

# The Situation of Human Rights Defenders in Selected OSCE Participating States

**The Final Report of  
the First Assessment Cycle  
(2017-2019)**



Warsaw, 2021

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## ABBREVIATIONS

ACHR	American Convention on Human Rights
ANAC	National Anti-Corruption Authority of Italy
APC	Agency for Prevention of Corruption of Montenegro
CSB	Civil Service Bureau of Georgia
DPA	Data Protection Authority of Italy
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GISF	General Inspection of Security Forces of the Czech Republic
GYLA	Georgian Young Lawyer's Association
IAAC	Independent Authority against Corruption of Mongolia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NAPR	National Agency of Public Registry of Georgia
NGO	Non-governmental organization
NHRI	National human rights institution
NPM	National Preventive Mechanism
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OGP	Open Government Partnership
OSCAD	Observatory for Security against Acts of Discrimination of Italy
OSCE	Organization for Security and Co-operation in Europe
OTA	Operative-Technical Agency of Georgia
PACE	Parliamentary Assembly of the Council of Europe
PAHCT	Prosecutors and Hate Crimes Training
PCP	Postal and Communications Police of Italy
RTCG	Radio and Television Montenegro
SIS	State Inspector's Service of Georgia
TAHCLE	Training Against Hate Crimes for Law Enforcement
TULPS	Consolidated Text of Public Safety Laws of Italy
UCIS	Central Office for Personal Security of Italy
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNAR	National Anti-Racial Discrimination Office of Italy
UNGA	United Nations General Assembly
UPR	Universal Periodic Review

**Who is a human rights defender?** Human rights defenders act “individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms”,<sup>1</sup> at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means.

Journalists who promote and report on human rights, corruption or mismanagement or on the work of whistleblowers are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet).

Excerpts from the *ODIHR Guidelines on the Protection of Human Rights Defenders*

## EXECUTIVE SUMMARY

1. The right to defend human rights derives from universal human rights, which participating States of the Organization for Security and Co-operation in Europe (OSCE) have committed to *respect, protect and fulfill* for everyone within their jurisdiction, without discrimination. In the Helsinki Final Act (1975), the OSCE participating States confirmed “the right of the individual to know and act upon his [her] rights and duties”.<sup>2</sup> In the Copenhagen Document (1990), they affirmed “the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms”.<sup>3</sup> Human rights defenders play a vital role in assisting states to ensure full respect for human rights and fundamental freedoms, democracy and the rule of law. In their commitments, OSCE participating States have recognized the important and positive role of human rights defenders in society,<sup>4</sup> and emphasized the need for ensuring their protection.<sup>5</sup>
2. The primary responsibility for the protection of human rights defenders lies with states, which have an obligation to *respect, protect and fulfill* the rights of all, including human rights defenders. An integral part of this obligation is ensuring effective protection of the physical integrity, liberty, security, and dignity of human rights defenders as well as the provision of a safe and enabling environment for their human rights work. This requires the realization of a variety of fundamental rights and freedoms that are necessary to carry out human rights work, including but not limited to the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, and the right to private life.

<sup>1</sup> General Assembly Res. 53/144, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (Declaration on Human Rights Defenders), UN Doc. A/RES/53/144 (9 December 1998), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

<sup>2</sup> Helsinki Final Act 1975 (Questions Relating to Security in Europe: 1(a) Declaration on Principles Guiding Relations between Participating States – Principle VII).

<sup>3</sup> Copenhagen Document 1990.

<sup>4</sup> *Op. cit.* notes 2 and 3; see also Budapest Document 1994 and Astana 2010.

<sup>5</sup> Budapest Declaration “Towards a Genuine Partnership in a New Era”, Budapest Document 1994.

3. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) is mandated, among other tasks, to assist in monitoring the implementation of OSCE human dimension commitments. Its monitoring mandate is based on a number of OSCE commitments.<sup>6</sup> ODIHR also serves as a point of contact for information provided by participating States in accordance with OSCE commitments,<sup>7</sup> and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation of their commitments.<sup>8</sup>
4. In line with its mandate to assist OSCE participating States to implement their commitments, ODIHR has long been engaged in promoting the protection of human rights defenders. This is done through regular monitoring and reporting on the situation of defenders across the OSCE region, provision of expert advice and legislative reviews, raising of OSCE participating States' awareness about their obligations to protect defenders, and facilitating dialogue between participating States and civil society on issues related to human rights defenders' work. ODIHR also supports national human rights institutions (NHRIs) and other defenders through different activities, building their capacity to conduct human rights monitoring and reporting in a safe and secure manner, including using new technologies.
5. In 2014, based on extensive consultations with civil society and OSCE participating States, ODIHR issued the *ODIHR Guidelines on the Protection of Human Rights Defenders* (the *Guidelines*), offering comprehensive guidance to participating States in the implementation of international standards and OSCE commitments related to the protection of human rights defenders.<sup>9</sup> In its report "*The Responsibility of States*": *Protection of Human Rights Defenders in the OSCE Region (2014-2016)*",<sup>10</sup> published in 2017, ODIHR assessed the implementation of those standards by participating States in the two-year period following the publication of the *Guidelines*. The report provides an overview and analysis of the findings of a baseline study conducted by ODIHR in 2016,<sup>11</sup> which focused on the identification of general trends, challenges and good practices pertaining to the protection of human rights defenders in the OSCE region. The report also offers recommendations on how to address identified protection gaps.
6. Building on this work, in 2018 ODIHR launched its first cycle of country-specific assessment, focusing on the situation of human rights defenders. The objective of this initiative was to examine the situation of human rights defenders in selected OSCE participating States<sup>12</sup> in the context of their legal and political obligations and commitments of the states, as set out in international human rights instruments and OSCE commitments, and elaborated in the *Guidelines*. In this framework, in 2018 and 2019 ODIHR visited the Czech Republic, Georgia, Italy, Mongolia and Montenegro. In these countries, ODIHR held 237 meetings with 574 individuals (335 women and 239 men) representing state bodies, NHRIs, civil society organizations, intergovernmental organizations and diplomatic missions. Of them, 360 were human rights defenders (213 women and 147 men), including journalists, whistleblowers and defense lawyers, of different genders, ages, disability status, and working on a range of human rights issues at national and grassroots levels.

<sup>6</sup> See on OSCE commitments pertaining to ODIHR's monitoring mandate Annex 2 of the present report.

<sup>7</sup> Document of the Fourth Meeting of the CSCE Council of Ministers, Rome 1993.

<sup>8</sup> Istanbul Document 1999.

<sup>9</sup> The *ODIHR Guidelines on the Protection of Human Rights Defenders*, available at: <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>. Throughout the report, this document is referred to as the *Guidelines* or *The ODIHR Guidelines on the Protection of Human Rights Defenders*, interchangeably.

<sup>10</sup> "*The Responsibility of States*": *Protection of Human Rights Defenders in the OSCE Region (2014-2016)*, available at: <https://www.osce.org/odihr/341366>.

<sup>11</sup> The findings of the study are largely based on questionnaires to participating States, NHRIs and civil society organizations across the OSCE region, as well as interviews with human rights defenders. In total, ODIHR received one or more inputs from governments, NHRIs, human rights defenders and/or OSCE field operations in 48 of the 57 OSCE participating States (84 per cent of the OSCE region), including from every subregion. Those inputs included 125 written responses to questionnaires from stakeholders in 46 participating States and Kosovo\*, 6 including from 72 human rights defenders (34 of them women); and 48 interviews with human rights defenders from 20 participating States and Kosovo\* (including 22 women).

<sup>12</sup> In the present report, 'selected participating States' refers to the five countries covered in the first assessment cycle (the Czech Republic, Georgia, Italy, Mongolia and Montenegro).

7. ODIHR thanks the Governments of the Czech Republic, Georgia, Italy, Mongolia and Montenegro for facilitating the visits and for the excellent co-operation in their organization. ODIHR also expresses its appreciation and gratitude to human rights defenders, including NHRIs and other independent human rights and equality bodies, as well as representatives of state bodies, intergovernmental organizations and diplomatic missions, for taking time to meet with the ODIHR delegation and contribute to this assessment.
8. In 2019 and 2020, the findings of country visits undertaken within the first assessment cycle, along with tailored country-specific recommendations, were communicated to the respective governments in *non-public reports*, which will serve as a reference for joint follow-up work on the implementation of recommendations. The key findings and recommendations are also summarized in the present *Final Report*, which provides an overview and analysis of identified trends in challenges and good practices pertaining to the protection of defenders in the countries visited by ODIHR, as well as recommendations to all OSCE participating States. The present report mirrors the structure of the *Guidelines*. ODIHR encourages participating States to consult and apply the *Guidelines* as a tool to address the challenges discussed in this report.
9. This report includes relevant developments and cases from OSCE participating States covered in the first assessment cycle, which are illustrative rather than exhaustive. Whether a participating State is mentioned – or not mentioned – in a particular section of the report is intended neither to indicate the full scope of protection available in that given state, nor all the challenges that human rights defenders may encounter there. Instead of seeking to provide exhaustive details of all allegations or other information collected during assessment visits, ODIHR has sought to identify significant trends in good practices as well as protection gaps and needs. The assessment revealed that while participating States face unique and context-specific challenges, many of them are analogous and can be addressed through similar solutions.
10. The findings of ODIHR's assessment, as summarized in this report, also facilitate sharing of good practices in the protection of human rights defenders across the OSCE region. Identified good practices primarily include measures aimed at ensuring better accountability for abuses targeting human rights defenders, as well as policies, programmes and mechanisms seeking to offer them targeted protection. For example, in some OSCE participating States, the system of physical protection by police of at-risk defenders, including journalists, was identified as a positive practice. Advanced measures are also being undertaken in several participating States to protect human rights defenders at risk from third countries, including in the framework of the Shelter City initiative.
11. Other examples of good practice shared with ODIHR include measures to protect whistleblowers, such as anonymous reporting mechanisms, safeguards of confidentiality of whistleblowers' identities, and measures to protect them against reprisals. Decriminalization of defamation in several countries is another positive measure, contributing to a more enabling civil society space. Furthermore, in all countries covered by the assessment, registration requirements and procedures were reported as being generally conducive to the development and functioning of non-governmental organizations (NGOs). The possibility of tax exemptions for NGOs is another good practice, along with a variety of legal measures and mechanisms to facilitate public participation of civil society.
12. At the same time, ODIHR identified a number of challenges that remain to be addressed. Cases of human rights defenders facing threats, attacks and intimidation by both state and non-state actors because of their work, were reported in all countries. Recurrent smear campaigns against activists and NGOs, often involving the discrediting of their work or their overall role in society, were flagged as matters of significant concern. In particular, negative portrayals and stigmatization of particular groups of human rights defenders, including women defenders, lesbian, gay, bisexual, transgender and intersex (LGBTI) activists, defenders of migrants' rights, environmental activists,

defenders working on anti-corruption issues and journalists, further expose them to online attacks and threats. Such attacks are difficult to investigate, as perpetrators often use fake accounts or tools to appear anonymous or make them hard to track on the internet. Challenges related to the protection of defenders from administrative and judicial harassment, criminalization and other forms of pressure as a consequence of their human rights work were also brought to ODIHR's attention in several participating States.

13. Furthermore, the lack of access to adequate and sustainable funding is one of the key gaps faced by human rights defenders in all the countries visited by ODIHR. This particularly affects smaller local organizations and those working with vulnerable groups, as well as local media outlets. In some participating States, ODIHR also received accounts of incidents involving the arbitrary or abusive application of legislation with the purpose or effect of obstructing the full realization of the right to freedom of peaceful assembly, or retaliation against defenders for the exercise of this right. The need to ensure meaningful and inclusive civil society participation in all stages of law- and policy-making processes was highlighted as another area requiring further improvement.
14. In the present report, ODIHR offers recommendations and conclusions to all OSCE participating States, with a view to assisting them in addressing identified gaps and challenges in the protection of human rights defenders and to facilitating the exchange of good practices.

# **CONSOLIDATED RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

## **ON ENSURING PHYSICAL INTEGRITY, LIBERTY, SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS**

### **On protection from threats, attacks and abuses against human rights defenders**

- Undertake comprehensive measures to prevent threats and attacks and other forms of abuses (online and offline) against human rights defenders, including by raising awareness of the positive role of defenders in society, strengthening the promotion of tolerance and non-discrimination and implementing educational programmes to this end.
- Protect human rights defenders, including journalists, and their families from any acts of intimidation, threats, attacks or other physical and psychological harm. Ensure that preventive and protection measures take into account specific challenges faced by women human rights defenders, LGBTI activists as well as other groups of defenders.
- Publicly condemn threats, attacks and other forms of abuses against human rights defenders, both online and offline, and apply a policy of zero tolerance.

### **On accountability for abuses against human rights defenders**

- Ensure prompt, impartial, independent and effective investigation into cases of threats, attacks and other forms of abuse targeting human rights defenders, including attacks on property of civil society organizations, individual defenders, media outlets or journalists, as well as unlawful acts committed by law enforcement or other state officials and business actors; guarantee availability and accessibility of effective legal remedies and of adequate reparation to victims and their families.
- Enhance the security of women human rights defenders, including by ensuring that gender-specific attacks and threats they face are addressed in a prompt, impartial, thorough, efficient and gender-sensitive manner. Similarly, address threats and attacks targeting LGBTI defenders, including hate crimes against them.
- Ensure that investigations are effective in identifying the perpetrators and masterminds (as relevant) and lead to their prosecution, where necessary. Ensure that imposed sanctions are commensurate with the gravity of the offence.
- Investigate any potential bias motive of alleged crimes and abuses against human rights defenders; ensure that law enforcement and judicial authorities are sufficiently trained in recognizing bias motivation. Consider adopting national legislation recognizing the motivation for crimes against human rights defenders on account of their human rights work as an aggravating factor in relation to sentencing.
- In inclusive, transparent and meaningful consultations with human rights defenders, review and ensure the full compliance of national laws on hate crime with international human rights standards; in this process, consider seeking ODIHR's opinion/legislative review of relevant laws.
- Build the capacity of law enforcement officials to identify and tackle online threats and attacks targeting human rights defenders, including gender-specific ones, and implement other appropriate measures to this end; raise public awareness of the types of online abuse and crimes targeting defenders and encourage reporting of such crimes.



- Enhance co-operation and collaboration within and between investigative and other relevant state bodies and NHRIs, to contribute to increased effectiveness in responding to and preventing attacks and threats against human rights defenders, including journalists.
- Establish independent and effective oversight mechanisms, including civilian oversight boards for police, to investigate complaints about police misconduct. Consider establishing investigation oversight bodies to ensure transparency and efficiency of investigations in relation to cases of threats and attacks targeting human rights defenders, including journalists. Where such bodies exist, co-operate with them and implement in good faith their recommendations; ensure their independence and full operational capacity, including by providing adequate financial resources.

### **On protection policies, programmes and mechanisms**

- Develop and adopt, in consultation with civil society, protection policies, programmes and mechanisms ensuring the safety and security of human rights defenders as well as members of their families; ensure that adequate funds are allocated to such programmes and mechanisms.
- Undertake protection measures reflective of and able to respond to the specific protection requirements of particularly vulnerable categories of defenders, in accordance with the needs identified by affected individuals and groups.
- Consider establishing a system of temporary physical protection by police for at-risk human rights defenders, including journalists, facing danger as a result of their work. Ensure that such programmes and mechanisms have a preventative function and ensure an appropriate respect of defenders' rights to privacy and freedom of movement.
- Ensure consistency, throughout the country, in the quality and level of assistance made available to victims and other individuals who collaborate with the justice system; to this end, consider establishing a national victim support service to ensure systematic monitoring and consistency in provided assistance, including in the provision of compensation to victims.
- Apply, in a non-discriminatory manner, consistent criteria in the granting of victim status in an alleged criminal offense and, in case such a status is denied, inform relevant individuals of the reasons and ensure effective application of available remedies to challenge such a decision.
- Assess the effectiveness of the system of state funded legal aid and, where relevant, consider enhancing it, including by ensuring consistency and transparency in the practice of granting legal aid and increasing the scope of application of free legal aid provided to victims of discrimination.
- Strengthen the role of independent NHRIs and their mandates in accordance with the Paris Principles, and grant them the competence to receive individual complaints, if not yet in place. Ensure consistent and adequate funding of NHRIs.
- Build on positive practices in protecting human rights defenders at risk from third countries, including through programmes such as the Shelter City initiative.
- Implement training and awareness raising programmes for relevant state bodies, as well as broader human rights education, focusing on international standards on the protection of human rights defenders and their positive role in society.

## **On protection from administrative or judicial harassment, criminalization, retaliation and arbitrary application of legislation**

- Ensure that legal, policy or other measures do not directly or indirectly lead to criminalization of human rights defenders and their legitimate human rights work. Where relevant, amend or repeal such provisions.
- Involve human rights defenders in an inclusive, transparent and meaningful manner in law- and policy-making processes pertaining to their operation or relevant to their work, and initiate regular impact assessment of relevant laws and policies on defenders' work.
- Prevent arbitrary or abusive application of laws and state policies and mechanisms against defenders, including journalists. Ensure that laws, administrative or other procedures and regulations are not used to intimidate, harass, persecute or retaliate against human rights defenders.
- Ensure that requests and complaints by human rights defenders addressed to state bodies are responded to in a timely manner, with a view to facilitate their human rights work.
- Investigate promptly, independently, impartially and effectively reported cases of administrative or judicial harassment of human rights defenders or any reported act of retaliation.
- Ensure access of human rights defenders to effective remedies to challenge the lawfulness of administrative measures, charges and requirements imposed on them, including compensation for damages caused by state bodies or officials.
- Safeguard or, where required, take steps to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to prevent any abuse in the application of laws or policies concerning the work of human rights defenders.

## **On confronting stigmatization and marginalization of human rights defenders/ smear campaigns against human rights defenders**

- Publicly condemn and counter smear campaigns, negative portrayals and stigmatization of human rights defenders, including journalists and lawyers; raise public awareness of the positive role defenders play in society.
- Take proactive measures to discourage state officials from making public statements discrediting and stigmatizing human rights defenders and their work, through adopting relevant codes of conduct, implementing awareness-raising and training programmes about the rights of human rights defenders and their role in a democratic society.
- Adopt and implement gender-sensitive measures to safeguard the dignity of women human rights defenders and LGBTI activists who are targeted with gender-specific smear attacks, including online; to this end, proactively counter attempts to marginalize and silence civically active women, and address prejudice and discrimination against LGBTI individuals.
- Adopt and implement measures, including educational programmes that foster tolerance in society, to change attitudes and behaviours that stigmatize and marginalize the Roma, migrants and refugees, persons with disabilities as well as defenders working on the protection of or belonging to these groups.
- Rebut negative statements targeting environmental and housing rights activists as well as NGOs working on anti-corruption or other issues, and take steps to counter smear campaigns against them.

## **ON CREATING A SAFE AND ENABLING ENVIRONMENT CONDUCTIVE TO HUMAN RIGHTS WORK**

### **On freedom of opinion and expression and of information/ freedom of the media**

- Ensure that legal frameworks are in full compliance with international standards and OSCE commitments related to freedom of opinion and expression and freedom of the media, and that any limitations on these rights are in strict compliance with principles of legality, necessity and proportionality, and are non-discriminatory.
- Where defamation remains a criminal offence, take steps to decriminalize defamation.
- Ensure that civil defamation laws are applied only when strictly necessary, in line with national legislation. Ensure that defamation charges or sanctions are not applied in retaliation for human rights and journalistic work.
- Review the proportionality of sanctions imposed for defamation, including by abolishing imprisonment as a possible sanction and introducing an appropriate upper limit for financial penalties. Remove provisions that increase sanctions in cases when defamation is directed against a political, administrative or judicial body, or other authority.
- Provide effective and prompt remedy in cases of undue application of defamation laws.
- Ensure that no undue political influence or other form of pressure is exerted on the media, including public broadcasters. Establish and implement legal safeguards for the media's financial autonomy and sustainability in a manner that ensures its independence and impartiality.
- Adopt measures to ensure transparency of media ownership.
- Provide appropriate protections for all journalists to maintain the confidentiality of their sources.

### **On access to information of public interest and protection of whistleblowers**

- Ensure that the national legal framework is consistent with international standards concerning the right to seek and impart information and provides for appropriate remedies if this right is unduly restricted.
- Put in place transparent procedures for accessing public information and respond to information requests in a timely manner, with a clearly stated policy that requests for information are always entitled to a response. Remove administrative, financial or other obstacles to accessing information, including by ensuring that any costs charged to the requester of information are low and that accurate information is provided in advance about any such costs.
- Strengthen the capacity of state bodies to provide information promptly and efficiently.
- In case a request for access to information is not granted, provide appropriate and timely information to the requester about the reason for denying access.
- Take measures to ensure that public information is of appropriate quality, including in terms of consistency, accuracy and accessibility.
- Ensure that public information is accessible in a systematized manner on government websites and that information is disaggregated according to sex, ethnicity, age and other relevant factors.
- Adopt a comprehensive and effective whistleblower protection framework, following inclusive, transparent and meaningful consultations with civil society. This should provide for the adequate financing of protection measures and include a sufficiently strong framework and mechanisms to inter alia protect the identity of whistleblowers and secure the protection of witnesses and victims.

- Create a robust and effective mechanism to access remedies when whistleblower protection is not granted or is ineffective.
- Raise public awareness about existing whistleblower reporting and about protection rules and procedures, including by collecting and publishing reliable statistical data about whistleblowing.
- Provide sufficient financial and human resources for bodies and mechanisms designed to facilitate the reporting of corruption, human rights violations and other forms of wrongdoing.

### **On freedom of peaceful assembly**

- Ensure that prior notification requirements are implemented for the purpose of facilitating the exercise of the right to freedom of peaceful assembly and protection of public order, public safety and the rights and freedom of others, rather than used to regulate and authorize the conduct of assemblies. Take measures to prevent the arbitrary application of legislation with the purpose or effect of obstructing the full realization of the right to freedom of peaceful assembly; all such cases should be investigated and addressed, in line with the national legislation.
- Recognize, protect in law and facilitate any spontaneous assembly as long as it is peaceful in nature.
- Facilitate peaceful assemblies organized by human rights defenders, including by small civil society groups and grassroots activists, through the adoption of adequate protection measures, without discrimination in relation to disability status, age, gender, sexual orientation, gender identity and political or other opinions of the organizers and participants.
- Facilitate the conduct of simultaneous assemblies, when possible; in cases of counterdemonstrations, apply appropriate safeguards to ensure safety and security of protesters and the public, including representatives of minorities who may be targeted. Develop and implement context-specific gender-sensitive strategies to ensure tailored protection of women protesters during assemblies.
- Ensure prompt, impartial, independent and effective investigation of reported harassment, threats or other forms of pressure from state, businesses or other actors on assembly organizers and participants prior, during and after assemblies.
- Investigate allegations with regards to excessive use of force or other police misconduct during assemblies. Ensure access of individuals who sustained injuries as a result of use of excessive law enforcement force during assemblies to appropriate social services, compensation and reimbursement of damages, as relevant.
- Ensure in law and practice that dispersal or forced termination of assemblies are treated and applied as a last resort in case of an imminent threat of violence. Restrictions to the use of tents or other non-permanent constructions should be proportionate and should not render the message of the assembly difficult or impossible to communicate.
- Ensure that administrative and other sanctions envisaged for misconduct by protesters during assemblies are applied in strict conformity with relevant laws. Where relevant, abolish imprisonment and excessive fines as possible punishment in the context of peaceful assemblies.

### **On freedom of association and the right to form, join, and participate effectively in NGOs**

- Ensure that registration procedures serve to facilitate defenders' work and are transparent, expeditious, inexpensive and allow the possibility to appeal.

