

Organic Law on the Public Defender (1996, amended 2010)

Organic Law of Georgia on the Public Defender

Chapter 1 General Provisions

Article 1 (21.07.2010. N3565)

This law sets out the powers, the basic principles and types of the activities of the Public Defender.

Article 2 (21.07.2010. N3565)

The Public Defender shall oversee observance of human rights and freedoms on the territory of Georgia and within its jurisdiction.

Article 3 (21.07.2010. N3565)

1. For the purpose of securing state guarantees for the protection of human rights and freedoms, the Public Defender shall supervise that the state and local self-government bodies, public entities and officials observe and respect the rights and freedoms recognized by the state for all persons within its territory and jurisdiction regardless of race, color, language, sex, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence or other status.
2. The Public Defender shall reveal facts of violations of human rights and freedoms and facilitate redress of violated rights and freedoms.
3. The Public Defender shall undertake educational activities in the field of human rights and freedoms.

Article 3 1(16.07.2009 N 1462)

1. The Public Defender of Georgia exercises the functions of the National Preventive Mechanism, envisaged by 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 is provided with the necessary logistical and financial resources required for performing the functions stipulated in paragraph one of this Article.
3. Pursuant to the aims of the National Preventive Mechanism, the Public Defender of Georgia shall cooperate with the respective bodies and mechanisms of the United Nations as well as international, regional and national institutions or organizations working on the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment in the places of arrest, detention or other places of restriction of liberty. (9.03.2010 N 2711 shall be enacted from 1 October 2010).

Article 4 (21.07.2010. N3565)

1. The Public Defender shall be independent in exercising functions of the office and bound only by the Constitution, international treaties and agreements of Georgia, universally recognized principles and rules of international law, the present law and other legislative acts.
2. Any influence or interference with the Public Defender's activities is prohibited and shall be punished by law.

Article 5

1. Adequate conditions of service and remuneration must be provided by the State to ensure the Public Defender's independence.
2. The Public Defender shall be protected with immunity. The Public Defender may not be prosecuted, arrested or imprisoned; no body search or search of his/her home, car or office may be undertaken without the approval by the Parliament of Georgia. The inviolability of the Public Defender does not apply to the case of being caught in the act of committing an offence which must be immediately notified to the Parliament. If the Parliament refuses to grant consent, the arrested or detained Public Defender must be immediately released. The Parliament shall make the decision within 14 days after receiving the relevant communication from the Minister of Justice of Georgia.

(01.11.2008 N 472)

3. If the Parliament gives approval to the initiation of criminal proceedings against, arrest or detention of the Public Defender, he/she shall be suspended from office until a final decision is made by the court. If the Public Defender is acquitted or the proceedings are discontinued on grounds of exoneration, the Public Defender shall be restored to office. (21.07.2010. N3565)

4. The Public Defender may not be required to testify or to release information provided in confidence in the course of his/her performance of duty. This privilege shall continue to apply after the expiry of the Public Defender's term of office. No correspondence addressed to or other written information furnished to the Public Defender may be seized.

5. The Public Defender may not be held liable for the views and opinions expressed when discharging the duties of the office.

6. The Public Defender shall be afforded appropriate safeguards for an unimpeded exercise of his/her powers. Upon the request by the Public Defender, relevant state bodies shall take the necessary measures to ensure the safety and security of the Public Defender and his/her family.

7. Preventing in any way the work of the Public Defender shall be punished by law.

Chapter 2 Appointment and Termination of the Term of Office of the Public Defender

Article 6

1. The Public Defender of Georgia shall be a citizen of Georgia.

2. The Public Defender shall be appointed for a term of 5 years by a majority of all members of the Parliament of Georgia. Candidates can be nominated by the President of Georgia, parliamentary factions or a group of at least 6 parliament members who do not belong to any faction. (16.07.2009 N 1460)

3. Before the vote, the Chairperson of the Parliament shall read out the list of nominees and present to the Parliament their written consent to run for the office of the Public Defender. Each candidate shall be voted upon separately by secret ballot.

4. The candidate receiving the highest number of votes but not less than a majority of the total number of the Parliament members, shall be elected. If two or more candidates receive the requisite but equal number of votes, the final determination shall be made by the Parliament voting on these candidates together. The candidate who wins a greater number of votes but not less than a majority of all the members of the Parliament shall be appointed. In the event of a tie, there will be a runoff voting until one candidate gains a majority of votes.

5. If no candidate receives the requisite number of votes, a new vote shall be held. The date for the vote shall be set not earlier than 7 days and not later than 14 days from the first vote. Procedures for the presentation of candidates and voting shall be the same as provided for in paragraphs 2, 3 and 4 of this Article.

