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Overview of the Reforms in the Prosecution System of Georgia: Achievements and Existing Challenges

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INTRODUCTION

In 2013, the Government of Georgia initiated institutional reforming process of the PSG in order to achieve a greater independence and autonomy of the Prosecution Service of Georgia (PSG).¹ In following years, the Government of Georgia carried out several important reforms:

- In 2013, the Parliament of Georgia adopted amendments to the “Law on the Prosecutor’s Office” that has shifted all prosecutorial powers from the Minister of Justice to the Chief Prosecutor of Georgia;
- In September 2015, the Parliament adopted new provisions in the “Law on the Prosecutor’s Office” on the selection, appointment and dismissal of the Chief Prosecutor and established a new collegial body - the Prosecutorial Council that makes decisions on the aforementioned queries;
- In 2016, the Chief Prosecutor, by its decision, established the Consultation Council to deal with the promotion and disciplinary liability of the PSG employees.
- According to the constitutional amendments that will enter into force in October 2018, after presidential elections, the PSG will be separated from the executive powers – the Ministry of Justice. The aforementioned reform, together with the 2017-2021 Strategy of the PSG², are the guarantees for strengthening the institutional independence of the PSG and its protection from the possible political interferences.

Despite the reinforced reforms, there are remaining challenges that necessitate further efforts and strong addressing mechanisms in the Prosecutor’s Office. To make those efforts successful, it is utterly important that the PSG continues to enhance the quality of its institutional independence and integrity, promotes the protection of Human Rights, raises trust of the society and empowers lower level prosecutors and actively engages them in the decision making processes.³

Once the constitutional amendments enter into force, PSG shall become a fully independent institution. However, it is of vital importance that this process is systematically monitored and deficiencies are eliminated in a timely manner. In so doing, the PSG shall develop into a strong law enforcement institution with a structure and activities being consistent with international standards.

CURRENT ENVIRONMENT

Before constitutional amendments enter into force, the Prosecution Service of Georgia (PSG) is still under the Ministry of Justice and the Minister of Justice provides general management of their operations. However, after the new Constitution is in force, the Prosecution Service of Georgia will be separated from the Ministry of Justice and it will become independent in its activities and the guarantees for the independence of the PSG will be provided by the constitution.

According to the amendments, the Prosecutor's Office shall be led by the Chief Prosecutor. The candidate of the Chief Prosecutor is elected by the Prosecutorial Council. The candidate of the Chief Prosecutor is subsequently appointed by the Parliament by a majority of the total number of its

¹ [Country Basic Data and Directions for 2013-2016 \(available only in Georgian\) p. 6, p. 49.](#)

² [The 2017-2021 Strategy of the Prosecution Service of Georgia \(available only in Georgian\)](#)

³ In the PSG, the managerial positions are held by Chief prosecutor, the deputy Chief Prosecutors, heads of the departments and their deputies, heads of divisions, district and regional prosecutors and their deputies. Prosecutors that do not hold the above-listed positions are considered to be so-called lower level prosecutors.

members. In this regards, the recommendation of the Venice Commission on the election of the Chief Prosecutor by the qualified majority was not taken into consideration in the constitutional amendments. The election of the Chief Prosecutor by qualified majority of votes in Parliament would secure the broadest political support for the person appointed and thus assist de-politicization of the process. On the other hand, the Venice Commission noted that in other areas of law, the requirement of a 2/3 majority has in the past led to political deadlock. Thus, an election of the Chief Prosecutor by the qualified majority would only work in practice if there were an alternative anti-deadlock mechanism to work for both - the majority and the opposition - in Parliament to reach a consensus. The Venice Commission, suggested that one possible solution would be, in such case, to bring different institutional actors in the process who could act as a neutral figure or body and would then have the final say (e.g. the chairperson of the constitutional court).⁴

In 2015, under the amendments of the law on the Prosecution Service, a new, independent collegial body has been instituted at the Ministry of Justice.⁵ The **Prosecutorial Council** is formed as an independent, collegial body and its main function is to ensure the autonomy and transparency of the PSG. With this purpose, the Council plays a major role in appointment and dismissal of the Chief Prosecutor. In addition, the Council conducts disciplinary proceedings against the Chief Prosecutor and the Deputy Chief Prosecutors, hears reports of the Chief Prosecutor on the activities of the PSG, etc.

