

**REPORT ON THE GEORGIAN MISSION
OF THE INTERNATIONAL OBSERVATORY FOR LAWYERS
DECEMBER 2010**



**INTERNATIONAL
OBSERVATORY
FOR LAWYERS**

Natacha Fauveau- Ivanovic, Lawyer
Nathalie Muller-Sarallier, Lawyer
Anne Souléliac, Lawyer



Lawyers for Lawyers

Supporting actions on Human Rights and Democracy issues in the area of Human Rights Defenders.

Table of contents

I.	Introduction	3
A.	Mission context	3
B.	Organisation of the legal profession in Georgia.....	4
II.	The major difficulties encountered by lawyers in their daily practice	4
A.	Lawyers' difficulties in meeting with a detainee	4
B.	Non-observance of confidentiality between the lawyer and his client in detention	6
<input type="checkbox"/>	Non-observance of confidentiality of interviews carried out in prison.....	6
<input type="checkbox"/>	Non-observance of the confidentiality of lawyer's notes and of the case documents.....	6
<input type="checkbox"/>	Pressures put on detainees wanting to file an appeal before the European Court of Human Rights.....	7
C.	Other dysfunctions	7
<input type="checkbox"/>	Access to care in prison	7
<input type="checkbox"/>	Difficult access to the medical file of a client in detention	8
<input type="checkbox"/>	Degrading and humiliating searches	8
III.	Institutional marginalization of the lawyers	8
A.	Prosecutor's dominant role / imbalance vis-à-vis the lawyers	8
B.	A quasi-systematic use of plea bargaining	9
IV.	Pressures on lawyers	9
V.	Conclusion	11
VI.	Recommendations	13
VII.	Appendices	14
	Appendix 1: letter from the President of the Georgian Bar Association addressed to the Chairman of the Paris Bar dated 3 September 2010.....	14
	Appendix 2: letter from the President of the Georgian Bar Association addressed to the Public Defender, dated 2 June 2010	18
	Appendix 3: letter from the President of the Georgian Bar Association addressed to the Penitentiary Ministry, dated 17 May 2010	22

I. Introduction

A. Mission context

Jean CASTELAIN, Chairman of the Paris Bar, was contacted by Zaza KHATIASHVILI, President of the Georgian Bar Association, by a letter dated 3 September 2010 (see Appendix 1). That letter was forwarded to the International Observatory for Lawyers through the intermediary of the Paris Bar. A similar letter had also been sent to the Council of Bars and Law Societies of Europe (CCBE)¹ as well as to other European Bars. That letter, translated into English by the Georgian Bar, referred to serious difficulties encountered by the legal profession in Georgia for several months now, and also mentioned several individual situations experienced by lawyers.

Several emails were exchanged directly with the President of the Georgian Bar Association, who immediately indicated that he was very favorable to the organisation of an observation mission to Georgia by the International Observatory for Lawyers. The partners of the International Observatory for Lawyers approved the project for organizing an initial mission on the spot.

That mission was carried out from the 21st to the 25th November 2010. It was aimed at establishing a general report concerning the difficulties encountered by lawyers in Georgia while also dealing with the precise case of Georgian lawyers who have been the victims of serious violations.

During that mission, we made sure that we heard the largest possible number of our colleagues and of organisations on the spot.

Thus, we talked with the following:

- Mr. Zaza KHATIASHVILI, President of the Georgian Bar Association ;
- Several members of the Georgian Bar Association ;
- Mrs. Eva CSERGO (technical cooperation attachée and humanitarian correspondent), Embassy of France in Tbilisi;
- Mrs. Eva PASTRANA (Human Rights Project Manager) and Mrs. Tamar KHULORDAVA (Project Manager Rule of Law and Good Governance), of the European Union Delegation;
- The "Save the Life" association created by the families of victims of police violence;
- Mrs. Ana NATSVLISHVILI and Nikoloz LEGASHVILI, coordinators of the Human Rights Center (HRIDC), as well as the representatives of the organisations *Former Political Prisoners for Human Rights*, *Center for the Protection of Constitutional Rights and Article 42*;
- Mrs. Sopio BENASHVILI (Deputy Head of Justice Department), at the Public Defender's Office;
- Mrs. Nino NEMSADZE (International Humanitarian Law Program) of the International Committee of the Red Cross;

¹ The CCBE is an organization that represents the law profession in the European Union (EU) and in the European Economic Area (E.E.A.), representing more than 700,000 lawyers.

- Mr. Mathias HUTTER (Analyst and Program Manager) and Nina KHATISKATSI (Program Director), Transparency International, Georgia;
- Mrs. Sabrina BUECHLER (Human Rights Advisor) and Marsel CAPI (Human Rights Advisor), Council of Europe.

We also heard the views of numerous colleagues, including: Mrs. Eka BESALIA, Mrs. Natela SIRADZE, Mr. Wladimer TABAROUA, Mr. Manouchar TIRKIA, Mr. Koba SOUKHADZE, Mr. Shalva KHACHAPOURIDZE, Mr. Kakhaber KARDAVA, Mrs. Maryam TZERETELI, Mrs. Natia CHIRIKASHVILI, Mrs. Tsitsino Bab OUNASHVILI, Mrs. Manana IVELASHVILI, mother of Mariana IVELASHVILI and also a lawyer, etc...

We regret having been unable to meet with the Georgian Young Lawyers' Association during our visit.

B. Organisation of the legal profession in Georgia

There is only one Bar in Georgia (Georgian Bar Association), headquartered in Tbilisi, the President of which is Mr. Zaza KHATIASHVILI, who was elected in December 2009. According to the President of the Georgian Bar, 3,300 lawyers are now practicing. The Georgian Bar Association holds observer status at the CCBE².

