



**MONITORING REPORT ON THE HUMAN RIGHTS SITUATION  
IN THE EASTERN PARTNERSHIP COUNTRIES.**

**November 2011**

This monitoring report has been prepared by the representatives of civil society organizations in the EaP 6 countries and their international partners within the Human Rights Sub-working group of the Civil Society Forum of the Eastern Partnership.

The aim of the report is to ensure that detailed information regarding the actual situation on the ground in the Eastern Partnership states is available to the participants of intergovernmental meetings within the EaP, and to all other interested parties.

This report, second in a series, aims to grasp the most relevant trends currently shaping the human rights situation in the six EaP countries. In order to keep the report brief, the list of issues is non-exhaustive and primarily focuses on the freedom of speech, association and assembly.

The report was compiled by the Helsinki Citizens` Assembly Vanadzor and the Helsinki Committee of Armenia (Armenia), Election Monitoring and Democracy Studies Center (Azerbaijan), Belarusian Schuman Society (Belarus/Poland), Human Rights Center (Georgia), Association for Participatory Democracy ADEPT (Moldova), Ukrainian Helsinki Human Rights Union (Ukraine) in cooperation with People in Need (Czech Republic).

## ARMENIA

### Freedom of assembly

The right to hold peaceful assemblies has always been problematic in Armenia. The issue of regulating peaceful assemblies became particularly urgent in Armenia in the aftermath of the 2008 presidential elections. On April 14, 2011 a new law on freedom of assembly was adopted. It is on the whole more in line with the international standards, but several of its provisions still cause concern.

- 1) In case a meeting is planned to be held in the territory of historical and cultural monuments or in their immediately vicinity, the Ministry of Culture can ban the meeting (Paragraph 3 of Article 16).
- 2) The provisions for the official hearing on whether to allow the public gathering or no are unclear and could be subject to manipulations (are such hearings open to public, who can represent the organizers of the gathering - Paragraph 1 of Article 17).
- 3) The meeting can be banned, if it is to be held close to the National Assembly and the Government buildings and from courts of law and such meeting may pose a danger of disruption of their routine operation. (Paragraph 3 of Article 19).
- 4) The new law provides for administrative responsibility for urging people to participate in a banned meeting (Paragraph 5 of Article 19).

The adoption of the new law coincided with subsidence of political tensions in Armenia. Liberty Square, which is seen as a traditional venue for rallies, became accessible to the opposition since April. Whether the new law will be used in a restrictive manner will become more clear during the pre-election and post-election period of the Armenian parliamentary elections to be held in 2012.

### Freedom of speech

As a result of legislative changes in 2010, articles related to freedom of speech, in particular, slander and insult, are decriminalized, but a penalty of ca. two thousand euro was introduced<sup>1</sup>, which is often enough to destroy a small media outlet. The Venice Commission of the Council of Europe had passed two negative conclusions on the draft law<sup>2</sup>. Twelve defamation cases have been initiated during the first quarter of 2011 alone. In most cases the plaintiffs are politicians. Independent newspapers are the leading

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<sup>1</sup> <http://www.arlis.am/>

<sup>2</sup> See Human Rights Defender's Special Report "[The Right to Freedom of Speech in Armenia](#)" (July 2010)

target of the cases<sup>3</sup> - the daily "Jamanak" is currently the subject of three different lawsuits, "Haykakan Jamanak" (already fined for 6400 EUR over the case of a politician Levon Kacharian; and 32 000 USD for publishing a list of Armenian officials and businessmen allegedly involved in criminal activity) and "Hraparak" are also being sued; the news website "Hetq", founded by the NGO Investigative Journalists, has been ordered to pay Ijevan mayor 820 euro in damages and publish a retraction for a series of articles about fraud by local officials. For comparison, an average salary in Armenia is 250 USD.

There are cases of harassment and preventing journalists from performing their professional duties, for instance, beating Ani Gevorgyan from "Haykakan Zhamanak" or forcefully escorting the journalists of radio "Liberty" and the National Radio of NKR from the hearing of the case of Mr. Hazroyan.

### **Ill treatment, penitentiary and mental health institutions**

In October, 2009 HCA Vanadzor conducted monitoring in the police stations of Lori region and recorded that there is lack of accountability to the citizens concerning the activity of the police stations.<sup>4</sup>

- The police have not established a structure ensuring Human Rights Protection and in providing service to society.
- No policeman was held responsible in relation to the recorded 14 cases of ill-treatment<sup>5</sup>. Moreover, access to information on these cases is considerably restricted<sup>6</sup>.
- The law does not define medical examination after detention. A person is examined only when there is obvious physical injury, and the injuries are often not recorded<sup>7</sup>. The living conditions of the convicted contradict the International Standards and the Armenian Penitentiary Code as stated in the 2006 report by the Committee for Torture Prevention<sup>8</sup>.
- The Armenian law does not define the minimal standards of food, sanitary/ hygienic conditions and treatment. The building and the sanitary conditions of those institutions are especially low<sup>9</sup>. The monitoring of mental health institutions reveals physical abuse of patients, who are often engaged in physical work.