- Adopt measures to strengthen financial sustainability of NGOs, including by consistent allocation of adequate public funds to organizations working across all human rights issues, with particular attention to the needs of grassroots NGOs working at the local level, those working on behalf of vulnerable and marginalized individuals and groups, and those providing social services. Also support civil society organizations with appropriate in-kind resources, for example, by providing free of charge spaces for human rights work.
- Across various state institutions and at national and local levels, develop transparent and consistent legal standards, rules and procedures pertaining to allocation of grants and other forms of public funding to civil society organizations, including an effective non-judicial/interim review procedure on public funding decisions.
- Ensure transparency in governance and allocation of public funds for civil society organizations through regular publication of information about funding decisions and of relevant oversight reports, and through proactive awareness raising with regard to procedures and decision-making concerning funding.
- Draw on the expertise of human rights defenders in the process of identification of priority areas for public funding through inclusive, transparent and meaningful consultations.
- Adopt and implement measures to encourage and facilitate private donors funding of NGOs, such as by introducing the possibility for taxpayers to dedicate a portion of their tax obligations to a chosen NGO and facilitating the establishment of social businesses. Support an environment that is conducive to private donors funding of civil society work by proactively raising public awareness about the important role of civil society and human rights defenders in a democratic society.
- Ensure that licensing requirements for NGOs working on providing social services do not pose an undue obstacle for those NGOs' operation or their ability to seek public funding.

### **On the right to participate in public affairs**

- Ensure effective and meaningful participation of human rights defenders in public affairs at the national and local level by engaging civil society in all stages of law- and policy-making processes, including initial discussions and drafting.
- Establish a unified legal and policy framework with consistent, transparent, institutionalized and inclusive mechanisms and procedures regulating civil society participation in law- and policy-making processes and other initiatives of public interest, to ensure consistency, transparency and predictability of procedures.
- Ensure transparency and a criteria-based approach in selecting members for consultative and advisory bodies, such as working groups and taskforces established to develop or comment on draft legislative or policy documents. Extend effective opportunities to participate in such bodies and groups to human rights defenders working at the local level and those belonging to or representing marginalized or vulnerable groups.
- Take measures to ensure the meaningful participation in decision-making processes of women human rights defenders and defenders working on the protection of/belonging to Roma and other minority groups, LGBTI defenders, environmental defenders and persons with disabilities, among others. Recognize and draw on the expertise of human rights defenders belonging to these groups.
- Publish on a consistent basis reports with feedback on consultation processes with civil society, including authorities' responses to civil society recommendations and reasons why these were not taken into account, as relevant.
- Ensure that expedited law- or policy-making processes, when used, allow for reasonable consultation with civil society. Refrain from adopting laws, policies, decrees or other documents pertaining to public interest without consulting civil society.

- Encourage and facilitate dialogue among and between environmental defenders, state bodies and non-state actors (such as private businesses), with the view to facilitating the work of environmental defenders and their meaningful participation in public affairs related to development projects and protection of the environment, among other areas.

### **On the right to private life**

- Ensure full compliance of national laws and practices with international standards on the establishment and operation of appropriate oversight mechanisms to prevent potential undue interference in the collection of personal data.
- Ensure effective protection of human rights activists, including journalists, and members of their families, from undue interference with the right to private life, including by implementing in good faith existing national laws and international standards and by conducting prompt, thorough, independent, impartial and effective investigations into alleged violations of this right.
- Conduct prompt and thorough investigations into alleged cases of undue interference with privacy and confidentiality safeguards.
- Ensure access of human rights defenders, including journalists, and members of their families, to an effective remedy and adequate reparation for suffered damages, including guarantees of non-repetition.

## **ON THE FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES**

- Adopt measures to implement in good faith ODIHR recommendations in the present report; to this end, co-operate with and draw on the expertise of ODIHR, among other relevant actors, in strengthening the protection of human rights defenders. Facilitate ODIHR's future country-specific assessments on the situation of human rights defenders, if not covered in the first assessment cycle.
- Adopt measures to allow for systematic monitoring of the situation of human rights defenders and the status of implementation of the present recommendations, to track progress and identify and address new challenges. Regularly inform the public about implementation progress.
- Consider assigning a focal point in one or more state bodies and in the NHRI to monitor the situation of human rights defenders, including the status of implementation of the recommendations in this report.
- Consider adopting national guidelines for authorities on the protection of human rights defenders, to ensure a sustainable, systematic and institutionalized approach to efforts aimed at strengthening the protection of human rights defenders.
- Take measures to safeguard and strengthen the independence of NHRIs and to ensure sufficient budgetary and human resources for their effective functioning, including in different localities/regions as relevant. Where an NHRI is not yet established or is not yet in full compliance with the Paris Principles, undertake to close these gaps. Strive for effective implementation of NHRIs' recommendations on the protection of human rights defenders and on other issues.
- Where the *Guidelines* are not yet available in local languages, undertake steps to facilitate their translation and dissemination. Disseminate them widely among law enforcement agencies, the judiciary, teachers and educators, journalists and other professional groups, civil society and other relevant actors.

## INTRODUCTION

15. The right to defend human rights is firmly established in OSCE commitments.<sup>13</sup> Participating States have also acknowledged the vital role played by human rights defenders – “organizations and persons” – in ensuring full respect for human rights, democracy and the rule of law,<sup>14</sup> and emphasized “the need for the protection of human rights defenders”,<sup>15</sup> in line with the United Nations (UN) Declaration on Human Rights Defenders. The OSCE human dimension commitments further reaffirm the particular importance of participating States’ realization of their obligations under international and regional human rights treaties.<sup>16</sup>
16. The *ODIHR Guidelines on the Protection of Human Rights Defenders* are based on OSCE commitments and universally recognized human rights standards that OSCE participating States have undertaken to adhere to. Correspondingly, the *Guidelines* focus on the responsibility of states to *respect, protect and fulfill* the rights of human rights defenders. These obligations require states to refrain from any acts that violate the rights of human rights defenders; protect them from abuses by third parties, including business enterprises and other non-state actors; and take proactive measures to facilitate the full realization of the rights of human rights defenders, including their right to defend human rights.
17. In line with ODIHR’s mandate, the *Guidelines* aim to support OSCE participating States in the implementation of the human dimension commitments related to the protection of human rights defenders. They “do not set new standards or seek to create ‘special’ rights for human rights defenders, but concentrate on the protection of human rights of those who are at risk as a result of their human rights work”.<sup>17</sup>

## METHODOLOGY

18. In 2018 and 2019, as part of the first cycle of country-specific assessment focusing on the situation of human rights defenders, ODIHR conducted assessment visits to the Czech Republic, Georgia, Italy, Mongolia and Montenegro. The objective of the visits was to examine the situation of human rights defenders in these five OSCE participating States in the context of legal and political obligations and commitments of the states, as set out in international human rights instruments and OSCE commitments, and as elaborated in the *Guidelines*.<sup>18</sup> The visits included an assessment of gaps and challenges in the protection of human rights defenders as well as identification of good practices in this area. The examination of the legal, institutional and administrative frameworks pertaining to the promotion and protection of human rights and fundamental freedoms – the environment in which human rights defenders operate – was of particular importance in this context.

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<sup>13</sup> *Op. cit.* notes 2, 3 and 4.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Op. cit.* note 5.

<sup>16</sup> Concluding Document of the Madrid Meeting (Second Follow-up Meeting to the Helsinki Conference), Madrid 1983; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow 1991.

<sup>17</sup> *Op. cit.* note 9.

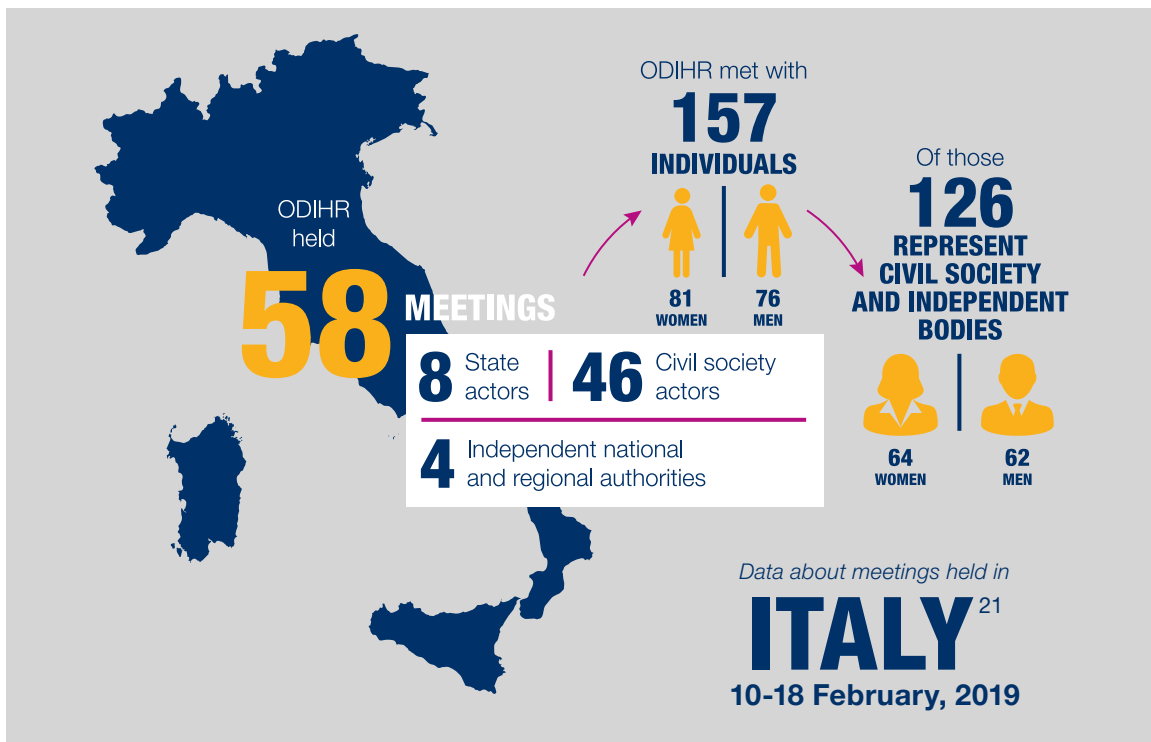
<sup>18</sup> *Ibid.*

19. In its choice of participating States, ODIHR attempted to ensure geographical/regional balance and the coverage of different contexts in the OSCE area. Other criteria included interest and readiness expressed by participating States to co-operate with ODIHR in the area of protection of human rights defenders, and the possibility for ODIHR to offer a considerable and durable contribution to the improvement of the situation of defenders through the identification of challenges and good practices, formulation of tailored recommendations to relevant state bodies and other actors, and conduct of follow-up activities, in co-operation with selected OSCE participating States.
20. The period of assessment presented in this report is from January 2017 to 31 December 2019. Cases of attacks and intimidation targeting human rights defenders and other relevant developments taking place prior to this period are also covered in the assessment, provided an investigation into those cases is ongoing or those developments have a major impact on the current situation of human rights defenders, according to interviewees or in the view of ODIHR. Updates from 2020 on key reported developments and cases are included in footnotes.
21. As a core part of the assessment process, ODIHR held 237 meetings in the Czech Republic, Georgia, Italy, Mongolia and Montenegro. These included 58 meetings with relevant state bodies, 165 meetings with civil society actors and 14 meetings with representatives of intergovernmental organizations and diplomatic missions. ODIHR met with 574 individuals (335 women and 239 men); 360 of them (213 women and 147 men) represented civil society.



<sup>19</sup> In the Czech Republic, from 23 to 29 April 2019, ODIHR held meetings with the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Labour and Social Affairs, Ministry of Interior, Prosecutor General's Office, the Senate, as well as representatives of the Office of the Government, including the Government Councils for Human Rights, for Non-Governmental Non-Profit Organizations, for Equality of Women and Men, for People with Disabilities, for National Minorities and Roma Community Affairs and for the Prevention of Corruption. ODIHR also held meetings with the Public Defender of Rights of the Czech Republic as well as civil society organizations, journalists and human rights defenders working on a range of human rights issues in Prague, Brno, Ostrava and Ústí nad Labem. .





<sup>20</sup> In **Georgia**, from 21 to 28 November 2018, ODIHR held meetings with the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Internal Affairs, Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs, Office of the State Minister for Reconciliation and Civic Equality, Chief Prosecutor's Office, State Security Service, Human Rights Secretariat of the Administration of the Government, Prime Minister's Adviser on Human Rights and Gender Equality, Anti-Corruption Council, and the Parliament's Legal Issues Committee. ODIHR also held meetings with the Office of the Public Defender, the Patriarchate of Georgia, as well as civil society organizations, journalists and human rights activists based in Tbilisi, Marneuli, Kutaisi, Gori and Zugdidi and working on a range of human rights issues.

The report does not cover the situation of human rights defenders in Abkhazia and South Ossetia.

<sup>21</sup> In **Italy**, from 10 to 18 February 2019, ODIHR held meetings with the Ministry of Foreign Affairs and International Cooperation, Ministry of Labour and Social Policies, Ministry of Interior, Inter-Ministerial Committee for Human Rights, Chamber of Deputies and Senate of the Republic as well as local authorities in Padua, Naples and Palermo. ODIHR also met with the National Anti-Corruption Authority, Data Protection Authority, National Authority for the Rights of Persons Detained or Deprived of Personal Liberty and the Ombudsman of Lombardy; and held meetings with civil society organizations, journalists and human rights activists working on a wide range of human rights issues in Rome, Naples, Padua, Palermo and Milan.



<sup>22</sup> In **Mongolia**, from 24 to 30 September 2018, ODIHR held meetings with the Ministry of Foreign Affairs, Ministry of Justice and Home Affairs, Ministry of Environment and Tourism, Ministry of Mining and Heavy Industry, General Prosecutor's Office, National Police Agency, National Committee on Gender Equality, Division for Development of Persons with Disabilities, Independent Authority against Corruption of Mongolia, and the Sub-Committee on Human Rights of the Parliament of Mongolia. ODIHR also held meetings with the National Human Rights Commissioner of Mongolia as well as civil society organizations, journalists and human rights activists working on a range of human rights issues in Ulaanbaatar and Zaamar district.

<sup>23</sup> In **Montenegro**, from 26 August to 1 September 2018, ODIHR held meetings with the Ministry of Foreign Affairs, Ministry for Human and Minority Rights, Ministry of Justice, Ministry of Interior, Prosecutor's Office, National Security Agency, Agency for Prevention of Corruption, Office for Cooperation with NGOs, Council on Gender Equality, Council for Social Protection of Persons with Disabilities, Council for Civilian Control of Police Operations and Council for Minority Nations and Other National Minority Communities as well as members of Human Rights and Freedoms, Legislative and Security and Defense Committees of the Parliament of Montenegro. ODIHR also held meetings with the Protector of Human Rights and Freedoms as well as civil society organizations, journalists and human rights defenders working on a range of human rights issues in Podgorica, Bijelo Polje, Berane and Nikšić.

*ODIHR's assessment visits provided the opportunity to examine the situation of human rights defenders in more depth and extent by directly reaching out to hundreds of human rights defenders, including journalists, whistleblowers and defense lawyers, in order to learn from their diverse experiences and knowledge. This diversity included human rights defenders working on a range of human dimension issues in and outside of capital cities, at the national and grassroots levels; activists defending the rights of and/or belonging to vulnerable groups; of different genders, ages, and disability status. The visits also allowed for meetings with state executive structures, policy makers and parliamentarians as well as NHRIs and other independent national and regional authorities.*

22. Throughout the report, ODIHR has kept civil society respondents anonymous. This addresses the preference of the majority of interviewees to remain as such and allows for consistency within the report, from a methodological point of view.
23. In addition to information gathered at interviews and meetings, ODIHR researched the national legal frameworks pertaining to the situation of human rights defenders and the environment in which they operate. Furthermore, for the purpose of verification and trend analysis, ODIHR also considered other key documentation during the assessment period, including observations, conclusions and reports by intergovernmental organizations; publications of national, regional and international NGOs; and media reports and news items, among other sources of information.
24. The findings of the assessment visits and ODIHR's tailored recommendations were summarized in country-specific *interim* reports (*not public*), which were shared with the Governments and NHRIs of the Czech Republic, Georgia, Mongolia and Montenegro as well as the Government of Italy.
25. The present final assessment report on the situation of human rights defenders provides an overview and analysis of findings of all five country visits undertaken within the first assessment cycle, including identified trends in challenges and good practices. Recommendations in the report are of a general nature and addressed to all OSCE participating States. Following the structure of the *Guidelines*, this report will cover the following themes: (I) Physical Integrity, Liberty, Security and Dignity of Human Rights Defenders; (II) A Safe and Enabling Environment Conducive to Human Rights Work; and (III) Framework for Implementation of the Guidelines.

# I. PHYSICAL INTEGRITY, LIBERTY, SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS

26. During the assessment cycle, ODIHR documented a number of challenges facing human rights defenders in selected OSCE participating States, including cases of physical attacks, threats and harassment targeting defenders, and in some instances, members of their families. Women human rights defenders are particularly exposed to gender-specific verbal attacks and threats. In all countries visited by ODIHR, online spaces are the most common environments where such abuses occur. ODIHR also received accounts of judicial and administrative harassment of defenders, criminalization of their work as well as other forms of pressure coming from state and non-state actors. In some reported cases, security risks facing defenders appeared to be linked to ineffective investigation, prosecution and punishment of acts targeting them.
27. Negative portrayals and stigmatization of human rights defenders were identified by ODIHR as another challenge that infringes upon defenders' rights to dignity and security. In some participating States visited by ODIHR, statements by public officials discrediting civil society contributed to this challenge, often prompting waves of online abuse against defenders.
28. To respond to existing challenges, participating States covered in the first assessment cycle have adopted a number of policies, programmes and mechanisms that seek to protect human rights defenders. Examples of such measures include mechanisms for providing police protection to at-risk defenders, including journalists, in **the Czech Republic, Italy and Montenegro**, the establishment of a Human Rights Protection and Investigation Quality Monitoring Department within the Ministry of Internal Affairs in **Georgia**, and the establishment of a specialized police unit aimed at tackling cybercrimes in **Mongolia**.<sup>24</sup> Notably, Mongolia has developed the Draft Law on the Legal Status of Human Rights Defenders (Draft Law on Human Rights Defenders) under the leadership of the NHRI and in consultation with civil society.<sup>25</sup> If adopted in its current form, this important legal initiative would play a vital role in promoting the work of defenders, and should address risks that they face while creating a more enabling civil society environment.
29. Furthermore, in the framework of the assessment, ODIHR was informed about the ongoing efforts of the Public Defender Office of **Georgia** to expand its methodologies and develop tools and mechanisms to monitor attacks and other violations targeting human rights defenders, as well as the strengthening of the role and overall capacity of the National Human Rights Commission of **Mongolia**. The Protector of Human Rights and Freedoms of **Montenegro** informed ODIHR about the Office's initiative to establish a network of focal points within NGOs across the country, which will facilitate the collection of information about individual cases of attacks and other human rights violations targeting defenders, among others. Strengthening the position of the Public Defender of Rights of **the Czech Republic** by broadening its competences and proceeding to obtain its accreditation as an NHRI in line with the Paris Principles would contribute to further enhancement of the country's overall protection framework. Likewise, establishing an independent and effective NHRI in **Italy** would contribute to addressing defenders' challenges and, more broadly, improve the framework for the protection of human rights in the country.

<sup>24</sup> See, for more information on the protection measures adopted by the authorities of selected OSCE participating States, the Protection Policies, Programmes and Mechanisms section of the present report.

<sup>25</sup> Draft Law on the Legal Status of Human Rights Defenders, available at: <http://forum.parliament.mn/projects/11059>.

# 1.1 PROTECTION FROM THREATS, ATTACKS AND ABUSES AGAINST HUMAN RIGHTS DEFENDERS

## Overview of relevant international standards and commitments

30. Article 12.3 of the UN Declaration on Human Rights Defenders provides that the “[s]tate shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”. Further, as reiterated in the *Guidelines*, state institutions and officials must refrain from any acts of intimidation or reprisals by threats, physical attacks or other acts of violence, damage and destruction of property, or psychological harm targeting human rights defenders and their families. Public authorities should publicly condemn such acts and apply a policy of zero tolerance.<sup>26</sup> Participating States also have a duty to protect human rights defenders from such acts by non-state actors, including acts committed online, and to take steps to prevent these abuses.

## Reported threats, attacks and abuses against human rights defenders in selected OSCE participating States

31. In all five participating States visited by ODIHR in the first assessment cycle, despite national legal frameworks that generally provide for the legal guarantees necessary to carry out human rights work freely, human rights defenders including journalists face several challenges, including threats and acts of violence as a result of their work. In particular, ODIHR received accounts of verbal and physical attacks, threats of gender-based violence, including online, and attacks on and damage of defenders’ property. Such abuses sometimes target not only human rights defenders, but also members of their families.
32. In Georgia and Mongolia, civil society interviewees raised concern over the deaths of several human rights activists, alleging possible links to their human rights or journalistic work, or their gender or ethnic identity. Interviewees noted with concern that in some cases, prior to their deaths, defenders were targeted with threats and attacks.
33. In **Georgia**, on 30 September 2018, Vitaly Safarov, a human rights defender who worked on combating hate crimes and xenophobia was killed in Tbilisi. Two suspects, allegedly members of a neo-Nazi group, were arrested, one on charges of premeditated murder and the other for failing to report a crime.<sup>27</sup> Civil society activists in Georgia launched a campaign calling for a thorough and prompt investigation into Safarov’s death, including the possible bias motive of the perpetrators.<sup>28</sup> In another reported case, Bianka Shigurova, a transgender woman activist, was found dead in her apartment in Tbilisi on 4 February 2016. Her death was attributed to a gas leak.<sup>29</sup> Shigurova had allegedly been subject to verbal and physical attacks prior to her death<sup>30</sup> and in one such incident, was threatened to be killed if she reported it to the authorities or talked about it publicly.<sup>31</sup>

<sup>26</sup> *Op. cit.* note 9, para 12.

<sup>27</sup> The Two Men Accused of Killing Vitali Safarov Remain in Custody, Georgia Today, 18 April 2019, available at: <http://georgiatoday.ge/news/15305/The-Two-Men-Accused-of-Killing-Vitali-Safarov-Remain-in-Custody>.

<sup>28</sup> За что убили Виталия Сафарова? [Why was Vitaly Safarov killed?], Radio Free Europe Radio Liberty, 11 October 2018, available at: <https://www.ekhokavkaza.com/a/29538803.html>. See also para 89 of the present report.

<sup>29</sup> MIA of Georgia: transgender woman Bianka Shigurova was found dead on February 4, Women’s Initiatives Supporting Group, 4 February 2016, available at: <https://women.ge/en/news/newsfeed/67/>.

<sup>30</sup> For example, in November 2014, Bianka Shigurova was beaten by a man who was later sentenced by the Supreme Court of Georgia for the murder of Sabi Beriani, a transgender woman and LGBTI activist, who was reportedly killed in her apartment on the same night Bianka Shigurova was attacked. See Transgender woman found dead in Tbilisi, Democracy & Freedom Watch, 5 February 2016, available at: <https://dfwatch.net/transgender-woman-found-dead-in-tbilisi-40021>; Murderer of transgender woman sentenced to 13 years in jail, oc-media.org, 3 February 2017, available at: <https://oc-media.org/murderer-of-transgender-woman-sentenced-to-13-years-in-jail/>.

<sup>31</sup> Petition calls for tougher punishment in transgender murder case, Democracy & Freedom Watch, 15 August 2015, available at: <https://dfwatch.net/petition-calls-for-tougher-punishment-in-transgender-murder-case-37826>.