An association of lawyers called the Georgian Young Lawyers' Association (GYLA) is particularly active and widely recognized in Georgia. It is said to have about 700 members, taking an active part in legislative lobbying and organising numerous free legal consultations throughout Georgia. We were unfortunately unable to meet with that association's representative.

During our mission in Georgia, we were able to observe serious difficulties on various levels in exercise of the lawyer's profession. Those difficulties greatly obstruct lawyers' daily practice, particularly when their clients are being held in detention.

One also notes an institutional marginalization of the lawyers, with an extremely powerful Prosecutor and quasi-systematic use of plea bargaining.

Finally, certain lawyers experience veritable pressures exerted by the authorities, which can go as far as prosecution and imprisonment.

II. The major difficulties encountered by lawyers in their daily practice

A. Lawyers' difficulties in meeting with a detainee

Generally speaking, we noted that the conditions experienced by lawyers wanting to enter a prison to meet with their clients are very difficult.

On Monday, 22 November 2010, at 11 a.m. we visited Tbilisi prison No. 8. That is a modern prison, of which the detention conditions, it appears, are better than at the other penitentiaries.

At the entrance, there is a building with two separate rooms, one for the families and the other one reserved for lawyers. The rooms are not equipped, particularly the ones reserved for the

²In addition to effective members, the CCBE has some "observer" members, represented by delegations of observers. In joining as such, the observer members must accept the CCBE articles of association and adopt the CCBE Code of Ethics.

lawyers, which has neither table nor chairs. The lawyers wait, standing, inside the building and outside it. They may have to wait for several hours before being allowed to enter the prison premises and meet with their client.

In the last three months, the conditions experienced by lawyers entering the prison to see their clients have deteriorated further. The fact is that by virtue of article 4 of the decree of 10 June 2010, lawyers may meet with only one client each time they go to the penitentiary. If the lawyer wants to meet with a second client at the same place, he must go out and then go through the same entrance formalities, a fact that again entails several hours' waiting. We were told by colleagues that access to the prison was even more difficult at the Zugdidi facility, the lawyers sometimes having to wait several days to be able to see their clients. The situation is also very worrisome at the Batumi, Rustavi and Ksani prisons.

This change in prison access has serious consequences for the rights of the defense:

- It sharply limits the lawyer's possibilities for meeting with his client and discussing the defense strategy, a fact that constitutes a violation of the accused person's right to have the time needed for preparation of his defense.
- It creates serious difficulties when it comes to appeals. The fact is that since 1st October 2010, the lawyer is no longer empowered to file an appeal in his client's name. The right to appeal is considered as held by the accused person alone, and he himself must sign the appeal application established by the lawyer.

The Georgian Bar Association referred the matter to the Public Defender or Ombudsman³, on 2 June 2010 (see Appendix 2).

The Georgian Bar Association also referred the same matter directly to the Penitentiary Ministry, but we do not know whether any response was obtained (see appendix 3).

Following the seizure by the Georgian Bar Association, the Public Defender referred the matter by letter to the Penitentiary Ministry, explaining the difficulties encountered by lawyers as regards access to their clients. The Public Defender also visited penitentiary establishment No. 8 on 20 October 2010⁴. During that visit, the Public Defender's representatives noted the difficulties experienced by lawyers in arranging their meetings with their clients.

The Public Defender recommends that the Penitentiary Ministry assure the following:

- the effectiveness of individual meetings between the lawyer and his client in detention on the Penitentiary Ministry's responsibility,
- that article 4 of decree No. 89 of 10 June 2010 is formulated in such a way as to make it possible to exercise the right to counsel, without any restrictions.

The Penitentiary Ministry responded to the Public Defender by stating that the said procedure had been installed for material and technical reasons, and that the places of detention do not have enough visitors' rooms for lawyers.

We should point out that this argument is disputed by the criminal lawyers with whom we met, who told us that the visitors' rooms are never full.

³ The Public Defender (Ombudsman) was established by an organic law. He monitors protection of human rights and liberties on the territory of Georgia. He has the assignment of reporting violations and of working on behalf of restoration of rights and freedoms when they are harmed. He may receive victims' individual complaints. He forwards recommendations to the authorities responsible for the violations and may propose reforms. He has the task of making the information available to him public, particularly thanks to publication of annual reports.

⁴ We must specify the fact that in connection with his work, the Public Defender enjoys access to all places of detention.

For the time being, it would seem that the Penitentiary Ministry does not plan any changes.

B. Non-observance of confidentiality between the lawyer and his client in detention

• Non-observance of confidentiality of interviews carried out in prison

During the various hearings held with lawyers and non-governmental organisations, we were told on several occasions about the lack of observance of confidentiality as concerns talks between a lawyer and his client, this in violation of Principle No. 8 of the Basic Principles of the Role of Lawyers, which provides that:

“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials”.

The fact is that the guards regularly enter the place at which the talks are held between the lawyer and the client in detention, and generally they remain within earshot.

• Non-observance of the confidentiality of lawyer’s notes and of the case documents

During the talks with the Georgian lawyers, they told us that the penitentiary authorities read the documents concerning the defense when the lawyers enter the prison and leave it. That was confirmed for us during all of our talks both with the lawyers and with the non-governmental organisations.

Certain documents are intercepted and kept by the prison authorities in violation of Principle No. 8 of the Basic Principles of the Role of Lawyers, which provides that:

“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials” and of Principle No. 22 according to which “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.

