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31 January 2017, Tbilisi, Georgia

On behalf of the Office of Public Defender of Georgia I request formal membership of Equinet AISBL/INFPA – European Network of Equality Bodies, enjoying the full rights that members of Equinet are entitled to and respecting the obligations that membership brings with it, including adhering to Equinet statutes.

The Public Defender's Office is the main national human rights institution in Georgia. The Public Defender of Georgia is mandated by the Constitution of Georgia and organic law to oversee the observance of human rights and fundamental freedoms in the country. The Public Defender, in the course of implementation of his/her activities is independent from the executive branch. Under the organic law, the Public Defender submits an annual report to the Parliament of Georgia on the situation of human rights and fundamental freedoms in the country.

In May 2014, the Parliament of Georgia adopted a **Law on the Elimination of All Forms of Discrimination**. The law delineates the Public Defender as an equality mechanism, responsible for monitoring the effective implementation of the anti-discrimination legislation. In particular, the law authorizes the Public Defender to review complaints from the private individuals and legal entities alleging to be the victims of discrimination and address the respective institutions (public and private entities) with recommendations; submit amicus briefs to the courts; develop necessary legislative amendments for the effective implementation of the law; prepare an annual special report on the situation of equality and elimination of discrimination in the country; carry out awareness raising activities.

Effective fulfillment of the new functions envisaged by the law required creation of an additional structure within the Office. Thus, in autumn of 2014, a new Equality Department has been established. For the purposes of effective monitoring of issues regarding elimination of discrimination and ensuring equality, the Equality Department examines the applications submitted by alleged victims and starts examination of cases on their own initiative. In case of finding a fact of discrimination, the Equality Department issues a recommendation calling the discriminating party to eliminate the results of discrimination and prevent similar facts in the future; the Equality Department also concludes the case by issuing a general proposal on the issue of preventing the facilitation and promotion of discrimination. Alternatively, the Equality Department invites a victim of discrimination and an alleged discriminating person to settle the case by mutual agreement of the parties. The Equality Department also submits amicus briefs to the courts on discrimination related cases. Along with it, the Department prepares legislative amendment regarding anti-discrimination legislation; analyses statistical data on discrimination cases provides awareness raising campaigns and cooperates with international and local non-governmental organizations.

The mandate of the Public Defender of Georgia as an Equality Body is envisaged in Article 14<sup>1</sup> of the Organic Law of Georgia on "Public Defender of Georgia" and Article 6 of the Law of Georgia on "Elimination of All Forms of Discrimination."

Annexes (12 pages):

1. Organic Law of Georgia on "Public Defender of Georgia"
2. Law of Georgia on "Elimination of All Forms of Discrimination"

Sincerely,

A handwritten signature in black ink, appearing to be a stylized name, possibly "S. G. G. G.", written over a horizontal line.

# LAW OF GEORGIA

## ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION

### Article 1 - Purpose of the Law

This Law is intended to eliminate every form of discrimination and to ensure equal rights of every natural and legal persons under the legislation of Georgia, irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics.

### Article 2 - Notion and prohibition of discrimination

1. All forms of discrimination shall be prohibited in Georgia.
2. Direct discrimination is the kind of treatment or creating the conditions when one person is treated less favourably than another person in a comparable situation on any grounds specified in Article 1 of this Law or when persons in inherently unequal conditions are treated equally in the enjoyment of the rights provided for by the legislation of Georgia, unless such treatment or creating such conditions serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate.
3. Indirect discrimination is a situation where a provision, criterion or practice, neutral in form but discriminatory in substance, puts persons having any of the characteristics specified in Article 1 of this Law at a disadvantage compared with another persons in a comparable situation, or equally treats persons who are in inherently unequal conditions, unless such situation serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate.
4. Multiple discrimination is discrimination based on the combination of two or more characteristics.
5. Any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person within the meaning of this article shall be prohibited.
6. Under the conditions provided for in this article, discrimination shall exist regardless of whether a person actually has any of the characteristics defined in Article 1, on the basis of which the person was discriminated against.
7. Temporary special measures intended to accelerate *de facto* equality, especially in gender, pregnancy, and maternity issues, also, with respect to persons with limited capabilities, shall not be considered discrimination.
8. Any distinction, exclusion, or preference with respect to a particular job, activity, or sphere, based on its inherent requirements, shall not be considered discrimination.
9. Differential treatment, creation of different conditions and/or situations shall be permissible if there is an overwhelming state interest and the necessity of state intervention in the democratic society.

### Article 3 - Scope of regulation of the Law

The requirements laid down in this Law shall apply to the actions of public institutions, organisations, and to the actions of natural and legal persons in all spheres, only if the actions are not regulated by other legal acts, which are in conformity with the provisions of Article 2(2)(3).