*This report was prepared by the Helsinki Citizens Assembly – Vanadzor and the Helsinki Committee of Armenia.*

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<sup>3</sup> <http://www.unhcr.org/refworld/docid/4dc2723f2.html>

<sup>4</sup> HCA Vanadzor report on "The Observations held in 6 Police Departments of Lori Region" see [more](#)

<sup>5</sup> HCA Vanadzor report on "Tortures in Lori Region." See [more](#)

<sup>6</sup> In 2010 inquires to the Prosecutor General, the police and the Special Investigative Service on the people with injuries transferred to prisons from police detention facilities and the measures taken were left unaddressed.

<sup>7</sup> 2009 Report of the Monitoring Group at RA Police Custody 2009, pages 132-148, [here](#)

<sup>8</sup> Report to Government on the Visit to Armenia <http://www.cpt.coe.int/documents/arm/2007-47-inf-eng.htm>

<sup>9</sup> HCA VANadzor [www.hcav.am](http://www.hcav.am) Monitoring of all mental health facilities in Armenia in 2009

## AZERBAIJAN

### Freedom of assembly

In the last 5 years freedom of assembly has been severely restricted.

- After the Parliamentary elections, held in November 2010, arrests of members of the Islamic party continue. They are charged with attempts of forcible seizure of power and possession of weapons. In January 2011, Nemat Pahanli, leader of National Statehood Party, Movsum Samadov, leader of the Islamic Party of Azerbaijan, and three more representatives of the Islamic Party were arrested in January 2011.
- Another wave of political arrests was observed against youth activists. On February 5, 2011 Jabbar Savalnli, an active *Facebook* user and political activist, was arrested. He was charged with obtaining or keeping narcotics and imprisoned for two and a half years. Another youth activist, Bakhtiyar Hajiev, who was a candidate in last parliamentary elections, was arrested on March 4, 2011 for evading military service and sentenced to two years of jail. Mr.Hajiyev noted that he was willing to serve in the army and that his sentence was politically motivated.
- In March 2011, members of the opposition *Ictimai Palata* (Public Chamber) movement started to organize protest actions in the capital of Azerbaijan. These events were not permitted by the Baky City Executive Authority. As the result of four unsanctioned demonstrations, conducted during 12 March – 19 June, 2011, 13 political activists were detained by the police in connection with these rallies and jailed for various prison terms.
- Together with political activists detained in the first quarter of 2011, more than 70 persons remain imprisoned or in-trial under politically motivated charges.
- Christophel Schtrassel, who was appointed a special rapporteur on political prisoners in Azerbaijan on 2010 Spring session of PACE, has not been able to get a visa to the country.

### Freedom of association

One of the obligations that Azerbaijan undertook while joined the Council of Europe is the simplification of registration procedure of the NGOs. Despite the absence of the requirement of state registration, unregistered NGOs are severely limited in their actions, while obtaining the registration remains troublesome. It is estimated that 1500 out of 3500 of civil society organizations cannot obtain a legal status.

- The law on State Registration of 2004 prolongs the period of registration procedure for an NGO to 90 days and requires it to register with the Central Office of the Ministry of Justice. The commercial organizations only need to undergo a three day registration with the tax office.

- According to the law, NGOs with no state registration are allowed to function, but the absence of legal status prevents NGOs from paying salaries and taxes, opening bank accounts, buying property or lodging a complaint.
- According to *the Law on Non-Governmental Organizations*, if a non-governmental organization receives more than three warnings within a year, it can be liquidated by the court. The scope of warnings ranges from the attempt to overthrow the government to the change of legal address, and each is considered a sufficient ground for a warning. For example, on 14 May 2008 the registration of Election Monitoring Center, the largest domestic civic watchdog, was revoked by Baku district court on basis of claim Ministry of Justice.

## **Freedom of speech**

Frequent arrests of journalists, recent changes to the legislation and banning local and international media outlets suggest that freedom of speech in Azerbaijan is practically non-existent.

- A considerable impediment for the development of the freedom of speech is the absence of the Law on Defamation. Notwithstanding the efforts of local and international organizations, adoption of the law on Defamation is being delayed. The draft prepared by local media organizations was submitted to the parliament and but was not discussed during recent parliamentary sessions.
- According to the amendments of 2010 to the Law on “Mass Media”, with the exception of operational search cases, conducting audio-video recording or taking pictures of a person by journalists without the knowledge and/or despite objections of that person is prohibited.
- From 1 January 2009 the government has banned the broadcast of Voice of America, Radio Liberty and BBC radio stations on FM frequencies, leaving only state regulated electronic media available.