However, there has been some concerns about the independence of the prosecutorial Council from the Ministry of Justice. The provision of the law, on one hand, establishes an independent, collegial body but on another, it places the Council under the Ministry of Justice, which, *per se*, casts doubt on the (quality of) Prosecutorial Council's independence. In addition, the law clearly states that the Minister of Justice is the chairperson of the Prosecutorial Council and in contrary to the other members of the Council, the Minister is appointed permanently to sit on the council. Minister of Justice is authorized to call the sessions of the Council. Following the function of the Council, the Minister is directly involved in the process of selection of the Chief Prosecutor, as well as disciplining the Chief Prosecutor and the Deputy Prosecutors, which grants the Minister a broad power. Hence, the division of the Council from the Ministry of Justice is yet unclear in the law. The Venice Commission noted that it would be impossible to ensure de-politicization and the autonomy of the PSG from the executive if the Council is defined as being an integral part of the executive branch.⁶ Before the constitutional amendments will enter into force, it is critical to ensure that through appropriate changes of the law the Prosecutorial Council becomes fully independent from the Ministry of Justice. It will be also important to monitor this processes in order to ensure long-lasting independence of the collegial body.

Another important element in this process is the composition of the Prosecutorial Council. The composition of the Council, the rights of its members and the competences of the Council should altogether ensure objective and quality performance of the duties of its members.⁷ The Council consists of 15 members. Besides the Minister of Justice, other members of the Council are: 8

⁴ [Joint Opinion by on the Draft Amendments to the Prosecutor's Office of Georgia](#) by VENICE COMMISSION, CCPE, OSCE/ODIHR, 2015, p. 7-8, par. 23.

⁵ Law on the Prosecutors Service, 2008, Article 8¹ par.1.

⁶ See [Joint Opinion by on the Draft Amendments to the Prosecutor's Office of Georgia](#) by VENICE COMMISSION, CCPE, OSCE/ODIHR, p. 9, par. 34.

⁷ See [Views of the Coalition about the reform of the Prosecutor's Office](#).

prosecutors elected by the conference of prosecutors; 2 members of the Parliament (one from the parliamentary majority to be elected by the parliamentary majority and another from the members that are not from the parliamentary majority to be elected by such members); 2 judges of common courts elected by the High Council of Justice; and 2 members elected by the Parliament from the candidates nominated by the higher educational institutions and civil society organizations. International community welcomed the creation of the Council as well as its composition. Especially, the fact that a significant number of members of the Council are prosecutors elected by their peer prosecutors.⁸

The fact that the constitutional amendments have not excluded the possibility of electing Minister of Justice as the chairperson of the Prosecutorial Council, remains as an ambiguous issue. The Venice Commission recommended that the members of the Council elect a head of the Council from their ranks, who shall preferably not be the Minister of Justice in order to ensure the independence of the Council. According to the new constitutional amendments, the chairperson of the council shall be elected by the Council itself. Yet the constitutional amendment provides only general provisions and specificities have to be regulated by the law. After the constitutional amendments enter into force, every member of the Council shall be elective which excludes, in the future, the *ex officio* membership of the council.

Within the framework of the reform under the amendments of the law on the Prosecutor's Office, another body has been established - the **Conference of Prosecutors**. The main function of the Conference is to nominate eight members of the prosecutorial council. The Venice Commission and other international institutions have welcomed the creation of the Conference and in their joint opinion stated that prosecutors having their representatives elected to the Prosecutorial Council is a positive step forward and it shall assist the process of de-politicization of the Prosecutor's Office.⁹

By Chief Prosecutor's order of January 2016, for the purposes of dealing with the development issues of the Prosecution Service, as well as incentives, promotion and disciplinary liability of Prosecutors Office employees - the **Consultation Council** was established. It should be noted that aforementioned document (Chief Prosecutor's order of January 2016) is not publicly available and discussion around this issue is only possible based on the information provided in the reports of international organizations. The Council comprises of sixteen members. Eight out of sixteen members are prosecutors from the Prosecutorial Council elected by the Conference of Prosecutors and are appointed by the Chief Prosecutor. Other members include: Chief Prosecutor and Deputy Chief Prosecutors. The Chief Prosecutor has an authority to change the composition of the Council upon his/her decision.¹⁰ Hence, the primary concern in regards to the Consultation Council is that its composition is within full discretion of the Chief Prosecutor. It has been noted by the OECD-ACN experts in their report that: "Such system may affect the independence of individual prosecutors and