### Article 4 - Measures for eliminating discrimination

In order to eliminate discrimination, any institution shall be obliged to:

- 1) bring its activity, legal acts and internal regulations, if any, into conformity with this Law and other anti-discrimination legislation;
- 2) respond promptly and efficiently to any alleged act of discrimination;
- 3) if an act of discrimination is confirmed, impose liability on offenders under its control according to the legislation of Georgia and internal regulations, and ensure that the consequences of discrimination are eliminated without prejudice to the rights and legitimate interests of third persons.

### Article 5 - Interpretation and scope of the Law

No provision of this Law may be interpreted as restricting the rights of religious associations on the basis of freedom of religion (including the right to religious worship), provided that the exercise of those rights does not violate public order, public safety, or the rights of other persons.

No provision of this Law may be interpreted as contradicting the Constitution of Georgia and the Constitutional Agreement between the State and the Apostolic Autocephalous Orthodox Church of Georgia.



... aimed at eliminating discrimination or the exercise/protection of rights by a person or a group of persons with the characteristics set forth in ... of this Law shall not violate public order, public safety, and/or the rights of other persons.

The rights laid down in this Law shall not be exercised with the purpose or effect of inciting hostility among persons or groups of persons with the characteristics set forth in Article 1 of this Law.

5. No provision of this Law may be interpreted as annulling any other right or freedom provided for by an international treaty ratified by the Parliament of Georgia, or as limiting it to a greater extent than it is prescribed by the treaty itself.

#### **Article 6 - Monitoring the elimination of discrimination and the process of ensuring equality**

1. The Public Defender of Georgia shall monitor issues regarding elimination of discrimination and ensuring equality.

2. To exercise the powers under the legislation of Georgia, the Public Defender shall:

- a) discuss the applications and complaints of natural and legal persons or groups of persons, who consider themselves to be victims of discrimination;
- b) examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations;
- c) prepare and forward general proposals to relevant institutions or persons on the issue of preventing and combating discrimination;
- d) for the purposes of this Law, prepare opinions regarding necessary legislative changes and submit them to the Parliament of Georgia as legislative proposals;
- e) invite a victim of discrimination and an alleged discriminating person, and try to settle the case by mutual agreement of the parties;
- f) submit recommendations to relevant institutions or persons to restore the rights of victims of discrimination if the parties fail to reach an agreement and if there is sufficient evidence of discrimination;
- g) be authorised to apply to a court, as an interested person, according to the Administrative Procedure Code of Georgia, and request the issue of an administrative legal act or the performance of an action, unless an administrative body responds to or shares a recommendation and there is sufficient evidence of discrimination;
- h) record and analyse statistical data on discrimination cases;
- i) organise events to raise public awareness of discrimination;
- j) cooperate with various international governmental and non-governmental organisations, local non-governmental organisations and the representatives of local civil society on discrimination issues.

#### **Article 7 - Special report of the Public Defender of Georgia**

1. The Public Defender of Georgia shall prepare and publish once a year a special report on combating and preventing discrimination, as well as on equality situation in the country.

2. A special report of the Public Defender of Georgia shall contain general evaluation, opinions, and recommendations on combating and preventing discrimination, as well as on equality situation in the country. The report shall also include information on detected serious violations and implemented measures.

#### **Article 8 - Hearing a case by the Public Defender of Georgia**

1. A person who submits an application/complaint to the Public Defender of Georgia shall indicate the facts that provide grounds for the alleged discriminatory action and shall present relevant evidence.

2. A person shall submit the facts and relevant evidence to the Public Defender of Georgia that give reason to suspect discrimination, as a result of which the alleged discriminating person shall bear burden of proving that discrimination did not occur.

3. If the Public Defender of Georgia considers it to be necessary, it may schedule an oral hearing and invite both parties to settle the case by mutual agreement. If the case is settled by mutual agreement, the Public Defender of Georgia shall monitor the fulfilment of the obligations determined by the settlement agreement.

4. Any administrative, local self-government and state body (including the Prosecutor's Office, investigation and court bodies) shall be obliged to transfer materials, documents, other information and explanations related to the case hearing to the Public Defender within 10 calendar days after request as provided for by law. If information is provided voluntarily by private persons, the persons may request reimbursement of the expenses of making copies and postal service related to the provision of information.

5. The Public Defender of Georgia shall examine the application/complaint as determined by the legislation of Georgia.



## Decisions by the Public Defender of Georgia

The Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination:

a) the dispute is pending in court;

b) administrative proceedings are under way;

c) criminal proceedings are under way.