## **Judiciary system and access to legal help**

- According to universally accepted standards, there is one advocate for every 1.500-2.000 persons. As of November 2004 in Azerbaijan there were 358 advocates (one for every twenty five thousand men). It is estimated that now this figure has risen to one lawyer for every 15-16 thousand men in the country. Among the reasons for such low percentage, there are the absence of normal legal basis regulating acceptance to Bar Association, indefinite oral interview procedures based mostly on subjectivism, low level of the advocate profession, anti-democratic environment in Bar Association seriously affect to the amount of the persons interested in joining it. This situation makes effective representation of citizens in courts impossible.

- Two independent lawyers – Khalid Bagirov and Elchin Namazov have lost their license as a result of decisions of the Bar Association for their work on political cases.
- In August 2011, Turaj Zeynalov was summoned to the Ministry of National Security and mysteriously died there. His family members initially reported that Turaj was subjected to harsh tortures by the officers of the Ministry, but later on refused their statements under the alleged pressure from the Ministry of National Security.

### **Violation of property rights**

During the last two years, violation of property right was among the most regular and massive violations in Azerbaijan. According to the reports of human rights organizations, in 2009-2011, twenty thousand people were illegally removed from their homes by the executive authorities in Baku city, capital of Azerbaijan, and thus their property rights were harshly violated. Compensation paid to the citizens is either too small, or not provided at all. In Azerbaijan there are currently about 1000 citizens whose property was subject to physical damage or destruction due to construction of oil pipelines, highways and other state construction projects.

### **Recommendations:**

1. The political prisoners who are recognized by domestic and international human rights organizations, as well as, the people whose right to fair trial has been violated on political motives, should be released from prison or the court decisions on them must be changed.
2. The balance and impartiality of state televisions, included the Public TV should be ensured. Political discrimination in this area must be removed and political parties and civil associations with alternative opinion should be provided with airtime in the Public TV.
3. The restrictions on the freedom of expression and freedom of association and peaceful assembly, which are the main guarantees for political freedoms, must be lifted.
4. Protection of property rights of citizens should be guaranteed by executive authorities and courts of Azerbaijan.
5. Independence of court system and Bar Association should be guaranteed and pressure against independent lawyers should be lifted by the Azerbaijan Government.

*This Report was prepared by the Election Monitoring and Democracy Studies Center (EMDS) and was reviewed by the Human Rights Club.*

## BELARUS

Since 19 December 2010, the last day of the Presidential elections<sup>10</sup>, the situation with human rights in Belarus has worsened dramatically. A peaceful demonstration was violently dispersed. During the protests windows and doors of the Parliament were broken, with the present police remaining indifferent to the incident. Several Presidential candidates tried to prevent people from breaking the glass (video recording available). However, the incident is viewed by the government as “mass riots”, often presented in the media as an attempt of overthrowing the government, drafted and ordered from abroad, and serves as grounds for mass repressions of opposition and civic activists:

- Over seven hundred of arrested participants of the demonstration, including seven out of ten oppositional candidates and their supporters;

- Forty three people received sentences, including five out of ten presidential candidates. Presidential candidates Andrei Sannikau, Mikalaj Statkievich and Dzmitry Us were charged with organization of mass riots under the Criminal Code and sentenced to five to six years. Some of the activists were pardoned and conditionally released. Six people are still serving their sentences including Mr.Sannikau and Mr. Statkievich.

- One hundred sixty five cases of searches in the offices and homes of political activists, human rights defenders and journalists offices, crackdowns on offices of organizations, which organized independent election observation;

- torture of the arrested in KGB prisons, reported by a presidential candidate Mr.Mikhalevich following his conditional release, who had to leave the country after making this information public.

and pressure on the lawyers, defending the demonstrators, including the withdrawal of licenses in at least eight cases indicate that the situation with human rights in the country *has never been worse and continues to deteriorate*.

### Restrictive legislation

The amendments for the Law “On Public Associations”, “On Political Parties” and the Criminal Code were ratified during a secret parliamentary session<sup>11</sup> and came into force in November 2011.

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<sup>10</sup> The OSCE/ODIHR concluded that “Belarus still has a considerable way to go in meeting its OSCE commitments, although some specific improvements were made. Election night was marred by detentions of most presidential candidates, and hundreds of activists, journalists and civil society representative”. Details available [here](#)

<sup>11</sup> No references to the session its agenda were announced in advance;

These amendments have severely aggravated the atmosphere among the civil society activists. Now, receiving foreign funding for civic activities can lead to criminal persecution and imprisonment for up to two years. The organization of public events has also been further restricted and criminal persecution for violating these regulations has been introduced. For more details on how civic Project in Belarus are now classified as criminal activity please see the [Analytical note by Belarusian Human Rights Defenders](#) on the new amendments.

