

Law on the Public Defender of Georgia

Chapter 1

General Provisions

Article 1

The Law on the Public Defender of Georgia (hereinafter referred to as "the Public Defender") shall determine the powers of the Public Defender, the basic principles and forms of his activities.

Article 2

In his activities, the Public Defender shall follow the Constitution of Georgia and the present Law, as well as the universally recognized principles and rules of international law, international treaties and agreements concluded by Georgia.

Article 3

1. The Public Defender shall supervise the protection of human rights and fundamental freedoms on the territory of Georgia, shall elicit the facts of violation of human rights and shall assist in the redress of the infringed rights.
2. Within the limits fixed by the Constitution of Georgia, the present Law and other legislative acts, with the aim of protection and promotion of human rights and freedoms by the State, the Public Defender shall supervise the activities of public authorities, national or local, public officials and legal persons, shall evaluate all acts passed by them, shall give recommendations and proposals.
3. The Public Defender shall conduct educational activities in the field of human rights.

Article 4

In exercising his functions, the Public Defender shall enjoy independence and he is subject only to the Constitution and law. Any pressure on the Public Defender or interference in his activities shall be prohibited and be punished by law.

Article 5

1. Ensuring the independence of the Public Defender, the State shall create proper conditions for his activities and life.
2. The Public Defender shall be inviolable. No criminal proceedings may be instituted against him, he may not be arrested or detained, his apartment, motorcar, office, as well as he himself may not be searched without the consent of the Parliament of Georgia. The case of being caught in the act is exceptional and shall be immediately reported to the Parliament. If the Parliament does not give its consent, the arrested or detained Public Defender shall be released without delay. The Parliament of

Georgia shall make a decision on this question within 14 days of the report by the Prosecutor General of Georgia.

3. In the case of consent by Parliament to arrest, detain or institute criminal proceedings against the Public Defender, the powers of the Public Defender shall be suspended until a final decision is reached by the court. If the Public Defender is acquitted or the case is closed on the grounds of exoneration, the powers of the Public Defender shall be restored.
4. The Public Defender shall have the right not to testify to the fact that he has been commissioned as Public Defender. This right is also to be preserved after termination of his powers. All written materials destined for the Public Defender may not be seized.
5. The Public Defender may not to be held responsible for opinion or views expressed by him in performance of his duties.
6. The conditions of unimpeded execution of powers of the Public Defender shall be guaranteed. The relevant State bodies shall safeguard the security of the Public Defender and that of his family on the basis of a request by the Public Defender.
7. Putting obstacles in the activities of the Public Defender shall be punished by law.

Chapter 2

Election of the Public Defender of Georgia and Termination of his Term of Office

Article 6

1. Any citizen of Georgia may be elected the Public Defender of Georgia.
2. The Public Defender shall be elected for a term of 5 years by a majority of the total members of the Parliament of Georgia. The right to nominate the Public Defender is granted to the President of Georgia, any parliamentary faction, or a group of MPs who are not members of any faction, provided the group consist of a minimum of 10 persons.
3. Before the vote, the Chairman of the Parliament shall familiarize the Parliament with the list of nominees and with their written consent to participate as a candidate to the post of Public Defender. Each nominee shall be voted separately by secret ballot.
4. The nominee having the largest number of votes, but not less than the majority of votes of the total members of Parliament, shall be elected. If more than one nominee obtains sufficient votes to be elected, but is not elected because of the draw, those nominees are to be the subject of a second vote and the one who obtains more votes but not less than the majority of votes of the total members of the Parliament, shall

be elected. In the case of a draw, the voting shall be prolonged, until a nominee is elected.

5. If no nominee obtains sufficient votes, a new ballot shall be held not earlier than 7 and not later than 14 days from the first vote. Nominations and elections during the voting shall be held according to the procedure established by paras. 2, 3 and 4 of this article.
6. One and the same person may be nominated twice only within one cycle of election.

