

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Assessment of the GYLA Regarding the Human Rights Situation in Georgia in 2015

The year 2015 has seen significant challenges in terms of protection of and respect for human rights. In parallel with specific cases and trends that deserve a negative assessment, it is a problem that the State failed to achieve the political neutrality, independence and effectiveness of institutions that are vital for the effective exercise

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of rights – the Ministry of Internal Affairs (MIA), the Prosecutor’s Office, and the judiciary, despite certain steps taken in this direction. The impact of informal governance and insufficient respect for the principle of secularism also remain important challenges.

Throughout the year, the Georgian Young Lawyers Association (GYLA) continued to work effectively to protect human rights through legal proceedings, as well as through monitoring, advocacy and involvement in the legislative process.

In our view, the major issues of the year included cases of violation of human rights on the part of law enforcers and the State’s ineffective response to such instances; problems in terms of prevention, investigation, and punishment of all forms of violence towards women and girls; cases of infringement on freedom of expression and assembly; ineffective investigation of crimes against minorities; obvious threats to the maintenance of pluralist and critical media environment; the lack of a clear, transparent and human rights-oriented state policy for the investigation of crimes committed in the years 2004-2012 and for the restoration of victims’ rights; cases of violation of labor rights and the lack of a labor inspection with an effective mandate; incomplete reforms of the Prosecutor’s Office and the Ministry of Internal Affairs whose practical implementation was also accompanied by serious flaws; challenges in the judicial system and the third, interrupted wave of reform; the lack of political will for the entry into force of the postponed procedure of interrogation of witnesses and initiation of essentially flawed legislative changes in this area; the refusal of the ruling team to create an equal and fair election environment for the 2016 parliamentary elections; etc.

Among achievements, we should definitely mention the following: a number of successful steps for the implementation of measures envisaged by the action plan for visa liberalization; adoption of the Code of Juvenile Justice, which is definitely a very progressive piece of legislation in this area, as well as making courts obligated to periodically verify the necessity of pre-trial detention; effective steps taken by the State on the path to reforming the legislation on the public service; involvement of the Parliament of Georgia in Open Governance Partnership and approval of the accompanying action plan; improvement of mechanisms for citizens’ participation in the activity of local self-government bodies; granting the right to photograph defendants/convicts to the Public Defender and members of the Special Preventive Group, albeit only from September 1, 2016; increasing the number of

protective/restraining orders issued; preparation of a package of legislative changes for eliminating all forms of violence against women; etc.

The fulfillment of a number of obligations that the authorities had undertaken in the framework of Open Governance Partnership (OGP) deserves a positive assessment, although two key obligations that were envisaged by the OGP action plan for 2014-15 – in particular, the obligations to prepare a portal for citizens' electronic petitions lchange.ge and to draft a freedom of information act in the appropriate form – are yet to be fulfilled.

Torture and ill-treatment

Ill-treatment is no longer a systemic problem after 2012, though it is still a severe issue in the penitentiary system, in addition to [ineffective investigation](#) of cases of ill-treatment by police officers.

Risks of ill-treatment are also created by certain flaws in legislation, for example, the Minister's orders (Order No. 200 of the Minister of Corrections and Probation of August 1, 2013; Order No. 116 of the Minister of Corrections and Probation of August 27, 2015; and Order No. 97 of the Minister of Corrections, Probation and Legal Assistance of May 30, 2011) that allow employees of penitentiary institutions to make prisoners undress and do squats with the aim of checking them. The said orders pertain to all prisoners without an exception in a blanket manner. This year, the GYLA appealed against these orders in the Constitutional Court.

It is important to note that the investigation often fails to assign the corresponding status to victims of ill-treatment, which keeps them in the dark about the progress and results of the investigation.

It is also a malpractice that inquiries regarding dissemination of information about a possible crime are launched by the [General Inspection of the MIA](#) instead of sending the case immediately to the [Prosecutor's Office](#) on the basis of a relevant order of the Minister of Justice.

On October 23, 2015, the Tbilisi City Court acquitted four persons who had been charged for attacking participants of the assembly held on May 17, 2013, to mark the International Day against Homophobia and Transphobia. As the Tbilisi City Court

, the prosecution had failed to substantiate that there was a link between the violent dispersal of the peaceful rally on May 17, 2013, and the act committed by the defendants. According to the Court, the Prosecutor's Office failed to investigate the case effectively and to conduct a forensic analysis of footage that would have helped identify those responsible for the alleged crime. The Prosecutor's Office also failed to submit a report on the forensic analysis of the bus that had been damaged on May 17, 2013.