### **Freedom of expression**

- A journalist Andrzej Poczobut has been found guilty for defamation of the President after several publications in a Polish daily “Gazeta Wyborcza”, independent websites and his personal blog. He is serving his sentence conditionally.
- A criminal case against a well known blogger Eugeni Lipkovich has been initiated for the discrediting state symbols;
- Decree No. 60, which took force on 1 July 2010, covers “a wide range of spheres dealing with the Internet”<sup>12</sup>. According to the decree<sup>13</sup> all online access devices (computers and mobile phones), as well as all internet café users, are to be identified and registered with Internet Service Providers. The providers are obliged to store the data on the Internet use of individuals for a full year and to hand that information over to law-enforcement agencies upon request. It also requires Internet service providers to block access to any website within 24 hours of being asked to do so by government regulators.
- At least eight new non-state newspapers were refused registration since February 2010 as the Ministry of Information introduced additional restrictions for registration of new media outlets, which are not provided for in the Media Law. Ten independent publications still have no possibility to be distributed through Belsayuzdruk, the state monopoly retail press distribution system, and the Belposhta subscription catalogue. Prominent independent newspapers<sup>14</sup> received several spurious warnings from the Ministry of Information, thus putting them at risk of being closed down or their production suspended at any moment.

### **Freedom of association**

- Ales Bialiatski, the leader of an unregistered human right centre Viasna, one of the oldest in the country, is being charged with tax evasion for receiving grants on his personal accounts in Lithuania and Poland. He was handed a 4,5 year prison sentence on November 24. Souhayr

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<sup>12</sup> Chavusau, Y. (2010). Soon there will be less privacy in Belarusian Internet. *BelarusInfo Letter*, 3, 1-2.

<sup>13</sup> [BAJ analysis of Decree 60](#)

<sup>14</sup> “Narodnaya Volya”, “Nasha Niva”, “Salidarnasc” and “Novy Chas”



Belhassen , the President of International Federation for Human Rights FIDH, among dozens of human rights activists, tried to attend the hearing, but was not allowed in the county.

- Belarusian Helsinki Committee received official warning from the Ministry of Justice for informing the UN of the grave situation with Belarusian lawyers (i.e. impossibility to meet with presidential candidates, being held at KGB prisons for over a month);
- International human rights activists are being denied entry into the country, or forced to leave<sup>15</sup>, for cooperating with the Committee on International Control over the Situation with Human Rights in Belarus, an initiative organized within the OSCE Moscow mechanism;
- The amendments to the Law on Political Parties and the Law on Civic Associations, which came into force in 2010, create wider possibilities for denying registration on spurious grounds.
- Under the article 193-1, criminal responsibility and a two-year imprisonment is stipulated for acting in a name of unregistered organization.
- While the activity of unregistered organizations is criminalized, obtaining legal status still remains an inaccessible luxury for political and human rights organizations. Prominent Belarusian organizations get their applications turned down on spurious grounds and none of such decisions has been overruled in court. No new party was registered in Belarus for the past ten years.<sup>16</sup>

### Other human rights

- Belarus continues to exercise the death penalty. The execution of Andrei Zhuk and Vasil Uzepchuk, sentenced last year, took place in March 2010, despite the fact that the UN Human Rights Committee sent requests for interim measures of protection. Two more death penalty verdicts have been announced by the Hrodna Regional Court to Andrei Burdyka and Aleh Hryshkautsou. On 30 November the court is to announce possible death to Dzmitry Kanavalau and Uladzislau Kavaliou, young people who have allegedly organized explosions in Minsk metro on 11 April 2011, taking the lives of fifteen people. The findings in the case are inconclusive.

*The report has been prepared by the Belarusian Schuman Society in cooperation with the Assembly of pro-democratic NGOs of Belarus.*

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<sup>15</sup> Andrei Yurau, Yury Dzybladze, Maksim Kitsiuk, Maryna Tsapok, Mikhaïl Kamenieu and others. See [here](#)

<sup>16</sup> The civic organizations, whose applications for registration were turned down since 2010, are youth organization Malady Front (1.04.2010, third denial), the Assembly of Pro-Democratic Non-Governmental Organizations (12.02.2010, third denial), an independent trade union “Razam” (25.01.2010, third denial) and “Brestskaya Viasna” (08.2010, seventh denial). Registration was also denied to civic youth association “Maladaya Backaushchyna”, civic association “Gavary Praudu” (twice in 2011), the Belarusian branch of the International Helsinki Association of Human Rights, the Belarusian Christian Democracy Party, civic association “Spadchyna”, civic association “Zalaty Leu”. Belarusian Christian Party applied for registration three times as a party, and twice – as an organization, in each case the application was turned down.