On this point, we will mention the statement by lawyer Wladimer ABAROUA, who visited one of his clients who had been beaten in prison. His client had numerous injuries and showed them to his lawyer, who made notes. A supervisor was regularly present during their talk. Once the visit was over, the guards asked the lawyer to turn over all of the notes he had just made so that they could be shown to the prison warden. The guards indicated to him that he would not be free to leave the establishment until the prison warden had been able to look at those notes.

He initially refused, but then, in the light of their insistence, he agreed to provide a few documents concerning his client. The guards demanded all of the documents in his possession. After an hour and twenty minutes, he was finally able to leave the prison, but he was never able to recover the documents that had been turned over to the guards. To journalists, he mentioned the violence that his client had experienced and the penitentiary authorities’ refusal to let him leave with his notes.

The President of the Georgian Bar Association sent an official letter to the Principal State Prosecutor about the situation, but did not receive any response. Wladimer TABAROUA’s complaint, on its part, was transferred to the Penitentiary Ministry.

The problem of document confidentiality was brought to the attention of the Penitentiary Ministry in a letter dated 17 May 2010 (Appendix 3) and to the Public Defender's attention in a letter of 2 June 2010.

When we mentioned this issue during our talk with the Public Defender's representatives, they told us that they were aware of the existence of such violations, but that they had not been "officially" brought to their attention.

- **Pressures put on detainees wanting to file an appeal to the European Court of Human Rights**

Within the framework of the defense strategies that might be contemplated, detainees wanting to file an appeal before the European Court of Human Rights are subjected to very strong pressures by the penitentiary authorities, regularly going as far as physical violence. They are considered as traitors to the nation. The penitentiary authorities are aware of such appeals, since they read the defense documents of the lawyer and of his client.

In the face of such retaliation or risks of retaliation, certain clients give up the possibility of applying to the European Court of Human Rights. Those actions on the penitentiary authorities' part constitute a violation of Principle 14 of the Basic Principles of the Role of Lawyers, which provides that "*Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession*".

This situation was confirmed for us during all of our talks.

The case of four detainees beaten at prison No. 7 in Ksani was reported to us by their lawyer. Those prisoners were beaten on 19 August 2010 in the penitentiary department because a search of their cell brought to light copies of letters written by the lawyer concerning the application to the European Court of Strasbourg. As soon as the penitentiary authorities learned that those detainees were appealing to the European Court of Human Rights, they were considered traitors to their own country, against which they were making a complaint.

Those pressures put on detainees appealing to the European Court of Human Rights are frequent, but no official actions whatsoever seem to have been taken to put an end to them.

C. Other dysfunctions

- **Access to care in prison**

Georgian legislation is in line with international standards as regards access to care for detainees. However, actually the care that can be obtained in prison is very limited, and does not meet the real needs.

Natela SIRADZE, who was arrested and held for three months, told us that she shared her cell, with an area of 10 m², with nine other detainees. When they were ill, the only medicine they received was generally sugar water.

Lawyer Mariana IVELAHSVILI, who was held at prison No. 9, suffered from pneumonia. Her health improved only because the Georgian Bar Association got drugs to her. She is now suffering from a serious pathology requiring thorough examinations and treatment that must be given by a specialised establishment. The care she might receive in prison at present is clearly insufficient.

This is a well-known situation concerning which it will be useful to refer to the report by the Public Defender concerning the situation of human rights and liberties in Georgia.

Similarly, numerous applications before the European Court of Human Rights relate to the question of access to care in prison.

- **Difficult access to the medical file of a client in detention**

In theory, lawyers are entitled to obtain the client's medical file, with the latter's approval. But actually the penitentiary authorities obstruct that process by pointing to a lack of technical means (a supposed impossibility of making photocopies).

Furthermore, even the detainees encountered difficulties in getting their own medical files. Thus, for instance, at prison No. 6, one detainee did not receive appropriate treatment, and when he complained about the kind received, he was beaten. The prison management subsequently refused to supply him with his own medical file.

Lawyer Mariana IVELAHSVILI, held in prison No. 9, cannot obtain access to her medical file despite many requests.

- **Degrading and humiliating searches**

To enter a prison, lawyers have to be searched.

Women lawyers, on their part, are subjected to particularly degrading and detailed searches. Thus Natia CHIRIKASHVILI, who has been a lawyer for two years, tells us that she is regularly subjected to very detailed searches, under her clothing and even under her underclothes. Even though such searches are carried out by women guards, they feel extremely humiliated on each occasion, and those security measures seem disproportionate.

The reality of such inappropriate searches was brought to the attention of the Penitentiary Ministry and of the Public Defender in the letters from the President of the Georgian Bar Association (letters dated 17 May and 2 June 2010 – Appendices 3 and 2).

III. Institutional Marginalization of the lawyers

A. Prosecutor's dominant role / imbalance vis-à-vis the lawyers

One notes a dominant role played by the Prosecutor in the Georgian criminal justice system.

Thus the Prosecutor intervenes regularly in the lawyer/client relationship, urging the client to change lawyers if the current one does not suit him. The Prosecutor generally encourages the accused persons to retain lawyers recognised for favoring negotiation. It would seem that such incentives can be treated as threats, since the staffs of the Prosecutor's Offices are said not to hesitate to predict a negative outcome, and even long prison terms, if the clients do not choose a conciliatory lawyer.

In theory, Georgian legislation grants many rights to the lawyer, but in practice those rights are not respected, nor is the Prosecutor's influence offset by the influence exercised by the judge, who, almost systematically adopts the Prosecutor's position.