These circumstances indicate that the State failed to fulfill its obligation under Article 3 of the European Convention on Human Rights to conduct an investigation into ill-treatment and to identify and punish those responsible for the offence.

Independence of the judiciary and the third wave of judicial reform

In parallel with the general trend of increasing judicial independence compared with the period before 2012, there are still problems related to concrete cases that reveal inappropriate influences on the judicial process, including those with a political character. Judicial independence and the public's trust in the judicial system are also undermined by the opaque [processes](#) of [appointment](#) and [promotion](#) of judges by the High Council of Justice.

The year 2015 saw a continuation of the trend of improvement of judicial approaches in certain areas in examination of criminal cases. However, the rate of application of detention as a measure of restraint, for example, remains high, despite a slight decrease compared with the previous years. Motions of the Prosecutor's Office regarding the use of this measure of restraint still lack substantiation. The prosecution only indicates the grounds for applying the measure of restraint formally, without specifying concrete factual circumstances. Detention as an extreme measure of restraint should only be applied with appropriate substantiation and as an exceptional measure.

For instance, according to the statistics of the Tbilisi City Court^[1], the prosecution applied to the Court for a preliminary permission for search and recovery measures in 462 cases, of which the Court granted 431 motions. The Court also reviewed 2,086 motions regarding recognition of the lawfulness of search and recovery measures that had been taken on the grounds of urgent necessity. Of these, the Court recognized

the lawfulness of search and recovery measures in 1,264 cases. It should be noted that conducting search and recovery on the grounds of urgent necessity is an exceptional measure that may only be applied in extreme cases. The aforementioned statistics confirm that the percentage rate of application of search and recovery measures without the Court's preliminary permission is still high. There is still a reason to question that law enforcement bodies and the Court fulfill the obligations according to which they should not apply or legitimize search and recovery measures unless urgent necessity is proven appropriately.

Unfortunately, in a number of instances – particularly in politically sensitive cases – the judiciary failed to take decisions in favor of human rights and freedoms safeguarded by the Constitution of Georgia and, instead, [restricted them](#) disproportionately in the name of law.

During 2014, the Ministry of Justice of Georgia developed a [legislative package](#) for the third wave of judicial reform.

The discussion regarding the draft laws of the third wave took place in a tense and polarized environment, and it turned out to be practically impossible to bring together all the stakeholders – the author of the draft law, the judicial corps, and the civil society – and to hold a dialogue in a concrete format where the stakeholders would have an opportunity to exchange ideas, on the one hand, and the transparency of the dialogue and of the reform process, in general, would be ensured, on the other.

Particularly relevant with regard to the judicial reform are such issues as transition to the electronic procedure of distribution of cases and reform of the system of selection and appointment of judges. The draft laws of the third wave envisage certain changes in both areas, though the Parliament of Georgia protracted their adoption for unclear reasons. In parallel, the Ministry of Justice of Georgia continues appointing judges through the existing [opaque procedures](#) and [malpractice](#), which considerably undermines the prospects of enhancing the independence of the judiciary and the public's trust in it. It should be taken into consideration that, in accordance with the applicable legislation, the judges who were appointed through such opaque and unsubstantiated procedures will remain in office for life.

Reform of the MIA and the Prosecutor's Office

One of the most important events in 2015 was the beginning of the reform of the Ministry of Internal Affairs and the Prosecutor's Office.

Considering the excessive powers concentrated in the hands of the Ministry of Internal Affairs, the initiative was assessed positively from the very start, although there were a number of issues that [drew severe criticism of the non-governmental sector](#). First of all, we should mention the lack of a unified and well-structured concept of reform, which caused neglect of a number of issues. In particular, the need for effective internal control mechanisms and reform of the General Inspection, creation of an independent investigative mechanism, resolution of the issue of eavesdropping, transparency, and strengthening of mechanisms of judicial control was left out of the reform process.

As for the State Security Service, despite [criticism of the civil society sector](#), a number of recommendations were not taken into consideration, which resulted in the creation of two structures – with excessive powers, duplicated functions, and high risks of exceeding of powers – after the dissolution of one mighty ministry. The mandate and powers of the State Security Service were not defined clearly, the Service was granted classic police powers – including investigation of cases, search for and detention of persons, operative-investigative activity, use of coercive and preventive measures – and the creation and introduction of an effective mechanism of external control on the activity of the Service was not ensured. Against the background of the low standard of the structure's transparency and the lack of an independent investigative mechanism for responding to possible misconduct of employees, the risk of misusing the activity of the Service, including for political purposes, remains high. Considering the aforementioned and despite the implemented reform, the system still faces a number of severe problems that make it necessary to initiate meaningful and adequate changes that are suitable for the existing reality.