## GEORGIA

### Freedom of assembly

- On January 4, March 25, April 4 and May 7, 2011, peaceful protests in Tbilisi, calling for respect of prisoners' rights ended up with arrests of human rights defenders and members of the opposition. For the majority of them, the court discussed possible administrative charges during the night, and the judges refused to view video recordings of the events and issued their decisions only on the basis of testimonies of policemen.
- On May 7, 2011, the police dispersed a peaceful protest near the house of a local police official who was accused of corruption, in Rustavi. On the pretext of an unknown person punching a policeman, the police arrested about a dozen of demonstrators. They were immediately charged with "minor hooliganism" and "disobedience to law enforcement agents", and sentenced to between seven and thirty days of administrative detention or fined ca. 165 euro<sup>17</sup>.
- The Democratic Movement, led by the former chairman of the parliament, Ms. Nino Burjanadze, together with the "Public Assembly" submitted a notification for holding a peaceful assembly from 21<sup>st</sup> to 25<sup>th</sup> of May, 2011. On the night of 25<sup>th</sup> May, when the notification had expired, the police violently dispersed a demonstration under the pretext of the preparations for the Independence Day military parade on the 26<sup>th</sup>. The police blocked all exits from the space and used rubber bullets, water cannons, rubber beats and sirens against all demonstrators. Two people, a policeman and a protester, have been officially reported dead after the attack; around 40 people were considered missing<sup>18</sup>. The public defender's office managed to find some of them in different detention facilities around Georgia<sup>19</sup>.

### Freedom of speech

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<sup>17</sup> Messrs. Levan Chitadze, Gocha Tedoradze and Vasil Balakhadze were sentenced to 30 days' imprisonment; Messrs. Davit Dalakishvili and Shalva Makharashvili, to 15 days in prison; and Messrs. Gia Nozadze, Gela Nakashidze and Kakha Salukvadze, to seven days' imprisonment. Messrs. Nika Samkharadze, Mirian Janiashvili, Giorgi Paresashvili and Nika Lapiashvili were fined 400 laris. See HRIDC.

<sup>18</sup> <http://www.civil.ge/eng/article.php?id=23544&search=>

<sup>19</sup> Many detainees were transferred to different detention facilities around the country which made it difficult to defend and even find them.

- Government-associated media and some representatives of the ruling party practices airing negative, unbalanced and often unsubstantiated information, defaming Georgian human rights NGOs<sup>20</sup>.
- According to the law ‘public information must be released immediately, but no later than in 10 days. However, public bodies often do not obey the legal requirement for immediacy, or at all do not disclose the information requested<sup>21</sup>.
- The recent amendments to the Law on Freedom of Information in July 2010 introduced strict limits on “third-party” access to information about cases involving Georgian government in international courts.
- There is a noted lack of impartiality of judicial system in Georgia. As a result, journalists themselves abstain from suing authorities for abuses committed against them, fearing retaliations and refusals to cooperate. A documented trend of selective application of justice and lack of commitment to the rule of law creates a lingering threat for watchdogs and critical voices in general.
- More than a dozen journalists covering the dispersal of a demonstration in front of the parliament building in Tbilisi were physically injured by Georgian riot police. Some journalists were beaten. Cameras and other equipment were confiscated or broken.
- Five photo-reporters have been arrested in for operating under the cover of one of the foreign country’s special service and supplying information against the interests of Georgia. Four of them have been found guilty of espionage, being sentenced on various suspended sentences.

## Freedom of association

- Since the “modalities for activities in occupied territories” came into force on October 15, 2010, in the framework of the official strategy of the Government in relation to the separatist territories, international and local NGOs need an agreement of the State to implement projects related to Abkhazia and South Ossetia. This measure might put in danger urgent humanitarian actions and other legal or monitoring activities carried out by NGOs<sup>22</sup>.

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<sup>20</sup> Human Rights Priority, Georgian Young Lawyers Association, the founder of the Studio Reporter Mr. Vakhtang Komakhidze and the founder of the Public Movement Multinational Georgia Mr. Arnold Stepaniyan. . Georgian Civil Society Organisations issued a separate [statement on the smear campaign](#)

<sup>21</sup> According to GYLA research, the following Georgian state agencies left the information requests unanswered: the President’s Administration, the Ministry of Refugee and Accommodation, the Supreme Council of Justice and the Ministry of Internal Affairs

<sup>22</sup> See HRIDC Annual Human Rights Report 2010, *Restricted Rights*, March 14, 2011.

- The new Tax Code, which came into force on January 1, 2011, increased the taxation of the grant-funded activities from 12 to 20 %<sup>23</sup>, endangering projects planned in advance.