34. In **Mongolia**, the deaths in November 2015 of Lkhagvasumberel (Sumbee) Tumursukh, an environmental activist,<sup>32</sup> and Bolormaa Luntan, the founder and editor-in-chief of the *Mongolian Mining Journal*,<sup>33</sup> alarmed the country's human rights community, which raised concerns regarding the circumstances of the activists' deaths. In this regard, a number of civil society and academic/research institutions in and outside of Mongolia drew the Mongolian authorities' attention to repeated physical attacks and threats targeting Sumbee Tumursukh in 2014 and 2015.<sup>34</sup> According to the activist's parents, Sumbee Tumursukh reported the assaults to the police, which did not result in the identification or prosecution of perpetrators.<sup>35</sup> Interviewed defenders also raised concern over a possible link between Luntan Bolormaa's death and her journalistic and human rights activity.<sup>36</sup> In relation to both cases, the National Police Agency and the Office of the Prosecutor General of Mongolia informed ODIHR that the defenders' deaths had no links to their human rights/journalistic work or other external factors.<sup>37</sup>
35. Threats and attacks targeting journalists who investigate corruption and organized crime cases were brought to the attention of ODIHR as serious concerns in Italy and Montenegro.
36. In **Italy**, according to the non-profit association *Ossigeno per l'Informazione*, between 2006 and 2018 more than 3,721 Italian journalists, bloggers, photo reporters and video operators were targeted with physical assaults, threats and damage to property. Of these cases, 91 per cent reportedly remained unpunished. As of 2019, 21 journalists lived under the protection of armed police due to death threats and attacks they faced, while another 167 individuals who were subject to intimidation and abuse were provided with lower levels of protection.<sup>38</sup> For example, Paolo Borrrometi, a journalist investigating cases related to organized crime and the president of *Articolo 21*, an association promoting freedom of expression in Italy, has faced multiple threats and attacks as a result of his work.<sup>39</sup> Following a series of violent attacks, in 2014 the Italian police put Borrrometi under protection<sup>40</sup> and as of end of 2019 he remained under police escort. Federica Angeli, a journalist of *La Repubblica*, has repeatedly been the target of death threats and gender-based attacks, including on social media, because of her journalistic inquiries into the activities of organized crime in Ostia.<sup>41</sup> In July 2013, Federica Angeli was granted protection by the Italian state and in 2018, following threats targeting her children, the protection was extended to her family members.<sup>42</sup> Roberto Saviano, another prominent journalist, as well as his parents and a brother,

<sup>32</sup> See Mining Licenses, Snow Leopards, and a Mysterious Death, the Diplomat, 22 February 2016, available at: <https://thediplomat.com/2016/02/mining-licenses-snow-leopards-and-a-mysterious-death/>.

<sup>33</sup> See Editor-in-Chief of Mongolian Mining Journal found dead, M Oyungerel, the UB Post, 23 November 2015, available at: <http://ubpost.mongolnews.mn/?p=17013>.

<sup>34</sup> For example, in May 2014, "he was assaulted and stabbed with a knife but managed to escape his captors". Later in 2014, Sumbee Tumursukh was reportedly abducted in Ulaanbaatar and taken outside of the city, where he was threatened with death if he would not stop his activist work in Gobi province. A third attack reportedly occurred in April 2015, when Sumbee Tumursukh was stabbed with a knife in South Gobi and transported to a hospital by a helicopter. See Letter regarding the sudden death of Lkhagvasumberel, Ирвэс Хамгаалах Сан ТББ, 14 March 2016, available at: <http://www.snowleopard.mn/lkhagvasumberel-2/> and *op. cit.* note 32.

<sup>35</sup> *Ibid.* See also Т.Лхагвасүмбэрэл агсны хэргийг үргэлжлүүлэн шалгаж байгаа гэв [The case of Lkhagvasumberel T is still under investigation], Eagle TV news, 27 January 2016, available at: <http://eagle.mn/r/3006>. See also para 91 of the present report.

<sup>36</sup> From Our Member *Globe International Center*, Mongolia – GCI and 22 NGO Believe Police Will Complete a Thorough Investigation of the Death of Famous Mongolian Journalist and Publicist, Asian Forum for Human Rights and Development, 29 February 2016, available at: <https://www.forum-asia.org/?p=20270>.

<sup>37</sup> As reported in 2016, following an examination of Bolormaa's body, the National Institute of Forensic Science of Mongolia concluded that she "died due to a brain haemorrhage caused by a concussion in the occipital bone". See In 2016 *Globe International Centre's* annual Media Freedom Award "For the Truth!" honored Luntan Bolormaa, who died on 21 November 2015, *Globe International*, 5 April 2016, available at: <http://www.themongolia.com/en/post/r/972>.

<sup>38</sup> Report on the December 2018 joint Fact-Finding Mission "Molta mafia, poche notizie – L'influenza della criminalità organizzata e della corruzione sulla cronaca e sui giornali" [So much mafia, so little news - The influence of organized crime and corruption on the news and newspapers], Ossigeno per l'Informazione, 2018, available at: <https://www.ossigeno.info/wp-content/uploads/2019/09/Molta-mafia-poche-notizie.pdf>.

<sup>39</sup> Paolo Borrrometi: il coraggio di scrivere [Paolo Borrrometi: the courage to write], *Articolo 21*, 13 April 2018, available at: <https://www.articolo21.org/2018/04/paolo-borrrometi-il-coraggio-di-scrivere/>.

<sup>40</sup> Giornalisti: tutela a cronista ragusano dopo intimidazioni [Ragusa journalist's protection after intimidation], Agenzia Giornalistica Italia (AGI), 28 August 2014, available at: [https://www.agi.it/regioni/sicilia/giornalisti\\_tutela\\_a\\_cronista\\_ragusano\\_dopo\\_intimidazioni-71309/news/2014-08-28/](https://www.agi.it/regioni/sicilia/giornalisti_tutela_a_cronista_ragusano_dopo_intimidazioni-71309/news/2014-08-28/).

<sup>41</sup> Ostia: Federica Angeli, la cronista minacciata da Spada: ho perso la libertà ma denuncierei di nuovo [Ostia: Federica Angeli, the reporter threatened by Spada: I lost my freedom, but I would report again], Rai News, 19 February 2018, available at: <http://www.rainews.it/dl/rainews/media/Ostia-Federica-Angeli-la-cronista-minacciata-da-Spada-ho-perso-la-liberta-ma-denuncierei-di-nuovo-5b395f81-ffca-47a7-bf41-a4cd7193cc0f.html>.

<sup>42</sup> I 5 anni sotto scorta di Federica Angeli [Federica Angeli's five years under escort], Ossigeno per l'Informazione, 13 November 2018, available at: <https://www.ossigeno.info/i-5-anni-sotto-scorta-di-federica-angeli/>.

have been under physical protection of the Italian police since 2006 following continuous threats to Saviano's and his family's personal safety and security.<sup>43</sup>

37. In **Montenegro**, on 8 May 2018, Olivera Lakić, a journalist investigating cases related to organized crime and corruption, was shot and injured in front of her home in Podgorica. The President, Prime Minister and Speaker of the Parliament of Montenegro, among other state officials and institutions, publicly condemned the act of violence and urged swift and efficient investigation of the attack.<sup>44</sup> Between 2011 and 2014, Olivera Lakić had already been the target of a number of threats and physical attacks.<sup>45</sup> In another case, on 1 April 2018, in Bijelo Polje, a car bomb exploded outside the home of Sead Sadiković, a journalist with the local television station *TV Vijesti* and a reporter on corruption and organized crime.<sup>46</sup> According to the Police Directorate, the attack was intended to target Sead Sadiković because of his journalistic activity.<sup>47</sup> On 11 October 2017, the vehicle of another journalist, Miroslav Drobnjak of *Večernje Novosti* from Pljevlja, was set on fire in front of his house. Montenegro's Council for Civilian Control of Police Operations and the Trade Union of Media raised concerns over the effectiveness of police response to this case.<sup>48</sup>

*"I am quite fearful lately. I think about things that could happen to me because of my work. We all saw what happened to Olivera [Lakić]. Although this did not affect me in a physical sense, I was still affected psychologically. Now, I would hesitate to work on sensitive cases involving corruption issues."*

Excerpt from ODIHR's meeting with a human rights defender in Montenegro,  
Podgorica, August 2018

38. Several incidents involving attacks targeting journalists were also reported in the Czech Republic, Georgia and Mongolia.
39. For example, in **the Czech Republic**, in August 2018, during a protest organized by the Workers' Party of Social Justice, a group of people attacked a journalist who was reporting on the protest. It was reported that police officers present at the assembly did not intervene.<sup>49</sup> On 27 January 2018, several reporters were physically attacked during an event following the election of a high-level state official.<sup>50</sup> On 30 January 2018, the OSCE

<sup>43</sup> Mafia hunter Roberto Saviano: I'm a monster, Stuff, 15 October 2014, available at: <http://www.stuff.co.nz/entertainment/books/10615012/Mafia-hunter-Roberto-Saviano-I-m-a-monster>.

<sup>44</sup> Statements condemning the attack on Olivera Lakić: by President Filip Vujanović <https://portalanalitika.me/clanak/301267/vujanovic-ocekuje-efikasnu-istragu-napada-na-lakic>; Prime Minister Duško Marković <https://twitter.com/VladaCG/status/993953068952838145>; Speaker of the Parliament Ivan Brajović <https://www.vijesti.me/vijesti/brajovic-u-najkracem-roku-rasvijetliti-napad-na-lakic>; Minister of Interior Mevludin Nuhodžić <https://www.cdm.me/hronika/osude-napada-na-oliveru-lakic-markovic-zahitjeva-brzu-i-efikasnu-istragu/> and the Ministry of Culture: <http://www.gov.me/vijesti/184609/Ministarstvo-kulture-najostrije-osuduje-napad-na-novinarku-Oliveru-Lakic.html>. See also para 96 of the present report.

<sup>45</sup> For example, See Prosecution of Attacks of Journalists in Montenegro, Human Rights Action (HRA), November 2016, available at: <http://www.hrraction.org/2016/11/20/report-prosecution-of-attacks-on-journalists-in-montenegro-2004-2016-2/?lang=en> and World Report on the Situation of Human Rights Defenders, the UN Special Rapporteur on the Situation of Human Rights Defenders, December 2018, available at: <https://www.business-humanrights.org/sites/default/files/documents/UNSR%20HRDs-%20World%20report%202018.pdf>.

<sup>46</sup> In Montenegro, car bomb explodes outside journalist's home, The Committee to Protect Journalists, 3 April 2018, available at: <https://cpij.org/2018/04/in-montenegro-car-bomb-explodes-outside-journalist.php>.

<sup>47</sup> Police and Prosecutor's Office solve case of double murder that happened on Saturday in Podgorica, Website of the Ministry of Interior of Montenegro, 4 April 2018, available at: <http://www.mup.gov.me/en/search/185048/Police-and-Prosecutor-s-Office-solve-case-of-double-murder-that-happened-on-Saturday-in-Podgorica.html>.

<sup>48</sup> Conclusion by the Council for Civilian Control of Police Operations, doc # 53/24 – 17, 3 April 2018, available at [http://www.kontrolapolicije.me/sites/default/files/lzvjestaji/Dokument\\_03.April\\_2018-Zaklju%C4%8Dak%20-%20Miroslav%20Drobnjak.pdf](http://www.kontrolapolicije.me/sites/default/files/lzvjestaji/Dokument_03.April_2018-Zaklju%C4%8Dak%20-%20Miroslav%20Drobnjak.pdf); Montenegro: Media Situation Worsens, Journalists' Position Deteriorating, South Eastern European Network for Professionalization of Media, 12 January 2019, available at: <http://seenpm.org/montenegro-media-situation-worsens-journalists-position-deteriorating/>.

<sup>49</sup> Novinář surově napaden – a novinářská obec mlčí [A journalist was aggressively attacked – and the journalist community is silent], A2Alarm, 18 February 2019, available at: <https://a2alarm.cz/2019/02/novinar-surove-napaden-a-novinarska-obec-mlci/>.

<sup>50</sup> V Zemanově štábu dostal novinář pěsti [A journalist was punched by a fist in Zeman's staff backstage], Idues.cz, 27 January 2018, available at: [https://tv.idnes.cz/zahranicni/volba-prezident-zeman-stab-opilst-cek-situace.V180127\\_204152\\_zpravodaj\\_vojt](https://tv.idnes.cz/zahranicni/volba-prezident-zeman-stab-opilst-cek-situace.V180127_204152_zpravodaj_vojt).



Representative on Freedom of the Media expressed his concern over the incident, calling on political leaders to condemn it publicly.<sup>51</sup>

40. In **Georgia**, in July 2017, Kamila Mamedova, Head of *Marneuli Community Radio*, reported instances of phone and social media threats targeting her and a number of journalists working for the media outlet.<sup>52</sup> The Ministry of Internal Affairs informed ODIHR that investigation into the case was not launched due to lack of necessary elements to classify the incident as a crime. In March 2018 in Tbilisi, three journalists working for the broadcasting company *Rustavi 2* were physically attacked during an assembly. One journalist, Davit Eradze, was reportedly injured.<sup>53</sup> An investigation into the case was initiated and several individuals were detained. On 7 June 2018, five individuals who were charged with group hooliganism were released on bail. Two other defendants, sentenced for violence, infliction of non-serious harm to one's health and property damage, remained in custody.<sup>54</sup> On 29 May 2017, Afgan Mukhtarli, an Azerbaijani investigative journalist and activist based in Georgia, was reportedly abducted by a group of people in Tbilisi and forcibly taken to Azerbaijan, where he was detained.<sup>55</sup>
41. In **Mongolia**, between May 2017 and May 2018, *Globe International*, an Ulaanbaatar-based NGO, documented seven cases of damage or unauthorized confiscation of journalistic equipment; 20 cases of threats, pressure and insults targeting journalists or their family members; and 108 cases of reported pressure on journalists by courts, police or other state bodies or officials.<sup>56</sup>
42. ODIHR received reports of threats and verbal attacks, including online, targeting LGBTI defenders in all the countries visited during the first assessment cycle, and of cases of physical assaults against LGBTI activists in Georgia and Montenegro.
43. In **Georgia**, on 28 January and 5 February 2018, Miranda Pagava, a transgender woman and LGBTI activist, was physically attacked in Tbilisi.<sup>57</sup> The Ministry of Internal Affairs informed ODIHR that perpetrators of the attacks were arrested and charged with violence under Article 126(1) of the Criminal Code and sentenced to six months of imprisonment. In both cases, the investigation confirmed the bias motive of the perpetrators and the competent court ruled that the crime was committed on the ground of intolerance of the victim's gender identity. On 28 September 2018, four activists of *Equality Movement*, an LGBTI rights NGO, were reportedly physically assaulted and threatened in the backyard of their office in Tbilisi.<sup>58</sup> A statement released by the Ministry of Internal Affairs the next day announced the launch of an investigation under Article 126 of the Criminal Code, regulating the crime of violence.<sup>59</sup> Because of safety concerns, *Equality Movement* decided to move their office to a new location a few days after the incident.<sup>60</sup> In another case, in August 2017, two LGBTI activists of the *Equality Movement*

<sup>51</sup> OSCE media freedom representative condemns recent violence against reporters in Czech Republic, urges safe environment for media, OSCE website, 30 January 2018, available at: <https://www.osce.org/fom/368581>.

<sup>52</sup> Possible instances of intimidation of Radio Marneuli journalists, Transparency International Georgia, 6 July 2017, available at: <https://www.transparency.ge/en/post/possible-instances-intimidation-radio-marneuli-journalists>.

<sup>53</sup> Rustavi 2 journalists attacked by far-right group for joke about Jesus and Ivanishvili, oc-media.org, 20 March 2018, available at: <https://oc-media.org/rustavi-2-journalists-attacked-by-far-right-group-for-joke-about-jesus-and-ivanishvili/>.

<sup>54</sup> *Ibid.* See also Five "Georgian March" activists released on bail, Caucasian Knot, 7 June 2018, available at: <http://www.eng.kavkaz-uzel.eu/articles/43395/>.

<sup>55</sup> See, for more information about this case, Case of Afgan Mukhtarli – Facts and evaluation, Human Rights House, May 2018, available at: <https://humanrightshouse.org/wp-content/uploads/2018/05/The-Case-of-Afgan-Mukhtarli.pdf>. See also para 98 of the present report.

<sup>56</sup> Media Freedom Report May 2017-May 2018, *Globe International*, available at: [http://www.globeinter.org.mn/images/upld/Media\\_freedom\\_report\\_2017eng.pdf](http://www.globeinter.org.mn/images/upld/Media_freedom_report_2017eng.pdf).

<sup>57</sup> See Transgender woman attacked in Tbilisi, Jam News, 29 January 2018, available at: <https://jam-news.net/transgender-woman-attacked-in-tbilisi/>; and Two Tbilisi residents suspected of attacking transgender people, Caucasian Knot, 6 February 2018, available at: <https://www.eng.kavkaz-uzel.eu/articles/42292/>.

<sup>58</sup> Human Rights Organizations Respond to Violence at Equality Movement's Office, Human Rights Education and Monitoring Center, 2 October 2018, available at: <https://emc.org.ge/en/products/adamianis-uflebebze-momushave-organizatsiebi-tanastsorobis-modzraobis-ofistan-momkhdari-dzaladobis-fakts-gmoben>.

<sup>59</sup> შინაგან საქმეთა სამინისტროს განცხადება [Statement by the Ministry of Internal Affairs], Ministry of Internal Affairs, 29 September 2018, available at: <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/12020>.

<sup>60</sup> 2019 Country Reports on Human Rights Practices: Georgia, US Department of State, 2019, available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/georgia/>.



were allegedly verbally and physically abused by police in Batumi.<sup>61</sup> The Prosecutor's Office initiated proceedings under Article 333(3)(b) of the Criminal Code regulating the crime of abuse of power by law enforcement officials.<sup>62</sup>

44. Civil society interviewees in Georgia also shared instances of threats targeting LGBTI defenders online. For example, in 2017, LGBTI activists Koba Bitsadze and Beka Gabadadze repeatedly received death threats on social media platforms as a result of their sexual orientation and public activism.<sup>63</sup> The Ministry of Internal Affairs informed ODIHR that in November 2017, police launched an investigation into the case under Article 151 of the Criminal Code, regulating threats, which confirmed the bias motive of the attack, and the perpetrator was identified. Both activists were officially recognized as victims. Tsubunia Vartagava, a defender working on domestic violence issues and LGBTI rights in Zugdidi, was also reportedly subject to death threats on social media.<sup>64</sup> The Ministry of Internal Affairs informed that in August 2018, an investigation into the death threats targeting the activist was launched and she was granted victim status.<sup>65</sup> According to some interviewees, online threats and attacks against LGBTI human rights defenders intensify around the International Day against Homophobia and Transphobia (17 May).
45. In **Mongolia**, in the assessment of interviewed LGBTI activists, in most cases threats they receive are not of a severe nature, although cumulatively they amount to psychological pressure and cause distress and fear among activists and the wider LGBTI community. Several activists reportedly opted to deactivate their social media profiles or keep a low-key online presence to shield themselves from online threats and insults. Some human rights defenders reported to the relevant authorities threats they assessed as imminent and serious. In one such case, in February 2018, an activist filed a complaint to the police after receiving direct and graphic threats to his life from an identified individual.<sup>66</sup> The threats were reportedly investigated as possible 'discrimination', invoking Article 14.1 of the Criminal Code of Mongolia,<sup>67</sup> but were not considered to be threats of use of force and violence against him. In November 2018, the Prosecutor's Office terminated the criminal investigation, stating that the committed actions did not constitute 'discrimination'.<sup>68</sup> The activist informed ODIHR that he fled Mongolia, fearing for his life.
46. Frontline Defenders has reported that in some cases, Mongolian law enforcement officials have been involved in attacks against LGBTI people, which have not been properly investigated.<sup>69</sup> For example, in November 2017, a transgender woman reportedly became a victim of gender identity discrimination while in custody, by being subject to forcible physical examination to identify her sex. The review of the case by the National Human Rights Commission in January 2018 resulted in the issuance of a number of recommendations to the National Police Agency of Mongolia, including to build capacity of police officers on human rights, particularly the rights of LGBTI and other minorities, and to prevent and eliminate human rights violations by police based on sexual orientation or gender identity.

<sup>61</sup> Georgian Police Arrest Gay-Rights Activists After Attack, Radio Free Europe Radio Liberty, 25 August 2017, available at: <https://www.rferl.org/a/georgia-lgbt-activists-beaten-arrested-charged-hooliganism/28697259.html>; and Queer rights activists 'abused by police' in Georgia, oc-media.org, 26 August 2017, available at: <https://oc-media.org/queer-rights-activists-abused-by-police-in-georgia/>.

<sup>62</sup> Georgia's General Inspection probes into alleged homophobic attack on LGBT activists involving police, Jam news, 25 August 2017, available at: <https://jam-news.net/georgias-general-inspection-probes-into-alleged-homophobic-attack-on-lgbt-activists-involving-police/>.

<sup>63</sup> EMC responds to the threats of violence against LGBTIQ activists Koba Bitsadze and Beka Gabadadze, EMC, 10 November 2017, available at: <https://emc.org.ge/en/products/emc-lgbtqi-aktivistebis-koba-bitsadzisa-da-beka-gabadadzis-mimart-dzaladobaze-mukaris-faktebs-ekhmianeba>.

<sup>64</sup> Tsubunia Vartagava: "I Will Always Be an LGBT Activist", Human Rights House Tbilisi, 16 September 2019, available at: <https://hrht.ge/en/tsabunia-vartagava-i-will-always-be-an-lgbt-activist/>.

<sup>65</sup> See, for more information about the system of granting victim status in Georgia and what this entails, paras 115 and 116 of the present report.

<sup>66</sup> The human rights defender shared with ODIHR screenshots of online messages that he received in February 2018, containing derogatory language and direct threats to his life.

<sup>67</sup> Criminal Code of Mongolia (amended 2017), available at: <https://www.legalinfo.mn/law/details/11634>.

<sup>68</sup> Notice of the termination of the registered case, # 2149, Ulaanbaatar City Sukhbaatar district Prosecutor's Office, 12 November 2018.

<sup>69</sup> #Mongolia, Frontline Defenders, available at: <https://www.frontlinedefenders.org/en/location/mongolia>. See also the LGBTI Centre Report on the Human Rights Situation of the Lesbian, Gay, Bisexual, Transgender and Intersex People in Mongolia for the Session 118 of the UN Human Rights Committee, 2017, available at: <http://lgbtcentre.mn/en/2017/05/31/reports-in-2017/>.