⁸ See [Joint Opinion by on the Draft Amendments to the Prosecutor's Office of Georgia](#) by VENICE COMMISSION, CCPE, OSCE/ODIHR, p. 7, par. 20; [Anti-corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, OECD, 2016, p. 64.](#)

⁹ [Anti-corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, OECD, 2016, p. 64](#)

¹⁰ [Anti-corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, OECD, 2016, p. 62](#)

concentrate excessive powers in the hands of the Chief Prosecutor who is still appointed with a decisive involvement of too many political bodies (Minister of Justice, Government, Parliament)”¹¹

While the PSG as an institution is becoming more autonomous through ongoing reforms, the issue of **individual prosecutors’ independence** remains a challenge. The prosecutors need an effective and functional legislative guarantees to ensure their neutrality and impartiality while carrying out criminal proceedings. The prosecution system is centralized and built on the principle of subordination - all prosecutors are subordinates of the Chief Prosecutor and the his/her orders are obligatory for all subordinates. Hence, the internal hierarchical control of the decisions might not fully ensure the independent and professional environment for the lower level prosecutors in the office and their sufficient engagement in the decision-making process. In this matter, it is important to further empower individual prosecutors’ and improve the quality of the independence of those lower level prosecutors.

In addition, the rights of the Prosecutors in the disciplinary proceedings need to be strengthened. In this regards, GRECO has recommended to:

- Regulate, in more detail, the recruitment and promotion of prosecutor to ensure that decisions are based on precise and objective criteria, and to provide more transparent procedures – including by making the above-mentioned criteria public – and ensuring that any decisions in those procedures are reasoned;
- Introduce clear and objective criteria for the assignment and withdrawal of cases to/from prosecutors. It has to ensure that decisions and instructions by superior prosecutors, including decisions to remove cases from subordinate prosecutors, are justified in writing.
- Review the disciplinary regime applicable to prosecutors, including defining disciplinary offences more precisely and ensuring proportionality of sanctions.¹²

In 2017, a document describing the criteria for assessing the professional development and performance of prosecutors has been developed. Following these criteria, prosecutors will be assessed accordingly and subsequently they will be promoted or disciplined.

In order to ensure transparency of the grounds of disciplinary liability, the Code of Ethics has been updated and the list of disciplinary misconduct has been described in more details. The code of ethics act as guidelines for prosecutors on exercising the prosecutorial functions and it has an important role in standard setting. The amendments in the Code of Ethics have categorized disciplinary misconducts according to the severity and specified the penalties for certain disciplinary offenses.¹³

It is indicated in the report of the Chief Prosecutor for 2017 that the Commentaries to the Code of Ethics are also in the process of elaboration. The Commentaries have to refine the content of the Code and make it more comprehensive for prosecutors.¹⁴

As a matter of further analyses of the current environment in the Prosecution Service of Georgia, it is also important to provide a brief review of the ongoing developments with regard to the selected

¹¹ [Anti-corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, OECD, 2016](#), p. 8, p. 69.

¹² [Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors](#), GRECO, p. 57

¹³ [Report of the Chief Prosecutor of Georgia](#), 2017, p. 55.

¹⁴ [Report of the Chief Prosecutor of Georgia](#), 2017, p. 62.

crimes. Lately, the efforts of the government to combat violence against women and hate crimes have been significantly strengthened. The PSG has already allocated specialized prosecutors for conducting criminal prosecution of the cases of violence against women and domestic violence in a professional manner. Additionally, the number of such cases have been increased in the recent years (especially, in 2017-2018) in line with the raised awareness and appeals. Hence, the state of these two crimes will be portrayed below.

