



**Institute for Development  
of Freedom of Information**

**Opinions of “Institute for Development of Freedom of Information”  
on the Strategy for the Protection of Human Rights**

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In March 2020, the Government of Georgia initiated the process of developing a new Strategy for the Protection of Human rights. Within the scope of this initiative, “Institute for Development of Freedom of Information” submitted to the government opinions and recommendations regarding main directions and objectives that should be part of the strategy.

The National Strategy for the Protection of Human Rights sets out Georgian government’s long-term priorities and objectives, which should ensure implementation of human rights-based policy and strengthening the rule of law. Given the long-term nature of the Strategy, it should encompass a broad vision of strengthening human rights that will lead to real and tangible results in the process of implementing constitutional principles in practice.

IDFI’s opinions and recommendations address the following key issues:

- 1) Right to a fair trial;
- 2) Freedom of expression/access to information;
- 3) Right to privacy;
- 4) Independence of the prosecution service;
- 5) Right to equality;
- 6) Combating violence against women and domestic violence.

## 1. The Right to a Fair Trial

The 2014-2020 Strategy envisages improved protection of the right to a fair trial through implementation of continued reform of the judiciary. The recent judicial reforms have not ensured proper independence of Georgian judiciary and certain essential flaws still remain as a significant challenge.<sup>1</sup> Therefore, IDFI considers that the new strategy should foresee this direction and cover the following crucial issues:

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<sup>1</sup>For further information see:

IDFI, GYLA, “The Supreme Court of Georgia – Analysis of Institutional and Legal Framework”, 2020, available at:

[https://idfi.ge/en/presentation\\_of\\_the\\_report\\_on\\_institutional\\_and\\_legal\\_framework\\_of\\_the\\_supreme\\_court\\_of\\_georgia](https://idfi.ge/en/presentation_of_the_report_on_institutional_and_legal_framework_of_the_supreme_court_of_georgia)

IDFI, EMC, “Assessment of the Judicial Reform – System of Disciplinary Liability of Judges”, 2019, available at:

[https://idfi.ge/en/assessment\\_of\\_the\\_judicial\\_reform\\_system\\_of\\_disciplinary\\_liability\\_of\\_judges](https://idfi.ge/en/assessment_of_the_judicial_reform_system_of_disciplinary_liability_of_judges)

IDFI, EMC, “Assessment of the Judicial Reform”, available at:

[https://idfi.ge/en/assessment\\_of\\_the\\_judicial\\_reform](https://idfi.ge/en/assessment_of_the_judicial_reform)

IDFI, Compliance with Procedural Time Limits for Considering Cases and Preparing Judgments in Tbilisi City Court - Practice of 2015-2018 years, 2019, available at:

[https://idfi.ge/en/compliance\\_with\\_deadlines\\_in\\_georgian\\_court](https://idfi.ge/en/compliance_with_deadlines_in_georgian_court)

IDFI, EMC, “Implementation of the Judicial Strategy and Action Plan”, shadow report, 2018, available at:

[https://idfi.ge/en/evaluation\\_report\\_of\\_court\\_system\\_strategy\\_and\\_action\\_plan](https://idfi.ge/en/evaluation_report_of_court_system_strategy_and_action_plan)

IDFI, ISFED, “Judges’ Professional Training System in Georgia, 2019, available at:

[https://idfi.ge/en/problems\\_identified\\_in\\_the\\_judges\\_professional\\_training\\_system\\_suggest\\_that\\_comprehensive\\_reform\\_of\\_high\\_school\\_of\\_justice\\_is\\_needed](https://idfi.ge/en/problems_identified_in_the_judges_professional_training_system_suggest_that_comprehensive_reform_of_high_school_of_justice_is_needed)

- Guarantee independence of the judiciary by reforming the system of appointment of judges, ensure justification of decisions and merit-based appointments;
- Eliminate deficiencies in the legal framework related to the Supreme Court in order to restrict broad powers of the Chief Justice, remove Chairpersons of Courts of Appeals from the Plenum, limit excessive powers of the Plenum, and effectively separate competencies between the HCOJ and the Supreme Court;
- Strengthen transparency of the judiciary;
- Continue the reform of the HSOJ in order to achieve its genuine independence, and to ensure quality and efficiency of justice;
- Further improve the system of disciplinary liability of judges with the aim of strengthening institutional independence of the Independent Inspector's Office, and ensure sufficient transparency of its activities;
- Strengthen internal independence of the judiciary by amending the rule for appointment of Court Chairpersons and by limiting their excessive powers;
- Take measures to ensure efficiency of justice by addressing the issue of excessive caseload and procedural delays in common courts;
- Initiate the reform of the judicial promotion and periodic evaluation system;
- Improve the system of electronic case allocation in order to ensure equal distribution, and avoid manipulation and arbitrary assignment of cases.

