See the report of Public Broadcaster on this issue: <https://1tv.ge/news/nino-gvenetadze-ghiad-vambob-dghes-dzaladobis-mskhverpli-var/> (available only in Georgian)

<sup>18</sup> See the statement of the Coalition:

<http://www.humanrights.ge/index.php?a=main&pid=19676&lang=eng>

member of the High Council, Ana Dolidze was unable to participate in the selection process of 14 judges<sup>19</sup>. Despite many years of reform of judiciary at every stage of the appointment of judges, it is clear for the public that the process of appointment is governed by the powerful group and is allegedly based on the nepotism. There is a grounded suspicion that the Council uses its powers and the legislative flaws against the judges with differing opinions, in order to drive them out of the system and further strengthen their positions. In this situation, the judges avoid voicing critical opinions regarding the problems existing in the judiciary. In this difficult situation, the NGO Coalition for an Independent and Transparent Judiciary started a campaign in March of 2018 – **Make Courts Trustworthy** – which made following requests: the government must take its share of responsibility for the crisis existing in the system of judiciary; the system of judiciary must be freed from the clan rule; the office of prosecutor must show interest and comprehensively investigate every possible instance of crime related to the system of judiciary; the Parliament must immediately implement real reforms based on which the powerful group existing in the judiciary will not be able to use the legislation for its unhealthy goals<sup>20</sup>. The Council severely reacts to the facts of open criticism and sharing of different opinions by the judges. One of the most visible examples of this is the refusal to appoint the former judge, Maia Bakradze to life tenure due to her critical opinions<sup>21</sup>.

The public attention was especially drawn to the session of High Council which took place on December 24, 2018. The information regarding the agenda of this session was published on a Sunday which is not a business day. This act violated the existing law. On December 24, the sitting judge members of the High Council of Justice selected 10 candidacies for the membership of the Supreme Court and presented the list to the Parliament. The list included Mikheil Chinchaladze who is considered to be the head of the clan in the system of judiciary by a big part of NGOs and non-judicial members of the High Council. The list also included the former judge members of the High Council who multiple times raised distrust and protest among the public. Considering that the discussion was held in a manner which was contrary to the existing law, three non-judicial members of the high council did not support it. As for the next stage – discussing candidacies in the Parliament – the chairperson of the Parliament of Georgia – Irakli Kobakhidze stated that the Parliament hears the views of different interested parties according to which the selection of the candidacies must take place according to the preliminarily established procedure and criteria. Therefore, the Parliament did not decide on the appointment of the judges of the

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<sup>19</sup> See the full information in the document of the Coalition:

<http://www.humanrights.ge/index.php?a=main&pid=19502&lang=eng>

<sup>20</sup> See the full statement:

<http://www.humanrights.ge/index.php?a=main&pid=19502&lang=eng>

<sup>21</sup> See the statement of the Coalition:

<http://www.humanrights.ge/index.php?a=main&pid=19522&lang=eng>

Supreme Court of Georgia during the autumn session and postponed the issue to the spring session<sup>22</sup>.

Another issue that raised alarm in the public was the interview with the judge, Levan Murusidze, conducted by the High Council of Justice on December 27, 2018. According to the decision of the High Council, Levan Murusidze was appointed to lifetime tenure in the Appeal Court of Georgia by 11 votes. It is noteworthy that the interview with him continued for 2 hours and questions were actively asked only by the non-judicial members of the High Council – Ana Dolidze and Nazi Janezashvili. Murusidze made a self-assessment during the interview – that he is a leader in the system of judiciary. Such self-assessment once again demonstrates that a part of the judges act as illegitimate leaders in the system of the judiciary that confirms the existence of the so-called clan rule.

### **INEFFECTIVE INVESTIGATION OF CRIMES COMMITTED BY THE LAW ENFORCEMENT EMPLOYEES**

According to the Constitution of Georgia, life is an inviolable right and is protected by the law. The human honor and dignity are also inviolable. Torture, inhuman and degrading treatment are prohibited. It is prohibited to use physical or mental coercion against the individuals who are deprived of liberty. The law clearly determines that the law enforcement employees must use proportional force against the detainee upon the detention.

In 2018, the legal results were still not achieved by the relevant state bodies in the cases where the police allegedly used violence, torture and inhuman treatment against the detainees.

Human Rights Center calls on the Ministry of Internal Affairs and Office of Prosecutor to conduct comprehensive and unbiased investigation in order to reach the relevant legal decisions.

During 2018, there was lack of public trust towards the investigative bodies from the side of the public. The underlying reason is the ineffective work of the investigative system. When alleged crimes are committed by the law-enforcement employees, the state organs do not have a clear will:

- To objectively investigate the criminal conduct;

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<sup>22</sup> <https://www.interpressnews.ge/ka/article/527027-parlamentma-uzenaesi-sasamartlos-mosamartleebis-sakitxis-ganxilva-sagazapxulo-sesiamde-gadado> (available only in Georgian)

- To timely grant victim status to the citizens which were subjected to the violence, torture and inhuman treatment from the side of the law-enforcement employees;
- To pass adequate punishment against the offender.

In 2018, the work of General Inspection Department of MIA has not improved. The General Inspection Department of MIA is unable to fully ensure balanced and effective mechanisms of internal and external control that results in the arbitrariness and the human rights violations. The adequate assessment of the misconduct of the police employees and imposition of disciplinary sanctions is sometimes possible after the active engagement of human rights organizations.

### **The Case of Zviad Kuprava**

The police used excessive force against Zviad Kuprava, a political activist who supported Zaza Saralidze, father of the teenager killed on Khorava Street in the dining hall of Tbilisi City Court. Zviad Kuprava was dining during a break announced at the court hearing. The police officers forcefully took him to the courtroom. According to the recommendation of the lawyer of Human Rights Center, Zviad Kuprava and Zaza Saralidze addressed the Department of General Inspection of MIA regarding the abovementioned fact.

According to the official inspection conducted by the General Inspection Department of MIA, five employees of MIA committed disciplinary misconduct. Following disciplinary sanctions were used against these individuals: four police officers were reprovved and their supervisor – severely reprovved, due to the non-fulfillment of official duties and negligent attitude towards the official duties.

### **The Case of Lawyer Giorgi Mdinardze**

In one of the cases processed by the Human Rights Center, legal result was achieved in 2018. The case concerned a violent act exercised against the Lawyer, Giorgi Mdinardze by the head of the N5 Department of Vake-Saburtalo Police, Lasha Kvirкваia in 2015. The Supreme Court of Georgia passed significant decision for the protection of human rights and rule of law.

The verdicts passed by the Tbilisi City Court and Appeal Court on the case of Giorgi Mdinardze are noteworthy. Tbilisi City Court found the defendant guilty only in the part of the charge which concerned the exceeding of official duties and acquitted him of another part – commission of violence. The Appeal Court upheld the decision of the court of the first instance.

According to the assessment of the International Federation of Human Rights (FIDH) and Human Rights Center, the fact that the lawyers whose integrity is protected by law find themselves as targets of physical assaults while performing their duty implies the extent of the problem on average citizens<sup>23</sup>.

The prosecutor appealed against the verdict of the Appeal Court to the Supreme Court of Georgia. The Supreme Court passed guilty verdict against Lasha Kvirkvaia, the former head of the N5 Department of Vake-Saburtalo Police on October 26, 2018, in accordance with the subparagraph B, Part III of Article 333 of Criminal Code of Georgia. 5-year imprisonment sentence was imposed against Lasha Kvirkvaia. He was also restricted to work for 1 year. After announcing the verdict, Kvirkvaia was arrested in the courtroom.

Human Rights Center positively assesses the final decision made by the Supreme Court of Georgia. Also, it should be noted that the protraction of judicial process remains to be a significant challenge in range of cases where alleged acts of violence and inhuman treatment were committed from the side of the police employees. The legal results have still not been achieved in these cases.

Based on the cases processed by the Legal Aid Center of Human Rights Center, it can be concluded that the eradication of the deeply rooted systemic problems would be possible only under the conditions of an independent investigative mechanism, in order to ensure the full and comprehensive investigation of the crimes committed by the law enforcement employees<sup>24</sup>.