This Prosecutorial power is further strengthened by the fact that he has many more resources and benefits from regular and advanced training programs, a fact that further strengthens the imbalance noted vis-à-vis the lawyers.

In addition, the Prosecutor regularly prevents lawyers from enjoying access to the case file without any valid reason. That practice creates difficulties for lawyers vis-à-vis the client, the latter feeling that the lawyer is not doing his work properly.

Lawyers who denounce that sort of practice on the part of the Prosecutors are therefore penalized further in their practice.

B. A quasi-systematic use of plea bargaining

The importance of the Prosecutor's role is further strengthened by the quasi-systematic use of plea bargaining. The fact is that the latter was introduced at the time of the reforms of criminal justice procedures that followed the 2004 elections and that were aimed at struggling against corruption and making the Georgian system more rapid and more efficient.

As of 2010, it appeared that the introduction of plea bargaining has many perverse effects. Thus, as soon as a person is arrested, the Prosecutor pressures him and his family to think about negotiating and pleading guilty. Thus he suggests a lawyer known for negotiating to the accused and his family. Even in case the person has not committed the alleged acts, he will always have a tendency to decide to plead guilty to avoid a trial with an uncertain outcome, even almost systematically an unfair one, and a long sentence. The "good lawyers" are the ones who negotiate with the Prosecutor.

Furthermore, the very great majority of plea bargains wind up in payment of a fine by the defendant. The money obtained in this way goes directly into the State budget.

Plea bargaining has very clearly gotten away from its initial objective, and in particular results in depriving lawyers of their defense role in criminal proceedings.

Natela SIRADZE, a Tbilisi lawyer told us that following her arrest⁵ based on a false accusation, she pled guilty, preferring to agree to that arrangement and to be free rather than serving three or four years in prison. That was the first time in her life that she refused to ply her trade.

IV. Pressures on lawyers

Numerous pressures are put on lawyers in violation of Principle No. 16 of the Basic Principles on the role of Lawyers, which provides that *"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics"*.

The various cases reported to us concern lawyers who have been the object of threats of proceedings, arrests, searches, or even who have received a criminal sentence, after having defended clients whose cases are considered sensitive.

Such practices violate Principle No. 18 of the Basic Principles on the role of Lawyers, which provides that *"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions"*.

Thus, Manouchar TIRKIA thinks that it was because of a rather serious case in which he represented the defense and for which he was subjected to a certain pressure that he was

⁵ Her arrest and the reasons for it are described in the last part of the report devoted to the pressures put on lawyers.

arrested for “drug use”. That arrest was unjustified, a fact that was demonstrated by the negative results of the blood analysis. He was kept for four hours on that occasion and thinks that it was clearly in order to put pressure on him.

Subsequently, on 13 April 2010, his house was searched. The law allows house searches in very urgent cases without a search warrant. He had several firearms duly registered in his name. A crime had been committed on the previous day opposite his home. One of his rifles, legally purchased, was seized, but was not sealed in his presence. It was not until three hours later that the police asked him to go to the police station to sign the sealed items, something he naturally refused to do. The weapon in question remained in police custody and the case is still active.

Natela SIRADZE has been a criminal lawyer since 1995. She has worked on cases characterized by wide media coverage, such as the one involving Marek DOUDAYEV, an Osset shot to death on his farm and considered a clandestine combatant by the Georgia Government. She was the family’s lawyer.

Natela SIRADZE is considered an opposition lawyer, since she does not hesitate to denounce the violations she notes.

In 2008, she defended a person accused of theft with assault. She had managed to prove that the accusations were false and had obtained permission for a defense witness to testify. Nevertheless, the defendant was sentenced to eighteen years in prison.

Before the appeal began, the defense witness was arrested for perjury. At the time of his arrest, a proposal was put to him to the effect that if he did not want to serve a long prison term of three or four years, it was better for him to say that he had perjured himself and that this had been suggested by the lawyer, Natela SIRADZE.

After two months, the witness, a young man in delicate health (seriously asthmatic), could no longer resist the pressures. He wrote up his “admissions” and was freed. During the appeals proceedings, he gave the new version of his testimony. In July 2009, the client was sentenced on appeal to seventeen years in prison.

The lawyer who had supposedly solicited the “perjury”, Natela SIRADZE, was arrested on 3 December 2009 at home, at 6:30 a.m., on her son’s birthday. There were more than a score of policemen to take her in. The police knew that her mother was dying and that she had been with her for four days at the hospital. She was home that morning because it was the birthday of her son, who was celebrating his 11th. The ground for her arrest was that she had influenced a witness to obtain testimony in her client’s behalf.

She was very quickly given to understand that she had to acknowledge her guilt and negotiate with the Prosecutor if she did not want to spend four years in prison. Ten days after her arrest and while she herself was still being held, her mother died. Natela SIRADZE is a single mother and she could not imagine leaving her children alone. For the first time in her life, she refused to ply her trade as a lawyer and signed “admissions”. The judge approved the agreement on 23 December 2009. She was released on 2 March 2010. She preferred to compromise and to be freed quickly, rather than spending four years in prison.

Following her sentencing, she was able to continue to practice, but she now has many fewer clients, who have a tendency to avoid her, since she is known as an opposition lawyer.

The case of lawyer Naim IASAGASHVILI, held in the women’s prison of Tbilisi, was also reported to us. She was accused of fraud on the basis of a statement by a client claiming that Naim IASAGASHVILI had kept the equivalent of USD 10,000 in lari as fees, whereas that

amount was supposed to be delivered to the Judge and the Prosecutor in order to conclude an agreement concerning guilt with the Prosecutor.