47. In **Montenegro**, on 5 August 2017, an activist and board member of the NGO *LGBT Forum Progress* was attacked in Podgorica with broken bottles, which caused physical injuries.<sup>70</sup> The Prosecutor's Office qualified the case as 'violent behaviour', without referring to Article 42a of the Criminal Code, which recognizes hate motivation, despite the assailants' reported verbal abuse and use of derogatory terms against the victim.<sup>71</sup> The same activist was repeatedly subject to verbal and in some cases physical attacks, which forced him to flee Montenegro in search of safety elsewhere. In another case, an NGO working on the rights of the LGBTI people publicly reported in March 2017 that its former executive director was attacked on 11 January 2016 in Podgorica by two men;<sup>72</sup> prior to that the human rights defender had reportedly suffered more than 30 physical and verbal attacks.<sup>73</sup>
48. In **the Czech Republic**, interviewed defenders informed that members of the LGBTI movement usually do not report cases of online or offline attacks and harassment to the police, including due to fear of secondary victimization. They further stressed that cumulatively, such threats may cause psychological harm and distress. In **Italy**, LGBTI defenders, including lawyers involved in cases related to LGBTI rights, also face threats in retaliation for their work. For example, in 2018, the LGBTI lawyer Cathy La Torre was the target of gender-based death threats on a social media platform.<sup>74</sup>
49. ODIHR also received accounts of physical threats and attacks targeting other groups of human rights defenders, including lawyers, environmental defenders and Roma activists.
50. In **Italy**, Adriana Quattropanni, a lawyer based in Sicily, was subject to an attack reportedly related to her work investigating activities of organized crime. On 29 December 2017, a paper bomb exploded under her car.<sup>75</sup> The perpetrators were convicted and sentenced to jail.<sup>76</sup> ODIHR also received reports of multiple threats targeting Mauro Palma, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, and his family members,<sup>77</sup> including following the publication in February 2019 of the Guarantor's report on Italy's prison regime known as *41-bis*.<sup>78</sup> During its meeting with the Office of the National Guarantor, ODIHR was also informed that Palma and several other members of his team received threats as a result of their work on the rights of migrants who were kept onboard the coast guard vessel *Diciotti* in 2018.
51. In **Mongolia**, local community activists from Gurvantis, Umnugobi province, and Zaamar, Tuv province informed ODIHR of being subject to threats and pressure from businesses and other actors as a result of their work on the protection of the environment. For example, defenders from Zaamar reported several instances of forceful dispersal of assemblies that they organized in 2017 and 2018 to protest against pollution caused by extractive industries. According to activists, in the process of such dispersals, some of them were injured while trying to

<sup>70</sup> Podgorica: Brutalno napadnut član LGBT Forum Progresia [Podgorica: Member of LGBT Forum Progress Brutally Attacked], CDM, 5 August 2017, available at: <https://www.cdm.me/drustvo/podgorica-brutalno-napadnut-clan-lgbt-forum-progresia/>.

<sup>71</sup> Violence against LGBTIQ Persons and Gender-based Violence in Montenegro – Practical Examples, LGBT Forum Progress, 2018, available at: [http://media.lgbtprogres.me/2018/01/Nasilje-nad-LGBTIQ-osobama-i-rodno-zasnovano-nasilje-u-Crnoj-Gori-primjeri-iz-prakse\\_web.pdf](http://media.lgbtprogres.me/2018/01/Nasilje-nad-LGBTIQ-osobama-i-rodno-zasnovano-nasilje-u-Crnoj-Gori-primjeri-iz-prakse_web.pdf).

<sup>72</sup> Situation Analysis Regarding Human Rights of LGBTIQ Persons in Montenegro during 2016, LGBT Forum Progress – Annual Report, March 2017, available at: <http://media.lgbtprogres.me/2017/05/SITUATION-ANALYSIS-REGARDING-HUMAN-RIGHTS-OF-LGBTIQ-PERSONS-IN-MONTENEGRO-DURING-2016.pdf>.

<sup>73</sup> Regarding the attack on LGBT Forum Progress Director Stevan Milivojevic, Human Rights Action, 12 January 2016, available at: <https://www.hraction.org/2016/01/12/1112016-regarding-the-new-attack-on-lgbt-forum-progress-director-stevan-milivojevic/?lang=en>.

<sup>74</sup> Omofobia, terza minaccia a Cathy La Torre: "Ti condanno a morte nel nome di Gesù" [Homophobia, third threat to Cathy La Torre: "I sentence you to death in the name of Jesus"], DIRE – Agenzia di Stampa Nazionale, 5 July 2018, available at: <https://www.dire.it/05-07-2018/218124-omofobia-minaccia-cathy-la-torre-morte-nome-gesu/>.

<sup>75</sup> Io, avvocatata minacciata, dico: tutelano solo i magistrati e a noi ci lasciano soli [As a threatened lawyer, I say: they only protect the judges and leave us alone], Il Dubbio, 3 January 2018, available at: <https://ildubbio.news/ildubbio/2018/01/03/avvocata-minacciata/>.

<sup>76</sup> Bomba carta sotto l'auto della curatrice fallimentare, tre condanne [Paper bomb under the bankruptcy trustee's car, three convictions], RaiNews, 22 December 2018, available at: <https://www.rairenews.it/tgr/sicilia/articoli/2018/12/sic-pachino-bomba-carta-curatrice-fallimentare-condanne-vizzini-c847b807-1e42-47fa-be08-97afb51f306f.html>.

<sup>77</sup> Garante, insulti, galera [Guarantor, insults, jail], Il Foglio, 13 February 2019, available at: <https://www.ilfoglio.it/contro-mastro-ciliegia/2019/02/13/news/garante-insulti-galera-237717/>.

<sup>78</sup> See Article 41-bis of Law 354, "Prison Administration Act", 26 July 1975, available at: <https://www.gazzettaufficiale.it/eli/id/1975/08/09/075U0354/sg>.

run away on rocky hills, fearing police violence. They also reported receiving threats from mining companies following the assemblies, including of possible prosecution on the grounds of 'disruption of legitimate business operations'.<sup>79</sup> An environmental activist from Gervantis also raised concern over threats targeting family members of local activists. Ger activists (housing rights activists) encounter similar challenges and threats from representatives of private companies.<sup>80</sup>

52. In **Montenegro**, a Roma woman human rights defender from outside of Podgorica informed ODIHR about three instances of physical attacks on her and one instance of an attack targeting her brother. She alleged that all four assaults were connected to her human rights work. In two of these cases, the activist did not report the attacks to the police because she feared she would be ostracized by the community she worked with, which the perpetrators belonged to.
53. Civil society interviewees from all the countries visited by ODIHR shared accounts of activists working on a range of human rights issues facing verbal attacks and threats, including gender-based ones, as a result of their human rights work. Women human rights defenders are particularly exposed to such abuses.
54. In **the Czech Republic**, between 2009 and 2019, White Media, described by civil society interviewees as a far-right group, operated a website that published the names, photos, contacts and other personal information of dozens of human rights defenders and referred to them as potential targets.<sup>81</sup> In January 2019, after years of attempts, the website was brought down through the initiative of the Czech Office for Personal Data Protection.<sup>82</sup> Human rights defenders working on the protection of the rights of migrants and other minority groups are particularly exposed to online attacks and threats. For example, in August 2017, female employees of the NGO *In Iustitia* became targets of repeated online attacks, including death threats, in response to the organization's publication of a report on hate crimes in the Czech Republic.<sup>83</sup> The director of the NGO filed a criminal complaint about the most serious attacks and publicly stated that some of the attacks targeting her were clearly motivated by her gender.<sup>84</sup> In another case, at the end of 2018, a woman activist was targeted online for helping an asylum seeker to look for accommodation through social media.<sup>85</sup> Similar experiences with online attacks were reported by Fatima Rahimi, a journalist of *Deník Referendum*,<sup>86</sup> Radka Korbelová Dohnalová, a lawyer representing a Muslim

<sup>79</sup> See the report A/HRC/37/58/Add.2 issued on 28 February 2018, available at: [https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/A\\_HRC\\_37\\_58\\_Add\\_2\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/A_HRC_37_58_Add_2_EN.pdf).

<sup>80</sup> See, for example, Down and out in Ulaanbaatar: the battle for housing in a city in crisis, Reuters, 7 June 2018, available at: <https://www.reuters.com/article/us-mongolia-homeless-economy/down-and-out-in-ulaanbaatar-the-battle-for-housing-in-a-city-in-crisis-idUSKCN1J303V>.

Ger activists are human rights defenders advocating for the right to housing in ger areas in Mongolia. Ger districts are so named because their residents typically live in gers rather than houses or apartments. Gers are round tents, usually covered with felt and easily portable, which have long been an integral part of the nomadic herding culture. See <https://gerhub.org/> for more information about ger areas and communities.

<sup>81</sup> White Media: Záhadný web bojovníků za rasovou čistotu [White Media: A mysterious web of fighters for racial purity], Lidovky.cz, 6 January 2016, available at: [https://www.lidovky.cz/domov/white-media-zahadny-web-bojovniku-za-rasovou-cistotu.A160106\\_113345\\_in\\_domov\\_ele](https://www.lidovky.cz/domov/white-media-zahadny-web-bojovniku-za-rasovou-cistotu.A160106_113345_in_domov_ele).

Extremistický server White Media zablokovali [The extremist server White Media was blocked], Novinky.cz, 14 January 2019, available at: <https://www.novinky.cz/domaci/clanek/extremisticky-server-white-media-zablokovali-40267739>.

<sup>82</sup> Úřad k případu White Media [Statement of the Office in relation to the White Media case], Office for Personal Data Protection, 14 January 2019, available at: [https://www.uoou.cz/vismo/dokumenty2.asp?id\\_org=200144&id=32952&n=urad%2Dk%2Dpripadu%20%2Dwebu%2Dwhite%2Dmedia%2Dinfo](https://www.uoou.cz/vismo/dokumenty2.asp?id_org=200144&id=32952&n=urad%2Dk%2Dpripadu%20%2Dwebu%2Dwhite%2Dmedia%2Dinfo).

According to the Ministry of Interior and the Office of the General Prosecutor of the Czech Republic, criminal investigation against White Media was complicated by the website's anonymous registration in the United States of America. However, the company in the United States hosting the White Media voluntarily complied with the Office for Personal Data Protection's request from 2018 to take the website down due to breach of personal data protection.

See Čeští úředníci nechali vypnout extremistický web White Media, který vedl "seznamy zrádců" [Czech officials had the extreme web White Media, publishing "lists of traitors", shut down], Irozhlas.cz, 14 January 2019, available at: [https://www.irozhlas.cz/zpravy-domov/white-media-seznam-info-nefunguje-2019\\_1901141814\\_ako](https://www.irozhlas.cz/zpravy-domov/white-media-seznam-info-nefunguje-2019_1901141814_ako).

<sup>83</sup> Lifecycle of a hate crime, National Report: Czech Republic, In Iustitia, December 2017, available at: <https://www.in-ius.cz/dwn/prirucka-sz/lchc-national-report-aj-web.pdf>.

<sup>84</sup> Nenávist na síti je třeba trestat. Přestupky nic neřeší [Online hate needs to be punished. Punishments for misdemeanours are not a solution] Respekt, 16 November 2018, available at: <https://www.respekt.cz/spolecnost/nenavist-na-sitich-je-treba-trestat-prestupky-nic-neresi>.

<sup>85</sup> Průběžná zpráva o předsudečném násilí/násilí z nenávisti 1. 10. - 31. 12. 2018 [Interim Report on Bias Violence/Hate Violence 1 October – 31 December 2018], In Iustitia, available at: <https://www.in-ius.cz/dwn/kvartalni-zpravy/kvarta-lni-zpra-va-o-na-sili-z-nena-visti-1.-10.-31.-12.-2018.pdf>.

<sup>86</sup> Odpověď nevděčné mrchy [The reply of an ungrateful bitch], Deník Referendum, 1 April 2019, available at: <http://denikreferendum.cz/clanek/29354-odpoved-nevdecne-mrchy>.

student in discrimination proceedings to defend her right to wear a headscarf at school,<sup>87</sup> and employees of the *Organization for Aid to Refugees* and the *Association for Integration and Migration*.<sup>88</sup>

55. In **Georgia**, on 17 July 2017, Tatia Dolidze, a former Georgian Youth Delegate to the UN, was the target of threats of gender-based abuse on social networks as a result of her criticism of an anti-immigration march that took place in Tbilisi a few days before.<sup>89</sup> In October 2018, Eka Gigauri, Executive Director of *Transparency International Georgia*, faced online attacks and threats of violence.<sup>90</sup> In 2018, Nino Lomjaria, the Public Defender of Georgia, was also repeatedly targeted with threats as a result of her human rights work.<sup>91</sup> Defenders working on the protection of victims of domestic violence, including women and children, reported receiving threats from people who viewed their protection work as interference with family affairs. One such organization based in Tbilisi and one in Zugdidi informed ODIHR of instances when individuals attempted to break into their premises with the intention to attack individuals inside. While representatives of both organizations noted the timely response by the police to such incidents as well as generally positive co-operation with law enforcement authorities in ensuring security of shelters, defenders also stressed that their staff, most of whom are female, remain at risk and need training to defend themselves and respond to such situations.
56. In **Italy**, defenders working on the protection of migrants and refugees as well as women's rights are exposed to increased risks of online and offline threats and attacks. For example, in 2019, Carola Rackete and Giorgia Linardi, human rights activists working for *Sea Watch*, became the targets of numerous threats and verbal attacks, including gender-based ones.<sup>92</sup> On 28 January 2019, unknown individuals damaged the car tires of Simona Giannangeli, Head of L'Aquila anti-violence centre.<sup>93</sup> She had previously faced similar attacks as a result of her work.<sup>94</sup>
57. In **Mongolia**, according to interviewed defenders, online threats and verbal abuse intensified during the public discussions on the status of the death penalty in 2018, targeting human rights activists who showed opposition to restoring capital punishment. A number of women activists informed ODIHR of having received phone threats of gender-based violence from unknown individuals. Verbal attacks against women activists are allegedly more persistent and aggressive than those targeting men human rights defenders, which most respondents linked to the overall prevalence of stereotypes about women in society and attempts to silence civically active women.

<sup>87</sup> Na zločiny z nenávisťi by doplatili všichni. Naštěstí soudy začínají konat [Everyone would pay for hate crime. Luckily, the courts begin to act], Deník Referendum, 28 November 2018, available at: <http://denikreferendum.cz/clanek/28717-na-zlociny-z-nenavisti-by-doplatili-vsichni-nastesti-soudy-zacinaji-konat>; and "Prohlédněte si tuto tvář." Advokátka zastupovala muslimku, hnutí zveřejnilo její fotku s útočným textem ["Look at this face." An attorney represented a Muslim woman, a movement published her photo with offensive caption], Lidovky.cz, 19 September 2017, available at: [https://www.lidovky.cz/domov/tricata-leta-advokatka-zastupuje-muslimku-hnuti-zverejnilo-jeji-fotku-s-utocnym-textem.A170918\\_172121\\_in\\_domov\\_rsa](https://www.lidovky.cz/domov/tricata-leta-advokatka-zastupuje-muslimku-hnuti-zverejnilo-jeji-fotku-s-utocnym-textem.A170918_172121_in_domov_rsa).

<sup>88</sup> Reportedly, after several online threats against the employees of the organization, police identified the perpetrator, but concluded no crime had been committed, due to lack of proven criminal intent on part of the perpetrator. The victims noted that their testimonies as well as the seriousness of the threats were downplayed by the police. See "Kéž by podřezali tebe." Někteří zaměstnanci neziskovek čelí kyberšikaně, stěžují si na nezájem policie ["I wish they cut your throat." Some employees of NGOs face cyberbullying, they complain on lack of interest from the Police], Irozhlas.cz, 9 October 2018, available at: [https://www.irozhlas.cz/zpravy-domov/kybersikana-neziskove-organizace-uprchlici-vyhruzne-maily\\_1810090600\\_dbr](https://www.irozhlas.cz/zpravy-domov/kybersikana-neziskove-organizace-uprchlici-vyhruzne-maily_1810090600_dbr).

<sup>89</sup> Opposition to Xenophobic March Earns Georgian Activist Threats, Show Of Support, Radio Free Europe Radio Liberty, 20 July 2017, available at: <https://www.rferl.org/a/opposition-xenophobic-march-earns-georgian-activist-threats-support/28629125.html>; გაუპატიურების მუქარის საქმეზე გია კორკოტაშვილი გამოიკითხა [Gia Korkotashvili was interrogated in the case of threatening to rape], netgazeti.ge, 20 July 2017, available at: <https://netgazeti.ge/news/208525/>.

<sup>90</sup> The challenges that female public figures face in Georgia, My Parliament, 5 November 2019, available at: <https://www.chemiparlamenti.ge/en/publication/challenges-female-public-figures-face-georgia>.

<sup>91</sup> *Ibid.*

<sup>92</sup> See Gli insulti sessisti contro Carola Rackete, capitana della Sea Watch 3 [Sexist insults against Carola Rackete, captain of the Sea Watch 3], Open, 27 June 2019, available at: <https://www.open.online/2019/06/27/gli-auguri-di-stupro-a-carola-rackete-capitana-della-sea-watch-3/>; and Migranti, gli haters contro la portavoce di Sea Watch: la lettera aperta di 'Como senza frontiere' [Migrants, haters against Sea Watch spokesperson: the open letter of 'Como without Borders'], La Repubblica, 14 January 2019, available at: [https://milano.repubblica.it/cronaca/2019/01/14/news/como\\_sostegno\\_giorgia\\_linardi\\_haters\\_sea\\_watch\\_migranti-216571181/](https://milano.repubblica.it/cronaca/2019/01/14/news/como_sostegno_giorgia_linardi_haters_sea_watch_migranti-216571181/).

<sup>93</sup> Centro antiviolenza per le donne, squarciate le gomme dell'auto della presidente [Women's anti-violence centre, tires of the President's car cut], Il Messaggero, 29 January 2019, available at: [https://www.ilmessaggero.it/abruzzo/centro\\_antiviolenza\\_donne\\_squarciate\\_gomme\\_auto\\_presidente-4263540.html](https://www.ilmessaggero.it/abruzzo/centro_antiviolenza_donne_squarciate_gomme_auto_presidente-4263540.html).

<sup>94</sup> See, for example, "Guardati le spalle", minacce all'avvocato del Centro Antiviolenza dell'Aquila [Threats to the lawyer of L'Aquila's Anti-violence Centre], FanPage, 4 February 2013, available at: <https://www.fanpage.it/attualita/guardati-le-spalle-minacce-all-avvocato-del-centro-antiviolenza-dell-aquila/>.

*“We face multiple challenges as a result of our human rights work, including threats and attacks. Most of them are of indirect nature, so we often cannot report those cases to the police and provide evidence of their links to our human rights activity, which police expects us to do. For example, after receiving threats online, I had my car mirror broken or stolen seven times in a short period of time. We frequently receive threats from perpetrators of violence and their families, especially prior to or after court hearings, where we represent victims’ interests. People also threaten us with curses and evil spell through shamanic rituals, which is a significant psychological pressure for many of us.”*

Excerpt from ODIHR’s interview with a woman human rights defender from Mongolia, Ulaanbaatar, September 2018

58. In **Montenegro**, types of verbal abuse human rights defenders reported to ODIHR included attacks against specific aspects of defenders’ identity such as their gender, sexual orientation and gender identity or their ethnicity as well as outright threats to their life and physical integrity. Some civil society interviewees also informed about instances of online intimidation directed at members of their families, including children, because of their human rights work. As reported to ODIHR, in an effort to shield themselves from online threats and insults, several interviewed women activists stopped posting information about their human rights work on their personal social media pages or restricted public access to their online profiles.
59. In Italy and Mongolia, interviewed defenders brought to the attention of ODIHR several cases of attacks on property of civil society organizations.
60. In **Italy**, on 18 January 2019, unknown individuals attacked the premises of the LGBTI rights NGO *Arcigay* in Salerno, causing substantial damage to the property. According to *Arcigay*, the attack was motivated by homophobia as nothing was stolen from the office.<sup>95</sup> The NGO reported the attack to the police.<sup>96</sup> Between 24 and 25 January 2019, burglars broke into the office of *Arcigay* in Rome and stole donations and other assets.<sup>97</sup> In another case, on 7 April 2018, a group of individuals broke into the premises of *Casa Internazionale delle Donne*, a women’s rights centre in Rome. According to the NGO, this attack was carried out in response to their work on abortion rights.<sup>98</sup> Between 7 and 8 March 2018, laptops and video cameras were stolen from the offices of *Antigone Association* and the *Italian Coalition for Civil Liberties and Rights* in Rome. According to the President of *Antigone*, the intrusion could have been related to the NGOs’ work and intended to intimidate them.<sup>99</sup> Furthermore, *Baobab Experience*, an association helping migrants, informed ODIHR about receiving anonymous threats to damage their premises, which provided temporary shelter to migrants.
61. In **Mongolia**, in January 2018 a police officer searched the office of the online news outlet *chuham.mn* without a warrant. He was accompanied by an employee of a private company and a computer expert, who allegedly broke into the website’s electronic archive and a database of journalists. According to *chuham.mn*, the group

<sup>95</sup> Arcigay’s Facebook post about the attack can be accessed at: [https://www.facebook.com/Arcigay.Salerno/posts/2135346756529219?\\_tn\\_=-R](https://www.facebook.com/Arcigay.Salerno/posts/2135346756529219?_tn_=-R).

<sup>96</sup> Salerno, vandalizzata sede dell’Arcigay: danneggiate due porte [Salerno, Arcigay office vandalized, two doors damaged], Sky tg24, 19 January 2019, available at: <https://tg24.sky.it/napoli/2019/01/19/salerno-atti-vandalici-arcigay.html>.

<sup>97</sup> Furto al Gay center, rubate donazioni: danni per 10mila euro [Robbery of the Gay centre, donations stolen amounting to 10 thousand Euros], Il Messaggero, 25 January 2019, available at: [https://www.ilmessaggero.it/roma/news/roma\\_furto\\_gay\\_center-4255837.html](https://www.ilmessaggero.it/roma/news/roma_furto_gay_center-4255837.html).

<sup>98</sup> Casa Internazionale delle Donne attaccata dai fascisti [International Women’s Centre attacked by fascists], Il Manifesto, 8 April 2018, available at: <https://ilmanifesto.it/casa-internazionale-delle-donne-attaccata-dai-fascisti/>.

<sup>99</sup> Furto nella sede di Antigone e Cild. “Preoccupati per clima d’odio [Theft in the headquarters of Antigone and Cild. “Worried about hatred”], Redattore Sociale, 9 March 2018, available at: [https://www.redattoresociale.it/article/notiziario/furto\\_nella\\_sede\\_di\\_antigone\\_e\\_cild\\_preoccupati\\_per\\_clima\\_d\\_odio\\_](https://www.redattoresociale.it/article/notiziario/furto_nella_sede_di_antigone_e_cild_preoccupati_per_clima_d_odio_).



searched for documents related to a journalistic investigation of an oil-importing company. The website's owner filed a complaint to the police but claimed that the investigation was ineffective.<sup>100</sup> The police officer who participated in the intrusion was held liable for a disciplinary breach of ethical rules and punished with a 20 per cent deduction from his monthly salary.<sup>101</sup>

## CONCLUDING OBSERVATIONS

- ODIHR is concerned about reported threats targeting human rights defenders as a result of their human rights work as well as cases of physical attacks against them. ODIHR's findings reveal that in some cases, serious threats to the safety and security of defenders are of a long-term and recurrent nature and may escalate to physical violence if unaddressed. Adequate responses by the authorities to such acts are necessary to reduce the fear of reprisals among civil society and boost trust in investigative and justice systems. In this regard, ODIHR recalls that participating States have a duty to take steps to prevent abuses against defenders.
- ODIHR welcomes the public condemnation by authorities of attacks against human rights defenders, as was the case in Montenegro following the attack against Olivera Lakić.
- ODIHR's findings point at serious recurrent threats facing investigative journalists reporting on organized crime and corruption issues, for example in Italy and Montenegro. ODIHR also notes with concern the reported abduction in Georgia of a foreign journalist. Other groups of defenders facing heightened risks in connection to their work include activists working on the protection of migrants, LGBTI people and other minority groups, women's rights, environmental protection, and, in some contexts, defense lawyers.
- Online threats and verbal attacks targeting human rights defenders appear to be a pervasive problem. Online targeting of defenders and, in some cases, members of their families, may be coordinated and long-term, causing psychological harm and distress. Generally, ODIHR's assessment revealed that women human rights defenders, including grassroots activists, are exposed to more persistent and aggressive forms of verbal abuse and threats, including sexual harassment, misogyny and threats of gender-based violence.
- LGBTI activists are also targeted with gender-specific threats and harassment and, as reported in Georgia and Montenegro, may face heightened risks of physical threats and attacks connected to both their work and their gender identity and sexual orientation. In some cases, LGBTI activists are subjected to abuse by law enforcement officials. ODIHR further notes with concern cases of attacks on property of civil society organizations, including LGBTI and women's rights organizations, as reported in several participating States visited in the first assessment cycle.
- While noting reported cases of threats and other forms of pressure on environmental defenders by business actors, for example as reported in Mongolia, ODIHR recalls the duty of states to protect defenders from any unlawful actions of businesses and ensure that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.
- Echoing interviewed human rights defenders, ODIHR underlines the utmost importance of proactive public awareness-raising by the authorities of the positive role that human rights defenders play in society. A negative image of civil society organizations undermines public trust in their work and potentially exposes individual defenders to threats, attacks and other forms of abuse.