## **THE DEPARTMENT OF THE CHIEF PROSECUTOR'S OFFICE OF GEORGIA FOR THE INVESTIGATION OF OFFENSES COMMITTED IN THE COURSE OF LEGAL PROCEEDINGS**

In 2018, the Department of the Chief Prosecutor's Office of Georgia for the Investigation of Offenses Committed in the Course of Legal Proceedings achieved certain success in terms of conducting new investigation into the cases of former political prisoners. This was demonstrated in the requests made to the Appeal Court for the acquittal of such individuals. In the cases where the violations of rights of victims are observed, the Office of Prosecutor passes resolution regarding the violation of right of the victim and addresses the Appeal Court with the request to

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<sup>23</sup> See the joint statement of International Federation of Human Rights and Human Rights Center:

<http://www.humanrights.ge/index.php?a=main&pid=19428&lang=eng>

<sup>24</sup> See the full report of Human Rights Center:

<http://hrdc.org/admin/editor/uploads/files/pdf/hrcprep2018/special%20report-eng..pdf>

revise the verdict due to the newly revealed circumstance. There are facts when the department gives back the property existing under the state's credit balance to the owner (victim) without first addressing the court. It is problematic that the new department of the Chief Prosecutor's Office of Georgia mainly investigates the cases of illegal deprivation of property, as well as cases of political prisoners, torture and inhuman treatment that occurred before 2012. Various positive and negative issues in relation to the work of the new department is reflected in the report of Human Rights Center – Monitoring of the Activities of the Department of the Chief Prosecutor's Office of Georgia for the investigation of Offenses Committed in the Course of Legal Proceedings<sup>25</sup>.

### **The Case of Bakur Kighuradze**

Human Rights Center was defending rights of former political prisoner, businessman Bakur Kighuradze who was charged for the crime envisaged by the Article 314 of CCG – espionage - according to the decision of the Tbilisi City Court passed on March 7, 2011. After the request of the Department of the Chief Prosecutor's Office of Georgia for the Investigation of Offenses Committed in the Course of Legal Proceedings, in July 2018, Tbilisi Appeal Court revoked the verdict passed on March 7, 2011 against Bakur Kighuradze. New verdict was passed in 2018 which found Bakur Kighuradze not guilty.

## **THE HIGH PROFILE CASES**

### **The case of Archil Tatunashvili**

In 2018, 35-year-old Archil Tatunashvili became the victim of the Russian occupation regime. He was arrested by the de-facto government of South Ossetia on February 22 under the charges of the participation in the 2008 August War and plotting acts of sabotage. According to the allegation of the Georgian investigative bodies, Archil Tatunashvili was killed by torture during the interrogation in detention in Tskhinvali. According to the de-fact regime, the reason of his death was a heart failure. In April 2018, Human Rights Center and other human rights organizations addressed the government of Georgia and called on to use international legal mechanisms to combat the human rights violations in the occupied territories of Abkhazia and Tskhinvali and along the occupation line. Specifically, to bring interstate complaint in the European Court of Human Rights (ECtHR) against the Russian Federation for the practice of violating the right to life and restriction of liberty. Two complaints were

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<sup>25</sup> See the report of Human Rights Center:

<http://hridc.org/admin/editor/uploads/files/pdf/hrcprep2018/research-eng.pdf>

sent against Russia to the ECtHR – one interstate and one individual complaint. The state of Georgia submitted the interstate complaint against Russia. The parents of Archil Tatumashvili, Giorgi and Rusudan Tatumashvili submitted individual complaints against Russia.

The case of Archil Tatumashvili raised high political interest in the country. On March 5, 2018, the political party, European Georgia offered the Parliamentary majority to develop a joint resolution in relation to the case<sup>26</sup>, considering the so-called Otkhozoria-Tatumashvili list that would have practical meaning for the prevention of the similar crimes, as well as for the punishment of the murderers of Giga Otkhozoria<sup>27</sup> and Archil Tatumashvili. According to the party, this document would have practical significance for the prevention of similar crimes in future and punishments of the killers of Archil Tatumashvili. On March 21, 2018, the Parliament of Georgia adopted the draft resolution regarding Tatumashvili with 106 votes<sup>28</sup>.

### **The Case of Tamar Mearakishvili**

The state of human rights in the occupied territories of Georgia is still very problematic. In 2018, the case of Tamar Mearakishvili drew high public interest. The freedom of movement of Tamar Mearakishvili was violated in the occupied territories followed by the multiple and grave violations of her other rights.

The de-facto office of the prosecutor of the occupied Akhgori brought following charges on Tamar Mearakishvili – receiving citizenship of South Ossetia illegally along with the citizenship of Georgia, using of false document and defamation of the regional department of the political party “*Edinaia Osetiya*” (United Ossetia). Currently, Tamar Mearakishvili lives in Akhgori, in the territory uncontrolled by Georgia. She is deprived of passport and all necessary documents. Therefore, her freedom of movement is restricted as she is able to move only in the territory of de-facto Republic of South Ossetia<sup>29</sup>. The case of Tamar Mearakishvili drew attention of international human rights organizations<sup>30</sup>. The relevant government bodies of

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<sup>26</sup> <https://imedinews.ge/ge/saqartvelo/51430/evropuli-saqartvelo-tatumashviltan-dakavshirebit-rezolutsiis-saerto-dokumentis-sheqmnis-momkhrea> (available only in Georgian)

<sup>27</sup> Giga Otkhozoria who lived in the occupied territories of Abkhazia was killed on May 19, 2016, at the border checkpoint. The perpetrator is still not punished.

<sup>28</sup> <https://imedinews.ge/ge/saqartvelo/53744/parlamentma-tatumashviltan-dakavshirebit-rezolutsia-106-khmit-miigo> (available only in Georgian)

<sup>29</sup> <http://netgazeti.ge/news/332000/> (available only in Georgian)

<sup>30</sup> See information on the website of the Network of Human Rights Houses:

<https://humanrightshouse.org/articles/civil-activist-and-journalist-persecuted-by-the-south-ossetias-de-facto-authority-2/>

Georgia must use every international mechanism to prevent the human rights violations in the occupied territories and obstacles for the human rights defenders and activists.

### **The Case of Teen Murder on Khorava Street**

On December 1, 2017, the brutal murder of two teenagers in Tbilisi, on Khorava Street showed the public the high level of subjectivity of state institutions when it comes to the full, comprehensive and effective investigation in order to reveal the individuals responsible for the murder. The brutal murder was predeceased by a confrontation among the teens which started in the bathroom of Tbilisi N51 public school and ultimately ended up with the killing of two.

The investigation did not ascertain from the very beginning who were the organizers of the conflict between the teens. This created a feeling in the society that the investigation was not comprehensive and a possible fabrication took place. It became known that the parent of one of the 14-year-old teen, A.S. was a high government official working in the Office of Prosecutor, Mirza Subeliani. The victim's side stated from the beginning that A.S. and his cousin M.K. were the main figures in the murder. However, they only had a witness status in the case that created a feeling in the society that the Office of Prosecutor was covering up the main perpetrators. Also, later it became known that one of the episodes of the confrontation among the teens took place in a shed on Khorava Street. The shed was soon dismantled which made it impossible to ascertain important details on the case.

The feeling was created in the public that Mirza Subeliani was an interested individual to evade the criminal responsibility for his son and ultimately it had an impact on the quality of the investigation.

The ineffective investigation of this murder gave rise to protest actions of thousands of people in Tbilisi. Only after 7 months from the murder, the deputy head of the Human Resources Department of Office of Prosecutor, Mirza Subeliani was arrested in accordance to the Article 376 of the Criminal Code of Georgia<sup>31</sup>.

On June 6, 2018, the Parliament of Georgia created a Temporary Investigative Commission on the murder of two young persons as a result of the crime committed on Khorava Street in Tbilisi on December 1, 2017. It became necessary to create the commission after the distrust towards the investigation of the murder increased from the father of the murdered teen, Davit Saralidze, as well as from the wider public. The distrust towards the process further increased and turned into the public dissent on

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<sup>31</sup> See the statement of Human Rights Center:

<http://www.humanrights.ge/index.php?a=main&pid=19587&lang=eng>

May 31, 2018, when the decision of the judge of the Criminal Collegium of Tbilisi City Court, Eka Areshidze became known. By this decision, the version of the Office of Prosecutor regarding the murderer of Davit Saralidze was not confirmed. The protest action was held in front of the Office of Chief Prosecutor of Georgia. The NGOs disseminated a statement requesting the resignation of the chief Prosecutor, Irakli Shotadze<sup>32</sup>. As a result of the request of the society, the chief prosecutor resigned.