Naim IASAGASHVILI on her part refers to a services and fees contract signed with the client. She was sentenced on appeal on 28 March 2008 to ten years in prison for fraud, as well as to a fine. It clearly seems that the lawyer was unable to get a fair trial. The fact is that the witnesses heard during the proceedings did not confirm the client's allegations, and the judges systematically rejected the defense arguments.

The most serious case brought to our attention was the one of lawyer Mariana IVELAHSVILI, now 24 years old, and still held in prison No. 9.

She was arrested in April 2008 on the grounds that she had received money from clients without having provided adequate services in exchange. On initial jurisdiction she was sentenced to seven years in prison for aggravated fraud, and on appeal to five years and nine months. Her conditions in prison are difficult and her health is now a subject of very great concern.

We met with Mariana's mother, Mrs. Manana IVELAHSVILI (born Kazieva), who is also a lawyer and who is of Ossetian origin. We also talked with her lawyers, Mrs. Natela SIRADZE and Mr. Shalva KHACHAPOURIDZE.

Those talks show that the charges against Mariana IVELAHSVILI are unjustified and seem to be linked with her political commitment. She considers herself, as she told us during a telephone talk from prison, a political prisoner. She wants to submit a request for asylum as soon as she gets out of prison.

V. Conclusion

In a general way, in Georgia there is a veritable destabilization of legal profession. Lawyers' daily practice (talks with clients, visits to prisons, access to files, etc.) is being made ever more difficult, a fact that discredits them in their clients' eyes. This weakening of the lawyer's role is further aggravated by the considerable powers held by the Prosecutor in practice, and by the systematic generalization of plea bargaining. Thus the defense strategies that might be instituted by the lawyer are extremely limited and may appear to be dictated by the Prosecutor. Even the possibility of appeals at European level may be hindered by the pressure that may be put on the client detainee.

Thus, to use the terms of the basic principles concerning the role of the Bar, in the criminal domain, the lawyer no longer appears to be an essential agent in the administration of justice.

This profound destabilization of the lawyer's role has the effect not only of penalizing the entire profession, but also of impairing the fairness of the proceedings and the rights of the defense.

The lawyers who resist and, in spite of everything, want to exercise their profession in a fully free and independent way or who are involved in sensitive cases are subjected to veritable pressure that may go as far as criminal proceedings and prison terms.

The disputes between the lawyers and their clients, particularly as concerns fees, are used against the lawyers themselves, who are prosecuted for fraud. The case of lawyer Mariana IVELAHSVILI, sentenced to five years and nine months in prison for supposedly having received money (300 GEL namely 170 euros) from clients without having provided adequate services in exchange, is a sad illustration of this practice. Such disputes, which should have been the object of disciplinary proceedings, wound up in very heavy sentences following

proceedings in which one notes lies and inconsistencies on the part of the witnesses and the victims, as well as violations of law by the prosecution and the courts.

VI. Recommendations

Thus, it seems to be of fundamental importance and urgent to reconsider the role of lawyers in Georgia.

To that end, it seems essential:

- To facilitate lawyers' working conditions by enabling them, in particular, to obtain access to their clients in detention under conditions guaranteeing observance of the rights of the defense: access to the prison and to all of their clients without hindrance or any excessive waiting;
- To respect the confidentiality of the conversations between the lawyer and his client in detention, as well as of their correspondence;
- To allow lawyers to advise their clients in the latter's best interest, without any improper interference by third parties;
- To make an urgent assessment of the negative effects of plea bargaining so as to contemplate a review of its use, which has become systematic;
- To avoid comparing lawyers to their clients or to the clients' situation because of the performance of their duties;
- To see to it that lawyers can perform their professional duties without hindrance, intimidation or pressures of any kind;
- To encourage and support the development of the Georgian Bar to enable it, on one hand, to play the role that it should have in the disciplinary domain in connection with any dispute between a lawyer and his client, and on the other hand in installation of quality training programs for lawyers.

VII. Appendices

Appendix 1: letter from the President of the Georgian Bar Association to the Chairman of the Paris Bar dated 3 September 2010

at, are made to take off their shoes. As to lady lawyers, they touch their breasts and genital organs under the pretext of looking for drugs, which is extremely degrading and insulting. In prison the security has detectors and they can use them for checking them, but they prefer not to do so. Despite the fact, that I again applied to the Chief Prosecutor's Office with request of initiation of criminal proceedings against the offenders, nobody has been punished.

In regard to detained and tried lawyers unfair and illegitimate convictions are drawn. Thus, for taking of around 200 EUROS from clients the lawyers are sentenced to the most heavy sentence. Of course we have to pose a legitimate question, whether lawyers should not take money from their clients at all? Clients are under pressure from police and they have to given testimony against lawyers, claiming that he did not provide them with an adequate service. Lawyers are detained immediately under this pretext. There is no such precedent in any other country, where lawyers are arrested because they did not render adequate service to their clients, or because he lost the case. This can be possible only in conditions of antidemocratic regime of Saakashvili.

In given regard it is interesting to dwell on the case of lawyer Mariam Ivelashvili. A 24 years old lawyer has been convicted for two years already for taking remuneration from two citizens in the amount of 170 EURO. The court has sentenced her to 5 years and 9 months of conviction on the basis of charges, that she has not provided adequate legal services to the citizens. The fact of unlawful conviction of Mariam Ivelashvili has been so publicized in Georgia, that Studio Monitor with financial assistance from EC has conducted journalist's investigation and made a documentary film on the fact of unlawful conviction of lawyer Mariam Ivelashvili. Despite of the fact, that the above referred documentary film was shown on TV the Supreme Court did not consider appeal of the lawyers and denied access to justice.