2. The Public Defender of Georgia shall terminate proceedings if due to the same alleged discrimination:

a) there is a court decision on the case;

b) the act of discrimination was not confirmed after examination of the application/complaint.

3. If the Public Defender of Georgia confirms the act of discrimination after examining an application/complaint and if the consequences of the discrimination are not eliminated, the Public Defender of Georgia shall end the proceedings with a recommendation regarding activities to be performed to restore violated equality.

### Article 10 - Application to the court

1. Any person considering himself/herself to be a victim of discrimination, may bring a court action against the person/institution which he/she considers to have committed the discrimination and may claim for moral and/or material damages.

2. The procedure for bringing a court action is governed by the Civil Procedure Code of Georgia.

### Article 11 - Participation of a third party in the proceedings

1. An organisation, institution, or association, engaged in the protection of persons from discrimination, may apply to the Public Defender of Georgia with the request to be permitted as a third party in the trial provided for by this Law.

2. The Public Defender of Georgia may satisfy a request provided for by the first paragraph of this article only with consent of the person who considers himself/herself to be a victim of discrimination.

### Article 12 - Protecting the persons using the procedures defined in this Law

1. No person may be subject to any negative treatment or influence for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination.

2. Relevant bodies shall ensure the confidentiality of the information related to victims of discrimination according to the Law of Georgia on Personal Data Protection during and after implementation of the procedures defined in this Law. Confidential information may not be given to a third person without consent of the victim of discrimination, unless otherwise directly defined by law.

3. If the requirements of this article are violated, the victim of discrimination may apply to the Public Defender of Georgia.

### Article 13 - Entry into force

1. This Law shall enter into force upon promulgation.

President of Georgia

Giorgi Margvelashvili

Attorney

May 2014

2391-II



# THE ORGANIC LAW OF GEORGIA

## ON THE PUBLIC DEFENDER OF GEORGIA

*Organic Law of Georgia No 2146<sup>a</sup> of 23 June 1999 - LHG I, No 27(34), 6.7.1999, Art. 142*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Chapter 1. General Provisions

#### Article 1

This Law determines the powers, basic principles and forms of activity of the Public Defender of Georgia.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

#### Article 2

The Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

#### Article 3

1. In order to provide state guarantees for protecting human rights and freedoms, the Public Defender of Georgia shall monitor to determine that state and local self-government authorities, public institutions and officials protect and respect the rights and freedoms recognised by the State for every person in the territory of Georgia and under its jurisdiction, irrespective of race, skin colour, sex, language, religion, political or other opinions, national, ethnic and social affiliation, origin, property and social status, place of residence or other characteristics.

1<sup>1</sup>. In order to eliminate all forms of discrimination and ensure equality, the Public Defender of Georgia shall monitor activities of administrative, state and local self-government authorities, public institutions and officials, also, physical and legal persons, detect facts of direct and indirect discrimination and take measures to eliminate the consequences of discrimination, according to this Law and the Law of Georgia on Elimination of all Forms of Discrimination.

2. The Public Defender of Georgia shall detect violations of human rights and freedoms and promote restoration of violated human rights and freedoms.

3. The Public Defender of Georgia shall carry out educational activities with regard to human rights and freedoms.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

*Organic Law of Georgia No 2395 of 2 May 2014 - website, 7.5.2014*

#### Article 3<sup>1</sup>

1. The Public Defender of Georgia shall carry out the functions of the National Preventive Mechanism stipulated under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Public Defender of Georgia shall be provided with material, technical and financial resources necessary to implement the functions under the first paragraph of this article.

3. In view of the objectives of the National Preventive Mechanism, the Public Defender of Georgia shall cooperate with relevant bodies and mechanisms of the United Nations Organisation and with international, regional and national institutions or organisations that are engaged in protecting persons from torture and other cruel, inhuman or degrading treatment in places of detention, preliminary imprisonment and other places of confinement.

4. The Public Defender of Georgia, within the scope of his/her authority, shall ensure effective protection of persons from discrimination under international agreements recognised as binding by Georgia and recommendations of the United Nations Organisation and monitoring bodies of the Council of Europe.

5. The Public Defender of Georgia shall cooperate with international state and non-governmental organisations, local non-governmental organisations and representatives of civil society with regard to discrimination issues.

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*



#### Article 4

1. The Public Defender of Georgia shall act independently and carry out his/her activities according to the Constitution of Georgia, treaties and international agreements of Georgia, universally recognised principles and norms of international law, this Law and other legislative acts.

2. Any influence on or interference in the activity of the Public Defender of Georgia shall be prohibited and shall be punishable by law.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

#### Article 5

1. In order to ensure independence of the Public Defender of Georgia, the State shall provide him/her with appropriate living and working conditions.