6. The same candidate can only be nominated twice during one appointment cycle.

Article 7

1. The term of office of the newly-appointed Public Defender shall commence on the day following the date of expiry of the term of office of the incumbent if he/she is appointed before such date, or on the day following the appointment if the incumbent's term had already expired or prematurely terminated.

2. The Public Defender's tenure shall end upon the expiry of 5 years from the appointment or upon a premature termination thereof.

3. The Public Defender cannot serve more than two consecutive terms.

Article 8

1. The office of the Public Defender shall be incompatible with membership of any state or local self-government representative body, holding another public office or engaging in a remunerated activity other than scientific, educational or artistic work. The Public Defender cannot be a member of a political party and shall be restricted from any sort of political activity. Exception shall be made

if the Public Defender of Georgia simultaneously holds any other office based on the requirements of law or other normative act. (21.07.2010. N3565)

2. Within one month of appointment, the Public Defender shall cease any activity incompatible with his/her status. Failure to comply with this requirement within the stipulated period shall result in the removal of the Public Defender from office and the Parliament shall appoint a new Public Defender.

Article 9

1. The Public Defender shall be appointed by the Parliament not earlier than 60 days before and not later than 30 days after the expiry of the term of the incumbent.

2. In case of premature termination of the term of office of the Public Defender the Parliament of Georgia appoints the new Public Defender not later than within 30 days after such termination. The incumbent Deputy Public Defender shall discharge the Public Defender's functions until a new Public Defender is appointed by the Parliament. While acting in this capacity, the Deputy Public Defender shall enjoy the same rights, legal safeguards and inviolability as the Public Defender. (21.07.2010. N3565)

Article 10

The tenure of the Public Defender shall be subject to premature termination in the event he/she:

- a. loses citizenship;
- b. is unable to serve for four consecutive months;
- c. is found guilty in the final judgment of the court;
- d. is recognised to be lacking legal capacity, missing or deceased by the court;
- e. has accepted or holds a position or carries out activities incompatible with the Public Defender's office;
- f. resigns;
- g. dies.

2. In cases referred to in paragraph 1 above, the term of office of the Public Defender shall be considered terminated from the moment any of the stipulated grounds are established. This shall be notified without delay to the Parliament.

3. In cases stipulated in sub-paragraphs (b) and (e) of paragraph 1 above, the term of office of the Public Defender shall be terminated by the decision of the Parliament adopted by a majority of all members of the Parliament.

Article 11 (21.07.2010. N3565)

Declaration of a state of emergency or martial law shall not suspend the activities or restrict the powers of the Public Defender.

Chapter 3 Powers and Competences of the Public Defender

Article 12 (21.07.2010. N3565)

The Public Defender shall independently monitor the observance of human rights and freedoms and examine cases concerning alleged human rights violations, either based on the applications and complaints received or on his own motion.

Article 13 (21.07.2010. N3565)

The Public Defender shall receive applications and complaints from Georgian citizens, foreign citizens, stateless persons, legal entities of private law, political and religious associations concerning alleged violations of any rights and freedoms guaranteed by the Georgian Constitution and by law, as well as by the international treaties and agreements to which Georgia is party and that may have resulted as a consequence of the actions or acts of State or local self-government bodies, public entities and officials.

Article 14

1. The Public Defender shall examine applications and complaints on violations of human rights and freedoms if the applicant contests:

- a. a decision of the public entity;
- b. a breach or violation of the rights and freedoms envisaged by the Georgian legislation in the course of the court proceedings;
- c. a violation of the rights envisaged by the legislation for a person under arrest, detention or any other form of restriction of liberty;
- d. compliance of the normative acts with the second chapter of the Constitution of Georgia;
- e. constitutionality of the norms on referendum and elections as well as constitutionality of the elections (referendum) held or to be held on the basis of these norms. (21.07.2010. N3565)

Article 15 (9.03.2010 N 2711 shall be enacted from 1 October 2010).

Applications, complaints and letters sent to the Public Defender by persons held in police custody, pre-trial detention or in other places of restriction of liberty shall be confidential and shall be mailed without opening, examination or censorship. Any such correspondence shall be delivered to the Public Defender without delay.

Article 16

1. No state fees shall be imposed on complaints and applications lodged with the Public Defender.
2. The services of the Public Defender shall be free of charge to the person concerned.