To ensure that you fully understand the fact, that rights of lawyers are infringed in Georgia, we would request you to see the documentary on conviction of Mariam Ivelashvili, which the our association has published on the web site: www.gba.ge

This is only a brief listing of the violations that have occurred after my appointment as a Chairman of Georgian Bar Association. Such inhuman and degrading treatment of lawyers was happening only during authoritarian regime. In the 21st century, in the era of computers the offences that Saakashvili's government is committing in regard to the lawyers are unheard of. I. Zaza Khatashvili, the Chairman of Georgian Bar Association have been trying to deal with this problem during 8 months that I have been appointed to this position. On numerous occasions I have applied to the Chief Prosecutor's Office but to no avail.

On October 1, 2010 we are adopting new Criminal Procedural Code in Georgia, which does not contain provisions on the rights and responsibilities of lawyers and there is no separate chapter, which would have covered issues related to the lawyers. The Criminal Procedural Code of Georgia states that lawyers have all right that the accused person has. Requirement of article 6 of the convention on equality of parties is infringed, as prosecution has far more rights, than the defense. According to the new Criminal Procedural Code the court can fine a lawyer in the amount of 5000 GEL (around 2150 EURO) and the decision can not be

appealed. In conditions, when minimal salary in Georgia is 100 EURO and annual income of majority of lawyers is less than 2000 EURO, unlawful fining of the lawyers by the court shall cause lawyers to refuse from the law practice and consequently, the government shall get rid of the lawyers, who work in the sphere of protection of human rights and whom they were not able to convict. When the judiciary system of Georgia is beyond any criticism and the lawyers are harassed by the court, when as a chairman of the Bar Association I am told by my colleagues that the court forges the protocols of court sessions (as there is no mechanism of control and Saakashvili's regime has imposed ban on recording of court sessions) granting of such vast rights to already unfair and unjust courts is basically a new mechanism of legitimate persecution of lawyers.

I have conducted formal survey among the lawyers on the issue of independence of judiciary. We posed several questions to the lawyers. Namely, whether the court is fair and whether the court is subjected to pressure from the government. All lawyers, who took part in the survey have stated their name, telephone number, number of their lawyer's certificate and signed the questionnaire. Interviewing of lawyers was conducted according to location of courts of appeal, i.e. in Tbilisi and Kutaisi. 99% of the interviewed 300 lawyers confirmed the fact, that there is no fair trial in Georgia and 95% of the interviewed stated, that judiciary system of Georgia is controlled by the government. Materials of the survey are kept with the Bar Association and we can provide them to all interested parties.

I, Zaza Khatiashvili, the Chairman of the Lawyers' Association have no opportunity of ensuring defense of rights and interests of my colleagues. We refrain ourselves from conducting of campaigns in protest of current state of affairs, as we are not politicians.

If you consider, that safeguarding of rights of lawyers is important, if you support democratic values, please apply to all legitimate measures within your means to defend lawyers from persecution by Saakashvili regime.

We request you to exert pressure on Saakashvili for the purpose of liberation of unlawfully convicted lawyers. This will be huge contribution towards ensuring democratic development of my country.

Respectfully,

Zaza Khatiashvili,
Chairman of L.E.P.L
Georgian Bar Association



Appendix 2: letter from the President of the Georgian Bar Association addressed to the Public Defender, dated 2 June 2010

დასრულდა №2 annex

(Emblem)

ს.ს.ი.პ. "საპროკურორულ ადვოკატთა ასოციაცია"
L.E.P.L "GEORGIAN BAR ASSOCIATION"

No. 1242/06/10

2nd of June, 2010

To the Public Defender of Georgia

Mr. Giorgi,

1. I want to inform You that the director of Penitentiary Department, Tamaz Meladze at Tbilisi Gldani No.8 Prison has established the personal legislation which is expressed in establishing of such norms which exceed the frames of the Law. In particular, Tamaz Meladze has introduced in Tbilisi Gldani No.8 Prison new forms of interrelations of the advocates and the arrestants being under their defense. The advocates have been imposed limits on taking up (bringing up from the prison), which is a criminal case at the same time. Me, the Chairman of Georgian Bar Association, have addressed the Chief Procurator and demanded to initiate the criminal case in relation to above-indicated fact. (See the Appendix No.1, Application to the Chief Procurator). My appeal was supplemented by the statements of 8 advocates which proves the fact if the Director of the No.8 Prison on the part of Tamaz Meladze. (See the Annex No.2 the Statement of an advocate Levan Adeishvili). It seems that after the indicated appeals Tamaz Meladze has been severely warned from upper authorities and he prevented to establish the limits for Tamaz Meladze during taking up the detainee, but in No.8 Prison still takes place the humiliate of dignity acts which is expressed in the following:

In the Prison No.8. the advocate has to stand in unbearable state while standing in the entrance to write out of a permit. So as the room is 20 sq.m., where the permit is written out, is 20sq.m. room with three windows. In one window there is effected writing out the permits for advocates, procurators and policemen. In the second window it is effected the registration of those who want to pass over the parcels, and In the third window wring out of permit for the advocates came to visit the prisoners in medical department, which cause a chaos and torture of advocates. So as in the 20 sq.m. room sometimes there gather more than 100 peopled and the advocate is obliged to wait outside, under rain, hot and cold. For settlement the indicated problem a political will is needed, so as to write out the permit for advocates can be effected in penitentiary department.