### Restrictive legislation and practices

- Tbilisi City Court heard 26, 172 criminal cases in 2010 (22% more than in the previous year) and only 3 of them were acquitted.
- In September 2010, a new set of legal amendments was adopted, which raises concerns with regard to situation of human rights. It grants increased powers to police officers who are entitled to stop and search any person in public, based on a reasonable suspicion that a person might have committed a crime. The law does not provide a definition for “reasonable suspicion”, neither grants any rights or guarantees for persons in question.
- According to the New Criminal Procedure Code (articles 56, 57, 58)<sup>24</sup> the rights of the victim are limited, leaving the latter, and the broader public, without any procedural rights or mechanisms to be involved in the investigation and exercise scrutiny on its effectiveness.
- Some prisoners who were released according to decisions of the ECHR were jailed again for different charges<sup>25</sup>. Another problem that tarnished Georgia’s human rights record was torture, ill-treatments and assassinations while in detention. According to Georgian Public defender, 142 prisoners died while in custody in 2010<sup>26</sup>.
- Recently, human rights lawyers in Georgia also faced difficulties in defending their clients. At least 5 lawyers were prevented from access to detainees and in some cases they were not allowed to visit their clients in hospitals.
- In 2009, The International Federation for Human Rights (FIDH) together with Human Rights Centre (HRIDC) study concluded that political prisoners do exist in Georgia, their number estimated to be between 60 and 130 as of October 2011.
- Introduction of a blanket ban on assemblies in certain public areas ( i.e. within 20 meters of the government buildings). Before the assemblies could be held at any place (including blocking of the road) with the prior notice and without the prior notice in areas not affecting the traffic flow or the public life.

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<sup>23</sup> 20 % is a tax rate applied to profit-oriented activities. NGOs activities are non profit. See HRIDC Annual Human Rights Report 2010, *Restricted Rights*, March 14, 2011.

<sup>24</sup> In force since October 1, 2010

<sup>25</sup> See HRIDC Annual Human Rights Report 2010, *Restricted Rights*, March 14, 2011.

<sup>26</sup> See HRIDC.

- Police received the right to use special means (plastic and rubber bullets, pepper gas, etc.). Georgian legislation does not expressly require that the use of force in all circumstances must be proportionate to the legitimate aim pursued.<sup>27</sup>
- The term of administrative detention, applied even for minor hooliganism and defying police orders, was increased from 30 to up-to 90 days.

*This report was prepared by Human Rights Center (HRIDC)*

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<sup>27</sup> Article 12.3 of the amended Georgian Law on police sets the criteria for the use of special means at necessity. There is no indication on the proportionality. The only limitation that the article sets is the restriction on the use of such means against pregnant, elderly, children and people with disabilities unless they are carrying out an organized assault or an armed resistance which can not be stopped otherwise. The part 5 of the same article restricts the use of enforcement which can impose heavy injuries, is associated with the unjustified risk or is prohibited by international acts.

## MOLDOVA

### Recommendations:

- Conduct effective investigation of all cases of intimidation and harassment of the press, violation of the right of speech and of restriction of access to information.
- Ensure effective fulfilment of right to assembly for all public gatherings – allow public marches and ensure protection by law enforcement against homophobic and extremist threats;
- Adopt the anti-discrimination law ensuring efficient mechanisms and safeguards against discrimination;
- Investigate all allegations of torture and ensure the perpetrators are brought before justice;
- Develop and put in place a mechanism to ensure the right of remedy and reparation for torture victims;
- Approve and implement the initiated justice sector reform strategy.

### Local elections 2011

The OSCE/ODIHR Limited Election Observation Mission (LEOM) found that the 5 June 2011 and runoff 19 June 2011 largely met the OSCE and Council of Europe election-related commitments, offering voters a “genuine choice”, while “the broadcast media overall provided equitable coverage for all contestants”. However, LEOM and civil society have raised concerns about the accuracy of complaints and appeals procedure and of the voter lists, and about the transparency of election campaign financing<sup>28</sup>. The amending of election legislation after the date for local elections has been set was done in contradiction to the Code of Good Practice in Electoral Matters of the Venice Commission.

### Freedom of expression

Despite the improvements achieved during the last year in the matters of freedom of the press, Moldova is still ranked as a country with a partially free press<sup>29</sup>. The main issues that raise concerns are:

- The adoption of the law on freedom of expression in 2010 was not followed by the amendment of secondary legislation, namely Penal Code that would introduce a penalization provision for media censorship and for exerting pressure over media. The judges avoid basing their decisions in media cases on the law on freedom of expression, applying instead the Civil Code provisions that are general and leave room for interpretation.

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<sup>28</sup> According to a study on party financing in the 2011 local elections, produced by IDIS Viitorul think-tank, the main 4 political parties competing in elections reported to the election bodies twice or even three times less election costs than the real ones. [www.viitorul.org](http://www.viitorul.org)

<sup>29</sup> In the Press Freedom Index, Moldova moved from “not free” (114) to “partly free” (75).

This gap generated impunity among high-ranking government officials, judges, influent persons who continue to exert pressure on media, by threats and by levying high civil damage awards<sup>30</sup>.