<sup>100</sup> *Op. cit.* note 56. See also Хэвлэлийн эрх чөлөө гэдэг хэн дуртай нь халддаг хэврэг зүйл үү? [Is Freedom of the Media that Weak that Anyone Can Attack?], News website [www.fact.mn](http://www.fact.mn), 31 January 2018, available at: <http://www.fact.mn/340142.html>.

<sup>101</sup> *Op. cit.* note 56.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Undertake comprehensive measures to prevent threats and attacks and other forms of abuses (online and offline) against human rights defenders, including by raising awareness of the positive role of defenders in society, strengthening the promotion of tolerance and non-discrimination and implementing educational programmes to this end.
- Protect human rights defenders, including journalists, and their families from any acts of intimidation, threats, attacks or other physical and psychological harm. Ensure that preventive and protection measures take into account specific challenges faced by women human rights defenders, LGBTI activists as well as other groups of defenders.
- Publicly condemn threats, attacks and other forms of abuses against human rights defenders, both online and offline, and apply a policy of zero tolerance.

### 1.1.1 ACCOUNTABILITY FOR ABUSES AGAINST HUMAN RIGHTS DEFENDERS

#### ***Overview of relevant standards and commitments***

62. Article 9.5 of the UN Declaration on Human Rights Defenders provides that states have a duty to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred”. In order for the investigation to be effective, it must be capable of leading to the identification and punishment of those responsible, be comprehensive in scope, capable of identifying any systematic failures that led to the violation and be impartial, independent and prompt, with a sufficient element of public scrutiny.<sup>102</sup>
63. The requirement of comprehensiveness includes the obligation of the authorities to properly investigate and uncover a potential bias motive and to establish whether any type of hatred and prejudice may have played a role in the act.<sup>103</sup> Any sanctions should be commensurate with the gravity of the offence and the acts must be prosecuted under the relevant provisions of the Criminal Code and related hate crime legislation, reflecting their nature and gravity. Hate crime legislation should be applied both in the situation when those targeted belong to these groups themselves or they are associated or affiliated with them through their human rights work.<sup>104</sup> Furthermore, states are encouraged to consider adopting national legislation recognizing the motivation for crimes against human rights defenders on account of their human rights work as an aggravating factor in relation to sentencing.<sup>105</sup>

#### ***Ensuring accountability for abuses against human rights defenders in selected OSCE participating States***

64. All participating States visited by ODIHR have put in place legal, policy and institutional measures to strengthen their responses to and contribute to the prevention of threats and attacks and other forms of abuses targeting human rights defenders.

<sup>102</sup> *Op. cit.* note 9, para 72.

<sup>103</sup> *Ibid.*, para 78.

<sup>104</sup> See, for example, Hate Crime Laws – A Practical Guide, ODIHR, available at: <https://www.osce.org/odihr/36426>.

<sup>105</sup> *Op. cit.* note 9, paras 71 and 72.

65. In the framework of the Universal Periodic Review (UPR), the governments of the five countries accepted recommendations contributing to strengthening the protection of defenders, including through enhancing the accountability for abuses against them. For example, during the country's UPR in 2017, **the Czech Republic** pledged to enhance the combating of racism, xenophobia, hate speech and hate crimes, including online.<sup>106</sup> In 2015, **Georgia** accepted recommendations aimed at strengthening mechanisms to investigate human rights violations, including offences committed by law enforcement officials, and ensuring that those responsible are held to account. Georgia also undertook to develop and implement a strategy to monitor, investigate and prosecute hate crimes, and to strengthen the capacities of judicial and prosecutorial officials on dealing with bias-motivated offences.<sup>107</sup> In 2015 and 2018, **Italy**<sup>108</sup> and **Montenegro**,<sup>109</sup> respectively, accepted recommendations to strengthen the protection of journalists and to investigate acts of violence and intimidation against journalists and prosecute all perpetrators. Montenegro also committed to fully investigate and bring to justice perpetrators of attacks and serious threats targeting civil society and minority groups. In 2010 and 2015, during the first and second cycles of the UPR, **Mongolia** committed to impartially investigate and prosecute alleged threats and attacks against LGBTI people, including defenders, and to ensure that journalists, media workers and civil society activists are able to practice their activities freely without any fear of retaliation or punishment.<sup>110</sup>
66. As steps contributing to the implementation of these recommendations and other relevant commitments, four participating States visited by ODIHR reported about institutional measures undertaken to strengthen the investigation of crimes, including those targeting human rights defenders.
67. In January 2018, the Government of **Georgia** established a Human Rights Protection and Investigation Quality Monitoring Department within the Ministry of Internal Affairs.<sup>111</sup> A number of civil society interviewees welcomed this step as demonstrating the authorities' commitment to address gaps in handling investigations. Furthermore, since December 2012, a Special Cybercrime Unit is operational within the Ministry of Internal Affairs. A 24-hour hotline within the Unit facilitates filing of complaints by victims of cybercrimes. According to the Ministry of Internal Affairs, 1,268 cybercrimes were registered in 2018, of which 98 (7.7 per cent) "were solved"; in 2019, of 1,806 registered crimes, 98 (5.4 per cent) "were solved".<sup>112</sup> The Ministry continues to build the capacity of investigators and members of cybercrimes police by providing regular training on tackling such crimes.<sup>113</sup>
68. In **Italy**, the Observatory for Security against Acts of Discrimination (OSCAD), housed in the Ministry of Interior, is mandated to tackle hate crimes both online and offline and to protect the rights of victims of discrimination. It also focuses on systematic gathering of data on hate crimes and acts of discrimination and on addressing underreporting of these crimes. The Postal and Communications Police (PCP), identified as an important contributor to ensuring a safe space online, receives complaints related to alleged online crimes through its website and, following a preliminary analysis, redirects them to the appropriate local police department.<sup>114</sup>

<sup>106</sup> Human Rights Council adopts Universal Periodic Review outcomes of Czech Republic and Argentina, United Nations Human Rights Council website, 15 March 2018, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22831&LangID=E>.

<sup>107</sup> UPR - Georgia, ohchr.org, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/GEindex.aspx>.

<sup>108</sup> UPR - Italy, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ITIndex.aspx>.

<sup>109</sup> Report of the Working Group on the Universal Periodic Review, Montenegro, A/HRC/38/13/Add.1, 5 June 2018, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MEIndex.aspx>.

<sup>110</sup> UPR - Mongolia, ohchr.org, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MNIndex.aspx>.

<sup>111</sup> The body is mandated to monitor investigations into cases of violence against women, abuse committed on discrimination grounds and hate crimes, among others, to ensure timely and effective police responses to these offences. See Ministry of Internal Affairs of Georgia launches Human Rights Protection Department to strengthen response to violence against women and domestic violence, UN Women Georgia, 23 January 2018, available at: <https://georgia.unwomen.org/en/news/stories/2018/01/ministry-of-internal-affairs-of-georgia-launches-human-rights-protection-department>.

<sup>112</sup> Statistics of Registered Crime 2019, the Ministry of Internal Affairs of Georgia, available at: [https://info.police.ge/page?id=247&parent\\_id=115](https://info.police.ge/page?id=247&parent_id=115).

<sup>113</sup> Actions carried out by the Ministry of Internal Affairs of Georgia, Ministry of Internal Affairs website, available at: <https://police.ge/en/projects/kiberdanashauli/shinagan-sagmeta-saministros-mier-gankhortsiebuli-ghonisdziebebi>.

<sup>114</sup> Segnalazioni [Notifications], PCP's official website, available at: <https://www.commissariatodips.it/segnalazioni/index.html>.



69. In **Mongolia**, a specialized Cybercrimes Unit at the National Police Authority contributes to tackling online threats and attacks targeting human rights defenders, among others. Complaints related to alleged online crimes can be submitted through the Unit's Facebook page and are redirected for regular processing to a police station. Complaints are processed within 30 days or, in exceptional circumstances and with prior notification to the petitioner, within 60 days.<sup>115</sup> For cases with 'enough evidence', however, national laws provide for an expedited review procedure, which requires law enforcement bodies to consider investigation requests immediately or within up to five days.<sup>116</sup>
70. In **Montenegro**, in October 2018 the Ministry of Interior formed a special team for solving attacks on journalists and other media representatives as well as their property. The Police Directorate designated a chief police inspector at the Criminal Investigation Department to coordinate the team's activities. Two criminal investigation officers were assigned in each of the regional police departments in Podgorica, Nikšić, Bar, Budva, Herceg Novi, Pljevlja, Bijelo Polje and Berane to carry out activities within their territories. The first working meeting of the team took place in October 2018, where reported and still unsolved cases of attacks and threats against journalists were discussed.<sup>117</sup> The Police Directorate informed ODIHR that, as of February 2019, of a total of 87 incidents involving attacks against journalists and their property reported since 2004 to the authority by journalists and media professionals, 61 resulted in filing criminal charges or were forwarded to the prosecutor's office for examination; in 15 cases, no criminal offence or misbehaviour was identified. Criminal proceedings were not initiated in relation to three incidents due to ending of the prescriptive period, while eight cases remained pending. According to the data provided by the Directorate, since 2004, 33 criminal charges have been filed against 55 people and 20 misdemeanour charges were filed against 22 people.
71. Two participating States reported about oversight mechanisms contributing to more effective investigations.
72. For example, in **Mongolia**, a network of Civilian Oversight Councils of Police operates in 21 provinces and the city of Ulaanbaatar.<sup>118</sup> The Oversight Councils are mandated to evaluate police activities and develop relevant recommendations to police.<sup>119</sup> According to several interviewed defenders, measures should be undertaken to raise public awareness of the mandate of the Oversight Councils so that individuals alleging mishandling of investigations by police can utilize this mechanism more effectively. The National Police Authority also informed ODIHR of its '126' hotline for reporting police misconduct as well as recommendations or expressions of gratitude pertaining to the work of the Police Authority. In the first three quarters of 2018, the '126' hotline registered 202 calls, including 168 complaints, of which the majority have been reportedly resolved; 34 callers expressed appreciation for the work of police.<sup>120</sup>
73. In **Montenegro**, interviewees informed about the Council for Civilian Control of Police Operations and the Commission for Monitoring Investigation of Attacks on Journalists as contributing to improvement in investigations of attacks targeting human rights activists, including journalists. The Police Directorate informed ODIHR about their co-operation with the Council, which has proven to be instrumental in the investigation of the case

<sup>115</sup> Өргөдөл гомдол хүлээж авах [Receiving petitions and complaints], National Police Authority's official website, available at <http://police.gov.mn/i/gomdol>.

<sup>116</sup> Law on Procedure for Complaints and Petitions of Citizens to Government Institutions and Officials, Article 16.1.2; Law on Criminal Procedure, Article 15.4.2.

<sup>117</sup> Eighth Semiannual report on Implementation of the Action Plan for Chapter 23 July-December 2018, January 2019, available at: <https://www.eu.me/en/23/23-documents?download=1915:eighth-semiannual-report-on-implementation-of-action-plan-for-chapter-23-and-the-od-july-december-2018>.

<sup>118</sup> 2013 оны Цагдаагийн албаны тухай хууль [Law on Police Authority of 2013], 5 July 2013, available at: <https://www.legalinfo.mn/law/details/9288>. See also Statute of Civilian Oversight Council of Police, Дүрэм батлах тухай [Approval of statute], Official website of the National Police Authority of Mongolia, 19 May 2017, available at <http://police.gov.mn/a/680>.

<sup>119</sup> Although they are not authorized to receive complaints from citizens directly, the Oversight Councils can place boxes at police stations to receive information from members of the public regarding registration and investigation of cases by police. See Иргэний зөвлөл [Civilian Oversight Council], the official website of the Citizens' Representative Khural, available at: [www.khural.mn](http://www.khural.mn).

<sup>120</sup> Цагдаа, дотоодын цэргийн байгууллагын 2018 оны Гуравдугаар улирлын үйл ажиллагааны тайлан [Activity report of the Police and Military organizations, 2018 3rd quarter], Official website of the National Police Authority, 19 October 2018, available at: <https://police.gov.mn/a/4081>.

of Miroslav Drobnjak.<sup>121</sup> Similarly, the Commission reported examples of fruitful collaboration with the Police Directorate and the Basic State Prosecutor's Office.<sup>122</sup> It also emphasized the need for more effective and consistent implementation of its conclusions and recommendations by the investigative authorities and other relevant state bodies, and indicated the lack of adequate financial resources as a challenge negatively affecting the Commission's operational capacity.

74. Interviewees in the five countries highlighted legal measures to combat hate crimes and pointed at some shortfalls connected to their implementation.
75. In **the Czech Republic**, an attack against a human rights defender can be considered an aggravated attack when the crime was motivated by hatred based on nationality, ethnicity, race, religion, class or other similar ground.<sup>123</sup> The Criminal Code offers heightened protection to some people on account of their group membership,<sup>124</sup> prohibits defamation of a nation, race, ethnic or other group of people and forbids incitement of hatred against a group of people or instigation of suppression of their rights and freedoms. While hate crime legislation allows for prosecution of crimes committed with a bias based on grounds listed in Section 352.2 of the Criminal Code, other characteristics such as gender identity, sexual orientation or disability are not listed as protected grounds.<sup>125</sup> According to some defenders as well as publicly available reports, protected grounds are treated inconsistently under different provisions of the Criminal Code.<sup>126</sup> Representatives of the General Prosecutor's Office also noted that police and prosecutors need to further build their capacities in comprehensive and effective investigation and prosecution of online hate crimes. According to the 2018 Annual Report of the General Prosecutor's Office, the number of hate motivated crimes in the Czech Republic rose by more than 10 per cent between 2017 and 2018, and in 59.8 per cent of the cases the crime was successfully investigated.<sup>127</sup> Between 2018 and 2019, the number of hate motivated crimes slightly dropped again, while the proportion of successfully investigated cases remained similar: 56.5 per cent.<sup>128</sup>
76. In **Georgia**, Article 53<sup>1</sup> of the Criminal Code stipulates that commission of a crime on a broad range of discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided in the Code, which results in the imposition of harsher sentences.<sup>129</sup> Furthermore, the Code criminalizes 'violation of human equality' on a range of discriminatory grounds (Article 142) as well as 'racial discrimination' and incitement to hatred leading to direct or indirect restriction of human rights or granting advantages on the grounds of race, color,

<sup>121</sup> *Op. cit.* note 48. See also Conclusion of the Council for Civil Control of Police, no. 50/5-18, 14 February 2019, available at: <http://www.kontrolapolicije.me/sites/default/files/lzvestaji/Ocjena%20Savjeta%20povodom%20kadrovskih%20promjena%20u%20CB%20Pljevlja.pdf>. See, for more information about the case, para 37 of the present report.

<sup>122</sup> Fifth Report of the Commission for Monitoring Investigation of Attacks on Journalists, July 2018, available at: <http://www.gov.me/ResourceManager/FileDownload.aspx?rid=333617&rType=2>.

<sup>123</sup> Criminal Code (2009), Section 42b, available at: <https://www.zakonyprolidi.cz/cs/2009-40>. The "other similar ground" clause may similarly offer heightened protection to persons defined by their gender, sexual orientation or disability.

<sup>124</sup> Pursuant to Section 352.2 of the Code, if a severe threat of killing, injury or extensive damage to property, or outright violence, is inflicted on an individual for their actual or presumed race, ethnicity, nationality, political opinion, religion or belief (or lack thereof), a punishment is increased from up to one year (Section 352.1) to up to three years of imprisonment.

<sup>125</sup> Sections 140.3g ('murder'), 145.2f ('grievous bodily harm'), 146.2e ('bodily harm'), 149.2c ('torture and other cruel and inhuman treatment') of the Criminal Code list the same grounds as in Section 352.2 as aggravating circumstances providing for harsher penalties. Section 42b on aggravating circumstances provides with an open list of protected characteristics, which may give rise to increased punishment for crimes committed with a bias based on grounds of sexual orientation, gender identity and disability as well as other grounds or motives. However, Section 42b appears to be inapplicable in combination with the abovementioned provisions to which it constitutes *lex generalis*.

<sup>126</sup> See, for example, Violence and Hate Crimes against Persons with Disabilities from the Perspective of Organizations Working with this Target Group, In *Iustitia*, 2020, available at: <https://www.in-ius.cz/dwn/vyzkum-lzp/nasili-a-predsudecne-nasili-proti-lzp-final.pdf>. See also *op. cit.* note 83; and Article 14 of the ECHR and Article 21 of the EU Charter of Fundamental Rights; On the ECtHR's reading of Article 14 in conjunction with Article 3 of the ECHR, See *Identoba and Others Vs. Georgia* (73235/12), available at: <http://hudoc.echr.coe.int/eng/?i=001-154400>.

<sup>127</sup> Annual Report of the General Prosecutor's Office of 2018, available at: [https://verejnazaloba.cz/wp-content/uploads/2020/03/zprava\\_o\\_cinnosti\\_sz\\_za\\_rok\\_2018-textova\\_cast.pdf](https://verejnazaloba.cz/wp-content/uploads/2020/03/zprava_o_cinnosti_sz_za_rok_2018-textova_cast.pdf).

<sup>128</sup> Annual Report of the General Prosecutor's Office of 2019, available at: <https://verejnazaloba.cz/wp-content/uploads/2020/06/Zprava-o-cinnosti-SZ-za-rok-2019-textova-cast.pdf>.

<sup>129</sup> Discriminatory grounds stipulated in Article 531 of the Criminal Code include race, color, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or other grounds. Article 531 also provides that the term of a sentence to be served shall exceed at least by one year the minimum term of imprisonment provided for a crime committed with an aggravating factor under the respective article of the Code. See Criminal Code of Georgia (1999), available at: <https://matsne.gov.ge/en/document/view/16426?publication=209>.

social status, national and ethnic origin (Article 1421).<sup>130</sup> According to interviewed representatives of civil society and state bodies, greater emphasis is needed on the implementation of these and other relevant provisions to ensure effective protection from hate crimes.<sup>131</sup> In 2017, of the 86 cases in which bias motivation was examined, 44 were prosecuted; in 2018, of the 344 recorded cases, 151 were prosecuted.<sup>132</sup>

77. In **Italy**, in line with Article 604-ter of the Criminal Code, crimes committed for purposes of discrimination or ethnic, national, racial or religious hatred, or to facilitate the activities of various entities having said purposes, constitute aggravating circumstances and lead to an increase by up to a half of the sentence for crimes punishable with a penalty other than life imprisonment. Furthermore, Article 604-bis provides for up to four years of imprisonment for dissemination of ideas based on racial superiority or racial/ethnic hatred, incitement to violence on racial, ethnic, national or religious grounds and committing acts of violence/discrimination on these grounds. The Article prohibits all organizations and groups pursuing such purposes and foresees criminal liability for leading and participating in such entities.<sup>133</sup> According to OSCAD, the number of documented hate crimes in Italy steadily increased in the past years, from 71 cases in 2012 to 1,111 cases in 2018,<sup>134</sup> which the Observatory attributes to vast improvements in data collection methods and identification of hate crimes, allowing for more effective and comprehensive responses.
78. In **Mongolia**, interviewees highlighted the introduction in May 2017 of criminal liability for discrimination on the grounds of gender identity and sexual orientation, among other protected grounds. As prescribed by Article 14.1 of the Criminal Code, the criminal offence 'discrimination' committed by a group of individuals, with the use of force, or as abuse of power by a state official is considered as aggravating circumstances and leads to a harsher penalty, including up to five years of international travel ban or imprisonment for one to five years. However, Mongolia's current criminal justice framework does not provide for recognition of a bias motive as an aggravating circumstance in crimes committed against members of vulnerable minority groups, including LGBTI people.
79. In **Montenegro**, Article 42a of the Criminal Code provides that where a criminal offence is committed out of hatred towards another person due to national or ethnic affiliation, race or religion or lack thereof, or due to disability, sex, sexual orientation or gender identity, the court shall take such a circumstance as aggravating.<sup>135</sup> Similarly, the court shall consider as aggravating an offence committed against a particularly vulnerable person (a child, person with disabilities, pregnant woman, elderly person or a refugee). The Code also penalizes 'violation of equality' on a broad range of grounds and provides for harsher sentences if such an offence is committed out of hatred and/or by a public official while performing his/her duties (Article 159). Racial and other forms of discrimination as well as persecution of organizations and individuals for their efforts to ensure equality of people are punishable by a prison sentence, in line with the Article 443(1). With regards to the application of these provisions, LGBTI

<sup>130</sup> Other Criminal Code provisions relevant to crimes committed on discriminatory grounds include Article 1422 (Restriction of Rights of Persons with Disabilities), Article 1441 (Torture), Article 155 (Illegal Interference in Performing Religious Rite), Article 156 (Persecution), Article 187 (Damage or Destruction of Property), Article 2391 (Public Incitement to Acts of Violence) and Article 258 (Disrespect towards graves).

<sup>131</sup> The Supreme Court of Georgia informed ODIHR that, in 2019, they conducted a number of studies analysing the compliance of the national judicial practice with relevant international standards when dealing with cases of discrimination, hate crimes and hate speech; in such studies, the Supreme Court also formulated recommendations aimed at strengthening the judicial response to discrimination-related cases. In 2019, the staff of the Supreme Court and a number of judges also took part in workshops aimed at achieving this goal. See for example "Discrimination-related Cases in National Judicial Practice (Application of International standards at the national level)", Supreme Court of Georgia, 2019, available at: <http://www.supremecourt.ge/files/upload-file/pdf/diskriminaciastan-dakavshirebuli-saqmeebi-erovnul-sasamartlo-praqtikashi.pdf>.

<sup>132</sup> OSCE/ODIHR Hate Crime Reporting - Georgia, available at: <https://hatecrime.osce.org/georgia?year=2018>.

<sup>133</sup> In 2020, Italy undertook further steps to include sexual orientation, gender identity and disability as protected grounds in the national legal system. See Activists hail bill to make violence against LGBT people as hate crime in Italy, the Guardian, 5 November 2020, available at: <https://www.theguardian.com/world/2020/nov/05/activists-hail-steps-to-make-violence-against-lgbt-people-hate-in-italy>.

<sup>134</sup> See also OSCE/ODIHR Hate Crime Reporting - Italy, available at: <https://hatecrime.osce.org/italy>.