The Temporary Investigative Commission of the Parliament of Georgia was studying the case for three months. It studied a lot of evidence and interrogated multiple witnesses. As a result, the commission presented conclusion and recommendations. However, the parliamentary majority who represented minority in the commission did not agree with these conclusion and recommendations. This became a matter of intense discussions between the members of the commission. The members of the investigative commission representing a fraction of Georgian Dream and the parliamentary majority presented alternative draft conclusion which was rejected by the commission. The two draft conclusions contradicted each other both in terms of the formulation of facts, as well as the assessments and recommendations. At the end, the Parliament of Georgia approved the conclusions presented by the parliamentary majority.

The conclusion which was developed by the majority of the members of the Temporary Investigative Commission presented 32 recommendations<sup>33</sup>.

Human Rights Center considers that it is important to fulfill the recommendations of the Temporary Investigative Commission and present a report on it to the Parliament and society.

The tragedy which took place on Khorava Street showed to the public as well as the relevant state institutions that it is essential to conduct substantive reforms in the investigative and prosecution bodies. It is necessary to take steps for the improvement of the legislative frameworks.

The flawed investigation of the teen murder case on Khorava Street significantly damaged the level of public trust towards the law enforcement bodies.

At this stage, the hearings on this case are taking place in Appeal Court in Tbilisi. For 10 months the State could not ensure to achieve comprehensive result in this case despite the creation of the temporary investigative commission. The State avoided sharing the recommendations of the commission. Moreover, the State could not

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<sup>32</sup> See the statement of the NGOs – the Chief Prosecutor must resign:  
<http://www.humanrights.ge/index.php?a=main&pid=19606&lang=eng>

<sup>33</sup> See the conclusion and recommendations:  
<http://parliament.ge/ge/ajax/downloadFile/101632/%E1%83%93%E1%83%90%E1%83%A1%E1%83%99%E1%83%95%E1%83%9C%E1%83%90> (available only in Georgian)

ensure the protection of the victim's assignee and inadequately assessed his legitimate protest and labeled it as politicized. The State could not ensure to overcome the crisis. It demonstrated the lack of the attention towards the ongoing processes. The murderer of Davit Saralidze has still not been revealed and punished.

The Human Rights Center calls on the relevant government institutions not to hinder the ascertaining of truth in this case and delivering a fair judgment in the judicial process.

### **The Case of Temirlan Machalikashvili**

On December 26, 2017, at about 04.00 a.m., the employees of the Counter Terrorism Center of the State Security Service of Georgia conducted a special operation in several villages of the Pankisi Gorge. During the special operation, four individuals were arrested and one individual, resident of the village Duisi, Temirlan Machalikashvili was severely wounded in the bed in his own home. The employees of the State Security Service allegedly exceeded their official powers. The questions were raised in relation to the legitimacy and proportionality of such special operation and need of the instant shooting at 04:00 a.m. when Temirlan Machalikashvili was sleeping in his bed. It is a serious violation that the State Security Service itself conducted the search/withdrawal procedures regarding the alleged crime committed by its own employees. This violated the principle of the objective investigation. The State Security Service destroyed significant evidence in this case - the hand grenade withdrawn as a result of the search and withdrawal procedure. It became impossible to measure the shooting distance at the crime scene as well. According to the information provided by the family members and the human rights defenders, Temirlan was not provided medical assistance timely. The young person wounded in the head died in Tbilisi hospital after the futile treatment for several days. During one year, the state could not ensure objective, comprehensive, full and effective investigation in the case of Temirlan Machalikashvili.

### **The so-called Cyanide Case**

The so-called cyanide case represents a high profile case since the year of 2017. However, the state continuously fails to provide answers to the society regarding the human rights violations which were observed during the investigation of the criminal case against the archpriest, Giorgi Mamaladze, as well as the violations observed at the trial hearings.

The trial hearings were conducted in a non-transparent manner in Tbilisi City and Appeal Courts. All hearings were closed for the public under groundless reasons. The Court did not consider the recommendation of the Public Defender of Georgia and

the request of lawyers of the defendant to close only the part of those hearings which revealed the information regarding the private life of the defendant<sup>34</sup>. It should be noted that from the moment of imposing charges against the archpriest Giorgi Mamaladze, the principle of presumption of innocence was violated by the high government officials that promoted a pre-judgment in the public regarding the culpability of the archpriest. The principle of equality of arms was substantially violated at the trial hearings considering that the lawyers were subjected to the conditions of non-disclosure obligations, while the Office of Prosecutor easily published multiple evidence on the case<sup>35</sup>. The non-disclosure obligations deprived the defense side the possibility to conduct several significant expert examinations in this case. The City and Appeal Courts did not grant the request of the defense side regarding the obtaining of the video recordings depicting the detention and search of Giorgi Mamaladze in the airport which represented significant neutral evidence in the case<sup>36</sup>. This decision lacked any reasoning.

The right to a reasoned decision was violated by the courts of both instances in the case of the archpriest Giorgi Mamaladze. The right to a fair trial was substantially violated. The state did not fulfill its positive obligation to ensure the procedural rights of the defendant that was demonstrated at every stage of the case hearing and decision-making.

### **The Case of the Former Chief Auditor**

The former chief auditor of Georgia, Lasha Tordia was attacked by the former chief prosecutor, Otar Partskhaladze and the deputy head of the Investigation Department of the Ministry of Finance on May 13, 2017. According to the statement of Lasha Tordia, the attack was connected to his audit work in the position of the Chief Auditor of Georgia, specifically, his audit report which showed the signs of the corrupt dealings allegedly involving Otar Partskhaladze.

Human Rights Center defended the interests of the former chief prosecutor. The Center protested that the investigation was opened under the Article 126 of the Criminal Code of Georgia which did not envisage the crime committed in relation to the official duties of the victim. The investigation into this case must be conducted in accordance to the Article 353<sup>1</sup> of CCG – assault on a state official due to his/her

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<sup>34</sup> The statement of the Public Defender on the so-called cyanide case:  
<http://www.humanrights.ge/index.php?a=main&pid=19318&lang=eng>

<sup>35</sup> One of the lawyers of the archpriest, Giorgi Mamaladze was the lawyer of Human Rights Center who also had to sign the non-disclosure agreement.

<sup>36</sup> The statement of Human Rights Center:  
<http://www.humanrights.ge/index.php?a=main&pid=19538&lang=eng>

professional activities<sup>37</sup>. Lasha Tordia suffered serious injuries as a result of the attack, including the closed traumatic brain injury. The lawyer of Otar Partskhaladze confirms that Lasha Tordia suffered physical injuries. As the lawyer stated to the media, it was necessary to use proportional force during the incident for “instant neutralizing” of the individual. According to the assessment of the Human Rights Center, it is completely irrelevant to talk about the proportional force because nobody else suffered during the incident except for Lasha Tordia<sup>38</sup>.

Except for the former chief prosecutor, the high government official from the Ministry of Finance, Mikheil Chokheli also participated in the assault on Lasha Tordia.

On November 5, 2018, during the pre-election campaign period, the Office of Prosecutor of Georgia became more active and after 1 year from the assault on Lasha Tordia, brought charges on Otar Partskhaladze and Mikheil Chokheli in accordance to Part I of Article 126 of Criminal Code of Georgia which stipulates the crime of assault. On the same day, Office of Prosecutor found Lasha Tordia to be the victim in this case and made a request to the court to hold the hearing regarding the use of compulsory measure against the defendant.

The Human Rights Center considers that it is important to conduct the investigation with the active control and participation of the Parliament of Georgia as the case concerns the assault on the state official, the head of the Audit Service of Georgia regarding his work.

Another significant problem in this case is the fact that the Office of Chief Prosecutor of Georgia does not discuss the group nature of the committed crime despite the fact that Otar Partskhaladze and Mikheil Chokheli are charged with the same conduct in the same case. This case clearly demonstrates that the crime was committed jointly by the two individuals and must be qualified as a group crime, entailing the relevant legal consequences.