Similarly, the measures taken for reforming the Prosecutor's Office were insufficient and flawed. The legislative changes enacted with the aim of reforming this agency fail to shield the system of selection of prosecutors from undue political influences and to depoliticize the prosecution system in general, which was a declared aim of the said reform. The process of practical implementation of the new legislative initiatives was

also fraught with significant flaws. Despite the fact that the civil society had an opportunity to observe certain stages of election of the Chief Prosecutor, two of the most important components of the process – the election of members the Council of Prosecutors by the Conference of Prosecutors and, later, the election of the Chief Prosecutor of Georgia by the Council of Prosecutors – were not open and transparent. Both the flaws in the legislative changes and their practical implementation gave rise to serious doubts in society that both the process of election of members of the Council of Prosecutors by the Conference of Prosecutors and the election of the Chief Prosecutor by the Council of Prosecutors were subjected to political influences.

Women's rights and gender equality

The lack of legislative norms for elimination and punishment of all forms of violence against women has remained a problem in 2015. Women who are subjected to violence due to their gender still remain without a legal remedy, unless the violent act falls under the category of domestic violence. Despite the development of an extensive legislative package to prevent all forms of violence in connection with the signing of the Istanbul Convention on preventing and combating violence against women and domestic violence, the package has yet to assume the form of a law.

Law enforcement and judicial bodies still fail to examine and take into account the motive of gender discrimination when they investigate violence against women/domestic violence and mete out punishment. In most cases, employees of the MIA and the Prosecutor's Office are not held responsible by the relevant agencies for inappropriate response to cases of domestic violence. Investigations of cases of bringing women to the point of suicide are also problematic. The State does not have an effective mechanism for preventing and punishing marriages of minors and sex crimes against them. The legal system still justifies the impunity of such cases by the absence of the public interest.

Victims of domestic violence still lack recourse to state-run crisis centers, sufficient medical and psychological assistance services, and a mechanism of screening for violence in medical institutions. The issue of compensating victims still remains unregulated.

The aforementioned flaws contribute to the maintenance of oppressive patriarchal

structures, ineffective justice in relation to women, and women's subordinated role in society on the part of the State.

Media pluralism

The events that unfolded simultaneously in connection with three national TV channels in 2015 posed a serious challenge to media pluralism and freedom of speech. In addition, there arose well-founded doubts that the authorities were trying to establish control on influential TV channels. With regard to the ongoing dispute about the stakes in the Rustavi 2 TV station, there arose serious doubts [about the independence and impartiality of the judge](#). The doubts were further reinforced by the [low standard of substantiation of the rulings](#), the indictment of the judge's family member by the Prosecutor's Office more than one year after the act the latter had committed, and the lack of substantiation in the [explanation](#) of the Prosecutor's Office regarding the aforementioned. As part of the same dispute, the court of first instance set an extremely dangerous precedent of appointing a temporary media manager who was granted the rights to determine the channel's editorial policy and to ensure the use of objective and impartial method of reporting, together with other broad powers. The said ruling was overturned by a court of appeals.

In fall, Imedi TV unexpectedly closed the channel's most popular political talk shows, *Reaktsia* and *Imedis Kvira*. As a result, the host of these programs, Inga Grigolia, left the channel. The indefinite suspension of the segment of social-political talk shows in the fall TV season, without even informing the producers and journalists of these programs in advance, [raised serious questions](#). Particularly disturbing in this context were the statements of members of the ruling team who explained the closing of the social-political talk shows by the biased nature of these programs.

The Public Broadcaster closed the authorship program of Eka Mishveladze – *Pirveli Studia*. The Public Broadcaster explained this decision by Ms. Mishveladze’s marriage to Aleks Petriashvili, a member of the Free Democrats party. Later, the Public Broadcaster changed its stance and Eka Mishveladze received a promise that her program would be back on air with a changed format. The year 2015 also saw several cases of pressure on journalists and interference with journalistic activity, which were not followed by effective response.

Ineffective investigation and impunity of crimes against journalists and media organizations still remains a problem.