2. We inform to You, that both in the 8th prison and other various establishments of Penitentiary Department there takes place the act of humiliation towards the advocates. In particular, inspection by the humiliating methods. They make the advocates to put off the shoes, check to girls the breast, etc. The Penitentiary Department is liable to inspect the advocates visually through the detector, what they do not fulfill. We ask You, as a Public Defender, to provide termination of acts humiliating the dignity of the advocates in various detentions of the penitentiary Departments and please, help us that the advocates were inspected only by means of the detectors.
3. When the advocate meets the person under his defense a new stage of humiliation of the advocate is started. In Particular:

Looking through in detail the notes of the advocates, gotten documents, correspondence of clients or other reference books (including the telephone ones), detail inspection by the foreign persons (officers of the Establishment), enforcing the advocate to leave in the very entrance of the Establishment the written notes of the telephone or correspondence character.

These are those fundamental violations, which are running permanently towards the advocates for several years.

We remind You the extracts from the provisions from the International and local normative acts connected with the advocate profession;

Main principles of United Nations about the role of advocates

Adopted by the Eight Congress of United Nations about excavation of criminal and attitude towards the offenders of the law.

Havana, Cuba, 27th of August – 7th of September, 1990.

So as the minimal standard rules of treatment of the prisoners for those to be judged provide the juridical assistance and confidential relations with the advocates.

The present main principles about the role of the advocates have been established for assistance of participating states, to promote to them provide establishments of advocates role. The governments within the frames of inner state legislation and practice should respect and take into account these principles and they should be transferred both to the advocates and other persons as well, in particular, to judges, procurators, representatives of executive and legislative power authorities and totally, to the society. These principles should be equally confronted to those persons who implement the functions of advocates without a formal status of the advocates.

SPECIAL GUARANTEES IN CRIMINAL LAW PROCEDURE

All prisoners, detained or the person being in the prison should be provided with dully possibilities, time and terms when meeting the advocate, for communication and consultation with him. Without delay, prevention and censure, with complete keeping of confidentiality. Such consultations can be supervised by the representative of a legal organs, but he has no right to listen to it.

GUARANTEE FOR ADVOCATE ACTIVITIES

The State should acknowledge and respect the confidentiality of all communications and consultations among the advocates and their clients advocates within the frames of their professional relationship.

EUROPEAN COURT COMMITTEE OF THE MINISTERS

Recommendation of the Ministers of the member States (Rec(2000)21

About the liberty of implementation of advocates profession.

Recommends the governments of memr states to receive relatively and implement all measures which they deem to be necessary for fulfillment the recommendations given in the this recommendation.

Principle 1 – Main Principles of Liberty of the advocate's Profession.

All measures should be applied with the aim of respect, protect and promotion of liberty of advocate's profession, without discrimination and unduly interference on the part of the society or power authorities. In particular, with allowance of provisions relative to the European Convention about the Human Rights.

All necessary measures should be applied to provide the respect of confidentiality of Advocate-Client relations. The deviation from this principle can be admitted only in case if this law corresponds to the principles of supremacy of a law.

According to the 42nd Article of the Georgian Constitution, right to defense is guaranteed

MR. GIORGI,

As You see the acts having the highest legal force charge the states that the interrelations between the advocates and the client were unlimited, their correspondence were without censure and any limitations,

And today's reality is as follows:

The advocates while entering the penitentiary department with the aim to meet the clients, before the meeting all persons pass some checking,

Advocate, investigator, procurator and other persons.

During checking of the advocates in a special room, there is carried out the detail checking of all documents, notes, correspondence with the client or the definition, telephone book, strategic plan or the defense layout, by the officers of the penitentiary establishment. The advocates are prohibited by the administration of the establishment to have at hand the letter, compiled by the client or advocate both during meeting with the client and while departure with him. By the officers of the establishment there is performed in massive manner a rude violation of the confidentiality between the advocate and the client, as well checking of the materials comprising the secret information, let it be an letterer, document, disclosure of this information, sin the way as it is done by several persons. The fact is interesting that during meeting with the client in the Gldani No8 prison the advocate is prohibited to close the door and the officer of the Administration enters the room during meeting of an advocate and the client whenever he likes.

Goal of the Advocates Corps is to be protected the professional secrecy of the advocates and to suppress inspection of all kinds of notes and documents of the advocates, censure and which is applied in this country for year, especially after Revolution of Roses.

4. In Zugidi No.4 Prison for appointment of the advocates with the prisoner two room are allocated. Which causes standing in the live queue by the advocates. In frequent cases the advocate can't manage to see the prisoner for the whole day and the person under his defense is left without the defense, so as the number of acts needs additionally for advocates of the consent of the accused person. For instance, for appealing of any summing decision, appeal of preventive pressure detention, copying of case materials, etc. Generally, the state of the advocates in Zugdidi reminds to us the returning to the Feudalism Epoch (See. The Annex. No.3, Statement of the advocate from Zugdidi.)

Please, urgently take measure that the minimal standards regulated by International documents in relation to advocates, and be prevented the rude violations of law on the party of managers of the penitentiary establishment or the personals working there.

We urge You to effect together with the chairman of the Georgian Bar Association visiting of Gldani No.8 Prison by the 10 o'clock in the morning. We want to make You sure personally in reality of the problem. Please, introduce the facts humiliating the treatment of advocates in Your annual report. Additionally I determine that me, the Chairman of Bar Association have addressed to Mrs. Khatuna Kalmakhelidze but she, as it seems, even does not answer to me, it appears that I do not deserve her response. (See the Annex No.4, Appeal to Kghatuna Kalmakhelidze.).