## 2. Freedom of Expression/Access to Information

One of the aims envisaged by the 2014-2020 Strategy is to ensure a high level protection of freedom of expression, association and peaceful assembly. IDFI considers that a high standard of freedom of expression should be foreseen as a separate direction in the new Strategy.

The Constitution of Georgia guarantees the high standard of freedom of expression, however, in recent years, initiatives of certain public officials threatened freedom of expression several times,<sup>2</sup> which should be negatively assessed. Apart from the above mentioned, recently serious concerns have been raised regarding the environment for media pluralism indicating the politicization of the media, that has been addressed in the international assessments<sup>3</sup> as well as in the local non-governmental organizations' statements.<sup>4</sup>

As for access to information, Georgia has basic legal provisions on this issue in the General Administrative Code, but there is no stand-alone law on freedom of information. There is also no dedicated oversight authority that would ensure enforcement of relevant regulations. Despite the fact that a draft law on Freedom of Information has been prepared, it has not been initiated in the Parliament of Georgia yet. It is an important challenge that the existing legislation fails to establish a

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<sup>2</sup> IDFI, Threat Posed to Freedom of Expression in Georgia, available at:

[https://idfi.ge/en/threat\\_posed\\_to\\_freedom\\_of\\_expression\\_in\\_georgia](https://idfi.ge/en/threat_posed_to_freedom_of_expression_in_georgia)

<sup>3</sup> US Department of State, Georgia 2019 Human Rights Report, available at:

<https://www.state.gov/wp-content/uploads/2020/03/GEORGIA-2019-HUMAN-RIGHTS-REPORT.pdf>

OSCE ODIHR Election Observation Mission Final Report, available at:

<https://www.osce.org/odihr/elections/georgia/412724?download=true>

<sup>4</sup> Public organizations collectively address to the International organizations concerning the alarming processes in the Adjara Public Broadcaster, available at:

[https://idfi.ge/ge/appeal\\_to\\_international\\_organizations](https://idfi.ge/ge/appeal_to_international_organizations)

supervisory body and a monitoring mechanism, and does not ensure sanctions for illegal refusal to disclose public information.

Consequently, IDFI considers that a new strategy should include the following issues:

- Strengthening freedom of expression and media pluralism;
- Strengthening guarantees of access to information by adopting the Law on Freedom of Information, establishing a supervisory body and introducing sanctions.

### 3. The Right to Privacy

National Human Rights Strategy for 2014-2020 envisages a high standard of protection of the right to privacy, which, in IDFI's opinion, should also be included in the new strategy as well.

Regulating secret surveillance in Georgia is an important challenge in this respect. In 2016 the Constitutional Court ruled that the technical access of the State Security Service to telecommunication operator networks was unconstitutional. This access allowed for unlimited monitoring of communication and data collection. According to the ruling, the legislation failed to ensure control of realtime acquisition of information on the internet. The legislative amendment adopted in 2017 did not comply with the requirements of the Constitutional Court decision<sup>5</sup>and as a result, more than 300 citizens filed a constitutional appeal against the new amendments, which is still pending at the Constitutional Court.

Therefore, IDFI considers that a new strategy should ensure that provisions regulating secret surveillance fully respect constitutional and international standards of human rights.

### 4. The Independence of the Prosecutor's Office

One of the directions of the 2014-2020 Strategy is a reform of the Prosecutor's Office aimed at ensuring fair, effective, transparent and independent criminal prosecution procedures. IDFI considers that this direction should be part of the new Strategy as well.

The independence accorded to the PSG through the recent reform is an unequivocally positive breakthrough. However, despite the reforms, there are remaining challenges that necessitate further efforts and strong addressing mechanisms in the institution.