2. The Public Defender of Georgia shall enjoy personal immunity. He/she may not be prosecuted, detained or arrested; he/she or his/her apartment, car, workplace may not be searched without the consent of the Parliament of Georgia, unless he/she is caught at the scene of crime, in which case the Parliament of Georgia shall immediately be notified. If the Parliament of Georgia does not give its consent, the detained or arrested Public Defender of Georgia shall be released immediately. The Parliament of Georgia shall make a decision on this issue not later than 14 days after application of the Chief Prosecutor of Georgia.

3. If there is consent to prosecute, detain or arrest the Public Defender of Georgia, his/her powers shall be suspended until the final court decision is issued. The powers of the Public Defender of Georgia shall be restored if he/she is found not guilty or if the proceedings are terminated on exonerative grounds.

4. The Public Defender of Georgia shall have the right not to testify on information that has been confided to him/her as the Public Defender of Georgia. He/she shall retain this right after termination of his/her power. Written materials intended for the Public Defender of Georgia may not be seized.

5. The Public Defender of Georgia may not be prosecuted for opinions and views expressed in the exercise of his/her duties.

6. The Public Defender of Georgia shall be provided with conditions necessary to exercise his/her powers without impediment. Based on the statement of the Public Defender of Georgia, the relevant state bodies shall provide his/her and his/her family's security.

7. Impediment of the activity of the Public Defender of Georgia shall be punishable by law.

*Organic Law of Georgia No 472 of 1 November 2008 - LHG I, No 30, 7.11.2008, Art. 181*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

*Organic Law of Georgia No 669 of 30 May 2013 - website, 24.6.2013*

### Chapter 2. Election and Termination of Powers of the Public Defender of Georgia

#### Article 6

1. A person to be elected as the Public Defender of Georgia shall be a citizen of Georgia.

2. The Public Defender of Georgia shall be elected by a majority of the total number of the members of the Parliament of Georgia for five years. Candidates for Public Defender may be nominated by a parliamentary faction or by a group of at least six Members of Parliament who do not belong to any faction.

3. Before the vote, the Chairperson of the Parliament of Georgia shall present to the Parliament of Georgia a list of candidates and their written consent to be elected as the Public Defender of Georgia. Each candidate shall be put to a vote separately, by secret ballot.

4. The candidate who receives the highest number of votes, but not less than a majority of votes of the total number of members of the Parliament of Georgia shall be deemed to be elected. If more than one candidate receives sufficient votes to be elected but due to the equal number of votes the winner cannot be determined, these candidates shall be put to a vote together and the candidate who receives the highest number of votes, but not less than a majority of votes of the total number of members of the Parliament of Georgia, shall be deemed to be elected. If the number of votes is equal, the voting procedure shall be continued until a Public Defender is elected.

5. If no candidate receives the number of votes sufficient for election, a repeat vote shall be held not earlier than 7 and not later than 14 days after the voting. During the repeat vote, candidates shall be nominated and the winner shall be determined under paragraphs (2, 3 and 4) of this article.

6. The same candidate may be nominated only twice in a single voting cycle.

*Organic Law of Georgia No 1460 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 92*



#### Article 7

1. The term of office of the newly elected Public Defender of Georgia shall commence from the day following the expiration of the term of office of the current Public Defender of Georgia, if he/she is elected before expiration of this term, or from the day following the election if he/she is elected after this term expires, or if the powers of the previous Public Defender have been terminated prematurely.
2. The powers of the Public Defender of Georgia shall be terminated after five years from his/her election or upon early termination of his/her powers.
3. The same person may be elected as the Public Defender of Georgia for only two consecutive terms.

#### Article 8

1. The position of the Public Defender of Georgia shall be incompatible with membership in state and local self-government representative bodies, any position in public service and paid activities, except for scientific, educational or artistic activities. The Public Defender of Georgia may not be a member of a political party or participate in political activity, except when the position of the Public Defender of Georgia obligates him/her to at the same time hold another office under the law or other normative acts.
2. The Public Defender of Georgia shall be obligated to terminate any occupation that is incompatible with his/her office within one month after the election. If the Public Defender of Georgia fails to meet these requirements in the specified period of time, his/her powers shall be terminated and the Parliament of Georgia shall elect a new Public Defender of Georgia.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

