



# **Human Rights Center (HRIDC)**

**Note on Human Rights Situation in Georgia**

**Tbilisi 2009**

## **Impunity for Excessive Use of Force by Law Enforcement Officials**

Excessive use of force by law enforcement officials, followed by ineffective investigations and unfair court hearings, continues to be one of the main concerns.<sup>1</sup> Excessive force is used under the cover of law and is justified under the pretext of ‘combating crime’ both by the executive and the political leadership of the country, as well as the judiciary.<sup>2</sup>

Although, in many cases, ‘criminality’ of the people killed remains highly contested: while the burden of proof on this matter lies exclusively on the state/authorities, authorities very often fail to meet this burden and to provide legally valid and convincing evidence that 1) the people killed were criminals and/or 2) that the authorities used necessary and proportionate force to achieve the legitimate aim pursued (effect the lawful arrest, in defence of any person from unlawful violence, etc.).

On the contrary, in majority of the cases there exists convincing evidence that these people were not ‘criminals,’ moreover – they were not armed during the incident and did not resist to the police. In fact, in several cases the evidence (including witness testimonies, results of expert examinations, etc.) suggest that people were executed by the police or law enforcement officials when the former were holding their hands up in surrender.

Next of kin or relatives of the victims of excessive use of force are often artificially blocked from having access to the case materials and are deprived of their right to participate in the proceedings, while these rights are formally guaranteed by Georgian legislation; Moreover, victims and their families are not compensated.

In addition, there are cases when citizens became a victim of police use of force against ‘criminals’ by accident. The rights of those people and their families most often go without any redress.

The Human Rights Centre has recently carried out a comprehensive research on the issue of excessive use of force and subsequent impunity in Georgia.

The report demonstrates that impunity is not the result of certain structural or legislative setbacks or the lack of training and qualified human resources that much, but of political will openly condoning and encouraging impunity of state agents. In the same way, excessive use of force by law enforcement officials in Georgia is not a matter of exceptions and accidents but an integral part of the state policy.

(The full report, named ‘Licence to Kill issues in Georgia: 2004-2009’ is available at <http://www.humanrights.ge/admin/editor/uploads/pdf/license-to-kill-bolo.pdf>)

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<sup>1</sup> The NGO ‘Protect the Life’ (which is headed and composed of the parents of those who became victims of police excessive use of force) and the Conservative Party of Georgia who has been studying such cases for long time state that there are more than 60 of such cases dated by 2004-2009.

<sup>2</sup> In many cases the investigation on the allegations of excessive use of force was not launched or the case did not reach the court because investigator decided to close down the investigation without finding any use of excessive force – despite the fact that in most of the cases the evidence suggested contrary.

## **Lack of Judicial Independence**

### **There were several important positive steps made in the course of the judicial reform:**

The situation has become better in terms of maintaining order in court hearings. The Organic Law of Georgia on General Courts introduced the position of a bailiff to maintain order in general court houses and to support the unrestricted implementation of justice. The mere presence of bailiffs with uniforms in court houses created a better environment there;

One of the indicators of the improvement of mechanisms in the struggle against corruption in the judicial system is the provision of social guarantees to judges. Judges received a mere 30 GEL salary per month before 1999; there had been no technical equipment for the effective and flexible administration of justice in court houses. It was difficult to struggle against corruption in this situation. Now the minimum salary of the judges of general courts is 1,550 GEL and the maximum is 4,100 GEL. The salaries of the general court administration officers and supporting staff were increased as well. The minimum salary of the court administration officers before 2007 had been 70 GEL and the maximum – 250 GEL. After January 1, 2007 the minimum salary has become 140 GEL and the maximum – 1,250 GEL.

- New forms of proceedings were introduced in the course of the judiciary reform which reveal the reasons for delay in the adjudication of cases . Important amendments were introduced to legislation regarding procedure. in particular, the procedures for adjudicating cases became simpler; judges got the opportunity to use flexible and effective legal mechanisms to avoid delay in hearing cases;
- Much attention is paid to the improvement of the technical equipment in court houses and therefore, to provide better working conditions to judges and court administration. The court houses were in bad conditions before the reform. In the course of reform court houses were renovated and court rooms were better furnished.