### **The Case of Afgan Mukhtarli**

The activist and journalist persecuted from Azerbaijan, Afgan Mukhtarli was kidnapped under secret circumstances in May 2017. The grounded suspicion was raised in the public that the law enforcement bodies of Georgia participated in this secret kidnapping. On January 12, 2018, the Belakani District Court in Azerbaijan found Afgan Mukhtarli guilty in the imposed charges of the illegal crossing of the

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<sup>37</sup> The press release of Human Rights Center:

<http://www.humanrights.ge/index.php?a=main&pid=19767&lang=eng>

<sup>38</sup> The statement of Human Rights Center regarding the investigation of assault on Lasha Tordia:

<http://www.humanrights.ge/index.php?a=main&pid=19223&lang=eng>

border, smuggling of large amount of foreign currency and disobedience to the police. The 6-year imprisonment sentence was passed against Afgan Mukhtarli. The court did not satisfy any request of the defense side which would have confirmed that he was not guilty. Belakani District Court violated his right to a fair trial as guaranteed by the European Court of Human Rights. On April 23, 2018, the lawyer of Afgan Mukhtarli, Nemat Karimli was ceased of his lawyer's license by the Bar Association of Azerbaijan, one day before the trial in Afgan Mukhtarli's case<sup>39</sup>. This decision gravely violated the legal work of Nemat Karimli, unjustifiably restricted the freedom of expression, and violated Afgan Mukhtarli's right to defense and to choose the lawyer of his liking. This violates one of the significant principles of right to a fair trial – right to defense. Afgan Mukhtarli was ceased his legal work based on the request of Office of Prosecutor due to his opinions expressed in relation to the case. This confirms the suspicion that the case against Afgan Mukhtarli is not free from the political influence and the alleged violations of his rights in Georgia and Azerbaijan are of systemic nature.

### **Case of Mirtag Asadov**

The doubts over the political loyalty of the Government of Georgia towards the Government of Azerbaijan and over alleged participation of the Government of Georgia representatives in incidents related with the Azerbaijani people in Georgia were further reinforced with the arrest of Sheikh Mirtag Asadov, citizen of Georgia, upon crossing the Azerbaijani border from Georgia on November 7, 2018<sup>40</sup>.

Sheikh Mirtag Asadov is a citizen of Georgia and, together with religious and charity-related activities, is actively working to support the protection of rights and equality of the religious and ethnic minorities in Georgia. Sheikh Mirtag Asadov is especially critical of the state policy, focused on the control and intervention with regard to Muslim religious organizations in Georgia. During the four days after the November 7 arrest, the family members of the Sheikh did not have information about his whereabouts. The lawyers of Mirtag Asadov promptly applied to the Ministry of Internal Affairs of Georgia, the Ministry of Foreign Affairs, and the Public Defender and requested the information about the detained cleric; however, we have not received an official answer. Only after engaging a private attorney in Azerbaijan, it became possible for the family members to receive information about the reasons for the detention of Asadov. It is important to note that the State does not timely react to similar incidents and does not try to defend the rights of Georgian citizens on

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<sup>39</sup> See the statement of Human Rights House Tbilisi:

<http://www.humanrights.ge/index.php?a=main&pid=19571&lang=eng>

<sup>40</sup> The statement of the religious and human rights organizations:

<http://www.humanrights.ge/index.php?a=main&pid=19745&lang=eng>

the international level that is violation of local and international positive obligations of the State. Asadov was released next day of the Presidential Elections in Georgia that presumably was the result of the concerns and reaction of the international organizations over his arrest<sup>41</sup>.

## **THE DISPUTES BETWEEN THE BUSINESS COMPANIES AND THE STATE**

In 2018, suspension of the broadcasting of the TV-Company Iberia attracted public attention. According to the statement of the founder, the reason was the dispute against its main source of financing, Omega Group, over the alleged debt to the State. The State claimed the Omega Group had violated the custom regulations and blamed the company of tax evasion. Reportedly, the Omega Group owed 53 million GEL to the State. Dissemination of audio-recordings and other materials related with the Omega Group and the TV-Company Iberia in September 2018 were of particular concern. The disclosed materials contained signs of grave offence of corruption with alleged participation of senior officials of the Government of Georgia. The names of senior officials were mentioned in the aired video-recordings, which disclosed alleged involvement of different branches of the Government of Georgia in the corruption deals that should have become subject of immediate reaction from the side of the Government.

On August 20, 2018, the Black Sea International University was deprived of the right to accept first-year students because of the University's debt to the State. In the process of legal dispute, the students' rights to get education were significantly restricted. In October 2018, the dispute stopped after the University paid 735 000 GEL to the State and the Revenue Service withdrew its appeal from the court. Consequently, on December 8, 2018, the University had its right to accept first-year students restored.

It is important that the State offers fair and enabling environment to support business companies. In addition to that, possible financial obligations of the companies shall be timely and comprehensively identified to prevent rapid and aggressive reactions from the State causing blatant violation of the right of employee or third parties.

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<sup>41</sup> Information about the release of the Sheikh, available in Georgian:  
<http://netgazeti.ge/news/325029/>

## HATE MOTIVATED CRIMES

The fight against hate motivated crimes is one of the biggest challenges of the country. The State fails to ensure a solution of the systemic problems related with equal rights.

For the past few years, various neo-Nazi/fascist groups became active, who carry out violent actions and demonstrations, which demonstrate aggressive, intolerant feelings towards liberal groups, foreigners, and minorities.

The State does not adequately react to illegal and violent activities of these groups. The practice of improper legal reaction towards hate motivated crimes, which have become particularly urgent against different minority groups recently, promotes inequality within the society, and intensifies xenophobic and violent feelings against those groups. The state must be aware of its role and demonstrate its readiness to the society to establish democratic, safe and tolerant political environment first of all, with adequate legal mechanisms and reactions, as well as official statements supporting tolerance and equality and awareness raising campaigns.

### **Murder of Vitaly Safarov**

On September 30, 2018, human rights defender Vitaly Safarov, 25, was killed in Tbilisi. He worked for the Center for Participation and Development (CPD). For years, he was actively engaged in youth camps and different projects on tolerance and against racism, xenophobia and discrimination. According to the information obtained by the CPD, one of the reasons of the conflict with Vitaly Safarov and his murder may be the fact of not speaking in state language with the guests in a café-bar. As the witnesses state, during the conflict they were speaking about the homeland and Georgian ethnicity. Considering that, the violence against Vitaly Safarov was allegedly committed on xenophobic ground that is a fear and/or hatred of foreigners or different people<sup>42</sup>.

The murder of the human rights defender once again demonstrated increased threat of hate motivated crimes in the society and incomprehensive and ineffective reaction of the state institutions to identify the motive in the hate motivated crimes and to elaborate preventive mechanisms.

Human Rights Center (HRC) is defending the legal interests of Vitaly Safarov's family. The prosecutor's office could not correctly determine the motive of the crime. Two persons are arrested in the case; they are members of a so-called neo-Nazi group.

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<sup>42</sup> Statement of Human Rights Center and the Center for Participation and Development: <http://www.humanrights.ge/index.php?a=main&pid=19703&lang=eng>

Initially, one of the accused persons was charged under the Article 108 of the Criminal Code of Georgia. The Prosecutor's Office shared the position of the Human Rights Center<sup>43</sup> and changed the qualification of the charge into the crime intentionally committed due to racial, religious, national or ethnic intolerance – Article 109 Part II “d” of the CCG; the crime is punishable by imprisonment from 13 up to 17 years in length.

One of the detainees is charged for not reporting to police about the committed crime though there are signs in the case files, which demonstrate his participation in the graver crime – murder. There is evidence that the accused person personally participated in the murder, he beat Safarov with so-called brass knuckles. Consequently, he shall be charged for the participation in the intentional murder rather than not reporting to the police.

**Unfortunately, we recently observed systemic biased approach of the prosecutor's office to the crimes committed by a group of individuals, when the charges are not qualified correctly in the course of the investigation. Similar malicious practice of the prosecutor's office directly demonstrates the low qualification of the law enforcement officers and lack of state will to effectively fight against the organized crimes.**

## **FREEDOM OF EXPRESSION**

Freedom of expression was disproportionately restricted in 2018.