Article 7

1. The term of office of the newly-elected Public Defender shall begin on the next day after the date of expiry of the term of office of his predecessor in the case where he is elected before the date of expiry of the term of his predecessor, and from the next day of election, if he is elected after the date of expiry of this term, or if the term of office of the previous Public Defender is suspended pre-term.
2. The term of office of the Public Defender shall be terminated on the date of expiry of 5 years of his election or on pre-term termination of his powers.
3. One and the same person may be elected Public Defender for two consecutive terms only.

Article 8

1. The post of Public Defender shall be incompatible with membership of any representative body of public authorities, national or local, with any position in public service and with carrying out any remunerative activity other than scientific, educational or creative work. The Public Defender may not be a member of any political party, nor participate in political activities.
2. Within one month of the date of his election, the Public Defender shall terminate any activity incompatible with his status. If the Public Defender does not comply with the above-mentioned requirements within the fixed time limits, his term of office shall be terminated and the Parliament shall elect a new Public Defender.

Article 9

1. The Parliament of Georgia shall elect the Public Defender not earlier than 60 days before the date of expiry of the term of office of the previous Public Defender or not later than 30 days after the date of expiry of his term of office.
2. In the case of pre-term dissolution of the term of office of the Public Defender and before the election of a new Public Defender, the Deputy Public Defender shall replace him. In such a case, the Deputy Public Defender shall enjoy the same rights, legal guarantees and inviolability as the Public Defender.

Article 10

1. The Public Defender shall be removed pre-term from his office, if:
 - a. He loses his citizenship;
 - b. He is not able to perform his duties for four consecutive months;
 - c. The sentence passed on him by a court enters into force;
 - d. He is recognized as lacking legal capacity, missing or deceased by the court;
 - e. He holds the position or carries out activities incompatible with the status of Public Defender;
 - f. He resigns;
 - g. He dies.
2. In cases stipulated in paragraph 1 of this Article, the term of office of the Public Defender shall be considered to be terminated from the moment of disclosure any of the above-mentioned facts which is to be reported to the Parliament of Georgia without delay.
3. In cases stipulated by sub-paragraphs (b) and (e) of paragraph 1 of this Article, the term of office of the Public Defender shall be terminated by the decision of the Parliament, which shall be adopted by a majority of votes of the total members of the Parliament.

Article 11

The proclamation of a state of emergency or a state of war shall not terminate the activities of the Public Defender, nor restrict his powers.

Chapter 3

Powers of the Public Defender of Georgia

Article 12

The Public Defender shall verify independently the situation regarding the protection of human rights and freedoms, the alleged facts of their violation, as on the basis of applications and complaints lodged with him, as well as on his own initiative where he is informed of those infringements.

Article 13

The Public Defender shall examine the complaints and applications of citizens of Georgia and those of aliens and stateless persons, as well as of non-governmental organizations, dealing with the violation of human rights and freedoms provided for by the Constitution and legislation of Georgia, by international treaties and agreements to which Georgia is a party, caused by actions or decisions of public authorities, national or local, public or private organizations, institutions, enterprises, public officials and legal persons.

Article 14

1. The Public Defender shall examine an application or complaint, provided that the claimant questions the decision of a higher body, administrative body or that of the court entered in force and if the application or complaint deals with the violation of human rights and freedoms committed during the consideration of a case.
2. The Public Defender shall have the right not to examine an application or complaint on a case that he has already considered, unless new circumstances arise.
3. The examination of an application or complaint by the Public Defender may not hamper the consideration of a similar application or complaint by the relevant international organization.

Article 15

Applications, complaints or communications lodged with the Public Defender by persons in police custody, pre-trial detention facilities or in any other places of deprivation of liberty shall be confidential and may not be unsealed or subject to censorship; They shall be delivered to the Public Defender without delay.