<sup>135</sup> Such a circumstance shall be taken as aggravating unless that is stipulated as an element of the basic or more serious form of that criminal offence. See Article 42a of the Criminal Code of Montenegro (as amended in 2018), available at: [https://www.legislationline.org/download/id/8406/file/Montenegro\\_CC\\_am2018\\_en.pdf](https://www.legislationline.org/download/id/8406/file/Montenegro_CC_am2018_en.pdf).

activists interviewed by ODIHR noted the reluctance of the authorities to qualify crimes targeting LGBTI people as hate crimes, despite reported verbal abuse and derogatory terms used against the victims.<sup>136</sup>

80. Participating States informed ODIHR about various capacity building initiatives involving police and prosecutors, among other relevant state bodies, on investigating hate crimes and other abuses targeting defenders, among others.
81. In **the Czech Republic**, interviewed representatives of the Ministry of Interior and the Prosecutor General's Office shared examples of regular training for their staff on hate crime identification, response and prevention, co-organized with *In Iustitia*, and other events aimed at raising awareness about the issue.<sup>137</sup> In December 2018, ODIHR and the Government Agent for Human Rights co-organized a seminar on hate crime in the Czech Republic.<sup>138</sup> In March 2019, the General Prosecutor's Office and the Judicial Academy of the Czech Republic signed a co-operation agreement with ODIHR on the implementation of Prosecutors and Hate Crimes Training (PAHCT) programme, to enhance the ability of prosecutors to recognize and prosecute hate crimes in the country.<sup>139</sup>
82. In **Georgia** in 2016, the Prosecutor's Office also undertook to implement PAHCT with four training events per year, focusing on effective investigation of hate crimes.<sup>140</sup> In 2018, 65 prosecutors and investigators of the prosecution service were trained in the framework of PAHCT.<sup>141</sup> According to the Prosecutor's Office, the programme significantly enhanced prosecutors' ability to identify hate crimes, which resulted in an increase in the number of criminal prosecutions relating to this type of crime.
83. In **Italy**, OSCAD informed ODIHR about their work on training police and Carabinieri officers on tackling hate crimes and applying relevant international standards, including in co-operation with civil society associations, the National Anti-Racial Discrimination Office (UNAR) and ODIHR, including in the framework of the Training Against Hate Crimes for Law Enforcement (TAHCLE) programme.<sup>142</sup> OSCAD further reported that they had trained around 29,000 police and Carabinieri officers as of the end of 2019.
84. In **Mongolia**, with the support of the Ulaanbaatar-based NGO *LGBT Centre*, more than 500 police officers, prosecutors and judges received training on hate crimes.<sup>143</sup> In this context, Mongolian police officers also received training on how to deal with transgender people and treat them according to the gender they identify as, regardless of their state-issued identification.
85. In **Montenegro**, since the launch of the programme in 2013, TAHCLE has become an integral part of the Police Academy curriculum. A series of workshops and meetings were conducted to train the police across Montenegro on tackling hate crimes. Further, in 2017-2018, the Centre for Training in Judiciary and State Prosecution and

<sup>136</sup> *Op. cit.* note 71. See also Montenegro report On the implementation of the Council of Europe Committee of Ministers Recommendation CM/REC (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, Spectra, 2018-2019, available at: <https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-Montenegro.pdf>.

<sup>137</sup> For example, on 16 October 2019, the authorities organized a high-level conference titled "Hate Crime on the Internet in the auspices of the Constitutional Court". See Jak bránit šíření nenávisťi na internetu [How to fight the spread of hate on the internet], Public Defender of Rights Press release, 16 October 2019, available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2019/jak-branit-sireni-nenavisti-na-internetu-1/>.

<sup>138</sup> See for more information: <https://www.osce.org/odihr/406352>.

<sup>139</sup> See for more information: <https://www.osce.org/odihr/417224>. See also PAHCT Programme Description, OSCE/ODIHR, 29 September 2014, available at: <https://www.osce.org/odihr/pahct>.

In February 2020, ODIHR conducted the first training for trainers in the Czech Republic the framework of PAHCT. Furthermore, as reported by the authorities, a high-level meeting on combating hate crime was held on 29 November 2019 with the representatives of the European Commission against Racism and Intolerance.

<sup>140</sup> See for more information: <https://www.osce.org/odihr/229006>.

<sup>141</sup> *Op. cit.* note 132.

<sup>142</sup> See, for example, Formazione per potenziare la lotta a crimini d'odio e atti discriminatori [Training to enhance the fight against hate crimes and discriminatory acts], Ministry of Interior, 30 November 2018, available at: <https://www.interno.gov.it/it/notizie/formazione-potenziare-lotta-crimini-dodio-e-atti-discriminatori>.

<sup>143</sup> Charges in Mongolia: LGBT attack hint at changing attitudes, Aljazeera, 9 October 2019, available at: <https://www.aljazeera.com/news/2019/10/9/charges-in-mongolia-lgbt-attack-hint-at-changing-attitudes>.

the OSCE Mission to Montenegro co-organized a number of training courses on hate crime for over 60 judges and prosecutors.<sup>144</sup>

86. Despite positive developments contributing to better responses by relevant authorities to crimes and abuses targeting human rights defenders, ODIHR was informed of instances in which law enforcement bodies in all participating States visited by ODIHR did not conduct adequate investigations into threats and attacks against activists and journalists or, when prosecutions took place, did not hold perpetrators to account with adequate penalties.
87. In **the Czech Republic**, civil society interviewees noted that in the past few years, several cases of reported online attacks targeting defenders were not prosecuted by the authorities, or in cases when the perpetrator was prosecuted and convicted, the sentences were not severe enough to deter others from committing similar crimes. For example, in the case of *In Iustitia* staff, who faced death threats online,<sup>145</sup> the District Court for Prague 6 convicted the attacker in November 2018 of the crime of violence against a group of people and individuals, in line with Section 352 of the Criminal Code. The perpetrator was sentenced to a fine of 30,000 CZK.<sup>146</sup> According to *In Iustitia*'s director, such a penalty lacks a deterring or educational character.<sup>147</sup> Nevertheless, in January 2019, the appellate Prague City Court quashed the judgment, referring the case back to the Prague Municipal Authority to judge the act as a misdemeanour.<sup>148</sup> The Constitutional Court in its decision of 28 May 2019 confirmed the Prague City Court's decision, arguing that public attacks and hateful critique are a natural part of the profession of a human rights defender.<sup>149</sup>

*"I think that hate crimes are underestimated and remedies against them remain inadequate, even though the police's work against hate crimes has been improving. We also feel that human rights defenders are not protected as they should be. (...) In one of our cases, the court issued a judgment in which it stated that we brought the attacks on ourselves by doing human rights work. For me, the judgment was really damaging as it was victimizing. Basically, the court said it was our fault."*

Excerpt from ODIHR's interview with a woman human rights defender from the Czech Republic, Prague, April 2019

88. In December 2017, the District Court in Kladno did not grant Radoslav Banga, who was subject to online threats and attacks,<sup>150</sup> the status of an injured party in criminal proceedings and sentenced one of the attackers to 100 hours of community service for having displayed sympathy for a movement seeking to suppress human rights

<sup>144</sup> See, for example, OSCE Mission to Montenegro supports hate crime workshop for judiciary, 30 May 2018, available at: <https://www.osce.org/mission-to-montenegro/382861>.

<sup>145</sup> More information about this case is available at para 54 of the present report.

<sup>146</sup> Autor výhrůžek smrti lidem z organizace In Iustitia byl odsouzen za trestné činy z nenávisti s politickým podtextem [The author of death threats to In Iustitia employees was condemned for hate crimes with political undertone], Romea, 13 November 2018, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/autor-vyhruzek-smrti-lidem-z-organizace-in-iustitia-byl-odsouzen-za-trestne-ciny-z-nenavisti-s-politickym-podtextem>.

<sup>147</sup> *Op. cit.* note 88.

<sup>148</sup> Constitutional Court decision of 28 May 2019, no. I.ÚS 1397/19, available at: [http://nalus.usoud.cz/Search/GetText.aspx?sz=1-1397-19\\_1](http://nalus.usoud.cz/Search/GetText.aspx?sz=1-1397-19_1).

<sup>149</sup> *Ibid.* See also Pracovníci neziskovek musí počítat s vulgaritami od nezralých a frustrovaných, řekl Ústavní soud [The employees of NGOs must expect verbal aggression from the unmaturing and frustrated, said the Constitutional Court], Ilned.cz, 19 June 2019, available at: <https://domaci.ihned.cz/c1-66592960-bojovat-za-lidska-prava-vyzaduje-statecnost-clovek-s-vulgaritami-musi-pocitat-rozhodl-ustavni-soud>.

<sup>150</sup> Radoslav Banga is a Roma singer, who was subject to online threats and attacks in December 2016, following his protest against an award given to a music band sympathizing with far-right. Seventeen perpetrators were reportedly identified by police and prosecutors, where acts committed by eight of them were qualified as misdemeanour, and nine as hate crimes motivated by perpetrators' presumption of the victim's affiliation with a race, ethnicity or nationality. See Banga versus Ortel: Policie zkoumala tisíce nenávistných příspěvků, u soudu však padl jediný trest [Banga vs Ortel: The police investigated thousands of hateful comments, but the courts only pronounced one sentence], Česká Televize, 4 December 2017, available at: <https://ct24.ceskatelevize.cz/domaci/2322541-banga-versus-ortel-policie-zkoumala-tisice-nenavistnych-prispevku-u-soudu-vsak-padl>.

and freedoms, while several other perpetrators were imposed small fines for a misdemeanour.<sup>151</sup> On 2 April 2019, the Constitutional Court concluded that the decision of the first-instance court violated Banga's right of access to the court and that remarks on social media must be viewed very critically because they are identical to assaults committed in public.<sup>152</sup> This judgement of the Constitutional Court, welcomed by human rights defenders as ground-breaking, set a legal precedent for investigating hate crimes in the form of online threats.

89. In **Georgia**, in the case of Vitaly Safarov's murder, investigators examined evidence for a potential bias motive.<sup>153</sup> In June 2019, the Tbilisi City Court sentenced two individuals to 15 years of imprisonment each for premeditated group murder, but ruled that the crime was not bias-motivated.<sup>154</sup> Civil society organizations and international observers criticized the Court's decision, reiterating the importance of recognizing bias motive as an aggravating factor in this case.<sup>155</sup>
90. Some civil society interviewees further shared instances in which police disregarded complaints relating to attacks against LGBTI people, including activists, or exhibited intimidating behaviour towards those reporting such crimes.<sup>156</sup> Similar concerns were reported by the Public Defender of Georgia, whose Office in 2018 examined 13 cases of abuse targeting LGBTI people, allegedly perpetrated by law enforcement officials.<sup>157</sup> According to information provided by the Ministry of Internal Affairs, most of these cases were provided a legal response.
91. In **Italy**, *Donne in Rete contro la Violenza (D.i.Re)*, a women's rights network organization, presented to ODIHR data on threats and attacks they reported to the police and on the authorities' response to such cases. Among 35 women working for the network who have faced threats, harassment and other types of abuse, including online, 60 per cent reported the episode to law enforcement authorities. Of those who filed a complaint, 40 per cent were satisfied with the response of the police, while 60 per cent claimed that their cases were not taken into due consideration. Furthermore, a number of activists working on migrants' rights shared with ODIHR accounts of police disregarding their complaints or minimizing the risks they face, which reportedly results in underreporting of threats or other types of abuse. In some cases, concerns were raised over lack of access to information about the investigation process following the launch of a complaint.

<sup>151</sup> Czech court fines online racists a mere EUR 4 for death threats against Romani celebrity, Romea.cz, 8 December 2017, available at: <http://www.romea.cz/en/news/czech/czech-court-fines-online-racists-a-mere-eur-4-for-death-threats-against-romani-celebrity>. See also Poškozený, 168 hodin [168 hours], Česká televize, 14 April 2019, available at: <https://www.ceskatelevize.cz/ivysilani/10117034229-168-hodin/219452801100414/titulky>.

<sup>152</sup> The Constitutional Court decision of 2 April 2019, III.ÚS 3439/17, available at: <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=106536&pos=1&cnt=1&typ=result>. See also Ústavní soud se zastal zpěváka Bangy v případě rasistického příspěvku na Facebooku [The Constitutional Court defended singer Banga in the cases of a racist Facebook comment] Česká televize, 9 April 2019, available at: <https://ct24.ceskatelevize.cz/domaci/2782778-banga-chybne-nebyl-chapan-jako-poskozeny-zastal-se-zpevaka-ustavni-soud>.

<sup>153</sup> Georgian rights activist's murder was 'a hate crime', oc-media.org, 11 October 2018, available at: <https://oc-media.org/georgian-rights-activist-s-murder-was-a-hate-crime/>. More information about this case is available at para 33 of the present report.

<sup>154</sup> Tbilisi court dismisses 'hate motivation' in Safarov murder while jailing two for 15 years, oc-media.org, 27 June 2019, available at: <https://oc-media.org/tbilisi-court-dismisses-hate-motivation-in-safarov-murder-and-jails-two-for-15-years/>.

<sup>155</sup> Georgia: Final Statement by international observers representing the Civic Solidarity Platform at the trial of suspects in the murder of Vitali Safarov, Civic Solidarity Platform, 10 July 2019, available at: <https://civicsolidarity.org/article/1613/georgia-final-statement-international-observers-representing-civic-solidarity-platform>.

<sup>156</sup> For example, in August 2017 in Batumi, law enforcement officials reportedly detained two LGBTI activists of the *Equality Movement* and targeted them with homophobic insults and physical violence. See, for more information about this case, para 43.

<sup>157</sup> Annual Report on the situation of human rights and freedoms in Georgia, The Public Defender of Georgia, 2018, available at: <http://www.ombudsman.ge/res/docs/2019101108583612469.pdf>.



*“We usually report threats and attacks to the police or the Office of the Public Prosecutor with no major obstacles. However, we rarely receive information on the outcome of investigation after reporting these cases. We also observed that law enforcement bodies often encounter difficulties in identifying offenders of online attacks, who frequently make use of fake accounts on social media. This makes it impossible for the authorities to sanction those responsible and hold them to account.”*

Excerpt from ODIHR’s meeting with a civil society organization in Italy,  
Milan, February 2019

92. In **Mongolia**, according to the Office of the Prosecutor General, relevant authorities undertook the necessary actions to conduct a comprehensive investigation into the death of Sumbee Tumursukh,<sup>158</sup> which included solicitation of foreign expertise in an analysis of satellite images and in the forensic examination. The investigative authorities also stated that previous attacks and threats against the activist were investigated, leading to no findings of a criminal nature. Sumbee Tumursukh’s father and a number of human rights defenders questioned these conclusions, noting that some evidence, such as audio messages recorded by Sumbee about his abductors, did not influence the investigation.<sup>159</sup> Similarly, according to defenders, investigation into the case of Bolormaa Luntan did not assess links between her death and her journalistic activity.<sup>160</sup> According to investigative authorities, Bolormaa Luntan’s death was ruled as death by natural causes.<sup>161</sup>
93. While noting that the response by the Mongolian police and prosecutors to cases of attacks targeting LGBTI people had improved over the past decade, human rights defenders stressed that serious concerns remain about the efficiency and thoroughness of investigations into such cases, especially in relation to abuses allegedly committed by police officers against LGBTI individuals.
94. In **Montenegro**, a number of civil society interviewees raised concern that investigations of attacks against journalists are sometimes long in duration, which renders them ineffective. They also noted that in some cases masterminds of attacks remain unidentified.
95. In November 2007, Tufik Softić, an investigative journalist from Berane, was attacked in front of his house and beaten with baseball bats. In 2018, the case remained unresolved. In October 2017, the Basic Court in Podgorica awarded Tufik Softić 7,000 EUR for damages on account of incurred and future suffering due to ineffective investigation in an attempted murder case and fear of renewed attempts at his life. In this landmark case, the court found deficiencies in the investigation.<sup>162</sup> In July 2018, the Higher Court in Podgorica increased the amount of damages to 12,000 EUR.<sup>163</sup> In separate proceedings, in November 2017, the Constitutional Court of Montenegro awarded Softić 7,000 EUR for a violation of the procedural aspect of Article 2 of the European Convention on

<sup>158</sup> See, for more information on this case, para 34 of the present report.

<sup>159</sup> What happened to him? Who murdered him???, online blog Justice for Sumbee, 21 January 2016, available at: <https://justiceforsumbee.blogspot.com/2016/>.

<sup>160</sup> Politics and Media, Media Ownership Monitor Mongolia, 7 December 2016, available at: <https://mongolia.mom-rsf.org/en/context/politics/>.

<sup>161</sup> See, for more information on this case, para 34 of the present report.

<sup>162</sup> For example, the pre-investigative phase lasted almost seven years, while no actions were undertaken by police or the prosecutor for five and a half years during this period. See Court adopts claim of journalist Tufik Softic against the State of Montenegro, Human Rights Action, 20 October 2017, available at: <https://www.hraction.org/2017/10/20/20102017-court-adopts-claim-of-journalist-tufik-softic-against-the-state-of-montenegro/?lang=en>.

<sup>163</sup> Appeal Court increases damages award to journalist following failure of Montenegrin authorities to investigate attacks against him, 10 July 2018, Human Rights Action, available at: <http://www.hraction.org/2018/07/10/10-7-2018-appeal-court-increases-damages-award-to-journalist-following-failure-of-montenegrin-authorities-to-investigate-attacks-against-him/?lang=en>.

Human Rights (ECHR) (right to life).<sup>164</sup> The Court found that the investigation was not thorough, efficient and transparent, and did not lead to identifying and holding the perpetrator(s) accountable.

96. In relation to the shooting of Olivera Lakić on 8 May 2018, at a joint press conference held in Podgorica on 19 February 2019, representatives of the Police and Prosecutor's Office stated that the case was solved.<sup>165</sup> Police reported arresting nine members of a criminal group who were suspected of wounding Olivera Lakić and committing other crimes. *Vijesti*, the media outlet where Olivera Lakić worked, raised concerns that the Higher Prosecutor's Office qualified the attack as inflicting severe bodily injuries instead of attempted murder and that the motives as well as the possible person[s] who ordered the attack remained unknown.<sup>166</sup> While welcoming progress in the investigation, the OSCE's Representative on Freedom of the Media called for holding to account all those involved in both ordering and executing the attack.<sup>167</sup>
97. Concerns with regards to the efficiency of investigations into cases of attacks targeting journalists and media organizations were also raised in Georgia, Italy and Mongolia.
98. In **Georgia**, on 30 May 2017, a criminal case under Article 143(1) of the Criminal Code pertaining to unlawful deprivation of liberty was initiated in regard to Afgan Mukhtarli's disappearance.<sup>168</sup> According to the journalist's wife and lawyer, the qualification of the case does not fully reflect the circumstances of the alleged crime, reportedly committed with aggravating factors, including abduction by a group of people and cross-border transfer. They also called for examination of the case under Article 154 pertaining to unlawful interference with a journalist's professional activities.<sup>169</sup> The Ministry of Foreign Affairs of Georgia informed ODIHR about its request to the authorities of Azerbaijan to provide information about the case, including in relation to court proceedings against Mukhtarli in Azerbaijan. In February 2018, the Ministry reportedly received information about the judgement of the District Court of Azerbaijan, but as of November 2018 the Georgian authorities were waiting for other reports and clarifications pertaining to the case. As of the end of 2019, the investigation remained open.<sup>170</sup>
99. In **Italy**, according to *Ossigeno per l'Informazione*, the impunity rate for crimes against journalists, including for crimes committed online, was 96.7 per cent in 2019.<sup>171</sup> While this percentage decreased compared to 2018, when only 1.7 per cent of cases were brought to justice, it still represents a worrying trend.<sup>172</sup> Furthermore, several civil society representatives informed ODIHR about cases when, in their assessment, the outcome of investigations did not correspond to the seriousness of attacks. For example, while threats received by Federica Angeli in 2013 reached the level of trial,<sup>173</sup> in May 2018 the presiding judge of the court in Rome ordered a new investigation by the public prosecutor.<sup>174</sup> An investigation into threats targeting the activist and founder of the association *Libera*

<sup>164</sup> Constitutional Court of Montenegro, decision U-III no. 6/16, 29 November 2017.

<sup>165</sup> Policija rasvijetlila ubistvo Kruščića i ranjavanje Olivera Lakić ["Police solves the Kruščić murder and wounding of Olivera Lakić"], Ministry of Interior of Montenegro, 19 February 2019, available at: <http://www.mup.gov.me/pretraga/196372/Policija-rasvijetlila-ubistvo-Kruscica-i-ranjavanje-Olivera-Lakic.html>.

<sup>166</sup> Sad ne znaju ko je pucao na Lakićevu ["Now they don't know who shot at Lakić"], *Vijesti*, 22 February 2019, available at: <https://www.vijesti.me/vijesti/crna-hronika/sad-ne-znaju-ko-je-pucalo-na-lakicevu>.

<sup>167</sup> OSCE Media Freedom Representative commends arrests in investigation of attack on Olivera Lakić in Montenegro, calls for justice to be served, OSCE, 19 February 2019, available at: <https://www.osce.org/representative-on-freedom-of-media/411851>.

<sup>168</sup> See, for more information about this case, para 40 of the present report.

<sup>169</sup> *Op. cit.* note 55.

<sup>170</sup> Georgia 2019, Amnesty International, 2019, available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/georgia/report-georgia/>.

The Prosecutor's Office informed ODIHR that, as of October 2020, investigation into the case has not yet established whether a crime was committed against Mukhtarli, and the case remains under investigation.

<sup>171</sup> Impunità 96,7% nel 2019 in Italia per chi minaccia [Impunity in 96,7% of cases in 2019 for who threatens journalists], *Ossigeno per l'Informazione*, 24 October 2019, available at: <https://www.ossigeno.info/impunita-967-nel-2019-in-italia-per-chi-minaccia/>.

<sup>172</sup> 98,3% è il tasso di impunità in Italia misurato da Ossigeno [Impunity rate measured by Ossigeno is of 98,3% in Italy], *Ossigeno per l'Informazione*, 26 October 2018, available at: <https://www.ossigeno.info/983-e-il-tasso-di-impunita-in-italia-misurato-da-ossigeno/>.

<sup>173</sup> See, for more information on this case, para 36 of the present report.

<sup>174</sup> Ostia, minacce a Angeli: "E' tentata violenza privata, da rifare il processo a Spada" [Ostia, threats to Angeli: "It's attempted private violence, Spada trial to redo"], *La Repubblica*, 15 May 2018, available at: [https://roma.repubblica.it/cronaca/2018/05/15/news/ostia\\_processo\\_a\\_armando\\_spada\\_per\\_le\\_minacce\\_a\\_federica\\_angeli-196440274/](https://roma.repubblica.it/cronaca/2018/05/15/news/ostia_processo_a_armando_spada_per_le_minacce_a_federica_angeli-196440274/).



Don Pio Luigi Ciotti lasted from September 2013 to June 2017, when the Preliminary Investigation Judge of Milan dismissed the case based on the fact that threats came from a member of an organized crime group imprisoned under a regime that limits inmates' contact with the outside world.<sup>175</sup>

100. In **Mongolia**, ODIHR was informed that a woman journalist of *Eagle News TV* was attacked on 30 July 2018 by a police officer while the journalist was conducting her work. The attack was captured on camera.<sup>176</sup> *Eagle News TV* reported filing a complaint to the Ethics Committee of the police following the incident.<sup>177</sup> The Confederation of Mongolian Journalists also submitted a complaint to the Ministry of Justice and Home Affairs regarding the attack, as well as other cases of violence by public officials targeting media professionals, calling for a public apology and condemnation.<sup>178</sup> According to *Globe International*, state officials, in particular those from courts and law enforcement bodies, reportedly committed 61 per cent of the 187 cases of violations of the rights of journalists, including attacks and threats, documented from May 2017 to May 2018.<sup>179</sup>

## CONCLUDING OBSERVATIONS

- ODIHR expresses concern over reportedly high rates of impunity for crimes committed against journalists and other defenders in some participating States visited by ODIHR as well as alleged cases of ineffective investigation of abuses targeting defenders in all five countries.
- ODIHR welcomes the commitment of participating States visited by ODIHR to ensure better accountability for threats, attacks and other abuses against human rights defenders, including journalists, through adoption of institutional measures and mechanisms such as the establishment of the Human Rights Protection and Investigation Quality Monitoring Department within the Ministry of Internal Affairs of Georgia and the setting up of a special team for resolving attacks against journalists and other media representatives within Montenegro's Ministry of Interior.
- ODIHR's findings reveal that tackling online threats and attacks targeting defenders is a common challenge in all countries covered by this assessment. Creation of special police units to deal with cybercrimes and online attacks and consistent steps to build the capacity of such units on relevant international human rights standards are therefore welcome measures.
- ODIHR underlines that the existence of independent and effective oversight mechanisms to investigate complaints about misconduct by police and other state officials and their accessibility to human rights defenders are essential to ensuring full accountability for abuses against them, and notes positive examples of civilian police oversight boards in Mongolia and Montenegro.
- ODIHR further underscores the importance of investigating any potential bias motive of alleged crimes against human rights defenders and invites participating States to consult its publication *Hate Crime Laws – A Practical Guide*<sup>180</sup> in the process of review of hate crime laws. ODIHR encourages the Czech Republic and Italy

<sup>175</sup> Minacce Riina a Don Ciotti, archiviata indagine [Riina threats to Don Ciotti, investigation closed], Articolo 21, 15 June 2017, available at: <https://www.articolo21.org/2017/06/minacce-riina-a-don-ciotti-archiviata-indagine/>.