### **Case of Gvantsa Doluashvili**

On August 3, 2018, the Gori District Court satisfied the claim of Human Rights Center and stopped administrative litigation against the director of the Community Radio Mosaic Gvantsa Doluashvili. The Ministry of Internal Affairs of Georgia started administrative proceedings against Gvantsa Doluashvili for the inscriptions made on the sidewalk in Gori, with which the authors expressed protest for the ineffective investigation into the Khorava street teenage murder case in Tbilisi. The administrative body requested to find her guilty in the violation of the administrative law and to sanction her with 500 GEL. The court did not satisfy the claim of the MIA<sup>44</sup>.

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<sup>43</sup> The press-release of the HRC and CPD:

<http://humanrights.ge/index.php?a=main&pid=19704&lang=eng>

<sup>44</sup> See more information at <http://humanrights.ge/index.php?a=main&pid=19653&lang=eng>

## Case of “Aiisa”

“Aiisa” is a Georgian company, which produces condoms. According to the court ruling, the company was banned to use concrete images of the condoms based on the protection of public moral and well-established moral feelings in the society.

On May 17, 2018, the court fined the founder of the company Ani Gachechiladze with 100 GEL for hooliganism. She was planning to release helium filled condoms colored in rainbow colors into the air on the International Day against Homophobia, Transphobia and Biphobia. MIA officers arrested Ani Gachechiladze before releasing the condoms into the air. Her rights were disproportionately restricted as it did not serve a legitimate goal and was not necessary in the democratic society.

### LARGE SCALE POLICE RAID IN 2018

On May 12, 2018, at midnight, a large scale raid was carried out in the clubs Bassiani and Gallery in Tbilisi. The law enforcement officers demonstrated their excessive force during the raid, which according to the statement of the MIA, aimed to arrest drug-dealers. They really arrested eight persons under the charge of drug-dealing but it is important to note that those people were not arrested inside the Bassiani but outside the club’s premises before the law enforcement officers broke into the club. The investigative activities were carried out with the violation of human rights; the law enforcement officers used disproportionate force against the visitors of the clubs. Law enforcement officers violated the rights of the club visitors that resulted into a several-thousand protest demonstration in Tbilisi. International media also reported about the raid in the night-clubs<sup>45</sup>.

**The State must be aware of the consequences of unjustified repressive activities and abuse of power, which blatantly violate fundamental human rights and do not serve legitimate goals of the democratic society.**

### RESTRICTION OF THE RIGHT TO ASSEMBLY AND MANIFESTATION

**In May, 2018, the large-scale demonstrations started in front of the Parliament building in Tbilisi, where the people protested against repressive drug-policy and use of disproportionate force during the raid in the club Bassiani on May 12, by the law enforcement officers.**

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<sup>45</sup> See more information at <https://www.theguardian.com/music/2018/may/14/georgian-techno-fans-extremists-clash-tbilisi-fight-club-culture>

Parallel to that, neo-Nazi groups organized counter-demonstrations. They were aggressive towards the demonstrators in front of the Parliament, threatened them using hate speech and called drug-dealers and LGBTI propagandists. Large-scale protest demonstrations and threat of civil controversy worried the government. The Minister of Internal Affairs Giorgi Gakharia arrived at the demonstration of several thousands of people organized by the White Noise Movement in front of the Parliament and apologized to the demonstrators: “I apologize to you on behalf of all MIA officers who violated your rights<sup>46</sup>”. The Minister promised the demonstrators to react to all incidents related with the Bassiani raid and to change the drug-policy in the country; in exchange he asked the protesters to peacefully end the demonstration.

### **The Protest of Fathers who lost Their Sons**

Zaza Saralidze and Malkhaz Machalikashvili were peacefully protesting the ineffective, impartial investigation of the murder cases of their sons throughout 2018; the investigation failed to determine the truth over the murder facts of their sons – Davit Saralidze and Temirlan Machalikashvili.

In the end of 2018, the police officers did not allow them to set up tents in front of the parliament. Police officers used force against part of demonstrators and even searched their cars and seized the tents and other objects from the owners. The fathers managed to continue the protest and erected the tents only after the representatives of NGOs demonstrated their support towards the protesters with setting up their tents in front of the Parliament building. However, the law enforcement officers hindered the protest of the NGO representatives too<sup>47</sup>. Finally, the protesters were allowed to set up tents.

During the ongoing protest demonstration in front of the Parliament building, Zaza Saralidze physically opposed the police officers, when they illegally hindered him to erect tents in front of the parliament; as a result Saralidze was arrested. In his search for justice, the father of the killed teenage boy himself became the accused person, whose right to assembly and manifestation was deprived and his human rights were blatantly violated. NGOs echoed the detention of Zaza Saralidze with the statement according to which, continuous and gross violation of the Constitution by the Ministry of Internal Affairs of Georgia causes escalation of the violence outside the Parliament building<sup>48</sup>. The Ministry of Internal Affairs of Georgia has numerous times violated the Constitution of Georgia and the Law on Assemblies and Demonstrations during

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<sup>46</sup> See detailed information at <http://liberali.ge/news/view/36652/giorgi-gakharia-aqtsiaze-gamovida--bodishs-gikhdit> (available only in Georgian)

<sup>47</sup> <http://netgazeti.ge/news/318463/>

<sup>48</sup> See the NGO statement <http://humanrights.ge/index.php?a=main&pid=19712&lang=eng>

multiple days of peaceful protest outside the Parliament building, by not allowing protestors to erect a tent and/or other construction in the area. The NGOs and the Public Defender of Georgia declared that similar action of the representatives of the Ministry of Internal Affairs of Georgia is a blatant violation of the Constitution of Georgia and national legislation and is an unjustified interference in the right to peaceful assembly.

Human Rights Center defends the interests of Zaza Saralidze in the criminal case launched against him.

### **Velistsikhe Incident**

**On December 16, 2018, in parallel to the inauguration ceremony of the President-Elect Salome Zurbishvili, the united opposition scheduled a protest demonstration in Telavi.** However, the police blocked the way to Telavi near Velistsikhe village, Gurjaani municipality without preliminarily informing the opposition members. Human rights organizations believe blocking the road for the united opposition to Telavi was a restriction of their right to assembly. With the blocking of the road to Telavi, the State unlawfully restricted the freedom of movement of the opposition members and did not allow them to hold demonstration. Similar decisions degrade the reputation of the police that causes conflicts between the citizens and police officers<sup>49</sup>.

After the clash between the opposition members and police, police arrested one of the leaders of the united opposition Davit Kirkitadze. He was accused of the violation of the Article 353 Part I of the CCG which refers to resistance, threat or violence against a police officer. On December 20, 2018, the Gurjaani district court imposed preliminary imprisonment on Kirkitadze as a compulsory measure<sup>50</sup>.

When evaluating the blocking of the roads for the opposition members in Telavi, human rights organizations underline the Article 25 of the Constitution of Georgia, which guarantees the right to public assembly without prior permission. Also, the Constitution guarantees free movement of citizens throughout the entire territory of Georgia. At the same time, these rights are not absolute and they may be restricted considering the proportionality test. In this light, if the restriction is necessary to achieve legitimate goals in the democratic society, it is the State's obligation to

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<sup>49</sup> See the statement of NGOs:

<http://humanrights.ge/index.php?a=main&pid=19760&lang=eng>

<sup>50</sup> See the information here: <http://liberali.ge/news/view/42037/davit-kirkitadzes-tsinastari-patimroba-sheufardes> (available only in Georgian)

restrict this right based on the balance of public and private interests, so that neither the interests of physical persons nor public interests are violated<sup>51</sup>.

## RESTRICTION OF MEDIA FREEDOM

In 2018, under the message of “priority changes”, the TV-program “Investigator Reporter” was put on external auction in the Georgian Public Broadcasting [GPB]<sup>52</sup>, based on which, one of the high-rate TV-program was banned to prepare documentary films about high-profile cases. The team members of the Investigative Reporter confirmed that before the “priority changes” started, there was controversy about the investigative film “Blood-stained boys from the Khorava Street”, which was prepared about the teenage murder case in Khorava Street, Tbilisi. At the same time, the GPB management negatively evaluated the film and spoke about the interference of the state institutions; before airing the film, the GPB management sent a working version of the film to government officials.

The State is obliged to defend media freedom. The cases of physical assault and violence against journalists are alarming<sup>53</sup>.