Article 17

1. Upon receipt of an application or complaint, the Public Defender shall independently decide to proceed with or decline the examination of the case.
2. The Public Defender shall notify the applicant on the decision set out in paragraph 1 of this Article. (21.07.2010. N3565)
3. The Public Defender shall inform the complainant of the outcome of the complaint as provided by law.

Article 18 (21.07.2010. N3565)

In carrying out an examination, the Public Defender shall be entitled to:

- a. have unimpeded access to the premises of any state or local self-government body, enterprise, organization and institution, regardless of its organizational-legal form including military units, places of arrest, pre-trial detention facilities and other places of restriction of liberty, psychiatric institutions, institutions for elderly persons, child care institutions. (9.03.2010 N 2711 shall be enacted from 1 October 2010).
- b. demand and immediately or not later than within 10 days receive from state or local self-government bodies, public organizations and officials all documents, files and other material necessary for examination;
- c. demand and receive written explanation from any public official, civil servant or equivalent employee on the subject under the examination;
- d. engage relevant state and/or private agencies to perform expert examinations and/or prepare findings; invite specialists/experts to conduct expertise and/or render advisory services;
- e. have access to criminal, civil and administrative case files where a final decision has been rendered by court.

Article 19 (9.03.2010 N 2711 shall be enacted from 1 October 2010).

1. The Public Defender or a member of the Special Preventive Group shall inspect the observance of human rights and freedoms in police stations, pre-trial detention facilities and other places of restriction of liberty.
2. To monitor regularly the treatment of persons placed in the police stations, pre-trial detention facilities and other places of restriction of liberty and to ensure their protection from torture and other cruel, inhuman or degrading treatment or punishment, the Public Defender or a member of the Special Preventive Group shall :
 - a. Without a whitewash, personally or with the assistance of an interpreter meet and interview persons under arrest, pre-trial detention or any other form of restriction of liberty and convicts, as

well as persons which can provide any information on violation of the rights of the abovementioned individuals.

b. Inspect documentation in respect of persons held in the police stations, pre-trial detention facilities and other places of restriction of liberty.

3. Meetings of the Public Defender/ member of the Special Preventive Group with persons under arrest, pre-trial detention or any other form of restriction of liberty and convicts shall be confidential. Any interception or surveillance shall be prohibited:

Article 19 1 (16.07.2009 N 1462)

1. A Special Preventive Group shall be set up under the Public Defender of Georgia to carry out functions of the National Preventive Mechanism. The Special Preventive Group shall examine the condition and treatment of the persons under arrest, detention or any other form of restriction of liberty to protect them from torture and other cruel, inhuman or degrading treatment or punishment.

2. A person with respective educational background, professional experience and ability to carry out functions of the National Preventive Mechanism due to his/her professional and moral qualities can be a member of the Special Preventive Group.

3. A member of the Special Preventive Group shall not be a member of a political party or shall not participate in any political activity.

4. Members of the Special Preventive Group shall act on the basis of a special authority granted by the Public Defender and shall be accountable only to the Public Defender.

5. Members of the Special Preventive Group shall be entitled not to give evidence on the fact which was disclosed to them when exercising their functions of national preventive mechanism. Members of the Special Preventive Group shall continue to enjoy this right after termination of their office.

6. Arrest, examination and seizure of the mail-telegraph correspondence or postal parcel addressed to the member of the Special Preventive Group shall be prohibited.

Article 20

1. Any information containing state, commercial or other secret material required to be kept confidential by law shall be provided to the Public Defender in accordance with the relevant requirements of law.

2. The Public Defender and a member of the Special Preventive Group shall be under the obligation to maintain the confidentiality of the secret information and the information declared as confidential, as well as information on torture, or any other cruel, inhumane or degrading treatment of a person unless this person has explicitly expressed consent for such disclosure.

Article 21

Proceeding from the findings of the examination, the Public Defender shall be authorized to:

a. submit proposals, comments or recommendations on Georgian legislation or draft laws to the Parliament or any other relevant body with the aim of ensuring observance of human rights and freedoms, improving the conditions and treatment of the persons held in the places of arrest, pre-trial detention facilities or other places of restriction of liberty and convicts as well as preventing torture and other cruel, inhuman and degrading treatment or punishment ; (9.03.2010 N 2711 shall be enacted from 1 October 2010).