- There is no clear framework for transparency of media ownership;
- Poor implementation of the law on access to information and the law on transparency in government decision making<sup>31</sup> due to reticence and low awareness of officials and discrepancies in legislation; expressed by selective disclosure of public interest information.
- The Broadcasting Coordinating Council (a national autonomous broadcasting regulatory authority) is still prone to external political and economical influences over issuing broadcast licenses. The current Broadcasting Code does not exclude the possibility of selecting the BCC members on political criteria.
- Limited freedom of speech in the separatist Transnistrian region of the country, not controlled by the constitutional authorities of the Republic of Moldova, but by separatist administration and business circles supporting it. The few independent newspapers and radio stations are subject to censorship and are intimidated and persecuted, either by administrative means and legal harassment<sup>32</sup>, or through public defamation campaigns<sup>33</sup>.

### **Freedom of assembly**

The overall situation with the freedom of assembly is generally good, though the failure of law enforcement bodies to ensure the safety of the participants, undermine the achievements in the sphere. The Parliament delays passing of the anti-discrimination law due to the strong criticism from religious organizations against the sexual orientation provision in the law but large public consultations have been organized in order to improve the draft.

The freedom of assembly is severely restricted in the Transnistrian region. The anti-Transnistrian administration protests that were held during June-August 2011 in a number of localities of Transnistrian region were broken up by local police forces and a number of participants have been arrested<sup>34</sup>.

### **Right to fair trial/access to justice**

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<sup>30</sup> The most recent case is that of the 'Ziarul de Garda' (The "Reporter on Guard") newspaper, that on 2 August 2011 was obliged to pay in total 500,000 MDL (approx. 42,000 USD) for moral damage of two prosecutors, allegedly involved in corruption.

<sup>31</sup> According to [Monitoring study by Access-Info Association, Chisinau 2010](#) only 34.5% of public information requests have been satisfied by public authorities, See.

<sup>32</sup> In April-May 2010, the editor chief of the Transnistrian public TV channel "Pervii respublicanskii" and his colleagues-supporters were dismissed for the critics against the activity of TV channel management. In May 2010, the newspaper "Russkii Proriv" was closed after being sentenced for defamation of a local lawyer and obliged to pay a fine of almost 100 000 USD. In 2010, the journalist Ernest Vardanean was arrested by the Transnistrian secret service on accusation of spying for the Republic of Moldova and sentenced to a 15-year imprisonment.

<sup>33</sup> [Promo-Lex](#), Research paper "Human rights in Transnistrian region of Moldova", Chisinau 2007,

<sup>34</sup> These protests were the first ever anti-administration meetings in the separatist Transnistrian region. They were organized by the youth wing of the local Democratic People's Party "Proriv", that advocates for the change of the incumbent president of the separatist entity and its international recognition.

In 2011 Moldova embarked on another judicial reform that was aimed to reduce the corruption within the system and increase its efficiency. The goals of the reform are laid out in the strategy for justice sector reform, which is not yet approved by the Parliament.

At the same time, the credibility of judicial system is constantly dropping.<sup>35</sup> The corruption within the system is a common phenomenon<sup>36</sup>. Political interference with judiciary is still an issue, especially visible in relation to the elections of the President of the Supreme Court of Justice, initiated back in 2010 and still not finished.

Access to justice has continued to be problematic in Moldova for several reasons:

- Unsatisfactory court management;
- The low quality of legal services provided, caused mainly by lack of professional standards for legal professionals;
- Limited access to primary legal assistance at the level of communities;

### **Torture and right to effective remedy**

Although apparently the torture and ill-treatment complaints have decreased during 2011, these continued to have been reported, especially while in police custody<sup>37</sup>. The investigations of torture and ill-treatment claim cases, including those related to 2009 events are inefficient, not all cases are brought before the court, while the criminal trials on torture are protected<sup>38</sup>. This encourages a feeling of impunity among police officers. There are no mechanisms and accessible services for effective rehabilitation<sup>39</sup> and reparation of victims of torture<sup>40</sup>.

*This report was prepared by Association for Participatory Democracy ADEPT and reviewed by the Legal Resource Center of Moldova*

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<sup>35</sup> As compared to the March 2011, by September 2011, the credibility of judicial system decreased by 8%. The survey was produced by IMAS on request of IDIS Viitorul think tank, [www.viitorul.org](http://www.viitorul.org).

<sup>36</sup> The last public case when the judicial system was accused of corruption was the August 2011 raider attacks against some Moldovan banks.

<sup>37</sup> Data provided by the Center for Rehabilitation of Victims of Torture Memoria (CRVT Memoria).

<sup>38</sup> According to Legal Resource Center from Moldova, only 5 policemen involved in torture cases in April 2009 events have been condemned so far, but in all cases the execution of imprisonment was suspended. Another 2 policemen have been condemned for torture in cases non-related to April 2009 events.

<sup>39</sup> The only center providing rehabilitation services for torture victims is an NGO - CRVT Memoria, not supported by the state.