Freedom of assembly and manifestations

During 2015, the authorities actively applied Article 150 (defacement of urban image) of the Code of Administrative Offences against the right to hold assembly and manifestations. Similarly to the past years, including the period before 2012, detention of peaceful protesters for alleged violation of Articles 166 (petty hooligan action) and 173 (disobedience to a lawful demand of a law enforcement officer) of the Code of Administrative Offences remains an unchanging method of unjustifiable restriction of critical opinion.

Members of the United National Movement and Free Zone were detained on the charges of defacement of urban image for posting a banner against Prime Minister Garibashvili; an employee of Tabula TV, [Lekso Machavariani](#), was detained for arranging a makeshift stage for a “Stop Russia” protest rally in front of the Government Chancellery. The Director of Tabula TV, Tamar Chergoleishvili, an employee of the same TV station, Lekso Machavariani, and Salome Khvadagiani, a student, were detained for posting a poster with Bidzina Ivanishvili’s image on a fence of a construction site. Ten members of the Guerrilla Gardeners movement were detained at a protest rally for holding a poster containing non-standard, offensive language against the Panorama construction project, and the court [imposed administrative fines](#) on seven of them. In the town of Gori, the police took down a tent at a [protest rally](#) of the Alliance of Patriots for the ostensible purpose of protecting the protesters’ health from harsh climate conditions.

On the other hand, the police faced a serious challenge of effective management of violent acts at the time of assemblies. Such acts took place in almost every corner of Georgia, for example, during raids on offices of the United National Movement by persons assembled near these offices. These incidents raise well-founded doubts that the actions of the police were dictated by selective approach and that they failed to ensure the [observance of the principle of political neutrality](#).

Labor rights

Employees' renunciation of legal mechanisms for the protection of their rights for fear of losing a job remains a significant problem. It is not only that employees cannot express their protest about inadequate labor conditions; there were also instances when, in the case of industrial injuries, the administration of an institution/organization coerced employees by threats of dismissal to state that they had not sustained the injury at the workplace. The existing practice of compensating for overtime work, as well as the lack of legal safeguards, remains a problem.

February 2015 saw the launch of the State Program for Monitoring Labor Conditions, which is not effective in the current form and fails to ensure the protection of the right to safe labor conditions and other rights of employees. The program envisages monitoring of labor conditions only in those organizations and institutions that have given their preliminary consent in writing. In addition, the program implies [informing employers about the monitoring](#) in advance.

It is important to ensure that a labor inspection equipped with appropriate instruments is put into operation in a timely manner, as well as to make relevant changes to the Labor Code and other by-laws, in order to improve the labor legislation.

Inviolability of private life

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During the year, several persons, who are well-known to the public, made public statements regarding eavesdropping and surveillance of their private life and activity by the authorities. The results of the investigation related to these statements are unknown to the public.

In March this year, screenings of the documentary *The Bloody Chronicles of the Saakashvili Regime* were held in theatres and halls owned by various municipalities. The documentary included footage of inhuman treatment, rape and torture of convicts in prisons. The majority of the audience attending the screenings consisted of school pupils. In October, the torture footage was also aired by a TV station and publicly screened in the town/city centers of Zugdidi and Tbilisi, and it was done in a way that made it possible to identify the torture victims. At a time when full rehabilitation of torture victims remains an acute problem for the country, the screening of the torture footage in such a form is clearly counter effective and constitutes a violation of the right to inviolability of private life. Unfortunately, it is still unknown whether an investigation has been launched into the said facts, the more so considering that, according to footage disseminated through the media, representatives of local authorities were also involved in the public screenings of the torture footage.

On July 8, 2015, the Parliament made an amendment to Part 32, Article 3 of the Code of Criminal Procedure according to which the Operative-Technical Department was separated from the Ministry of Internal Affairs and subordinated to the State Security Service. The Operative-Technical Department holds the key for eavesdropping together with the Personal Data Protection Inspector. The amendment did not dispel the fears of NGOs involved in the “This Concerns You, They Are Still Listening to Us” campaign that the Operative-Technical Department will be able to eavesdrop on telephone conversations bypassing the Personal Data Protection Inspector. The GYLA, together with its partner NGOs, maintains the stance that the key for eavesdropping should not be held by a structure under the Ministry of Internal Affairs or the State Security Service which will be interested in obtaining as much information as possible, thereby increasing the risks of illegal eavesdropping, but it should be transferred to an agency without investigative functions. The courts or the National Communications Commission can be regarded as such agencies.

The NGOs involved in the “This Concerns You, They Are Still Listening to Us” campaign filed a complaint in the Constitutional Court demanding that the key for

eavesdropping be taken away from the Operative-Technical Department. On January 26, 2015, the GYLA filed another complaint in the Constitutional Court demanding that the Court find unconstitutional the order of the Minister of Internal Affairs that provides for storage of information about all offences committed by a person for an indefinite period.

