

## An emerging trend in Georgia - shrinking the scope of rights and freedoms guaranteed under the national legislation

Human Rights Centre (HRIDC)



Liberal legislation guaranteeing fundamental rights and freedoms has been one of the most important achievements of Georgia throughout its transition to democracy. However, what remained problematic was implementation of those laws in practice.

Impunity for violating human rights and freedoms was a long-established practice in Georgia.<sup>1</sup> Human Rights Defenders have documented dozens of such cases in recent years and continuously called upon the relevant authorities to eliminate these trends, undermining the very foundations of society.

What followed, however, are not the actions to address the systemic problems, but amending the laws and shrinking the scope of rights and freedoms guaranteed by the national legal system. Legalizing what once was considered as a severe violation of human rights, has become a new trend threatening human rights and democracy in Georgia.

### July 2009

Apparently in response to the thousands-strong protests throughout spring and summer 2009 in Tbilisi, demanding resignation of the President, in July the parliament adopted regressive amendments seriously undermining legal environment conducive of peaceful public protests. The amendments were adopted in a rush, on an extraordinary session of the Parliament, *despite the call from human rights groups to wait for the legal opinion from the Venice Commission.*

- **Limiting the Right to Assembly and Manifestation** - July amendments to the *Law on Assemblies and Manifestations* imposed a blanket ban on assemblies in certain public areas (within 20 meters of the government buildings); the law also banned full or partial blocking of roads during rallies unless the rally cannot be held elsewhere due to the number of participants. *The law was passed despite the call from human rights groups to wait for the legal opinion from the Venice Commission.*
- **Increasing police powers** – Police received the right to use special means (including plastic and rubber bullets, pepper gas, etc.), which were legally prohibited before. (It needs to be further noted here, that Georgian legislation does not expressly require that use of force in all circumstances must be proportionate to the legitimate aim pursued.) Moreover, legitimate grounds for the use of force listed in the law go beyond the list provided in article 2 of the ECHR. e.g., unlike ECHR, Georgian legislation authorizes use of force solely for the purposes of protection of property.
- **Harshening the sanctions** – The term of administrative detention was increased from 30 to up-to 90 days. This sanction can be applied for minor hooliganism and defying police orders, as well as

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<sup>1</sup> Ineffective investigations into human rights abuses and lack of judicial independence to sanction these abuses have been a part of this problem. Selective application of justice has been another part of the problem, manifesting itself in shielding some groups, e.g., law enforcement authorities, from accountability or giving them lenient sanctions, pardoning them, etc., This takes place against the background of a “zero tolerance” policy declared by the highest political authorities.

violating the rule of holding a public assembly. The measure appears excessive given that pretrial detention for criminal charges is only 60 days.

Furthermore, these amendments were introduced against the background of continuous impunity for previous instances when peaceful assembly and manifestation was severely dispersed by police.<sup>2</sup>

The July 2009 amendments are used to silence the dissent, particularly youth groups who use peaceful street actions for condemning cases of corruption, mismanagement, human rights abuses, etc.

### July 2010

- **Limiting Access to Public Information** - A new amendment to Georgia's freedom of information law introduced strict limits on "third-party" access to information about cases involving the Georgian government in international courts. The amendment marked the first time the government has restricted the country's FOI legislation since the 2003 Rose Revolution.
- **Law on Reserve Troops** - Amendments increased term of compulsory service in the reserve forces. According to the law, male citizens before the age of 40 may be called for compulsory service for several times per year, but the total days of service per year should not exceed 45. The law does not however provide any other limitation on the powers to call a citizen in the reserve, and does not clarify whether and in which situations a citizen is entitled to ask for postponement of the service. Such gaps in the law create disproportionately high risk of abuse of power and arbitrariness.

### September 2010

- **Increasing Police powers** – Police received the power to stop any person at street for a search – (called "surface examination", which can easily be followed by a full search, as formulated in the law). This procedure can be conducted based on a "reasonable suspicion" – a notion undefined further - that one might have committed a crime. The law does not specify the amount of time limit for conducting such a procedure, does not grant the person in question any legal status and procedural rights to protect oneself from illegal intrusion and abuse. The law further eliminates the need to draw up a search protocol, and to obtain a prior authorization of a judge, or a prosecutor - in emergency situations (as specifically mandated by the previous law).
- **Limiting protection of personal data** (draft law pending before the parliament) – pending amendments to the "Law on the Protection of Personal Data" initiated by the parliamentary majority. The amendments, if adopted, will oblige any public or private body to collect the data about its employees, process it and send it to the inspector of the personal data, a new position the draft law also envisages. While the need for introducing such a law remains vague vis-à-vis declared democratic goals, the law does not provide proper guarantees for ensuring that