<sup>176</sup> See a video of the journalist being punched in the face by a police officer, Сэтгүүлчид халдсан асуудлаар «Ийгл ньюс» телевиз Цагдаагийн байгууллагад хандлаа ["Eagle news" TV filed a complaint to the Police for attacks against journalist], Eagle News website, 30 July 2018, available at <http://eagle.mn/tr/48057>.

<sup>177</sup> *Ibid.*

<sup>178</sup> МНЦЭ-ээс Мэдэгдэл гаргалаа [Statement from CMJ], Confederation of Mongolian Journalist website, 2 August 2018, available at <https://cmj.mn/2y>.

<sup>179</sup> *Op. cit.* note 56.

<sup>180</sup> *Op. cit.* note 104.

to take steps to explicitly include gender identity, sexual orientation and disability status among legally protected characteristics/grounds and calls upon Mongolia to recognize a bias motive as an aggravating circumstance in crimes committed against members of vulnerable minority groups. In Montenegro, ensuring the explicit application of relevant laws to crimes committed against human rights defenders “by association” is of importance.

- Continuous monitoring and data collection on cases of hate crime and other abuses targeting human rights defenders is of importance. ODIHR notes in this respect the positive role of OSCAD in Italy in conducting more consistent data gathering and reporting on hate crimes and online crimes.
- Building the capacity of the police, prosecutors and judges on identification and prosecution of hate crimes, including in co-operation with ODIHR, is a positive practice. Equally important is raising awareness among relevant state bodies of special needs and sensitivities of working with minority groups (such as LGBTI people) and subsequent adoption of gender-sensitive and needs-sensitive approaches.
- ODIHR underscores that effective remedies should be made available to human rights defenders and their families to challenge the process of investigation of reported threats and attacks. In this respect, ODIHR welcomes the decision of the court in Montenegro to award monetary damages for the lack of an effective investigation in the case of Tufik Softić.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Ensure prompt, impartial, independent and effective investigation into cases of threats, attacks and other forms of abuse targeting human rights defenders, including attacks on property of civil society organizations, individual defenders, media outlets or journalists, as well as unlawful acts committed by law enforcement or other state officials and business actors; guarantee availability and accessibility of effective legal remedies and of adequate reparation to victims and their families.
- Enhance the security of women human rights defenders, including by ensuring that gender-specific attacks and threats they face are addressed in a prompt, impartial, thorough, efficient and gender-sensitive manner. Similarly, address threats and attacks targeting LGBTI defenders, including hate crimes against them.
- Ensure that investigations are effective in identifying the perpetrators and masterminds (as relevant) and lead to their prosecution, where necessary. Ensure that imposed sanctions are commensurate with the gravity of the offence.
- Investigate any potential bias motive of alleged crimes and abuses against human rights defenders; ensure that law enforcement and judicial authorities are sufficiently trained in recognizing bias motivation. Consider adopting national legislation recognizing the motivation for crimes against human rights defenders on account of their human rights work as an aggravating factor in relation to sentencing.
- In inclusive, transparent and meaningful consultations with human rights defenders, review and ensure the full compliance of national laws on hate crime with international human rights standards; in this process, consider seeking ODIHR’s opinion/legislative review of relevant laws.
- Build the capacity of law enforcement officials to identify and tackle online threats and attacks targeting human rights defenders, including gender-specific ones, and implement other appropriate measures to this end; raise public awareness of the types of online abuse and crimes targeting defenders and encourage reporting of such crimes.

- Enhance co-operation and collaboration within and between investigative and other relevant state bodies and NHRIs, to contribute to increased effectiveness in responding to and preventing attacks and threats against human rights defenders, including journalists.
- Establish independent and effective oversight mechanisms, including civilian oversight boards for police, to investigate complaints about police misconduct. Consider establishing investigation oversight bodies to ensure transparency and efficiency of investigations in relation to cases of threats and attacks targeting human rights defenders, including journalists. Where such bodies exist, co-operate with them and implement in good faith their recommendations; ensure their independence and full operational capacity, including by providing adequate financial resources.

## 1.1.2. PROTECTION POLICIES, PROGRAMMES AND MECHANISMS

### **Overview of relevant standards and commitments**

101. The need for protection of human rights defenders is emphasized in a number of OSCE commitments, which recognize the essential role of human rights defenders and civil society in ensuring full respect for human rights, democracy and the rule of law.<sup>181</sup>
102. Article 12.3 of the UN Declaration on Human Rights Defenders calls upon states to take all necessary measures to protect human rights defenders against any forms of violence, threats, discrimination or pressure resulting from their legitimate exercise of human rights and fundamental freedoms. Similar calls have been reiterated by the UN General Assembly (UNGA), which has repeatedly highlighted the importance of ensuring such protection at both the local and national levels.<sup>182</sup>
103. To support the practical implementation of these commitments and standards, the *Guidelines* call on states to develop, in consultation with civil society, adequate protection policies, programmes and mechanisms to ensure the safety and security of human rights defenders at risk as well as members of their families. Such measures should reflect and respond to the specific protection requirements of particularly vulnerable categories of defenders, including women human rights defenders,<sup>183</sup> in accordance with the needs identified by affected individuals and groups.<sup>184</sup>
104. Furthermore, the *Guidelines* encourage states to allocate adequate funds to programmes and mechanisms providing physical and psychological protection to human rights defenders at risk, including by actively supporting NGOs providing such services. When accompanied by training and awareness-raising programmes targeted at relevant professional groups, as well as broader human rights education, these measures contribute to shaping attitudes and behaviours and increasing public understanding of the positive role of human rights defenders in society, thereby advancing their protection.<sup>185</sup> Similar recommendations were also made by the UN Special Rapporteur on the situation of human rights defenders.<sup>186</sup>

<sup>181</sup> *Op. cit.* notes 2, 3 and 4.

<sup>182</sup> See UNGA Resolution A/RES/ 64/164, para 4, and also earlier General Assembly resolutions on human rights defenders.

<sup>183</sup> See UNGA Resolution on women human rights defenders (A/RES/68/181), calling on States "to adopt and implement policies and programmes that provide women human rights defenders with access to effective remedies, including by ensuring: [...] (b) adequate access to comprehensive support services for those women human rights defenders who experience violence, including shelters, psychological services, counselling, medical care and legal and social service", para 21.

<sup>184</sup> *Op. cit.* note 9, paras 19-20.

<sup>185</sup> *Op. cit.* note 9, paras 21-22.

<sup>186</sup> See the report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, paras 84 and 131.

## **Protection policies, programmes and mechanisms in selected OSCE participating States**

105. The existing legal frameworks in the participating States visited by ODIHR generally provide safeguards to human rights defenders and guarantee the protection and promotion of their human rights and fundamental freedoms. In addition, governments have put in place targeted policies, programmes and mechanisms seeking to protect human rights defenders at risk. Examples of such measures include legal and policy initiatives aimed at strengthening the protection of defenders; physical protection by police of at-risk human rights defenders, including journalists; legal protections for victims and witnesses; and the provision of free legal aid to financially disadvantaged individuals, including activists.
106. The development of a stand-alone Draft Law on Human Rights Defenders was an important and ground-breaking legal initiative undertaken by **Mongolia** during the reporting period, signaling the commitment of the country to enhance the protection of human rights defenders.<sup>187</sup> Elaborated under the leadership of the National Human Rights Commission and in close collaboration with civil society organizations, the Draft Law provides for a definition of a human rights defender that is in line with international standards and stipulates rights and obligations as well as the scope of activities of human rights defenders. It also specifies the obligations of public authorities, businesses and other entities vis-à-vis defenders. The Draft Law further provides for specific protection measures, including through the establishment of an independent body within the National Human Rights Commission with a duty to monitor the implementation of the Law and to conduct regular assessments of the situation of defenders. Once adopted, the Law would be vital in promoting the role and work of defenders as legitimate and important as well as recognizing risks they face as a result of their human rights work.
107. The State Policy Concept on Civil Society Development, which remains in draft form, is another potentially effective protection measure in Mongolia.<sup>188</sup> The government approved the Policy Concept in 2012 but parliamentary discussions were put on hold and have not resumed as of the end of 2019.<sup>189</sup> A number of human rights defenders interviewed by ODIHR called for renewed discussions on the Policy Concept and for its adoption together with the Draft Law on Human Rights Defenders.
108. In some participating States visited by ODIHR, special protection measures include physical protection by police of at-risk human rights defenders, including journalists.
109. In **Italy**, Decree-Law 83/2002 on Personal Security provides for physical protection by police of organizations and persons that are subject to current or potential danger in relation to the functions they perform; according to the law, such danger could emanate from organized crime of various kinds and could target family members of individuals concerned, who are also offered protection.<sup>190</sup> To manage and further develop the established system, the Decree-Law also set up the Central Office for Personal Security (UCIS) under the Ministry of Interior, which is tasked to analyse information relating to personal risk situations and to determine in which cases, and

<sup>187</sup> *Op. cit.* note 25. The National Human Rights Commission of Mongolia shared a copy of the Draft Law on Human Rights Defenders with ODIHR during its assessment visit to Mongolia. In May 2020, the Draft Law was submitted to the Speaker of the Parliament by the Minister of Foreign Affairs. In December 2020, ODIHR was informed by the authorities of Mongolia that the Draft Law was under discussion at the Parliamentary Standing Committee on Legal Affairs and was supported for recommendation to the Parliament for further consideration/discussion in its plenary session. A Working Group, supported by a sub-working group of parliamentary experts and comprising government officials, Commissioners of the NHRI and representatives of civil society, has also been established for preparation of the initial hearing in the Parliament. Discussions on the Draft Law within the Parliament are planned for spring 2021.

<sup>188</sup> State of Civil Society Development in Mongolia by T. Undarya, the Mongolian Journal of International Affairs, 2013, available at: <https://doi.org/10.5564/mjia.v0i18.70>.

<sup>189</sup> Civil Society Brief on Mongolia, Asian Development Bank, 20 May 2019, available at: <https://www.adb.org/sites/default/files/publication/503101/civil-society-brief-mongolia.pdf>.

More information about the Policy Concept is available in para 274 of the present report.

<sup>190</sup> Legislative Decree 83, "Urgent provisions regarding personal security", 6 May 2002, available at: <http://www.parlamento.it/parlam/leggi/decreti/02083d.htm>.

- to what extent, police escort should be granted.<sup>191</sup> According to the Ministry of Interior, more than 600 people have benefited from this scheme, with the highest level of protection granted in about 20 cases. The Ministry also informed ODIHR that requests for protection could come from individuals, police, prefectures and the judiciary.
110. While state and civil society interviewees largely viewed this protection scheme as efficient and robust, several also noted the system's shortfalls. For example, they reported that in some cases, the assigned protection lasts for many years, resulting in prolonged restriction of freedom of movement of individuals under higher levels of protection, and the monitoring and surveillance presents a challenge in terms of privacy and impedes effective continuation of professional activity, in particular when confidentiality and anonymity of sources are required. Several interviewees, including those who have been granted protection, further raised concern that protection is at times granted with a delay, after defenders were directly attacked following a series of threats.<sup>192</sup> The Parliamentary Anti-Mafia Commission, in particular its Committee on Mafia, Journalism and Media,<sup>193</sup> periodically convenes sessions with journalists, including those under the protection of the Italian state, in order to review the effectiveness of protection measures, identify challenges and elaborate targeted responses.<sup>194</sup>
111. In **Montenegro**, physical protection by police can be assigned to at-risk journalists, including for prolonged periods,<sup>195</sup> as a measure aimed at preventing possible attacks and other types of harm targeting them.<sup>196</sup> According to the Ministry of Interior, this protection measure can be applied at the request of the Office of the Protector of Human Rights and Freedoms, a journalist/human rights defender at risk, and based on the risk assessment of the Police Directorate. The Directorate undertakes risk analysis of the vulnerability of media professionals, as well as members of their families, as another preventive measure to protect journalists against threats and violence they face because of their activities.<sup>197</sup> As reported by the Ministry of Interior, such assessments allow for regular monitoring of the situation of journalists in the country and developing comprehensive and needs-based measures to improve their protection. One of the reported outcomes of these measures was granting physical protection to two journalists at risk by 2018.<sup>198</sup>
112. Police in Montenegro also provide physical protection to LGBTI human rights defenders, especially during Pride events and other assemblies organized and attended by LGBTI activists and community members, as well as

<sup>191</sup> See Official website of the Ministry of Interior of Italy at: <https://www.interno.gov.it/ufficio-centrale-interforze-sicurezza-personale-ucis>.

The Ministry of Interior informed ODIHR of four protection levels, with the first one being granted to individuals requiring the lightest form of protection and where the danger is considered relatively low. In practical terms, this measure may include a police car driving by the workplace or home of a person under protection several times a day. While the second and third levels grant a greater degree of protection, including police escort and systematic checks of potential target areas, the fourth and the most advanced level assigns an armed police escort, armored vehicles and other forms of physical protection to individuals who are assessed to be at most risk. For more information, See New protection services, Polizia and Democrazia, October 2002, available at: <http://www.poliziaedemocrazia.it/live/index.php?domain=archivio&action=articolo&idArticolo=327>.

<sup>192</sup> The European Centre for Press and Media Freedom (ECPMF) informed that 55 per cent of its interviewees believed that the protection system by police "is adequate to current needs"; 10 per cent considered it incomplete "as it addresses only problems of journalists at higher risk", while the remaining 35 per cent either did not hold a view on the matter (25 per cent) or believed it was "difficult to assess" (10 per cent). See So much mafia, so little news, ECPMF, December 2018, available at: <https://adobeindd.com/view/publications/4fd5ff1c-0f8c-4186-9565-dd3217e63b28/bndf/publication-web-resources/pdf/ECPMF-FFM-Italy.pdf>.

<sup>193</sup> See Article 1 of Law 99, "Istituzione di una Commissione parlamentare di inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere" [Establishment of a Parliamentary Commission of Inquiry into the phenomenon of mafia and other criminal associations, including foreign ones], 7 August 2018, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2018-08-07:99>.

<sup>194</sup> Most recently, such a hearing was held in July 2019. See Fnsi e cronisti minacciati in audizione in Commissione Antimafia. Morra: "Una grande iniziativa in Calabria" [Fnsi and threatened reporters heard before the Anti-Mafia Commission. Morra: "A great initiative to carry out in Calabria"], Federazione Nazionale Stampa Italiana (FNSI), 2 July 2019, available at: <https://www.fnsi.it/fnsi-e-cronisti-minacciati-in-audizione-in-commissione-antimafia-morra-una-grande-iniziativa-in-calabria>.

<sup>195</sup> For example, Tufik Softić was under police protection from February 2014 until December 2016. See Ukinute mjere zaštite novinaru Softića na osnovu procjene bezbjednosti ["Police Directorate: Protection Measures for Journalist Softić Repealed after Security Assessment"], Antena M, 14 December 2016, available at: <http://www.antenam.net/drustvo/20541-up-ukinute-mjere-zastite-novinaru-softica-na-osnovu-procjene-bezbjednosti>.

<sup>196</sup> Physical protection by police was assigned, for example, to Olivera Lakić, first from March 2012 until October 2014 and then again in May 2018. See Država me izdala, neću da budem dio farse ["The State Betrayed Me, I Do Not Want to Be Part of a Farce"], Vijesti, 5 October 2014: available at: <https://www.vijesti.me/kolumne/drzava-me-izdala-necu-da-budem-dio-farse>; and Olivera Lakić na kućnom liječenju, čuva je policija ["Olivera Lakić Recovering at Home, Guarded by Police"], Al Jazeera Balkans, 10 May 2018, <http://balkans.aljazeera.net/vijesti/olivera-lakic-na-kucnom-lijecenju-cuva-je-policija>.

<sup>197</sup> *Op. cit.* note 117.

<sup>198</sup> Zaštita slobode medija i slobode izražavanja u Crnoj Gori u sklopu projekta "Neispričane priče – novinari u opasnosti" [Protection of Freedom of the Media and Freedom of Expression in Montenegro as Part of the "Untold Stories – Journalists Endangered"], 25 April 2018, available at: <http://www.nvo35mm.org/izvjestaj-sa-javne-debate-zastita-slobode-medija-i-slobode-izrazavanja-u-crnoj-gori/>.

during their official trips to the regions outside of Podgorica, where risks of threats and attacks are assessed as high. Improved co-operation between police and LGBTI activists in the past several years was reported as a positive development contributing to strengthening the protection of the LGBTI community and their defenders. This was particularly observed in the framework of a *Trust Team* of LGBTI community representatives and the Police Directorate, founded in February 2016 by the decision of the Ministry of Interior.<sup>199</sup> The team is tasked with maintaining regular communication between the LGBTI community and the Police Directorate, monitoring the security of LGBTI persons and creating and advancing measures for improvement of their security.<sup>200</sup> ODIHR was informed that, through its activities, the *Trust Team* contributed to the prevention of abuse against LGBTI people as well as to the successful prosecution of individuals who committed acts of violence targeting them. Human rights defenders also reported about local *Trust Teams* working in some regions outside of Podgorica.<sup>201</sup>

113. As reported in four countries that participated in the first assessment cycle, the protection framework for witnesses and victims is particularly relevant to human rights defenders' work as well as their safety, security and well-being.
114. In **the Czech Republic**, according to the Act on Victims of Crime, safeguards for human rights defenders who become victims of crime include the provision of free social and legal counselling, the right to detailed information about their rights in criminal proceedings, the right to privacy and protection of personal data, protection against secondary or repeated victimization, including the right not to face the offender, and access to financial help.<sup>202</sup> Short-term police protection or special protection of witnesses are among the additional measures envisaged by the Act on Victims of Crime and the Police Act to ensure the safety of victims or witnesses.<sup>203</sup> ODIHR was informed of at least three cases where human rights defenders who received threats in relation to their activities received such special protection by the police.<sup>204</sup>
115. In **Georgia**, individuals recognized by the Prosecutor's Office as victims, in line with the Criminal Procedure Code, enjoy a series of rights, including the right to have unhindered access to information about the investigation process and criminal proceedings relating to their case.<sup>205</sup> According to the Code, in case victim status is not granted or is revoked by a prosecutor, individuals have the possibility to appeal such a decision to the superior prosecutor or a court. The Prosecutor's Office informed ODIHR that in 2018 and 2019 victim status was respectively granted to three and six human rights defenders for crimes committed against them. Participants in criminal proceedings, including witnesses and victims, may also request to benefit from other protection measures if their collaboration with the justice system jeopardizes their safety or endangers the life, health and/or property of their family members. Special measures include protection of personal data, change of identity documents and appearance, temporary or permanent modification of the place of residence, and relocation to another country.<sup>206</sup>

<sup>199</sup> The Trust Team is comprised of 13 members, including members of the LGBTI community, NGOs working on LGBTI rights, the Council for Civilian Control of Police Operations and the Ministry of Interior/Police Directorate. It was established as part of the Strategy for the Improvement of the Quality of Life of LGBT[+] Persons for 2013-2018, available at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=130140&rType=2&file=LGBT%20Strategija%20i%20AP.pdf>.

<sup>200</sup> Konstituisan tim poverjenja LGBT zajednice i Uprave Policije ["LGBT Community and Police Directorate Trust Team Established"], the Council for Civilian Control of Police Operations, 28 March 2016, available at: <http://www.kontrolapolicije.me/node/567>.

<sup>201</sup> The further operation of the Trust Team is envisaged in the new LGBTI Strategy for the period of 2019-2023, adopted by the Government of Montenegro in March 2019, available at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=353750&rType=2&file=Strategija%20za%20unapre%20kvaliteta%20LGBTI%20osoba%20u%20Crnoj%20Gori%202019-2023.pdf>.

<sup>202</sup> Act on Victims of Crime (2013), available at: <https://www.zakonyprolidi.cz/cs/2013-45>, Sections 7-12 (right to receive information about the rights to which victims of crimes are entitled in criminal proceedings); 15-16 (right to privacy); 17-22 (protection from secondary or repeat victimization); and 23 et seq (access to financial help).

<sup>203</sup> *Ibid.*, Section 14; and Police Act (2008), Section 50, available at: <https://www.zakonyprolidi.cz/cs/2008-273>.

<sup>204</sup> See, for example, Stopy slovenské vraždy v Česku: Políejní ochrana pro novinářku a Vandalova firma na Příkopě [Traces of a Slovak murder in Czechia: Police protection for a journalist and Vandal's business on Příkop street], Česká Televize, 28 February 2018, available at: <https://ct24.ceskatelevize.cz/domaci/2405245-stop-y-slovenske-vrazdy-v-cesku-policejni-ochrana-pro-novinarku-a-vadalova-firma-na>.

<sup>205</sup> According to the Criminal Procedure Code, the Prosecutor's Office can grant the victim status to a "person that has incurred moral, physical or material damage directly as a result of a crime". See Article 3 para. 22 and Article 56, Criminal Procedure Code of Georgia, available at: <https://matsne.gov.ge/en/document/view/90034?publication=106>.

<sup>206</sup> *Ibid.*, Article 68.



116. Furthermore, a special coordinator may be designated by the prosecutor to deliver psychological support to victims or witnesses, support them in the use of services made available for them such as shelters, medical or psychological assistance and legal aid, prevent their revictimization, and keep them informed about the investigation process and criminal proceedings.<sup>207</sup> In 2017, 9,913 individuals were assigned a coordinator, including 3,986 victims and 1,825 witnesses, while in 2018 the number of people benefiting from this mechanism amounted to 9,292, including 3,891 victims and 2,341 witnesses.<sup>208</sup> As of the end of 2019, 18 coordinators were employed in various regional and local units of the Prosecutor's Office.<sup>209</sup>
117. In **Italy**, special protection measures apply to individuals who collaborate with the justice system as well as their close relatives and those who live with them, and include physical protection by law enforcement, relocation of individuals to a safer place within the country, provision of temporary identity documents and protection of personal data.<sup>210</sup> Enhanced protection is granted to victims the judge identifies as particularly vulnerable; this protection includes victims' access to free legal aid, psychological support and other social services.<sup>211</sup> In this regard, defenders noted the need for the establishment of a national victim support service to ensure systematic monitoring and consistency in victims' assistance, including in the provision of compensation.<sup>212</sup> Furthermore, several interviewees raised concern about the protection system leaving vulnerable victims and their lawyers in civil cases without the level of protection that is granted in criminal cases, and encouraged the authorities to consider addressing this gap.
118. In **Mongolia**, special measures, including protection of personal data, provision of special communication equipment, temporary relocation to a safe space, resettlement, change of identity documents and appearance, are made available to witnesses and victims under the Law on the Protection of Witnesses and Victims.<sup>213</sup> However, the lack of regulation on funding allocation for these measures largely impedes their implementation.<sup>214</sup> The Criminal Procedure Code incorporates regulations only with regard to the implementation of four out of nine special measures listed in the Law, so the procedure for realization of the remaining five protection measures is unclear.<sup>215</sup> Pointing at existing legislative gaps, the majority of interviewed defenders raised concern that the current protection framework lacks efficiency and comprehensiveness.
119. Most interviewees in Mongolia also called for the re-establishment of the Marshall's Office, which had victim and witness protection among its core functions prior to its dissolution in July 2016 due to budget shortfalls.<sup>216</sup> According to human rights defenders, in the course of its operation between 2014 and 2016, the Marshall's Office

<sup>207</sup> *Ibid.*, Article 58.