Article 16

1. Complaints and applications lodged with the Public Defender shall be exempt from state taxes.
2. The assistance of the Public Defender rendered to persons concerned shall be free of charge.

Article 17

1. After receiving a complaint or application, the Public Defender shall decide independently to start examination.
2. The claimant and the state body or a public official or legal person, against whose action or decision the complaint is lodged, shall be informed of the above decision by the Public Defender.
3. The Public Defender shall be obliged to inform the claimant as to the results of his examination of the complaint, as established by law.

Article 18

While carrying out his examination, the Public Defender shall enjoy the following rights:

- a. To have access to any public authorities, national or local, enterprise, organization and institution, including military units, police custody and pre-trial detention facilities, as well as other places of derivation of liberty without impediment;
- b. To demand and receive from public authorities, national or local, public and private enterprises, organizations and institutions, as well as from public officials and legal persons any information, document or other material required for examination;

- c. To obtain explanation on the issue from any public official;
- d. To carry out expert examinations and to make findings through state and/or non-state organizations; to invite experts to conduct examinations and render advisory services;
- e. To have access to criminal, civil and administrative cases, the decisions on which have entered into force.

Article 19

The Public Defender shall verify the state of protection of human rights and freedoms in pre-trial detention facilities and in other places of deprivation of liberty. He shall meet and talk personally with arrested or detained persons and the convicted; he shall check the relevant documentation, confirming the legality of holding such persons in the above-mentioned institutions.

Article 20

- 1. Information containing State, commercial or other kind of secrecy protected by law shall be submitted to the Public Defender in conformity with the Georgian legislation.
- 2. The Public Defender shall be under an obligation not to disclose information recognized as secret and confidential.

Article 21

Following the results of the examination, the Public Defender of Georgia shall be authorized:

- a. to submit proposals concerning the improvement of legislation to the Parliament, in order to secure human rights and fundamental freedoms;
- b. to send recommendations on the redress of human rights and freedoms to those public authorities, public officials or legal persons whose activities have caused violation of human rights;
- c. in a case of bringing to light any indication of a crime, to forward all materials on this case to the competent authorities with a recommendation to institute criminal proceedings;
- d. to make suggestions to competent bodies on disciplinary or administrative responsibilities against persons whose actions caused a violation of human rights;
- e. to address recommendations to relevant judicial bodies, to examine the legality of the court decisions which have already entered into force, if, on the basis of examination, he considers that violation of human rights committed during the legal proceedings could have a substantial impact on the final decision of the court;
- f. to inform the mass media on the examination of the alleged facts of violation of human rights and freedoms;

- g. to publicize his decisions on the results of his examinations in special reports and annual records;
- h. to appeal in writing to the President of Georgia or make a statement at the Parliamentary session on the gross and/or mass violation of human rights and freedoms if the means of response at his disposal is not sufficient;
- i. to bring out a suit at the Constitutional Court of Georgia in a case where a referendum is not held, despite the request of the electorate; if he considers that the holding of a referendum contradicts the provisions of paragraph 2 of Article 74 of the Constitution of Georgia, or in the case where any legal act or any provision of this act violates human rights and fundamental freedoms recognized by Chapter 2 of the Constitution of Georgia;
- j. to appeal to the Parliament in extraordinary cases with the request of the creation of an Interim Parliamentary Commission to investigate any allegation of violation of human rights and fundamental freedoms and of consideration of this issue by the Parliament.

Article 22

1. Within three months after the end of a calendar year, the Public Defender shall submit to the Parliament an annual report on the human rights situation in Georgia.
2. The annual report of the Public Defender shall list those public authorities, national or local, public officials and legal persons that systematically violate human rights and freedoms and who do not adopt the recommendations of the Public Defender concerning measures for the redress of the infringed rights.
3. The annual report shall also contain general assessments, conclusions and recommendations concerning the promotion and protection of human rights and freedoms in Georgia.
4. The Public Defender shall submit to the Parliament a special report on the situation in the field of human rights and freedoms in Georgia.
5. The annual report of the Public Defender shall be published in an official bulletin of the Parliament of Georgia. The special report may be published at the discretion of the Public Defender.