SELECTED CRIMES: VIOLENCE AGAINST WOMEN

Violence against women is the most radical expression of gender inequality. In the past few years, the violent gender-based crimes have drastically increased nationally. Despite the efforts of the Georgian Government from 2014 to start the legislative reforms and systemic improvements, the issue of violence against women remains as one of biggest challenge.

In practice, the most challenging part is identifying and defining the gender motive. Article 53¹ of the Criminal Code of Georgia states that committing a crime on basis of gender identity is an aggravating circumstance. Yet, the investigative and prosecutorial bodies have difficulties to identify the motive.¹⁵

Cases on domestic violence have its own characteristics that differs this type of violent crime from the others. In practice, there are many cases, when the victim gives a testimony in the first phase but later, the victim refuses to cooperate. One of the reasons why victims refuse to cooperate with law enforcement agents is the feeling of embarrassment about giving the testimony against their family member(s), as well as the fear that the violator will receive a strict punishment. Those instances of changing testimonies complicates the proceedings. Namely, if in the violent crimes the testimony (witness statement) of the victim is the major evidence in the case, without it the case proceedings become impossible to carry out.¹⁶

In the report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, it is noted that the prosecutors are not fully aware of the existing international standards in regards to eliminate and address the gender-based violence.¹⁷ In order to raise trust towards the prosecution service and overcome the existing challenges, it is important for the Prosecutors Office to ensure that the level of the qualification of the prosecutors is constantly elevated in regards to the aforementioned crimes.

In 2017, the Government of Georgia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention.¹⁸ Ratification of the Istanbul Convention is an important guarantee for prevention of domestic violence and violence against women. The Government of Georgia took relevant steps for setting the appropriate legal framework aimed at harmonization of the domestic legislation with the Istanbul Convention. For this purposes, there were new crimes introduced in the Criminal Code of Georgia: Article 133⁽¹⁾ – Sterilization without consent; Article 133⁽²⁾ – Female genital mutilation; Article 151⁽¹⁾ – Stalking. Since

¹⁵ [Results of the Trial Monitoring on the Cases of Domestic Violence, Domestic Crimes and Violence against Women](#), Georgian Young Lawyers Association (GYLA), 2017

¹⁶ Prevention of Violence Against Women, Problems and Challenges, 2018, Human Rights Center

¹⁷ [Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia \(15 to 19 February 2016\)](#), pg. 17

¹⁸ “[Georgia ratifies Council of Europe Convention on violence against women and domestic violence](#)”, Council of Europe News, 2017; See the full text of the Convention: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>.

combating with the above listed crimes is a novelty for the Georgian law enforcement system, a thorough monitoring and readiness of the law enforcement agents to conduct the investigation and carry out the litigation in an efficient manner is important.

In 2018 the Ministry of Interior created Human Rights department - a division within the system of the Ministry of Interior that aims to ensure the effectiveness of the investigations on domestic violence cases, violence against women and hate crimes. This was utterly important reform in direction of ensuring equality in the country.

Despite the positive legal and systemic changes, the statistics show the rise in violent crimes. This trend could be on one hand explained by the fact that the violent crimes are reported more often than before, hence the statistics are depicting a more clear picture of the issue and its dramatic extent.

According to the Public Defender of Georgia, in regards to the murder of females (femicide), in 2007, 14 out of 26 were a domestic homicide cases and 15 were attempts of the murder related to the domestic crimes.¹⁹

For increasing transparency and adequately assessing the threats, it is important that the PSG opens statistics about gender-based violent crimes. The 2017 report of the Public Defender²⁰ noted that the recommendation of the Public defender on processing and analyzing the statistics, in regards to the cases of domestic violence and violence against women, were only implemented partially. The report positively assessed the changes by the PSG made to process information on the criminal aspects of the crimes against women. The report also notes that violence against women and domestic violence requires a very attentive approach. Taking into account that violence, in most cases, are perpetrated by a member of the family, the victim undergoes a very intense pressure that *per se* decreases the frequency of reporting the violence, or, in separate cases, when the victim reports the violence it is already overdue. Hence, it is important that the legal awareness and trust in the society towards the governmental bodies are raised.

HATE CRIMES

Similarly to the violence against women, drawing up effective policies on hate crimes and implementing them, remains as a major challenge. Violence perpetrated on hate and discrimination bases is a result of the false societal beliefs. Hence, prevention and elimination of the hate motives present itself a serious challenge for the government.