#### Article 9

1. The Parliament of Georgia shall elect the Public Defender of Georgia not earlier than 60 days before and not later than 30 days after the powers of the current Public Defender expire.
2. If the powers of the Public Defender of Georgia are terminated prematurely, the Parliament of Georgia shall elect a new Public Defender of Georgia not later than 30 days after the powers of the current Public Defender of Georgia are terminated. The Deputy Public Defender of Georgia shall perform duties of the current Public Defender of Georgia until a new Public Defender is elected. In this case, he/she shall enjoy the rights, legal guarantees and immunity granted to the Public Defender of Georgia.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

#### Article 10

1. The powers of the Public Defender of Georgia shall be terminated prematurely if:
  - a) he/she loses Georgian citizenship;
  - b) he/she fails to perform his/her duties for four consecutive months;
  - c) a judgement of guilty has come into force against him/her;
  - d) a court declares him/her as legally incompetent, missing or dead;
  - e) he/she took or holds a position, or carries out activities incompatible with the status of the Public Defender of Georgia;
  - f) he/she has resigned voluntarily;
  - g) he/she dies.
2. In the cases provided for in the first paragraph of this article, the powers of the Public Defender of Georgia shall be deemed terminated from the moment when the occurrence of the above circumstances is determined, in which case the Parliament of Georgia shall be notified immediately.
3. In the cases provided for in sub-paragraphs (b) and (e) of the first paragraph of this article, the powers of the Public Defender of Georgia shall be terminated by the decision of a majority of votes of the total number of members of the Parliament of Georgia.

#### Article 11

The declaration of a state of emergency or martial law shall not cause termination or restriction of the powers of the Public Defender of Georgia.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*





## Chapter 3. Rights and Duties of the Public Defender of Georgia

### Article 12

The Public Defender of Georgia shall independently examine the situation with regard to the protection of human rights and freedoms, and the facts of their violation, based on both received statements and appeals and on his/her own initiative.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Article 13

The Public Defender of Georgia shall examine statements and appeals of citizens of Georgia, foreign citizens and stateless persons, as well as legal entities under private law, and political and religious associations, regarding actions or acts of state and local self-government authorities, public institutions and officials violating the rights and freedoms defined in the Constitution and laws of Georgia, and in treaties and international agreements to which Georgia is a party.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Article 14

1. The Public Defender of Georgia shall examine statements and appeals on violations of human rights and freedoms if the declarant is contesting:

- a) a decision of a public institution;
- b) infringement or violation of rights and freedoms granted by the legislation of Georgia during court proceedings;
- c) violation of rights provided for by the legislation of Georgia for detained and arrested persons or persons whose liberty is otherwise restricted;
- d) conformity of normative acts with the Second Chapter of the Constitution of Georgia;
- e) constitutionality of norms regulating referendum and elections and of elections (referendums) held or to be held according to those norms.

2. The Public Defender of Georgia shall be entitled not to examine such statements and appeals on which he/she has already made a decision, unless new circumstances arise.

3. An examination conducted by the Public Defender of Georgia may not impede the examination of similar statements or appeals by relevant international organisations.

### Article 14<sup>1</sup>

1. The Public Defender of Georgia shall monitor issues related to elimination of all forms of discrimination and ensuring equality.

2. In order to perform his/her functions, the Public Defender of Georgia shall:

- a) examine statements and appeals of physical or legal persons or groups of persons who consider themselves to be victims of discrimination;
- b) study facts of direct and indirect discrimination based on statements or appeals or on his/her own initiative, and produce appropriate recommendations;
- c) prepare and submit to relevant institutions or persons, general proposals on preventing or combating discrimination;
- d) for the purpose of this Law, develop opinions on necessary legislative changes and submit them to the Parliament of Georgia in the form of a legislative proposal;
- e) record and analyse statistical data on facts of discrimination;
- f) invite victims of discrimination and alleged discriminators and attempt to settle a case by mutual agreement of the parties;
- g) submit recommendations to relevant institutions or persons to restore the rights of victims of discrimination, if it is impossible to settle the case by mutual agreement and there is sufficient evidence of discrimination;
- h) be authorised to apply to the court as an interested person, according to the Administrative Procedure Code of Georgia and request issuance of an administrative legal act or taking measures if the administrative body does not respond to or adopt his/her recommendation and there is sufficient evidence of discrimination;
- i) perform activities intended for raising public awareness of discrimination.



## Article 15

Statements, appeals and letters sent to the Public Defender of Georgia by persons in prisons and places of confinement, other places of detention and restriction of liberty shall be confidential. They may not be opened and censored; they shall be sent immediately to the Public Defender of Georgia.

*Organic Law of Georgia No 2711 of 9 March 2010 - LHG I, No 12, 24.3.2010, Art. 42*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

## Article 16

1. No state taxes shall be imposed on statements and appeals.
2. The Public Defender of Georgia shall serve interested persons free of charge.