Chapter 4

Legal Guarantees of Powers of the Public Defender

Article 23

1. All public authorities, national or local, any public official or legal person shall be obliged to assist the Public Defender by all possible means, to submit to him without

delay all materials, documents and other information as may be required by him while exercising his duties.

2. Any State body, any public official or any legal person whose action or decision is under examination, shall, in the process of examination, or upon the request of the Public Defender, be obliged to submit to the Public Defender the explanation on the issue under examination.
3. Materials, documents, other information and explanations shall be submitted to the Public Defender within 15 days of the date of lodging a request. This term may, if necessary, be prolonged with the consent of the Public Defender.
4. The claimant shall familiarize himself with the relevant materials.

Article 24

The State body, public official or legal person that receive recommendations or proposals from the Public Defender shall consider them within one month and shall inform the Public Defender in writing on the results of his findings.

Article 25

1. Non-compliance with the duties provided for by the present Law, as well as the impediment in the activity of the Public Defender in any other form, shall be punishable by law and shall be reflected in the annual report of the Public Defender for further consideration by the Parliament.
2. Estimate cost related to the organization of the Public Defender and that of his staff shall be stipulated by a separate article of the State budget of Georgia. The Public Defender shall submit a draft of estimate costs related to his activity, as provided by law.

Chapter 5

Staff and Structure of the Office of the Public Defender

Article 26

For the work of the Public Defender there shall be established the Office of the Public Defender of Georgia. The structure, functioning and management of the Office shall be determined by the Public Defender in the Statute of the Office.

1. The Deputy Public Defender of Georgia, who is to be appointed and released by the Public Defender, shall head the Office of the Public Defender of Georgia.
2. Requirements concerning incomparability with other posts as regards the Public Defender fixed by this Law shall also be extended to the Deputy Public Defender.

Article 27

1. The Deputy Public Defender and the personnel of the Office shall exercise their functions or a part of them as defined by Articles 18 and 19 of the present Law, through special powers invested to them by the Public Defender.
2. A person invested with special powers while exercising the functions specified in paragraph 1 of this article shall have the right to testify on the fact he has been commissioned with the consent of the Public Defender. The right shall also be preserved for the person concerned after termination of his powers. The seizure of written materials related to this issue may be made only with the consent of the Public Defender.

Eduard Shevardnadze
President of Georgia

16 May 1996
Tbilisi

Article 43

1. The protection of human rights and freedoms on the territory of Georgia shall be supervised by the Public Defender of Georgia, who shall be elected by the majority of the whole of Parliament of Georgia for a period of five years.
2. The Public Defender shall be authorized to reveal facts of violation of human rights and freedoms and to report on them to the relevant bodies and individuals. Putting obstacles in the activities of the Public Defender shall be punished by law.
3. The powers of the Public Defender shall be determined by organic law.

The Constitution of Georgia
24 August 1995

Organic Law of Georgia
Amendments to the Organic Law on the Public Defender of Georgia

The Georgian Parliament lays down as follows:

- I. The following amendments shall be made to the Law on the Public Defender of Georgia:

1. The heading of the Law should read as follows: "The Organic Law of Georgia on the Public Defender of Georgia".
2. The word "annual" shall be deleted from subparagraph (g) of Article 21, from paras. (2), (3) and (5) of Article 22, and from par. (1) of Article 25.
3. Article 22 should read as follows:
 1. "The Public Defender of Georgia shall submit to the Parliament of Georgia a report on the human rights situation in Georgia once a six months, in March and October of a calendar year respectively".

II. The present Law shall enter into force as soon as it is published.

Eduard Shevardnadze

President of Georgia

June 23, 1999

Tbilisi