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<sup>2</sup> Particularly, November 7, 2007, May 6 and June 15 of 2009 - when police violently dispersed peaceful demonstrations, used excessive force and prohibited weapons. Up to date, no proper investigation has been held and no one has been brought to justice for these actions. (Allegedly, several police officers faced administrative sanctions; however their names remain undisclosed to the public).

information, such as e.g., one's religious or political beliefs or sexual orientation will be protected appropriately.<sup>3</sup>

**Limiting transparency in criminal justice (New Criminal Procedure Code)** – [in force since October 1, 2010] – Although the new Code has many commendable provisions, their effectiveness in practice to facilitate justice has yet to be tested. One of the most problematic parts is that the new Code eliminates the notion of a victim as a part to the proceedings, and consequently, leaves the latter without any procedural rights or mechanisms to be involved in the investigation and exercise scrutiny on its effectiveness. That, in itself, leads to elimination of the legal mechanisms for the broader public to exercise such a scrutiny over investigations, which are of critical importance, especially when public interest is at stake.

**Internet Control in Georgia**-According to the amendments made into the Law on the Operative-Investigative Activity, the communication companies are obligated to ensure the availability of private information for the investigation. The amendment to the Law on Operative-Investigative Activity was made on September 24<sup>th</sup>, 2010. According to the changes, the investigative structures will be authorized to have access to the physical lines of communication, mail servers, bases, networks of communications. The private e-mails, chats, open and closed conversations in internet will be accessible for investigative structures according to the new law amendment.

However, in case of the urgent necessity, the investigation service has a right to implement this action and then during 24 hours present it to the court where he can prove that this action was evoked by the urgent necessity.

**The Freedom Charter**- was approved in a second reading in December, and will be finally passed when on spring session 2011.

The law will expand the powers of law-enforcement agencies and encourage them to coordinate better on counter-terrorism measures. It will sanction the creation of a single video surveillance system for strategic buildings and shipments, and oblige banks to inform the interior ministry about large bank transfers to organisations or private individuals.

#### **Modalities for activities in conflict zones**

Since the end of 2008 conflict, Georgia has introduced several legislative measures to address the situation in breakaway regions. The Law on Occupied Territories introduced a substantial restrictions to activities in these regions which were binding for Georgian, foreign or international actors. The law was amended in February 2010 as a result of wide criticism and recommendations by the Venice Commission. By introducing blanket restrictions for almost all kinds of activities in the abovementioned areas the Government risked making urgent humanitarian or other necessary activities illegal.

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<sup>3</sup> The amendment envisages authorization to process such data in the public interest. One of the initiators of the draft, representative of the ruling party Mr. Tordia stated that it is in public interest for the kindergarten to know sexual orientation of a teacher or for a hospital to know if a staff member is infected with HIV/AIDs.

Georgian Government has introduced new modalities for projects related to occupied territories of Abkhazia and South Ossetia. The new law was adopted in the framework of “Engagement through Cooperation” the official strategy of the Georgian State in relation to the above mentioned territories and came into force on October 15 2010<sup>4</sup>.

According to the new law all activities carried out in occupied territories or in relation to them must be approved by the Government. Modalities cover activities of both local and international actors, as well as joint projects carried out together with civil society organizations within those territories.

While it is understandable that the Georgian government wants to have at least some picture of activities carried out by non-government actors in its breakaway provinces, the law carries the potential to destroy the small amount of trust built between parties on a civil society level. The rationale behind such judgment relies on the perception of the Georgian government in Abkhazia and South Ossetia which is overwhelmingly negative. Therefore the project approved by central authorities will be viewed with some precaution and mistrust by Abkhazians and Ossetians.

Although, the Georgian government has several times showed openness to hear legal expertise and recommendations from the European bodies on these amendments, i.e. Venice Commission, in the end, the amendments were adopted before the Venice Commission provided its opinion.

In addition, control over the legislative process is weak in Georgia, owing to misbalance of political forces inside the Parliament.<sup>5</sup> Constitutional Court has also failed to establish itself as a strong guarantor of human rights through law.

**We consider that erosion of strong guarantees for the protection and promotion of human rights in the national legislation is a clear step back. They jeopardize current achievements and future of democracy in Georgia.**

**We call upon Council of Europe and the European Union, and their appropriate agencies, to:**

- Strengthen their monitoring over the legislative process in Georgia.
- Use their mandate and political leverage to ensure that laws are kept strictly in line with the ECHR standards and European values of human rights and freedoms.
- Continue support for civil society groups working on monitoring legislative process and implementation of laws in practice.

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<sup>4</sup> The document is available at [http://www.government.gov.ge/files/225\\_31228\\_370287\\_SMR-Strategy-en.pdf](http://www.government.gov.ge/files/225_31228_370287_SMR-Strategy-en.pdf)

<sup>5</sup> It is often very difficult to draw a line between the policy of the ruling party under the President's leadership – which holds an absolute majority in the Parliament (enough to change the Constitution, the supreme law of the country) - and the executive branch, again under the President's leadership.