## Article 17

1. The Public Defender of Georgia shall independently decide whether to start an inspection after he/she receives a statement or an appeal.
2. The Public Defender of Georgia shall inform the declarant about the decision in the first paragraph of this article.
3. The Public Defender of Georgia shall be obliged to inform the declarant about the results of the inspection in a prescribed manner.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

## Article 18

When conducting an inspection, the Public Defender of Georgia may:

- a) freely enter any state or local self-government body, enterprise, organisation, institution, including, military unit, prison and confinement facilities and other places of detention and restriction of liberty;
- b) request and receive, immediately or not later than 10 days, from state and local self-government authorities or from officials all certificates, documents and materials necessary for conducting an inspection;
- c) request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender;
- d) conduct expert examinations and/or prepare conclusions by means of state and/or non-state institutions; invite specialists/experts in order to perform expert and/or consultation works;
- e) obtain information about criminal, civil and administrative cases, the decisions in which have entered into force.

*Law of Georgia No 2711 of 9 March 2010 - LHG I, No 12, 24.3.2010, Art. 42*

*Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

## Article 19

1. The Public Defender of Georgia or a member of the Special Preventive Group shall examine the situation with respect to human rights and freedoms in prisons and confinement facilities, other places of detention and restriction of liberty, as well as psychiatric facilities, old people's homes and children's homes; personally meet and talk with detainees, prisoners and convicted persons; inspect documentation confirming their stay in those facilities.
2. In order to conduct regular inspections of the behaviour of persons in prisons and confinement facilities, other places of detention and restriction of liberty, as well as in psychiatric facilities, old people's and children's homes, also, to protect them from torture and other cruel, inhuman or degrading treatment, the Public Defender of Georgia/a member of the Special Preventive Group shall:
  - a) meet and talk personally or with assistance of an interpreter, without witnesses, with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes, as well as with persons who may provide information about violations of the rights of those persons;
  - b) inspect documentation confirming the stay of persons in prisons and confinement facilities, other places of detention and restriction of liberty, as well as psychiatric facilities, old people's and children's homes.
3. The meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is



restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes shall be confidential. Any kind of tapping and surveillance shall be prohibited.

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

*Organic Law of Georgia No 2711 of 9 March 2010 - LHG I, No 12, 24.3.2010, Art. 42*

*Organic Law of Georgia No 5264 of 11 November 2011 - website, 24.11.2011*

#### Article 19<sup>1</sup>

1. In order to implement the National Preventive Mechanism, the Special Preventive Group shall be set up under the auspices of the Public Defender of Georgia. The group shall regularly monitor the condition and treatment of detainees and prisoners or persons whose liberty is otherwise restricted, convicted persons, as well as persons in psychiatric facilities, old people's and children's homes in order to protect them from torture and other cruel, inhuman or degrading treatment or punishment.
2. A member of the Special Preventive Group may be a person who has appropriate education, professional experience and has professional and moral qualities to carry out the functions of the National Preventive Mechanism.
3. A member of the Special Preventive Group may not be a member of any political party or participate in political activity.
4. Members of the Special Preventive Group shall act under special authority granted by the Public Defender of Georgia when carrying out function of the National Preventive Mechanism and shall be accountable only to him/her.
5. Members of the Special Preventive Group shall be entitled not to give evidence about information that was disclosed to them in the exercise of the functions under the National Preventive Mechanism. They shall retain this right after termination of their powers as members of the Special Preventive Group.
6. Post and telegraph correspondence, postal parcels belonging to a member of the Special Preventive Group may not be subject to seizure, inspection and confiscation.

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

*Organic Law of Georgia No 5264 of 11 November 2011 - website, 24.11.2011*

#### Article 20

1. State, commercial or other confidential information protected by law shall be delivered to the Public Defender of Georgia in a prescribed manner.
2. The Public Defender of Georgia and members of the Special Preventive Group may not disclose the information recognised as secret and confidential, as well as information about torture and other cruel, inhuman or degrading treatment towards persons without explicit consent of those persons.

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

#### Article 20<sup>1</sup>

If the examination of a statement/appeal confirms the fact of discrimination, the Public Defender of Georgia shall issue a recommendation based on the circumstances of the case, by which he/she offers the discriminating person, state or local self-government authorities to take measures to eliminate discrimination and restore the equality violated by the discrimination without impairing legitimate interests of third parties.