The 17th of May 2013 - celebration of the International Day against Homophobia, Transphobia and Biphobia has been one of the most vivid examples of the hate crimes in Georgia. The expression of hate of those representatives of the Georgian Orthodox Church who have intruded in the peaceful demonstration on 17th of May have intensified aggression in the society towards LGBTQI community and individuals. The delay in investigation of the 17th of May case has further exacerbated the issue. After this event, it has become more difficult for the LGBTQI community and individuals to mark and celebrate 17th of May. Violent hate crimes have also been increased in the recent period. Taking into account the given environment, it is very important for the law enforcement agents to properly conduct investigation and criminal proceedings, which will on one hand, serve as an effective measure

¹⁹ [“Public Defender of Georgia Responds to Murder of Woman”](#), Statement of the Public Defender of Georgia, 2008

²⁰ [THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA](#), ANNUAL REPORT OF THE PUBLIC DEFENDER OF GEORGIA, 2018, p. 30.

of (hate crime) prevention and on the other, raise awareness in the society about hate crimes and hate motivated violence.

In the process of preventing and fighting against crimes, in order to ensure an adequate, thorough and effective investigation and protection of the Human Rights, it is crucial for the government to have an integral and unified policy which is based on the principle of equality before the law. Especially, in the part of the Human Rights that refers to the protection of freedom of expression, right to a fair trial, prohibition of discrimination.

In the 2018 report of the PSG, the statistics show that hate crimes are, in the majority of cases, committed on basis of gender identity, sexual orientation, religious and, in separate cases, on national motives. The reports states that in 2017 hate motives were studied on 86 criminal cases. Namely, a sexual orientation was examined on 12 criminal cases, gender identity was examined on 37 cases, sex/gender was examined on 25 cases, nationality on one case, ethnicity on one case and religion on 10 criminal cases. In 2017, criminal prosecution was launched in relation to 44 persons for hate-motivated crimes. Four persons out of them were charged on the ground of sexual orientation, four persons on the ground of gender identity, two persons on the ground of religion, 25 persons on the ground of sex/gender, nine persons on the ground of other motive (presumably on the ground of gender identity – six persons, sexual orientation – one person, religion two persons).²¹

The 2017 report of the Public Defender²² states that in 2017 the Public defender has reviewed 162 new discrimination case. According to the Public Defender's information, the most vulnerable remain the women, LGBTQI community and religious minority group representatives.

The statistics of the PSG and the Public Defender yet again prove that individuals report more frequently to the Public Defender's Office (The Public Defender has studies 76 cases more than the PSG), which means that the PSG has to act proactively in order to raise trust in the society.

Positively has to be assessed the readiness of the PSG to actively and effectively cooperate with state agencies, the Public Defender's Office and with local CSOs as it will, in the future, change the behavior and attitude in the society that serve as a cause of committing the hate crimes.

RECOMMENDATIONS:

- **It is necessary to amend the appropriate laws in frames of the constitutional amendments in order to separate Prosecutorial Council from the Ministry of Justice;**
- **It is important to conduct a thorough monitoring of these processes in order to constantly ensure a independence of the Prosecutorial Council;**
- **It is necessary to regulate the composition of the Consultative Council in such manner that the Prosecutor General does not have an absolute authority and power in his/her discretion;**
- **It is important to empower the lower level prosecutors and increase the level of their independence. For these purposes, an effective and functioning legal guarantees are to be implemented in order to ensure their neutrality and impartiality;**

²¹ [REPORT OF THE CHIEF PROSECUTOR OF GEORGIA](#), 2018.

²² [THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA](#), ANNUAL REPORT OF THE PUBLIC DEFENDER OF GEORGIA, 2018, p. 30.

- It is also important, to regulate the rights of the prosecutors in the disciplinary proceeding in a more detailed and precise way, as well as to regulate the legal basis and criteria of the case allocation to and removal of the prosecutors from the case;
- It is crucial to further increase the number of specialized prosecutors on the violence against women and hate crimes and ensure their continuous retraining. It is also important for the PSG to increase its efforts in order to raise the public trust which will affect the frequency of reporting of the victims of violence.