Another fact of restriction of the media freedom happened when Kurieri team of Rustavi 2 was working on the violations observed during the construction of the new railway track in Georgia. The representatives of the Georgian office of the 23rd Bureau of the Chinese Railway physically assaulted the video-team of the Rustavi 2. The State shall ensure with all legal instruments not to hinder professional activities of the media and media representatives.

## 2018 PRESIDENTIAL ELECTIONS

The 2018 Presidential Elections were conducted in an environment of aggressive pre-election campaign in Georgia. Political opponents used hate speech and xenophobic statements against each other during unhealthy criticism<sup>54</sup>. Unfortunately, during the 2018 Presidential Elections, the society could not receive a healthy election environment, which could be based on the respect of human rights, equality and bona fide.

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<sup>51</sup> See the NGO statement: <http://humanrights.ge/index.php?a=main&pid=19760&lang=eng>

<sup>52</sup> <http://humanrights.ge/index.php?a=main&pid=19634&lang=eng>

<sup>53</sup> See the statement of Media Institute and Human Rights Center:

<http://humanrights.ge/index.php?a=main&pid=19701&lang=eng>

<sup>54</sup> See the NGO statement about xenophobic statement of Salome Zurabishvili:

<http://humanrights.ge/index.php?a=main&pid=19696&lang=eng>

Human Rights Center observed the following violations as a result of election monitoring: low qualification of the election commission members is still a serious challenge of the election administration. Procedural violations were mostly caused not by the attempt to fake the election results but by the low qualification and lack of knowledge of the election law. The incompetence of the Precinct Election Commission (PEC) members often caused tension and sometimes even conflicts. The low qualification of PEC members and lack of knowledge of procedures created problems in the conflict affected villages of the Gori municipality as well<sup>55</sup>. Another significant problem was excessive campaigning of the political parties' supporters in the polling stations on the Election Day. It is also a problem that the legislation does not provide clear definition of the territory of polling station and its vicinities. It is important to prohibit campaigning in the vicinities of the polling station on the Election Day. One of the key principles of the Election Code is to enable voters to freely demonstrate their will.

The observer NGOs also spoke about the alleged misuse of administrative resources and unprecedented bribery of voters before the second round of the Presidential Elections. More precisely, the Prime Minister of Georgia, Mamuka Bakhtadze announced that 600 000 citizens will have their debts annulled and total sum of the annulled debts would amount 1, 5 billion GEL. The initiative was to go in force in December 2018<sup>56</sup>.

In 2018, the authority of the chairperson of the Central Election Commission (CEC) was suspended based on the legislation and the acting CEC chairperson was re-elected for the second term. On December 20, 2018, the President of Georgia, after the consultations with the NGO representatives, presented three candidates to the CEC and one of them was Tamar Zhvania, the former CEC chairperson that was negatively evaluated by a part of the society. Finally, the CEC re-elected Tamar Zhvania to the position of the chairperson for the second term.

## **THE RIGHTS OF THE PEOPLE WITH DISABILITIES**

UN Convention on the Rights of Persons with Disabilities (UNCRPD) guarantees the persons with disabilities to enjoy all rights and freedoms fully and equally and to promote the respect of their innate dignity. UNCRPD authorizes its member states to promote and ensure the protection of the rights of the people with disabilities not only with the empowerment of legislative and institutional mechanism but with

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<sup>55</sup> See the press-release of Human Rights - Main Tendencies Observed during the October 28 Presidential Elections in 2018:

<http://humanrights.ge/index.php?a=main&pid=19720&lang=eng>

<sup>56</sup> See full information here: <http://netgazeti.ge/news/320701/> (available only in Georgian)

undertaking administrative measures and changing the practice degrading the rights of the people with disabilities. UNCRPD believes it is the obligation of the State to fight against stereotypes, stigma and replace the views in the society with new approaches.

Although Georgia ratified the UN Convention in 2013, there are still a number of challenges in respect of the rights of the people with disabilities. In 2018, the people with disabilities had problems to get education, to receive health care, to get involved in rehabilitation-re-socialization programs, to get employed and to realize their social rights. At the same time, establishment of the social model to grant status to the people with disabilities is also hindered. Physical environment, infrastructure, transport and information are still beyond the access of the people with disabilities.

### **RIGHTS OF THE LGBT COMMUNITY**

International human rights principles – equality and non-discrimination are fundamental principles of human rights. Protection of the rights of the LGBT community is essential to ensure equality.

In 2018, the state failed to ensure clear principles about the procedures of changing the gender and to officially acknowledge them.

The use of the mechanisms to protect LGBT people from violence is still a significant challenge. A big part of the society is not well informed about the rights of LGBT people and that is a significant cultural problem.

In recent years, on May 17, in parallel to the International Day against Homophobia and Transphobia, traditionally, the Patriarchate of Georgia marks the Day of Family Purity. Since 2013, part of the society opposes the demonstrations held in support of LGBT people particularly aggressively. In 2018, LGBT activists cancelled the demonstration on May 17, in order to avoid civil unrest<sup>57</sup>. It once again demonstrates that equality is not respected in the society and adequate protection of the rights of the LGBT individuals is a serious challenge.

### **RIGHTS OF ETHNIC AND RELIGIOUS MINORITIES**

In 2018, the rights of religious minorities were not protected in Georgia in various ways. Ethnic minority population of Georgia still faces problems due to the language barrier that hinders the realization of their rights as well as their access to justice. One of the challenges is artificial bureaucratic barriers in getting a license for the

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<sup>57</sup> See full information here <http://netgazeti.ge/news/277675/> (available only in Georgian)

construction of places of worship. In 2018, Human Rights Center worked on the cases in terms of protection of rights of religious minorities. The cases concerned the obtaining of the permission to construct a mosque. It is still problematic for the state institutions to find legal solutions for the issues related to the construction of places of worship or other types of religious buildings. Non-dominant religious groups are often discriminated. The State must be aware of the principle of equal rights. Denial to construct places of worship and dragged-out process of decision making demonstrates discriminative approach of the state institutions to the issue that seriously damage human rights.

## WOMEN'S RIGHTS

Regardless of the legislative and systemic changes, which aim to better protect the women's rights and to empower them, the fight against the gender discrimination is still a serious challenge. Gender inequality is one of the blatant violations of human rights. In 2018, cases of sexual harassment in the workplace were reported that led to legal consequences.

In 2018, in light of the elimination of domestic violence and violence against women, HRC positively evaluates several important systemic and legislative changes carried out by the MIA. The sanctions for the first instance of domestic violence were made stricter.

The creation of the Human Rights Department in the MIA in 2018 is particularly important among those recommendations which were fulfilled by the authorities. The main purpose of the department is to ensure the effective investigation of facts of domestic violence, violence against women and crimes committed based on discrimination and hate. It is also important to note that in 2018, as a result of the reform, the institute of the officer of public order was created in the MIA. One of his/her functions will be to react to the facts of domestic violence, and plan the activities aiming at the prevention of these crimes. Regardless of all these changes, minimizing the cases of domestic violence and violence against women are still a significant challenge for the State.

To ensure effective prevention of the violence against women and domestic violence, in December 2018, with the financial support of the international donor organizations, important initiatives commenced, which will be implemented in 2019 on the level of legislation. It concerns the legislative regulations about the use of electronic bracelets for the harassers. It was also important to introduce the definition of the sexual harassment in the legislation, creation of effective legal prevention mechanism, which will ensure the creation of an environment free and safe from sexual harassment in the workplace; it will ensure to timely and

comprehensively study the complaints about sexual harassment, as well as liability for any harasser if the fact of sexual harassment is determined.

## **THE RIGHTS OF THE CONVICTED PEOPLE IN PENITENTIARY ESTABLISHMENTS**

There are still cases in the penitentiary system when the State fails to ensure protection of life, health and safety of prisoners in different penitentiary establishments. On December 17, 2018, after a 40-day hunger-strike, a prisoner died in the penitentiary establishment N8. Although he was under particular surveillance since he had attempts of suicide, the penitentiary establishment could not take relevant measures to protect his life.

It is also problematic to exempt from punishment the convicted people who have grave health problems. The prisoners speak about inadequate, ineffective and late surgical or outpatient medical treatment.