*Organic Law of Georgia No 2395 of 2 May 2014 - website, 7.5.2014*

#### Article 21

Based on the results of an inspection, the Public Defender of Georgia may:

- a) submit proposals, observations and recommendations related to the legislation of Georgia and draft laws to the Parliament of Georgia or other relevant bodies in order to protect human rights and freedoms, improve conditions and treatment of detainees, prisoners, persons whose liberty is otherwise restricted and of convicts, as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment;
- b) in order to restore violated human rights and freedoms, send proposals and recommendations to state and local self-government authorities, public institutions and officials whose actions caused a violation of rights and freedoms guaranteed by the State.
- c) request relevant investigating authorities to start an investigation and/or criminal prosecution, if, after examining the case, he/she comes to the conclusion that there are elements of crime in the case;
- d) make proposals to relevant bodies on disciplinary or administrative liability of persons whose actions caused a violation of human rights and freedoms;



in cases, act as a friend of the court (*amicus curiae*) in common courts and the Constitutional Court of Georgia;

inform the mass-media about the results of inspections related to violations of human rights and freedoms;

g) include the decisions made by him/her into annual and special reports;

h) apply in writing to the President of Georgia, the Prime-Minister of Georgia, if the Public Defender of Georgia considers that the means of response at the disposal of the Public Defender of Georgia are not sufficient;

i) apply to the Constitutional Court of Georgia with a constitutional appeal related to the constitutionality of norms regulating referendums and elections and of the elections (referenda) held or to be held based on these norms, or when a normative act or some of its norms violate human rights and freedoms recognised by the Second Chapter of the Constitution of Georgia;

j) in special cases, request that the Parliament of Georgia set up a temporary investigation commission in relation to the facts of violation of human rights and freedoms and discuss those issues.

*Organic Law of Georgia No 2146<sup>a</sup> of 23 June 1999 - LHG I, No 27(34), 6.7.1999, Art. 142*

*Organic Law of Georgia No 1343 of 20 April 2005 - LHG I, No 19, 28.4.2005, Art. 115*

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

*Organic Law of Georgia No 2711 of 9 March 2010 - LHG I, No 12, 24.3.2010, Art. 42*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

*Organic Law of Georgia No 3621 of 24 September 2010 - LHG I, No 52, 30.9.2010, Art. 335*

*Organic Law of Georgia No 5264 of 11 November 2011 - website, 24.11.2011*

*Organic Law of Georgia No 1082 of 18 September 2013 - website, 23.9.2013*

## Article 21<sup>1</sup>

1. The Public Defender of Georgia shall nominate two candidates for the membership on the Board of Trustees of the Public Broadcaster to the Parliament of Georgia.

2. The candidates for membership on the Board of Trustees of the Public Broadcaster who are to be nominated to the Parliament of Georgia by the Public Defender shall be selected by a competition commission set up according to Article 25 of the Law of Georgia on Broadcasting. The Public Defender of Georgia shall sign the decision on the nomination of candidates selected by the Public Defender of Georgia.

3. The Parliament of Georgia shall separately elect each candidate nominated by the Public Defender of Georgia by a majority of votes of the total number of members within 15 calendar days after the candidates are nominated.

4. If a candidate to the Board of Trustees of the Public Broadcaster fails to obtain the necessary number of votes, the Public Defender of Georgia shall nominate a new candidate to the Parliament of Georgia within 10 calendar days.

5. The Public Defender of Georgia may nominate to the Parliament of Georgia three candidates out of the candidates selected by the competition commission. The same candidate may be nominated twice.

6. If none of the candidates nominated by the Public Defender of Georgia obtains the necessary number of votes, the candidate who receives the highest number of votes, but not less than one-third of the current nominal list of the Parliament of Georgia, shall be deemed elected.

7. If none of the candidates nominated by the Public Defender of Georgia obtains votes of not less than one-third of the current nominal list of the Parliament of Georgia, a new competition shall be held.

*Organic Law of Georgia No 835 of 12 July 2013 - website, 25.7.2013*

## Article 22

1. In March of each calendar year the Public Defender of Georgia shall submit to the Parliament of Georgia an annual report on the situation of human rights and freedoms in the country.

2. The report of the Public Defender of Georgia shall specify those state and local self-government authorities and officials that violated human rights and freedoms, or ignored recommendations of the Public Defender of Georgia on measures to be taken for restoration of those rights.

3. The report of the Public Defender of Georgia shall contain general assessments, conclusions and recommendations about human rights and freedoms in the country.

4. During the spring session of the Parliament of Georgia the Public Defender of Georgia shall present to the Parliament a report, in connection with the annual report, on the situation of human rights and freedoms.



Report of the Public Defender of Georgia shall be published in the Official Gazette of the Parliament. A special report may be published by the Public Defender of Georgia.