Crimes/violations of rights committed in the past

Despite the fact that a number of international organizations and experts have spoken about the necessity of investigating cases of systemic torture and other violations of rights and about reparations to the victims, the State still lacks a clear, transparent and human rights-oriented policy of investigation of crimes committed in the years 2004-2012 and of restoration of the victims' rights, while the practice of restoration of violated rights is scarce and vague.

Impunity of systemic torture and ill-treatment in prisons remains a problem. Although individual persons have been charged and indicted for the said acts, the measures taken thus far are insufficient for identification of all the relevant perpetrators and rehabilitation of victims, considering the scale and character of the crimes.

The activity of the Special Department – which was created within the Prosecutor's Office with the aim of investigating cases of torture and forced concession of property – is not transparent. For instance, it is unclear by what criteria it selects cases for investigation, how it determines their order of priority, how it prevents potential conflict of interest, etc. The speed of the Department's work also deserves a negative assessment.

As of October this year, the Department had received 3,343 applications/complaints; of these, the Department was investigating 220 cases and had launched prosecutions against 2 persons in 2 cases. As of this period, the Department had completed investigations on 20 criminal episodes and exposed 15 public officials. Of these, criminal prosecution had been launched against 2 persons. The Department had used its discretion and refrained from launching criminal prosecutions in relation to 11 persons on the basis of Part 3, Article 105 of the Code of Criminal Procedure, while investigations had stopped in relation to 2 indicted persons due to their deaths. The Department is now prosecuting 2 criminal cases in which the final court decisions are

still pending.

This year, the Government of Georgia completed a number of disputes against Georgia, which had been underway in the European Court of Human Rights with regard to violations of rights committed in previous years, through the procedure of friendly settlement and recognition. Usually, in such cases, the Government of Georgia accepts the applicants' position, acknowledges that the State has violated their human rights, and offers to conduct an effective investigation to restore their violated rights and to pay them pecuniary compensation. During 2015, [seven cases that had been litigated by the GYLA](#) were completed successfully using such procedures. The majority of them concerned violent dispersal of peaceful protests under the government in power before 2012 and inhuman, cruel, degrading and humiliating treatment of protesters on the part of law enforcers during the dispersal.

Electoral legislation and environment

The authorities failed to take into account the unprecedented consensus between opposition parties and NGOs regarding the abolition of the majoritarian electoral system. By the decision of the authorities, the existing electoral system will be revised only for the 2020 parliamentary elections. In particular, the current majoritarian system will be abolished and the elections will be held with the proportional method. However, a 50% threshold will be introduced for majoritarian MPs for the 2016 parliamentary elections. In addition, the borders of majoritarian districts will be changed to observe the principle of equality of votes.

The said changes are only partially relevant to the problems in the current electoral system, and they fail to ensure the creation of a competitive and equal election environment in Georgia in a comprehensive manner.

We should separately mention the by-elections of October 31 that revealed significant legislative flaws that interfere with ensuring an equal and fair election environment, for example, the procedure of creation of special precincts and casting votes at such precincts, which has been criticized by the GYLA on a number of occasions in previous years.

The by-elections were held under a sort of political boycott. A large part of both the

parliamentary and non-parliamentary opposition refused to take part in the elections, which made the elections significantly less democratic. The elections of October 31 were also characterized by a high involvement of both the central and local authorities in pre-electoral processes, as well as on the polling day. Although the active involvement of political officials did not violate the electoral legislation, such background did not create the feeling that the election environment was equal. On a number of occasions, monitors of the GYLA observed [passivity and ineffective response](#) on the part of law enforcers.

Reform of local self-government

In terms of formation of an effective and citizen-oriented local self-government, we give a positive assessment to the changes made to the legislation on ensuring citizens' involvement in the exercise of local self-governance. However, we believe that there remain certain problematic provisions in the legislation which require additional improvement, in particular, the discretion of municipalities to hold a public meeting in a town or settlement where the number of the population exceeds 2,000, the necessity of conducting the activity of the public meeting openly and transparently, abolition of the standing body of the public meeting – the Public Council, the necessity of specifying the powers of the person elected by the public meeting, election of members of the Council of Civilian Advisers, the necessity of determining the person responsible for presiding over the Council of Civilian Advisers, etc.

[1] The statistics pertain to the period from February 2015 up to September 2015.