### **Despite the positive trends, judicial independence still remains a crucial concern.**

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

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

- Pretrial detention has become a norm in Georgia. Today there are very few court hearings which do not end up with pretrial detention of a suspect. We recommend to revise the “Zero Policy” of the government; It is not necessary to hold all suspects in pretrial detention, especially when they do not create problems for investigation;
- It is noteworthy that torture and inhuman treatment is frequent in pretrial detention cells. Despite the fact that NGOs often indicate this and present facts of torture and inhuman treatment to relevant institutions, very few police officers have been charged with torture

and convicted under the Criminal Code of Georgia. This somehow indicates that there is a culture of impunity in Georgia;

- The analysis of cases shows that in most cases the court approves the plea bargain agreement without having adjudicated the case in detail and investigated many important issues. Courts adjudicate cases mainly in 1-2 court hearings. Cases are discussed on these hearings superficially and then the court endorses a plea bargain agreement. It is noteworthy that the court has never refused the prosecutor's office's motion to endorse a plea bargain agreement. They have always been approved by the court;
- Influencing court verdicts: the executive branch of the government and the prosecutor's office puts pressure on the court regarding administrative and criminal cases;
- Each court hearing should be open and transparent. There are some cases when court hearing should be closed but even in cases of closed hearings, judgments should be announced publicly. A court hearing is public when a court hearing is recorded on video or on photos under a motion of a side which is interested in court hearing. Otherwise, there will always be a doubt in the society that the scenes that were publicized by the court are edited and do not show the reality;
- Despite the fact that the Georgian Constitution encompasses a large number of civil rights and freedoms, including the right of an individual to apply to the court to protect his rights and freedoms, in practice the role of the court in protecting human rights remains inadequate – it is ineffective to seek assistance from court.

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

## **Massive Violations of the Freedom of Assembly and Demonstration**

In April 2009 mass demonstrations started in the capital Tbilisi and some other provinces against the current political leadership of Georgia. There are tens of documented cases that the Government of Georgia was using undemocratic and in some cases illegal methods to quash the dissent and maintain the power.

On the one hand the demonstrations have been characterized by harassments, repressions and excessive use of force by the law enforcement officials against political activists and ordinary citizens who joined the demonstrations; on the other hand state has failed to investigate harassments against the demonstrators committed by 'unidentified people.' Bearing in mind particular circumstances suggesting that the state failure was deliberate, Human Rights Centre concludes that by this omission the government was directly condoning and encouraged those 'unidentified people' in their crimes against the peaceful demonstrators.

(Detailed information on this issue can be seen in the HRIDC report 'Repressive Democracy?! Chronicles of State Sponsored Violence in Georgia during the spring 2009' at <http://www.humanrights.ge/admin/editor/uploads/pdf/repressive%20democracy.pdf> ;

See also the Statement against the Political Persecutions in Georgia by the South Caucasus Network of Human Rights Defenders at

<http://www.humanrights.ge/index.php?a=announce&id=76&lang=en> )

Following the demonstrations the Parliament adopted amendments to the Law on Rallies, Law on Police and Law on Administrative Offences on July 17, 2009. These amendments were adopted on the extraordinary session without the parliament waiting for the responses on the amendments from the Venice Commission. These amendments unjustifiably restrict human rights and fundamental freedoms and further undermine democracy in Georgia.

## Political Prisoners

Despite valid guarantees in Georgian legislation against the persecution on political grounds, the monitoring carried out by the Human Rights Centre and another one carried out by the International Federation for Human Rights demonstrate the cases when people are persecuted and imprisoned on political grounds in Georgia.

In almost every case, the reasons for detention and judgment of people are crimes committed by those people; such as: hooliganism, drug-abusing, bribery, abusing power. Furthermore, governmental officials are persecuted only after they make public critical statements about the government. Human Rights Center (HRIDC) covered similar facts several times<sup>3</sup> and called upon the authority to release people arrested on political grounds. (For further information see <http://www.humanrights.ge/admin/editor/uploads/pdf/georgie528a2009.pdf>)

## Control and Harassment of journalists and media outlets

Freedom of expression and the media have significantly deteriorated during the last five years. Journalists face physical and verbal attacks by the representatives of the government while carrying out their professional duties. Failure of the justice system to hold perpetrators accountable further encourages and perpetuates violence.

Journalists were harassed and beaten up during the demonstrations of April 9, 2009 and its aftermaths, and November 7, 2007. Many have faced harassment, seizure and/or destruction of cameras, and other illegal interference in their activities, such as in the cases of Eliso Chapidze, Gela Mtivlishvili, Saba Tsitsikashvili, Vakho Komakhidze, and Irakli Imnaishvili. In none of these cases have the perpetrators been held responsible for their unlawful acts.

The closure of the TV channels Iberia, 202 and Channel 9 in 2004 and 2005, violent evictions of TV Channel Kavkasia and 15 newspapers from their premises in 2007, raid of the office of the TV Channel Imedi by police special forces and unlawful seizure of Imedi's broadcasting license during the November 2007 demonstrations have had a chilling effect on media freedom and strengthened government control and influence on access and dissemination of public information in the country.

Non-transparent ownership of media outlets has further led to self-censorship. As a result, TV channels fail to fulfil their role as a public watchdog, and information they provide lacks objectivity and is often biased in favour of the ruling elite.<sup>4</sup>

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<sup>3</sup> <http://www.humanrights.ge>

<sup>4</sup> World Press Freedom Statement by *the South Caucasus Network of Human Rights Defenders* (coordinated by the Human Rights Center) see at <http://www.humanrights.ge/index.php?a=urgent&id=94&lang=en>