Worsened health conditions of the former Minister of Interior Ivane Merabishvili in the prison facility became an urgent issue in 2018. Special penitentiary service disseminated a statement where all medical procedures and diagnosis of the former minister were disclosed. According to the lawyers of Merabishvili, the special penitentiary service had not obtained permission of the prisoner to disseminate similar information about his health conditions. Penitentiary service explained the dissemination of confidential information with high public interest and with the attempt to avoid possible political speculations. According to the CPT standards, freedom to express consent and protection of confidential information are basic human rights. Protection of these rights is of utmost importance to create trust between a doctor and a patient, especially in places of deprivation of liberty, where a patient is unable to choose a doctor according to his/her own free will<sup>58</sup>.

## **LABOR RIGHTS AND SAFETY**

**In 2018, the restriction of labor rights were particularly alarming in Georgian Public Broadcasting (GPB).** GPB offered the labor contracts to the employees, where only the interests of the employer are considered, while the rights of the employees are not respected in accordance to the Georgian legislation and international standards.

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<sup>58</sup> The NGO statement about the health conditions of Ivane Merabishvili: <http://humanrights.ge/index.php?a=main&pid=19681&lang=eng>

The employees appealed the city court to restore their breached labor rights. Human Rights Center defends their interests in front of the Court<sup>59</sup>.

Challenges and dangerous environment in the field of labor rights are still very alarming in Georgia as the workers still perform different jobs under the risk of their lives. In 2018, 12 miners died and 9 were injured in the mine pits mostly because of breached safety rules by the employers. The State does not defend the right to life and health of the workers properly. There is no adequate will of the State to address the problems in this field, to elaborate respective mechanisms and policy of labor safety in accordance to international standards to ensure the protection of employees' rights, life and health.

In 2018, standards on labor safety in enterprises were not elaborated. An alarming situation is in the construction business, where the companies do not guarantee safety in the workplace. There are no standards and procedures based on how the work shall be performed in similar places. The State must acknowledge the scope of the problem, elaborate the legislative regulations in accordance to international standards, and raise awareness of the employers and workers.

**Passive role of the State in relation to the environmental protection and creation of a safe environment is alarming.** Environmental protection is a fundamentally necessary component to comprehensively defend human rights. For the creation of a safe environment in Georgia, it was very important to commence the Campaign "Swim Safe" with the initiative of Ana Dolidze, Human Rights Center, Caucasus Environmental NGO Network (CENN) and Progress Center in 2018. The Campaign aims to increase government's responsibility and raise public awareness. The participatory organizations and civil activists try to identify risky zones, which are left beyond the attention of the State and where a lot of people die<sup>60</sup>.

## PROTECTION OF THE HEALTH RIGHTS

Regardless of the positive changes, qualified and comprehensive medical treatment in medical centers for the patients is still a challenge for the State. Often, doctors do not provide patients with clear information about their medical treatment and possible risks.

Unfortunately, in 2018 too, there were certain cases when alleged indifferent and unqualified treatment from the side of doctors resulted into the death of the patients.

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<sup>59</sup> See the statement of HRC about the ongoing developments in the GPB: <http://humanrights.ge/index.php?a=main&pid=19668&lang=eng>

<sup>60</sup> See information about one of the actions of the Campaign "Swim Safe": <http://humanrights.ge/index.php?a=main&pid=19700&lang=eng>

The case of Farman Jeyranli, the former director of the Ltd Lancet is worth to mention, who was arrested for extorting particularly large amount of money from patients and for hiding the information about dangerous environment in the clinic. Tbilisi City Court found Farman Jeyranli guilty into the imposed charges and sentenced him to 6-year imprisonment. HRC provided the families of the deceased patients of the Ltd Lancet with free legal aid. According to the HRC evaluation, the records on the history of medical manipulations and treatment provided to the patients before their death were done in full negligence of the legislation that ended up with the death of the patients. These violations were confirmed by the State Regulation Agency for Medical Activities of Georgia as well<sup>61</sup>. However, in December 2018, the Tbilisi Appellate Court eased the punishment for Farman Jeyranli and found him guilty only in professional negligence. Before that, the State Regulation Agency for Medical Activities forbade the Lancet to carry out transplantation operations of organs.

### FOREIGNERS' RIGHTS

In 2017-2018, information disseminated about Mustafa Emre Chabuk, the manager of Demireli College in Georgia, raised many questions about the partiality of concrete actions of the State. There were doubts that their actions were caused by political oppression from the Turkish Government. Georgian law enforcement bodies arrested Chabuk on May 24, 2017, upon the request of the Turkish Government and imposed pre-extradition imprisonment on him. As the family members were subjects of intimidation from Turkey, the Chief Prosecutor's Office enrolled them into special protection program. On February 17, 2018, Tbilisi City Court released Mustafa Emre Chabuk under the bail of 1000 GEL. His extradition imprisonment term was due to expire on February 24, 2018<sup>62</sup>.

In January 2018, the Tbilisi Appellate Court did not satisfy the claim of Mustafa Emre Chabuk on refugee status for him and his family members in Georgia. With it, the State of Georgia created high risk of being tortured and inhumanly treated in Turkey for the status-seeker and his family members in case of extradition.

It is important that the State defends the rights of foreign citizens and not deny them refugee status in the country without reasonable grounds.

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<sup>61</sup> See the statement of HRC about the activities of Farman Jeyranli:  
<http://humanrights.ge/index.php?a=main&pid=19518&lang=eng>

<sup>62</sup> <https://www.radiotavisupleba.ge/a/chabuki-tavisufalia/29048106.html> (available only in Georgian)

## **THE RIGHTS OF INTERNALLY DISPLACED PERSONS**

Poverty, lack of adequate living standards, high level of unemployment, health problems and social isolation are the main challenges for the Internally Displaced Persons (IDPs) in Georgia. Majority of IDPs still live in different communal centers (former buildings of state institutions). Economic non-sustainability is a major problem for the most part of the Georgian population but lack of accommodation further deteriorates the economic and social rights of the IDPs. After years of displacement, IDPs still have psychological problems related with adjustment to new conditions; often, mixed families stay in the territories adjacent to de-facto borders. In 2018, occupants frequently kidnapped people alongside the occupation line, and they often used force while being detained. The State of Georgia does not effectively defend the rights of the kidnapped citizens. It is essential that the State elaborates effective policy to address those challenges.

### **INVESTIGATION IN THE INTERNATIONAL CRIMINAL COURT OF THE HAGUE**

Since January 2016, the International Criminal Court (ICC) has been investigating war crimes and crimes against humanity allegedly committed during 2008 war in Georgia. The ICC Prosecutor's Office [OTP] has right to investigate only those crimes, which were committed in and around South Ossetia between July 1 and October 10, 2008, by the three participating sides of the war – armed forces of Russia and Georgia and de-facto forces of South Ossetia.

There are many problems with regard to the ongoing investigation both on national and international levels, which were many times raised by the Georgian NGOs, including the Georgian Coalition for International Criminal Court.

The investigation carried out by the OTP is absolutely confidential that means the society – including the victims and their representatives, do not have information about the investigation process and progress. Regardless of the many requests made by the NGOs, information about current progress of the investigation is not available.

One of the main challenges for the OTP is the denial of the Russian Federation to cooperate with the Court. Consequently, there is high risk that the OTP will not be able to carry out comprehensive investigation. Besides that, Russia, not being a Rome Statute member state, is not obliged to cooperate with the ICC that includes providing the investigation with necessary information and materials and delivery of suspects to the court, unlike Georgia, which is a Rome Statute member state and is obliged to cooperate with the Court. Consequently, there is risk that if the OTP issues order on the arrest of citizens of Russia, de-facto South Ossetia or Georgia, only Georgian citizens will be brought in front of the Court as the State of Georgia will have the

obligation to deliver its citizen to the Court. Lack of information about the ongoing investigation in the conflict-affected population is also a problem. Although, about one and half year ago, the ICC opened its field office in Georgia, the Office has limited financial and human resources and therefore is unable to function properly; consequently, the field office cannot conduct sufficient awareness raising campaign for the conflict-affected population. It negatively impacts the victims' motivation, their effective engagement in the process and cooperation with the Court.