*Organic Law of Georgia No 2146<sup>a</sup> of 23 June 1999 - LHG I, No 27(34), 6.7.1999, Art. 142*

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

## Article 22<sup>1</sup>

1. The Public Defender of Georgia shall nominate three candidates to the Legal Aid Board, according to Article 10 of the Law of Georgia on Legal Aid.
2. The Public Defender of Georgia shall nominate one candidate to the Legal Aid Board from among his/her staff, the other two members shall be selected through an open competition from among the representatives of non-entrepreneurial (non-commercial) legal persons working in human rights field and representatives of scientific sector working at higher education establishments of Georgia, based on the recommendations of the governing bodies of these organisations.
3. A person who has high public recognition and good reputation, as well as a higher education and not less than five years working and/or teaching/scientific experience in the human rights field may be selected as a member of the Legal Aid Board. A member of the Legal Aid Board selected through an open competition may not work as an Advocate.
4. In order to select two members of the Legal Aid Board, the Public Defender of Georgia shall set up a competition commission consisting of at least nine members. The competition commission shall be composed of: members of the staff of the Public Defender's Office of Georgia, one member of the parliamentary committee for human rights and civil integration, representatives of mass-media, of state bodies and of non-entrepreneurial (non-commercial) legal persons.
5. The Public Defender of Georgia shall approve the terms of competition for selecting the members of the Legal Aid Board and the regulations of the competition commission.

*Organic Law of Georgia No 1800 of 13 December 2013 - website, 28.12.2013*

## Chapter 4. Legal Guarantees for Implementation of Powers of the Public Defender of Georgia

### Article 23

1. All state and local self-government authorities, officials or legal persons shall be obligated to assist the Public Defender of Georgia in every way, immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.
2. During inspection, or if requested by the Public Defender of Georgia, a state body, an official or a legal person whose action or decision is under examination or is appealed shall be obligated to submit an explanation on the issue in question to the Public Defender of Georgia.
3. Materials, documents, other information and explanations shall be given to the Public Defender of Georgia, upon request, unless request for the materials, documents and other information is received in writing. In this case, documents and other information shall be delivered to the Public Defender of Georgia within 10 days.
4. Upon request, the declarant shall have access to appropriate materials, except for information provided in Article 20 of this Law.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Article 24

State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Article 25

Failure to fulfil the obligations defined by this Law, as well as any obstruction of the activity of the Public Defender of Georgia shall be punishable by law, shall be entered in the report of the Public Defender of Georgia and become a subject of special discussion by the Parliament of Georgia.

The Public Defender's Office shall be financed from the State Budget of Georgia to the extent necessary for effective performance of its functions.

The amount of labour remuneration provided in the relevant article of the State Budget of Georgia for the Public Defender's Office of Georgia may be reduced compared to the corresponding amount of the previous year only by prior consent of the Public Defender of Georgia.



Salary of the Public Defender of Georgia shall be equal to the salary of the Chairperson of the Constitutional Court of Georgia.

*Organic Law of Georgia No 2146<sup>a</sup> of 23 June 1999 - LHG I, No 27(34), 6.7.1999, Art. 142*

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

*Organic Law of Georgia No 5264 of 11 November 2011 - website, 24.11.2011*

## Chapter 5. Composition and Structure of the Public Defender's Office of Georgia

### Article 26

1. The Public Defender's Office of Georgia shall be established to support the activity of the Public Defender of Georgia. The structure, rules of operation and organisation of the Public Defender's Office shall be determined by the Statute of the Public Defender's Office of Georgia. The Public Defender's Office of Georgia shall act in the name of and within the scope of the powers determined by the Public Defender of Georgia.
2. The Deputy Public Defender of Georgia shall manage the staff of the Public Defender's Office of Georgia. He/she shall be appointed and dismissed by the Public Defender of Georgia.
3. The Deputy Public Defender of Georgia shall be subject to the incompatibility provisions of this Law.
4. Specialised centres may be set up under the auspices of the Public Defender Office of Georgia. The Public Defender of Georgia shall determine their structure, organisation and areas of activity, rules of operation and other issues.

*Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278*

### Article 27

1. The Deputy Public Defender of Georgia and the Office personnel, and members of the Special Preventive Group, shall exercise the powers provided in Articles 18 and 19 of this Law under special authorisation of the Public Defender of Georgia.
2. When exercising the powers provided in the first paragraph of this article, a person who has special authorisation may testify on information confided to him/her only with the consent of the Public Defender of Georgia. The person shall retain this right after termination of his/her powers. Written materials related to this issue may be seized only with the consent of the Public Defender of Georgia.

*Organic Law of Georgia No 1462 of 16 July 2009 - LHG I, No 20, 28.7.2009, Art. 90*

President of Georgia

E. Shevardnadze

Tbilisi

16 May 1996

No 230-IIS