Even though the Minister of Justice is no longer a member of the Prosecutorial Council, (Council) is the only change made to the Council composition rules, which became a target of Civil Society,<sup>6</sup>as well as

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<sup>5</sup> IDFI, Regulating Secret Surveillance in Georgia (January-August 2017), available at:

[https://idfi.ge/en/regulating\\_secrete\\_surveillance\\_georgia\\_january\\_august\\_2017](https://idfi.ge/en/regulating_secrete_surveillance_georgia_january_august_2017)

IDFI, Regulating Secret Surveillance and Practice in Georgia, 2017-2019, available at:

[https://idfi.ge/ge/statistics\\_of\\_secret\\_surveillance\\_2017\\_2019\\_in\\_georgia](https://idfi.ge/ge/statistics_of_secret_surveillance_2017_2019_in_georgia)

<sup>6</sup> IDFI, Opinions of Institute for Development of Freedom of Information (IDFI) on the Draft Organic Law on Prosecutor's Office, 2018, pp. 2 – 3, available at:

[https://idfi.ge/public/upload/IDFI\\_Photos\\_2018/PrIME\\_Project\\_EU/opinion\\_on\\_draft\\_law\\_PSG\\_ENG.PDF](https://idfi.ge/public/upload/IDFI_Photos_2018/PrIME_Project_EU/opinion_on_draft_law_PSG_ENG.PDF)

Human Rights Education and Monitoring Center (EMC), EMC's Opinion on the Draft Law on Prosecutor's Office, 2018, pp. 1 – 2, available at:

[https://emc.org.ge/uploads/products/pdf/EMCs\\_opinion\\_on\\_draft\\_law\\_1538495733.pdf](https://emc.org.ge/uploads/products/pdf/EMCs_opinion_on_draft_law_1538495733.pdf)

Open Society Georgia Foundation (OSGF), Assessment of the reform of the PSG, 2018, available at:

<https://osgf.ge/prokuraturis-reformis-shefaseba/>

the Venice Commission criticism, raising the issue of low representation of the civil society in the Council.<sup>7</sup> Constitutional amendments enforced in 2018 granted the Council the role to ensure independence, transparency and effectiveness of the PSG, but without relevant legislative amendments this remains just a formality.

Individual prosecutors' independence remains a challenge. Prosecutors need effective and functional legislative guarantees to ensure their neutrality and impartiality while carrying out criminal proceedings. Chief Prosecutor's orders are obligatory for all prosecutors. It is important to further empower individual prosecutors and enhance the independence of the lower level prosecutors.<sup>8</sup> It should be noted that appointment, promotion, disciplining and dismissal of prosecutors is a competence of the Prosecutor General. Even though the advisory body is formed in relation to above-mentioned issues, its decisions are not mandatory and the final decision is made by the Prosecutor General. Overall, such a system may affect the independence of the individual prosecutors and concentrate excessive powers in the hands of the Chief Prosecutor.<sup>9</sup>

The law must ensure that the process of selection and promotion of prosecutors are merit-based. The Prosecutor General should not have the discretion to appoint a prosecutor without competition. The relevant law should provide a detailed set of criteria of promotion of prosecutors and justification for promotion of prosecutors, which was underlined in the reports of international organizations.<sup>10</sup> Herewith, the Organic Law should define the basis for employee rotation in more detail and include full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (even mandatory) of a prosecutor/investigator to a different position.<sup>11</sup>

The Organic Law only provides general criteria for a candidate for the position of the Prosecutor General. However, there should be further criteria set forth in the legislation to choose between those candidates who have met general criteria set forth by the law and are taking part in the competition. Moreover, the Prosecutor General is elected by the majority of the full composition of the Parliament of Georgia.<sup>12</sup> This does not guarantee depoliticization of a selection process as has been recommended by international organizations.<sup>13</sup>

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<sup>7</sup> Venice Commission, Opinion on the provisions on the Prosecutorial Council in the Draft Organic Law on the Prosecutor's Office and on the Provisions on the High Council of Justice in the Existing Organic Law on General Courts, 17 December 2018, p. 8, para. 33, available at: [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>8</sup> GRECO, Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report, (Strasbourg, 28 November – 2 December 2016), pp. 46-47, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc116>