## **THE AUGUST WAR CASES IN THE EUROPEAN COURT OF HUMAN RIGHTS**

On its side, the European Court of Human Rights examines the inter-state complaint of Georgia, in which Georgia claims that during the armed conflict in 2008, Russia and Russia-controlled separatist forces carried out discriminative and disproportionate attacks on peaceful population of Georgia that resulted into the damage of people's health, death, imprisonment or disappearance. Thousands of citizens lost their properties and their houses were devastated; thousands of people were forced to flee their houses in Abkhazia and South Ossetia.

ECtHR shall determine whether the Russian Federation violated those articles of the European Convention on Human Rights, which guarantee the right to life, right to freedom and safety, prohibits torture, guarantees the right to personal and family rights, right of property and freedom of movement.

On the other hand, people living in Tskhinvali speak about their complaints submitted to the ECtHR, where they claim that Georgian Armed Forces created threat to their lives and damaged their properties in 2008. In 2018, ECtHR declared inadmissible two applications over the August War – Kudukhova vs Georgia and Naniev and Bagaev vs Georgia; one more application – “Jyoeva and others vs Georgia” was declared partly inadmissible. With regard to this application, the European Court made a decision on admissibility based on the materials provided by the applicants. Consequently, the Government of Georgia was requested to provide its position with regard to this complaint only.

## **INTERNATIONAL ORGANIZATIONS ABOUT THE STATE OF HUMAN RIGHTS IN GEORGIA**

Human Rights Center presents the evaluations of international human rights organizations and stakeholders about the state of human rights in the country.

In the August 13, 2018 Report of the Human Rights Watch<sup>63</sup>, the organization states that Georgia continues to use harsh laws against drug-users. It is alarming that every year police randomly detain thousands of people for compulsory drug testing. Similar facts were observed in 2018 as well. The cases of plea-bargains were also frequent. It is worth to note that in 2018, the State started elaboration of legislative regulations for liberalized drug-policy, however, in terms of final results, the situation has not improved. Unfortunately, the legislative sanctions are still harsh and the State failed to establish more effective healthcare-oriented policy. Strict criminalization is not a way out to improve the situation, the report reads.

In December 2018, the Venice Commission published an opinion<sup>64</sup>, which reviews the provisions about the prosecutorial council and its functions. The Venice Commission stresses out the necessity to implement important reforms in the judiciary system. According to the conclusion, the reform in the judiciary and prosecutors systems shall become more comprehensive, oriented on real challenges and problems and rapid. The document also speaks about the improvement of the work of the High Council of Justice, for what it is necessary that all decisions of the HCJ were well grounded; the legislation shall determine general requirements to open the Council sessions to the public and more. The Conclusion also underlines that it is necessary to depoliticize the prosecutor's office as well as determine the rules of prosecutorial council composition, which are in line with the draft project presented by the NGOs. The Venice Commission recommends that the civil society shall have strong representation in the prosecutorial council.

International organizations paid attention to the preliminary period of the second round of the 2018 Presidential Elections. The OSCE ODIHR states in its report<sup>65</sup> that in the run-up to the second round campaign activities intensified, and there were isolated violent incidents. A number of anti-opposition and anti-government demonstrations took place before the run-off, increasing the tensions between the two sides. The use of negative, harsh and at times violent rhetoric significantly overshadowed the campaign and went unaddressed by authorities. In the campaign there were incidents of the misuse of administrative resources and the announcement of a series of social and financial initiatives, in particular, debt relief for 600,000 individuals by a private financial institution linked to the chairperson of the ruling party. The report pays attention to the incomprehensive election

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<sup>63</sup> See the August 13, 2018 Report of HRW:

<https://www.hrw.org/news/2018/08/13/georgia-severe-toll-abusive-drug-laws>

<sup>64</sup> See the opinion of the Venice Commission at:

<file:///C:/Users/ninot/AppData/Local/Microsoft/Windows/INetCache/IE/5P8B0283/default.pdf>

<sup>65</sup> See the preliminary report of the OSCE/ODIHR:

<https://www.osce.org/odihr/elections/georgia/404642?download=true>

legislation, which does not adequately regulate the necessary legislative frame to hold the second round of the elections. It is important to mention the statement of the Head of the Delegation of the European Parliament Laima Liucija Andrikiene with regard to the 2018 Presidential Elections in Georgia<sup>66</sup>. She paid attention to the statement of the Chairperson of the Georgian Parliament, when Irakli Kobakhidze called NGO representatives promoters of fascism<sup>67</sup>. The Member of European Parliament (MEP) underlined that: “It is inadmissible to call election monitoring organizations promoters of fascism. Citizens of Georgia do not deserve similar words. Young democracy needs free a civil society that people can trust, defend and support in their significant work.”

US State Department also disseminated a statement with regard to the 2018 Presidential Elections<sup>68</sup>, and stated that elections were conducted in free environment and the US State Department continues observation of the development of democracy in Georgia.

In 2018, US Embassy in Georgia paid attention to the reforms of recent years aiming at the independence of judiciary authority. The statement underlines the necessity of transparent and independent investigative procedures. According to the Embassy, increased transparency of the disciplinary process will improve public accountability and foster greater public confidence in the objectivity of the judicial system<sup>69</sup>.

Analytic research company The Economist Intelligence Unit evaluated the level of democracy worldwide in 2018. According to the study of Democracy Index<sup>70</sup>, the democracy index of Georgia significantly worsened in 2018 and the State remained in the category of hybrid regime.

In 2018, according to the statement of Amnesty International<sup>71</sup>, reform of the country’s criminal justice system, including the creation of an independent mechanism to investigate alleged human rights violations by police, should be the top priority of Georgia’s new government. The statement touches upon the teenage murder case in Khorava Street, where the State failed to ensure independent,

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<sup>66</sup> See the evaluation of the MeP: <http://pirveliradio.ge/?newsid=115440> (available only in Georgian):

<sup>67</sup> See the statement of the Parliament Chairperson: <http://liberali.ge/news/view/39941/kobakhidze-samtsukharoa-rom-NGOebis-natsili-fashizmis-tanamonatsilea> (available only in Georgian)

<sup>68</sup> See the full statement at <https://www.state.gov/r/pa/prs/ps/2018/11/287714.htm>

<sup>69</sup> See the statement of the US Embassy at <https://ge.usembassy.gov/statement-of-the-u-s-embassy-on-judicial-reform-may-18/>

<sup>70</sup> See the report: <http://country.eiu.com/georgia>

<sup>71</sup> See the full statement of the Amnesty International:

<https://www.amnesty.org/download/Documents/EUR5686172018ENGLISH.pdf>

effective, comprehensive and impartial investigation. The statement stresses out the case of Temirlan Machalikhvili, where the State failed to investigate the case timely and impartially that weakens the public trust towards investigative bodies.

On April 25, 2018, the eleventh round of the annual human rights dialogue was held between EU and Georgia. The EU reaffirmed its support to the sovereignty and territorial integrity of Georgia within its internationally recognized borders. It reiterated its concerns about the deprivation of life in custody of the Georgian citizen Archil Tatumashvili in Tskhinvali in February and about the overall deterioration of the human rights situation in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia, in particular with regard to ethnic discrimination, freedom of movement, property rights, and education in mother tongue, as well as about continued obstacles to the rights of internally displaced persons and refugees to a safe and dignified return to their homes.

EU called on Georgia to continue effective implementation of the anti-discrimination law, among them in the private sector. The participants of the dialogue underlined the faith to the universally declared principles of human rights regardless of religion, beliefs, race, gender, language, sexual orientation, gender identity, ability or any other characteristics.

The EU acknowledged the adoption of the Law on Labor Safety and encouraged Georgia to enhance its social dialogue and to continue to work closely with the International Labor Organization.

EU noted that Georgia has also made considerable progress in preventing torture and ill-treatment. The EU encouraged Georgia to continue to work on the establishment of an independent and impartial investigative mechanism for the investigation of alleged cases of violation of human rights and freedoms committed by representatives of law enforcement agencies<sup>72</sup>.

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<sup>72</sup> See the EU and Georgia 11th annual Human Rights Dialogue, Brussels April 25, 2018: [https://eeas.europa.eu/generic-warning-system-taxonomy/404\\_en/43514/EU%20and%20Georgia%20hold%2011th%20annual%20Human%20Rights%20Dialogue](https://eeas.europa.eu/generic-warning-system-taxonomy/404_en/43514/EU%20and%20Georgia%20hold%2011th%20annual%20Human%20Rights%20Dialogue)