b. make proposals and recommendations to the relevant state and local self-government bodies, public entities and officials on redressing violations of human rights and freedoms guaranteed by State and violated by their actions;

c. address respective investigative bodies with a proposal requesting initiation of the preliminary investigation and/or criminal proceedings, if characteristics of a crime are revealed as a result of the case examination;

d. submit to the relevant authorities proposals on disciplinary or administrative measures against employees responsible for the violation of human rights and freedoms;

e. in particular cases exercise the Amicus Curiae function in the first instance and appellate courts;

f. inform the media about the outcomes of the examination carried out in respect of the violation of

the human rights and freedoms;

g. present the decisions taken in annual and special reports;

h. appeal in writing to the President of Georgia if the means of reacting to the violation at the disposal of the Public Defender are not sufficient;

i. Lodge a constitutional complaint with the Constitutional Court on the norms related to the referendum and elections as well as the elections (referendum) conducted or to be conducted on the basis of these norms, or in case when the human rights and freedoms envisaged in the chapter II of the Georgian constitution are violated in a normative act or its particular norms;

j. in a special case, propose the setting up of an ad hoc parliamentary human rights investigation commission and request that the Parliament take up the matter for consideration.

Article 22 (21.07.2010. N3565)

1. Once per year, in March, the Public Defender shall submit to the Parliament a report on the human rights and freedoms situation in the country. (23.06.1999 N 2146)

2. The report of the Public Defender shall include information about those State and local self-government bodies and officials that were found to have violated human rights and freedoms and failed to act upon the Public Defender's recommendations concerning the measures of redress.

3. The report shall provide a general assessment of the human rights and freedoms situation in the country, a summary of the findings and recommendations to address the identified problems.

4. During the spring session of the Parliament the Public Defender shall make a speech on the human rights and freedoms situation in the country described in the annual report;

5. The report of the Public Defender shall be published in the official journal of the Parliament. Publishing of a special report shall be subject to the Public Defender's discretion.

Chapter 4 Legal Safeguards for Exercising Powers of the Public Defender

Article 23

1. Every national or local authority, public official or legal person shall be obliged to fully cooperate and to provide without delay all materials, documents and other information as shall be required by the Public Defender.

2. The authority, public official or legal person whose act or decision is under examination or is complained against shall upon the request of the Public Defender be obliged to provide to him/her a full explanation on the matter under examination.

3. The requested materials, documents, information or explanations shall be furnished upon receipt of the request, save for the cases where material, documents or other information is requested on the basis of a written demand. In such cases documents and other information shall be provided to the Public Defender within 10 days. (21.07.2010. N3565)

4. The complainant shall be acquainted with respective material save for the information set out in Article 20 of the present law. (21.07.2010. N3565)

Article 24 (21.07.2010. N3565)

Within one month after receiving the Public Defender's recommendations or proposals, every state or local-government body or official shall review them and inform the Public Defender in writing on the follow-up of such review.

Article 25 (21.07.2010. N3565)

1. Non-compliance with the duties provided for by this Law or hindering in any way the activities of the Public Defender shall be punishable by law and shall be included in the Public Defender's report as a matter of special consideration by the Parliament.

2. The Public Defender's Office is financed from the State budget of Georgia, in the amount required for appropriate exercise of its functions.

3. Reduction in the amount envisaged for the Public Defender's Office in the respective Article on remuneration within the State budget in comparison with the amount allocated for the previous year shall be permitted only with a prior consent of the Public Defender.

Chapter 5 The Staff and the Structure of the Public Defender's Office

Article 26

1. In order to carry out the activities set forth in this law, the Office of the Public Defender shall be established. The structure, rules of procedure and organization of the Office shall be prescribed by the Public Defender in the Statute of the Office. The Public Defender's Office is acting on behalf of the Public Defender and within the authority defined by him/her. (21.07.2010. N3565)

2. The Deputy Public Defender, who shall be the Chief of Staff of the Office of the Public Defender, shall be appointed and removed from office by the Public Defender.

3. The Deputy Public Defender shall be subject to the same legal requirements concerning the conflict of interests as the Public Defender.

4. Specialized Centers can be established under the Public Defender's Office. Structure, organization, areas of activity, rules of operation and other issues related to the Centers are set out by the Public Defender. (21.07.2010. N3565)

Article 27

1. The Deputy Public Defender and the staff as well as the members of the Special Preventive Group shall discharge, in whole or in part, the functions provided for in Articles 18 and 19 of this Law under the special authority conferred by the Public Defender. (16.07.2009 N 1462)

2. The staff acting under the special authority of the Public Defender may not be compelled to testify concerning information confided to them in the performance of stipulated duties without the consent of the Public Defender. This provision shall continue to apply after the expiry of the said mandate. The use of any related records as evidence shall only be permissible with the consent of the Public Defender.

Eduard Shevardnadze
President of Georgia
16 May 1996
Tbilisi