<sup>9</sup> OECD, Anti-Corruption Reforms in Georgia, Fourth Round of Monitoring of the Istanbul Anti-Corruption Action-Plan, 2016, pp. 69-70, available at: <https://www.oecd.org/corruption/anti-bribery/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>

<sup>10</sup> GRECO, Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report, (Strasbourg, 28 November – 2 December 2016), pp. 43 – 44, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc116>

OECD, Anti-Corruption Reforms in Georgia, Fourth Round of Monitoring of the Istanbul Anti-Corruption Action-Plan, 2016, pp. 70 – 71, available at: <https://www.oecd.org/corruption/anti-bribery/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>

<sup>11</sup> IDFI, 2017-2018 Interim Monitoring Report on the Implementation of the Strategy & the Action Plan by the Prosecution Service of Georgia, 2018, pp. 146 – 149, available at: [https://idfi.ge/public/upload/IDFI\\_2019/PrIME/full\\_report\\_eng.pdf](https://idfi.ge/public/upload/IDFI_2019/PrIME/full_report_eng.pdf)

<sup>12</sup> Organic Law of Georgia on the Prosecution Service, 30 November 2018, Article 16(3). Rules of Procedure of the Parliament of Georgia, Article 204 (4), available at:

<https://matsne.gov.ge/en/document/view/4401423?publication=9>

<sup>13</sup> GRECO, Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report, (Strasbourg, 28 November – 2 December 2016), pp. 42 – 43, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc116>

IDFI considers that the new Strategy, taking into consideration the abovementioned challenges, should include the following issues:

- Minimize the participation of political subjects (e.g. Members of the Parliament, a representative of the Minister of Justice) in the work of Prosecutorial Council;
- Broaden the Prosecutorial Council functions to make it able to perform its constitutional role;
- The role of the Council for Career Management, Ethics, and Incentives needs to be strengthened;
- Composition of the Prosecutorial Council needs to be reviewed and civil participation needs to be increased;
- Detailed promotion criteria for prosecutors and investigators as well as justification for assignment or promotion need to be prescribed by the law;
- Full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (including mandatory) of a prosecutor/investigator to a different position need to be enshrined in the law;
- Additional qualifications for a candidate on the position of the Prosecutor General need to be evaluated when interviewing those, who have met formal criteria set by the law and guarantee the depoliticization of a candidate selection.

## 5. Right to Equality

The 2014-2020 Strategy aims to guarantee equal rights and the protection of the rights of minorities, that among other goals includes ensuring effective investigations of all crimes committed on the basis of discriminatory grounds. IDFI considers that the new Strategy should encompass the abovementioned direction again.

As a result of significant legislative amendments in 2017, article 53<sup>1</sup> was added to the Criminal Code by which aggravating circumstances of punishment are regulated separately. The abovementioned article provides aggravation of the criminal liability in case of commission of crime on the basis of discrimination with the reason of intolerance. However, article 53<sup>1</sup> is not appropriately applied in practice. The case of the murder of human rights defender Vitaly Safarov once again confirms that identifying a component of signs of discrimination with the reason of intolerance in hate crimes is still a challenge. 2018 report of the Public Defender points out that most of the victims (sexual minorities) complain about harassment and homophobic treatment from law-enforcement officials.<sup>14</sup> Prosecution launched on possible hate crimes committed by law enforcement officers is still very low. It is not

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OECD, Anti-Corruption Reforms in Georgia, Fourth Round of Monitoring of the Istanbul Anti-Corruption Action-Plan, 2016, pp. 69 – 71, available at: <https://www.oecd.org/corruption/anti-bribery/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>  
Joint Opinion of the European Commission for Democracy Through Law, Consultative Council of European Prosecutors and OSCE Office for Democratic Institutions and Human Rights On The Draft Amendments To The Law On The Prosecutor's Office Of Georgia, 2015, pp. 4, 7-9, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)039-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)039-e)

<sup>14</sup> Annual Report of the Public Defender of Georgia the Situation in Human Rights and Freedoms in Georgia, (2018), P. 139, available at: <http://ombudsman.ge/res/docs/2019101108583612469.pdf>

welcoming that there are no outcomes for investigations that started in 2016 – no victims or convicts are identified. This proves that there are challenges in this direction.<sup>15</sup>

In order to respond to challenges, it is important that a new Strategy includes the mentioned direction once again and encompasses the following key issues:

- Increase knowledge regarding hate crimes and raise sensibility of prosecutors regarding intolerance and discriminatory motives;
- Ensure the availability of comprehensive guidelines and their application in practice for establishing a unified approach to fighting discriminatory crimes.