Best regards,

Zaza Khatiashvil (signed)

Chairman of L.E.P.L "Georgian Bar Association"

(Stamp of the Association is affixed)

See:

Annex No.1 – Appeal to the Procurator General
Annex No.2 Statement of the advocate, Levan Dvalishvili
Annex No.3 – Statement of the advocates form Zugdidi.
Annex No.4. Appeal to Khatuna Kalmakhelidze.

(including the telephone book), enforce the advocate to leave the telephone notes or other written notes in the very entrance.

These are those fundamental violations which are applied against the advocates for several years.

We want to remind You some extracts from the provisions advocates profession and the International and local normative acts;

Main Principles about the role of Advocates

*Adopted by the Eight Congress of the United Nations about the eradication of offence and attitude to the offenders.
Havana, Cuba, 27th of August- 7th of September, 1990*

So as the minimal standard rule of attitude towards the prisoners for those to be judged provides with juridical assistance and confidential relations with the advocate. These Main Principles about the role of advocates have been created for assistance of the participant states, to support and provide with establishment of advocates' role. The governments within the limits of inner governmental legislation and practice should respect and take into account these principles and they should be transferred both to advocates and other persons, in particular, to the judges, procurators, representatives of executive and legislative authorities and totally, to the society. These principles should be equally correlated to those persons who realize the functions of advocates without a formal status of an advocate.

SPECIAL GARANTIES IN CRIMINAL LAW PROCEDURE

Each arrested, detained or being in the prison person should be provided by relative possibility, time and terms for meeting with his advocate, for communicating with him and consultation, without delay, prevention and censure, under complete keeping of confidentiality. Such consultations can be supervised by the representatives of legal organs but they have no right to listen to them.

GUARANTIES OF ADVOCACY ACTIVITIES

The states should acknowledge and respect the confidentiality of all communications and consultation between the advocates and their clients within the frames of their professional relationships.

EUROPEAN COUNCIL COMMITTEE OF MINISTERS

The recommendation of the Committee of Ministers of Member Countries
Rec (2000)21

About liberty of realization of advocate's profession.

Recommends the governments of member states, to receive and realize all measures which they consider to be necessary for fulfillment of the recommendations given in this recommendation.

Principle 1 – Main Principles of Liberty of advocate's Profession

All measures should be taken with the aim to respect the liberty of the advocate's profession, defense and promotion without unduly interference and discrimination on the part of the society and power authorities. In particular, with allowance of relative provisions of European Convention about Human Rights.

All necessary measures should be taken for guaranties of respect of confidentiality between the relations of an advocate and a client. Deviations from this principle can be admitted only in case if this law corresponds to the principles of supremacy of the law.

In accord to the 42nd Article of the Georgia Constitution, right of defense is guarantied.

DEAR MRS.KHATUNA,

As You see the acts having the supreme legal force charge the state, that the interrelation between the advocate and a client be unlimited, their correspondences should be free of censure and any limitations.

And the present reality is as follows:

While entering the Penitentiary Department with the aim to meet with their clients, before meeting all persons are subjected to some inspection.

Advocate, Investigator, Procurator and other persons.

During checking of advocates in special room, a detail inspection of all documents effected, notes of the advocate, correspondence or definitions, telephone book, strategic plan or the defense layout by the officers of penitentiary department. The Administration of the Establishment is prohibited to hand the letter drawn up by the client or to have with himself the letter of an advocate, both during the meeting with the client and departure with him. The officers of the department perform rudely violate totally confidentiality existing between the advocate and client, inspection of the material comprising the secret of an advocate, inspection of a letter, document and communicative information, divulgence so as it makes several persons. The fact is interesting that during meeting with the client in the Gldani No8 prison the advocate is prohibited to close the door and the officer of the Administration enters the room during meeting of an advocate and the client whenever he likes.

Goal of the Advocates Corps is to be protected the professional secrecy of the advocates and to suppress inspection of all kinds of notes and documents of the advocates, censure and which is applied in this country for year, especially after Revolution of Roses.

4. In Zugdidi No.4 Prison for advocates are allotted two rooms for meeting with the prisoner, the advocate which causes to stand in live queue - the advocate in frequent case can't manage to see the prisoner during the whole day ad the person being under his defense is left without defense, so as the whole number of actions requires the additional consent of the accused for the advocates. For example, appealing of any summing decision appeal a, suppression measure, coping of the case materials, etc.

We appeal tpo recive the urgent measures that the minimal standards regulated by the International documents be followed in relation to sdvocates and be excavated the rude vilations of the law of the managers of penitentiary Establishment or on the part of the personals working there.

Sincerely,

Zaza Khatiashvili (signed)

Chairman of the P.P/I/L/ "Georgian Bar Association"

Annex No.1 Statement of the advocate, Levan Dvalishvili

Contact:

Coordinator of the International Observatory for Lawyers: Charlotte Benoit

uia@observatoire-avocats.org

Tel: 00.33.5.34.31.78.79

Fax: 00.33.5.34.31.17.84

Project Coordinator: Damien Romestant

damien.romestant@acojuris.org

The International Observatory for Lawyers exists within the framework of the project called "Lawyers for Lawyers", financed by the European Instrument for Democracy and Human Rights of the European Commission and managed by a consortium made up of: Avocats sans Frontières France (France), the Conseil National des Barreaux (CNB), the Consiglio Nazionale Forense (Italy), the Consejo General de la Abogacía española (Spain) and the Ordre des Avocats de Paris (France).



Lawyers for Lawyers

Supporting actions on Human Rights and Democracy issues in the area of Human Rights Defenders.