<sup>40</sup> Special Commission to identify victims of the April 2009 events and elaborate measures to their reparation was founded in 2009, but it was effective a short period of time. So far, there is no mechanism for adequate remedy and reparation of torture victims.



## UKRAINE

### Freedom of assembly

The possibility for people to exercise the rights for peaceful assembly has been severely limited in 2010 - 2011. Among the reasons for this tendency are:

- Introduction of various restrictions of the right to peaceful assembly by local authorities
- Pressure on activists and organizers of peaceful actions
- Use of force by militia to stop peaceful assemblies, in particular of opposition and those, which are protesting on social topics.
- On 27 April 2010 during a protest action near the Parliament on the ratification of agreements with Russia, 43 participants got serious injuries as a result of a crackdown on the demonstration.
- In 2011 against the backdrop of political persecution there is a growing number of peaceful actions and, therefore, increasing judicial and extra-judicial restrictions on freedom of peaceful assembly.
- There is still no law, guaranteeing the right for peaceful assembly

### Political persecution

There appear to have been political grounds for the criminal prosecutions against:

- Participants in the Tax Code Maidan (the protests in autumn 2010 against the Tax Code) and members of NGO “Tryzub” (for beheading the bust of Stalin on 28 December 2010);
- Former government officials: Yulia Tymoshenko; Yury Lutsenko; Bohdan Danylyshyn; Yevhen Korniychuk, Valery Ivashchenko, Ihor Didenko, Anatoly Makarenko and other former government officials.
- Both top-ranking candidates in the electoral lists of the former parliamentary majority - Yulia Tymoshenko and Yuriy Lutsenko - are in custody, Tymoshenko having been already sentenced to seven years in prison.

### Freedom of expression<sup>41</sup>

- All the members of The National Council on Television and Radio were substituted in April-June 2010, so it became totally controlled by one political party.

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<sup>41</sup> Further in this summary we are using the Human Rights Organizations Report “Human Rights in Ukraine 2009-2010”, <http://helsinki.org.ua/files/docs/1298368505.pdf>

- The newly elected Head of State Security Service is the major stock-holder of the Media Group, which among other includes seven largest TV channels (e.g. Inter TV channel).
- According to the new law “On Personal Data Protection”, signed on June 2010 by the President, the mass media distribution of any personal data of a person without his or her consent will be prohibited. The definition of “personal data” is vague. There are registered facts of pressure on journalists, when they were forbidden to shoot certain materials about corruption among the higher authorities.
- In August 2011 the National TV and Radio Broadcasting Council allocated licences for digital broadcasting. The majority of winners are people in power. Independent channels only received one license.<sup>42</sup>
- On 13 September 2011 three independent Kharkiv TV companies – ATN, Fora and ATV/K – were simultaneously removed from air.

### III treatment in law enforcing bodies

An acute problem that tarnished Ukraine during the last months is the unexplained deaths of several people detained in police units. During 2010 and the beginning of 2011, 51 people have died in police stations<sup>43</sup>. In 2009 twenty people died, while being detained or arrested, so far in 2011 thirty two death have occurred.

- In 2009-2010 the victims of unlawful violence in the internal affairs agencies numbered to 790 000 people.
- In 2010, according to the State Penitentiary Service, 808 people died in places of confinement, and so far in 2011 there were 601. The number of deaths increased by 45% and the number of suicides by 22%<sup>44</sup>.

### Right to fair trial

In May-July 2010 the new juridical reform was implemented. The new law makes it impossible to contest certain local courts decisions concerning administrative offences. Also, one of the main consequence of the reform is increased role of the High Council of Justice, excising. such important functions as appointment and dismissal of judges. Another worrying tendency is the corruption among the judges.

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<sup>42</sup> The Inter Group owned by Valery Khoroshkovsky, Head of the SBU [Security Service] and media magnate received eight frequencies; The EastOne Group, owned by Viktor Pinchuk – three; TRC Ukraina, owned by billionaire and National Deputy from the Party of the Regions, Rinat Akhmetov – four. Of the two channels seen as independent, Channel 5, owned by Petro Poroshenko received one and TVi did not obtained licenses for digital broadcasting at all. Independent regional channels also did not get the licenses.

<sup>43</sup> See Kharkiv Human Rights Protection Group (KHRG) Open Letter to the President.

<sup>44</sup> [Shocking statistics in Ukrainian penal institutions](#) (Kharkiv Humn rights protection group report)

- In September 2010 four judges were replaced in the Constitutional Court, so this Court have now pro-presidential majority. Due to other replacements the President and the ruling Party of Regions have now all the necessary levels under their control, so they can exert pressure on judges.
- The rate of acquittals in Ukraine for many years has not exceeded 0.5% of all rulings.
- From 2005 to 2011 the average level of courts decisions, which were not executed was 60-70%.

*This report was prepared by Ukrainian Helsinki Human Rights Union.*