## 6. Combating Violence Against Women and Domestic Violence

One of the directions of the 2014-2020 Strategy is promotion of gender equality, protection of women's rights and prevention of domestic violence. IDFI considers that the new Strategy should also include the mentioned direction.

The situation analysis and evaluation by the international<sup>16</sup> and local organizations<sup>17</sup> show that the Prosecution Service of Georgia (PSG) is still facing the challenge of an efficient and comprehensive prosecution of gender-based violence. In majority of cases, prosecutors are not sufficiently informed on standards and special approaches to gender-based crimes,<sup>18</sup> which represents a gap in justice on the one hand and is a barrier in protecting the rights of the victims of the crime of the type on the other.

One of the main complications is the insufficient number of specialized prosecutors for domestic offences, violence against women and domestic violence,<sup>19</sup> which causes an increase in the workload of specialized prosecutors. Herewith, there is no comprehensive monitoring system for the workload of specialized prosecutors for implementation of effective criminal prosecution; In some cases, the prosecutor has to deal not only with different criminal cases at the same time, but to participate in trials scheduled one after another that result in one, two and more hours of delays of the hearings. This

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<sup>15</sup> IDFI, Interim Monitoring Report on the Implementation of the Strategy & the Action Plan by the Prosecution Service of Georgia, 2017-2018, P. 60, available at:

[https://idfi.ge/public/upload/IDFI\\_2019/PriME/full\\_report\\_eng.pdf](https://idfi.ge/public/upload/IDFI_2019/PriME/full_report_eng.pdf)

<sup>16</sup> Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9<sup>th</sup> of June 2016, p. 17, available at:

[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/32/42/Add.3](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/32/42/Add.3)

Un women Georgia official [website](#), "Chief Prosecutor's Office of Georgia presents analysis of cases of violence against women and girls", 27 November 2018.

<sup>17</sup> IDFI, Overview of the Reforms in the Prosecution System of Georgia: Achievements and Existing Challenges 2018, P. 6 – 9; available at:

[https://idfi.ge/public/upload/IDFI\\_Photos\\_2018/PriME\\_Project\\_EU/ENG\\_Challenges\\_PSG\\_AK.pdf](https://idfi.ge/public/upload/IDFI_Photos_2018/PriME_Project_EU/ENG_Challenges_PSG_AK.pdf)

GYLA, The Results of Trial Monitoring on the Cases of Domestic Violence, Domestic Crimes and Violence Against Women, #10, 2017, available at: <https://gyla.ge/files/news/2008/sasamartlos%20monitoringi%2010.pdf>

GYLA, Results of Criminal Trial Monitoring, N13, 2019, available at:

<https://gyla.ge/en/post/saiam-siskhlis-samartlis-saqmeebis-sasamartlo-monitoringis#sthash.50LQIXNy.dpbs>

<sup>18</sup> Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, p. 17, available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/32/42/Add.3](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/32/42/Add.3)

<sup>19</sup> IDFI, 2017-2018 Interim Monitoring Report on the Implementation of the Strategy & the Action Plan by the Prosecution Service of Georgia, 2018, pp. 55-56, available at:

[https://idfi.ge/public/upload/IDFI\\_2019/PriME/full\\_report\\_eng.pdf](https://idfi.ge/public/upload/IDFI_2019/PriME/full_report_eng.pdf)

reflects on the quality of prosecutor's preparation and causes delay of the process. This, in the end, has a clear negative impact on both the process and the quality of criminal proceedings in general.

IDFI considers that the new Strategy should include the noted direction and the following basic issues:

- Continually improve the qualification of prosecutors and continue their specialization in the areas of domestic violence and violence against women with the aim of ensuring adequate number of prosecutors and, consequently, eliminating excess workload of specialized prosecutors;
- Establish a comprehensive monitoring system for the workload of specialized prosecutors for implementation of effective criminal prosecution.