Coordinators are public servants who are primarily involved in cases of hate crimes, domestic violence, sexual assault, trafficking in human beings, or in cases in which the victim or witness are persons with disabilities or minors, have suffered from serious physical and moral damage as a result of the crime. See for more information Office of the Coordinator of Witnesses and Victims, Prosecutor's office of Georgia, available at: <http://pog.gov.ge/en/interesting-info/coordinator-of-the-witness-and-victim>.

The Prosecutor's Office informed ODHR that in October 2020, they conducted a training course for coordinators focusing on the legal and psychological aspects of dealing with victims and witnesses of crimes committed on different grounds of intolerance.

<sup>208</sup> *Ibid.*, Office of the Coordinator of Witnesses and Victims.

<sup>209</sup> Coordinators, Prosecutor's Office of Georgia, available at: <http://pog.gov.ge/en/employee/list/witnessservice>.

<sup>210</sup> See, for example, Decree-Law 8, "New measures relating to kidnappings for the purpose of extortion and for the protection of those who collaborate with justice", Gazzetta Ufficiale, 15 January 1991; and Legislative Decree 119, "Discipline of the change of the generalities for the protection of those who collaborate with justice", Gazzetta Ufficiale, 29 March 1993.

<sup>211</sup> Legislative Decree 212, "Implementation of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, assistance and protection of victims of crime", 15 December 2015, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015-12-15:212>.

<sup>212</sup> Il sistema di protezione delle vittime: principi sovranazionali e normativa nazionale [The victim protection system: supranational principles and national legislation], Camera dei deputati Servizio Studi, 12 January 2016, available at: <https://www.ordineavvocativoterbo.it/public/ImmagineNews/270-Dossier%20vittime%20reato.pdf>. See also Italy: Developments on the implementation of victim assistance mechanisms, APAV - Portuguese Association for Victim Support, available at: [https://www.apav.pt/ivor/images/ivor/PDFs/Fact\\_sheet\\_italy.pdf](https://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_italy.pdf).

<sup>213</sup> The Law on the Protection of Witnesses and Victims of Mongolia, adopted in 2013 and into force as of January 2014, available at: <https://www.legalinfo.mn/law/details/9287>.

<sup>214</sup> Цагдаагийн Ахмад Ш.Шинэбаяр: Нэг Хэргийн Ард Хамгийн Багадаа Таван Гэрч, Хохирогч Байдаг [Interview with the senior specialist of the Victims' Protection Department Sh. Shinbayar], 12 June 2019, available at: <https://police.gov.mn/a/4472>.

<sup>215</sup> Article 13.1 of the Criminal Procedure Code of Mongolia, adopted on 18 May 2017, available at: <https://www.legalinfo.mn/law/details/12694>.

<sup>216</sup> Тахарын албаны тухай хууль хүчингүй болсонд тооцох тухай [The law on annulling the law on Marshall's Office], 1 July 2016, available at <https://www.legalinfo.mn/law/details/12112?lawid=12112ж>.



considerably contributed to safeguarding of judges and courts from pressure, harassment or other types of attempted influence, and enhanced the protection of victims and witnesses. In 2017, witness and victim protection functions were assigned to the designated department within the National Police Authority, which according to civil society interviewees weakened the overall protection framework, including in relation to victims and witnesses of crimes committed by police officers.<sup>217</sup> Noting that the transfer of functions was implemented with no additional resources or training provided to the police, the UN Special Rapporteur on the situation of human rights defenders reiterated civil society calls for the re-establishment and adequate financing of the Marshall's Office.<sup>218</sup>

120. The provision of free legal aid to financially disadvantaged individuals and members of vulnerable groups is another important measure contributing to the protection of human rights defenders in the OSCE participating States visited by ODIHR.
121. In **the Czech Republic**, provision of free or reduced-cost legal aid in court proceedings is regulated by relevant procedural codes,<sup>219</sup> according to which the court assesses in the relevant proceeding whether the applicant lacks available means to qualify for state sponsored legal aid. The Legal Profession Act, as amended in 2018, provides for the possibility to request free legal aid in court proceedings in case it is not provided on the basis of procedural codes and if the applicant proves that he or she cannot secure the provision of legal services otherwise.<sup>220</sup> The Public Defender of Rights raised concern that the procedural codes do not specify conditions under which a person qualifies for free legal aid, leading to sometimes fragmented practice and a lack of legal certainty and transparency.<sup>221</sup> Ineffective access to legal aid was also suggested to be among the reasons for underreporting of discrimination.<sup>222</sup> According to interviewed representatives of the Ministry of Justice and civil society, NGOs also provide a large part of free legal aid.<sup>223</sup>
122. In **Georgia**, the Legal Aid Service provides free legal assistance and other free legal services, including legal counselling, assistance with filling legal documents, and legal representation in courts and administrative bodies.<sup>224</sup> To ensure the provision of qualified legal aid throughout the country, 13 Legal Aid Bureaus and 25 consultation centres have been set up across Georgia. To access such assistance, requesters are required to apply to the relevant Legal Aid Bureau or consultation centre, explaining the need to be assigned a *pro bono* lawyer. In 2017, the Legal Aid Service delivered 29,310 legal consultations and examined 13,878 cases, 76.5 per cent of which involved criminal proceedings.<sup>225</sup>
123. In **Italy**, individuals with an annual income below 11,493 Euros are considered eligible for free legal assistance.<sup>226</sup> In criminal cases, legal aid is available to foreign citizens regardless of their immigration status, whereas residency

<sup>217</sup> Dismantling of the Takhar Service will weaken protection of witnesses, victims and security of court proceedings [Тахарын албыг татан буулгаснаар гэрч, хохирогч, шүүхийн аюулгүй байдал сулрах эрсдэлтэй], Trends.mn, 25 July 2016, available at: <https://www.trends.mn/n/5869>; An opinion against dissolution of the Takhar Office, OCH.mn, 12 May 2015, available at: <http://och.mn/?p=11528>.

<sup>218</sup> Visit to Mongolia of the UN Special Rapporteur on the situation of human rights defenders, 30 April – 13 May 2019, End of Mission Statement, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24603&LangID=E>.

<sup>219</sup> Section 138 of the Civil Procedure Code (1963), Section 63 of the Administrative Court Procedure Code (2004) and Sections 33 and 51a of the Code of Criminal Procedure (1961).

<sup>220</sup> Sections 18, 18a and 18c of the Legal Profession Act (1996) as amended since 1 July 2018.

<sup>221</sup> Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti [Discrimination in the Czech Republic: the victims of discrimination and their barriers in access to justice], Public Defender of Rights report, 2015, available at: [https://www.ochrance.cz/fileadmin/user\\_upload/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf).

<sup>222</sup> *Ibid.*

<sup>223</sup> Právní pomoc chudým stále pokulhává. Nově mají alespoň nárok na zastupování státem placeným právníkem ve sporech s úřady [The legal aid to the poor is still lacking. Now they at least they have the right to aid by a lawyer in proceedings before administrative bodies], IHNED.cz, 8 August 2018, available at: <https://archiv.ihned.cz/c1-66211350-pravni-pomoc-chudym-stale-pokulhava-nove-maji-alespon-narok-na-zastupovani-statem-placenym-pravnikem-napriklad-i-ve-sporech-s-urady>.

<sup>224</sup> The Legal Aid Service was established in 2007 following the adoption of the Law of Georgia on Legal Aid (2007), available at: <https://matsne.gov.ge/en/document/view/21604?publication=16>.

<sup>225</sup> Legal Aid Service – Statistics, available at: <http://www.legalaid.ge/en/p/100/statistics>.

<sup>226</sup> Legal aid in Italy, Nicola Canestrini, 18 March 2017, available at: <https://canestrinilex.com/en/readings/legal-aid-in-italy>. See also Presidential Decree no. 115, 30 May 2002, available at: <https://www.gazzettaufficiale.it/eli/id/2002/06/15/002G0139/sg>.

in the country is required in civil and administrative cases.<sup>227</sup> NGOs are also entitled to state-funded legal aid in civil and administrative cases.<sup>228</sup> Interviewed human rights defenders noted that state-funded legal aid to migrants and asylum seekers was reduced following the adoption of Decree-Laws 113/2018 and 53/2019,<sup>229</sup> and many attorneys providing legal assistance to these groups reportedly work on their cases without compensation. Some interviewees also noted that in rare cases, free legal aid granted to migrants or asylum seekers can be revoked by the Cassation Court at a later stage of the process.

124. In **Mongolia**, access to free legal aid for members of vulnerable groups and individuals who are financially disadvantaged is regulated by the Law on Legal Assistance to Defendants with no Financial Capability and the Law on Legal Status of Lawyers.<sup>230</sup> Institutional structures providing free of charge legal services are the Legal Aid Centre, established in 2006 under the Ministry of Justice and Home Affairs, with 31 branches operating in 21 provinces, eight districts of Ulaanbaatar and two sub-districts of Dornogobi and Selenge provinces,<sup>231</sup> as well as the Mongolian Bar Association. Under the latter, free legal assistance is also made available to individuals and groups that work on human rights protection.<sup>232</sup>
125. In **Montenegro**, free legal aid is provided to financially disadvantaged individuals by attorneys who are part of the Bar Association, or by the free legal aid service of the competent basic court having jurisdiction in the place of residence of the applicant. In case the financial standing of the person benefiting from this scheme changes, he or she is obliged to notify the service.<sup>233</sup>
126. The existing protection mechanisms available under the NHRIs of the Czech Republic, Georgia, Mongolia and Montenegro also play an important role in strengthening the protection of defenders in the respective countries.
127. The Public Defender of Rights of **the Czech Republic** has the competence to file an administrative action for interference with rights in the public interest<sup>234</sup> and to recommend to the Constitutional Court to abolish as unconstitutional a local decree or other regulation adopted by a state body.<sup>235</sup> The Public Defender also conducts individual inquiries, which can be initiated by anyone through an email, an online web-form, by phone or in person,<sup>236</sup> or on the Defender's initiative.<sup>237</sup> As a result of an investigation, the Defender may suggest the adoption

<sup>227</sup> Pro Bono Practices and Opportunities in Italy, Latham & Watkins LLP, available at: <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-italy.pdf>.

<sup>228</sup> *Ibid.*

<sup>229</sup> Decree-Law 113, "Urgent provisions regarding international protection and immigration, public security, as well as measures for the functionality of the Ministry of the Interior and the organization and functioning of the National Agency for the administration and destination of assets seized and confiscated from organized crime", 4 October 2018, available at: <https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg>; and Decree-Law 53, "Urgent provisions regarding public order and security", 14 June 2019, available at: <https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg>.

More information about Decree-Laws 113/2018 and 53/2019 is available at para 145 of the present report.

<sup>230</sup> Хуульчийн эрх зүйн байдлын тухай хууль [Law on Legal Status of Lawyer], 7 March 2012, available at <https://www.legalinfo.mn/law/details/8661>; Төлбөрийн чадваргүй яллагдагчид үзүүлэх хууль зүйн туслалцааны тухай [Law on Legal Assistance to Defendants with Financial Capability], 5 July 2013, available at: <https://www.legalinfo.mn/law/details/9289>.

<sup>231</sup> Танилцуулга (Хууль зүйн туслалцааны төв), [Introduction (Legal Aid Centre)], Official website of the Legal Aid Centre, 27 February 2019, available at <http://lac.gov.mn/150.html>; Иргэдэд зориулсан мэдээлэл [Information for the public], Official website of the Legal Aid Centre, available at <http://lac.gov.mn/backend/f/DFbIPVtkAE.pdf>.

According to its annual activity report, in 2018 the Legal Aid Centre provided free legal assistance to 3,003 people on 2,781 cases; 1,711 cases were resolved by court, 103 were resolved at pre-trial stage and the remaining cases were ongoing at the time of publication of the report in December 2018. See for more information Хууль зүйн туслалцааны төвийн ажлын албаны 2018 Оны жилийн эцсийн үйл ажиллагааны тайлан [Activity report of the Legal Aid Centre Secretariat of 2018], Official website of the Legal Aid Centre, 10 December 2018, available at <http://lac.gov.mn/backend/f/ns9dgFWASo.pdf>.

<sup>232</sup> Хуульчийн нийтэд тустай мэргэжлийн үйл ажиллагааны журам, [Regulation of professional activities of lawyers for public assistance], Official website of the Mongolian Bar Association, 14 December 2013, available at: <https://www.mglbar.mn/act/20>.

<sup>233</sup> Right to Free Legal Aid, Montenegro Basic Court, available at: [https://mpa.gov.me/ResourceManager/FileDownload.aspx?rid=150878&rType=2&file=Pravo\\_Eng.pdf](https://mpa.gov.me/ResourceManager/FileDownload.aspx?rid=150878&rType=2&file=Pravo_Eng.pdf).

<sup>234</sup> Code on Administrative Court Procedure (2002), Section 66(3), available at: <https://www.zakonyprolidi.cz/cs/2002-150>.

<sup>235</sup> Constitutional Court Act (1993), Section 64(2), available at: <https://www.zakonyprolidi.cz/cs/1993-182>.

<sup>236</sup> Jak stížnost podat a co musí obsahovat [How to file a complaint and what it must contain], Public Defender of Rights website, available at: <https://www.ochrance.cz/stiznosti-na-urady/jak-podat-stiznost/>.

<sup>237</sup> Act on Public Defender of Rights (1999), Section 9, available at: <https://www.ochrance.cz/en/law-on-the-public-defender-of-rights/>.

of remedial measures to the public authority concerned.<sup>238</sup> In selected cases, the Defender also helps victims to obtain free and qualified legal aid through co-operation with the NGO *Pro Bono Alliance*.<sup>239</sup>

128. Similar safeguards are made available to defenders in **Georgia**, where the Office of the Public Defender examines cases of abuses at its own initiative and, when appropriate, files reports to the relevant investigative authorities recommending the launch of an investigation. It also provides free legal advice, often as part of the review of individual complaints filed by people claiming violation of their human rights. Several civil society interviewees, as well as state actors at the national and local levels, informed ODIHR about their fruitful co-operation with the Public Defender, including on cases of human rights defenders at risk.
129. The National Human Rights Commission of **Mongolia** provides similar protection mechanisms, including through consideration of individual complaints, provision of free legal consultations and conducting inquiries at its own initiative based on information about human rights violations.<sup>240</sup> However, according to interviewed defenders, public awareness of existing mechanisms under the Commission remains low in rural areas, with the majority of complaints or requests for protection being submitted by residents of Ulaanbaatar.<sup>241</sup> Further strengthening of the capacity and presence of the National Human Rights Commission in the regions of Mongolia and raising public awareness about its mechanisms were among the recommendations of human rights defenders.
130. The Office of the Protector of Human Rights and Freedoms of **Montenegro** also informed ODIHR of its assistance to human rights defenders at risk, including through provision of legal assistance, filing of reports to law enforcement bodies about attacks and threats against activists, and regular follow-up on the status of consideration/investigation of those cases by the police or prosecutor's office.
131. In **Italy**, the process of setting up an NHRI has been ongoing for many years, but according to interviewed defenders and state officials, this process lacks leadership and a clear timeline or structure. Since 2014, a number of consultations and debates were reportedly held with civil society and within the Parliament on various drafts of the law to establish an NHRI, with the most recent discussion taking place in November 2019 in the Chamber of Deputies.<sup>242</sup> While the establishment of a national human rights body remains pending, a number of independent regional and national human rights bodies and mechanisms operate throughout the country. Mandates and coverage of human rights issues vary across these institutions. For example, the Office of the Regional Defender of Lombardy focuses on the protection of persons deprived of liberty, retired people and taxpayers and works on healthcare and housing rights as well as the right to access public information. Interviewed representatives of the Office informed ODIHR that while tackling administrative and procedural issues in these areas is the core of their work, they are regularly contacted by the public with requests to help in situations concerning a wide range of human rights.<sup>243</sup> At the national level, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, which functions as the National Preventive Mechanism (NPM), is a specialized institution mandated to protect people deprived of their liberty.

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<sup>238</sup> *Ibid.*, Section 19.

<sup>239</sup> Information about the co-operation is available on the website of Pro Bono Alliance at: <http://www.probonoalliance.cz/en/cooperation-with-public-defender/>.

<sup>240</sup> See the website of the National Human Rights Commission for more information: On complaint lodging procedure of the Commission, available at: <http://en.nhrm.gov.mn/news/complaint-lodging-procedure-of-the-commission/>; On procedure of resolving complaints, available at: <http://en.nhrm.gov.mn/news/complaint-handling-procedure/>; On examination and inquiries, available at: <http://en.nhrm.gov.mn/news/examination-and-inquires/>; On legal advice, available at: <http://en.nhrm.gov.mn/news/legal-advice/>.

<sup>241</sup> The National Human Rights Commission has one staff member in each of the 21 provinces of Mongolia. See for more information <http://en.nhrm.gov.mn/>.

<sup>242</sup> Report of the Working Group on the UPR, Italy, 27 December 2019, available at: <https://undocs.org/A/HRC/43/4>.

<sup>243</sup> Interviewed representatives of the Office of the Regional Defender of Lombardy also noted that an increase in funding and the expansion of their mandate could help them address some of the underlined challenges and exercise their autonomy more effectively. The fact that all decisions of Regional Defender of Lombardy are not binding, as well as the lack of public awareness about what the institution can and cannot do, also reportedly constitute a considerable limitation.

132. According to the National Guarantor, due to the absence of an NHRI in Italy, his Office receives numerous complaints and requests that fall outside of his direct mandate, underlying the need for the establishment of a national-level body with broader competencies covering all human rights and fundamental freedoms. The vast majority of interviewed civil society representatives made similar calls, as did the Regional Defender of Lombardy, who stressed that setting up an NHRI would not only ensure effective protection from and prevention of human rights violations, but also harmonize the work of all regional human rights bodies by building their capacity and offering guidance on issues of common concern.
133. Advanced measures are also being undertaken in a number of participating States to protect human rights defenders at risk from third countries.
134. For example, since 2015 the Government of **the Czech Republic** has been implementing the Human Rights and Transition Promotion Policy Concept, a strategy on supporting human rights defenders abroad.<sup>244</sup> In this framework, the country pledged to efficiently use both multilateral and bilateral diplomatic relations to support civil society development in third countries and to provide targeted support to human rights defenders at risk.<sup>245</sup> Furthermore, as a part of this policy, the Czech Republic established a Transition Promotion Programme (“TRANS” programme), allocating funding to projects of Czech NGOs aimed at sharing and transferring experience of human rights defenders in the Czech Republic to activists abroad, and providing micro-grants to grassroots NGOs in third countries.<sup>246</sup> Most supported activities take place in Armenia, Belarus, Bosnia and Herzegovina, Georgia, Cuba, Kosovo\*,<sup>247</sup> Moldova, Myanmar, Serbia and Ukraine. The “TRANS” programme is financed through grants from the budget of the Ministry of Foreign Affairs, which supported 69 projects in 2017, 79 projects in 2018, and 100 projects in 2019.<sup>248</sup>
135. In **Georgia**, interviewees highlighted as a positive practice the Shelter City initiative,<sup>249</sup> offering temporary protection in the country to human rights defenders facing heightened risk abroad. As part of this initiative, which is run by civil society organizations *Truth Hounds and Center for Participation and Development*, the cities of Tbilisi and Batumi, which joined the network in 2016 and 2019 respectively, host foreign at-risk defenders mostly coming from Central Asia, the South Caucasus, Russia, Belarus and Ukraine.<sup>250</sup> In some cases, protection and relocation are also offered to defenders’ immediate or dependent family members. In Tbilisi, since the launch of the Shelter City initiative, over 80 human rights defenders were offered safe accommodation, psychological and medical support, and benefited from a wide range of activities, including capacity building courses.<sup>251</sup> In Batumi, the initiative was launched with the signing of a Memorandum of Understanding between the Human

<sup>244</sup> Human Rights and Transition Policy Concept, September 2015, available at: [https://www.mzv.cz/file/583273/Human\\_rights\\_and\\_transition\\_promotion\\_policy\\_concept\\_of\\_the\\_Czech\\_Republic\\_.pdf](https://www.mzv.cz/file/583273/Human_rights_and_transition_promotion_policy_concept_of_the_Czech_Republic_.pdf).

The Policy Concept remains in force since 2015 for an indefinite period and is aligned with the state’s Foreign Policy Concept, available at: [https://www.mzv.cz/file/1565920/Koncepcie\\_zahranicni\\_politiky\\_CR.pdf](https://www.mzv.cz/file/1565920/Koncepcie_zahranicni_politiky_CR.pdf).

<sup>245</sup> *Ibid.* Measures undertaken in the framework of the implementation of both Policy Concepts include, for example, pro-active implementation of the EU Guidelines on Human Rights Defenders, monitoring of trials of human rights defenders or raising the cases of persecuted defenders, including journalists, during talks with respective governments. The embassies of the Czech Republic also support local defenders’ project work aimed at promotion of human rights and democratization.

<sup>246</sup> Under the “TRANS” programme, the Czech Republic funds projects to support civil society development; promote freedom of expression and of the media; promote equal political and public participation; support democratic institution-building; promote equality and non-discrimination; and promote human rights in employment and in the environmental context.

<sup>247</sup> \*There is no consensus among OSCE participating States on the status of Kosovo and, as such, the Organization does not have a position on this issue. All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

<sup>248</sup> In 2017, 61 million CZK were allocated to this programme; in 2018 and 2019, the amount of allocated funds grew to 71 million CZK and 78 million CZK, respectively. See Ministry of Foreign Affairs TRANS programme grant call for 2017, available at: <http://www.czechaid.cz/ministerstvo-zahranicnich-veci-cr-vyhlasuje-dotacniho-rizeni-programu-transformacni-spoluprace-na-rok-2017/>; Ministry of Foreign Affairs TRANS programme grant call for 2018, available at: <http://www.czechaid.cz/ministerstvo-zahranicnich-veci-vyhlasuje-vyberove-dotacni-rizeni-na-podporu-projektu-transformacni-spoluprace-2018/>; and Ministry of Foreign Affairs TRANS programme grant call for 2019, available at: [https://www.mzv.cz/jnp/cz/zahranicni\\_vztahy/lidska\\_prava/aktualne/vyhlaseni\\_vyberoveho\\_dotacniho\\_rizeni\\_1.html](https://www.mzv.cz/jnp/cz/zahranicni_vztahy/lidska_prava/aktualne/vyhlaseni_vyberoveho_dotacniho_rizeni_1.html).

<sup>249</sup> The Shelter City network is a worldwide initiative to protect human rights defenders at risk and support them to reclaim their civic space. See, for more information, the Official website of the Shelter City initiative, available at: <https://sheltercity.nl/en/>.

<sup>250</sup> Shelter City in Georgia, Sheltercity.nl, available at: <https://sheltercity.nl/en/tbilisi-and-batumi-georgia/>.

<sup>251</sup> Shelter City Network in the Spotlight – Georgia, Sheltercity.nl, 1 April 2020, available at: <https://sheltercity.nl/en/shelter-city-network-in-the-spotlight-georgia/>.

Rights Committee of the Supreme Council of the Autonomous Republic of Adjara and civil society organizations, in which these stakeholders pledged to host up to six foreign defenders-at-risk per year.<sup>252</sup>

136. ODIHR was informed that transgender defenders as well as activists and journalists from Azerbaijan are not relocated to Georgia under the Shelter City initiative, as the country is not deemed safe for them.<sup>253</sup> Nevertheless, human rights defenders facing threats and other forms of pressure in Azerbaijan and sheltering in Georgia can benefit from a special protection program implemented since 2014 by *Human Rights House Tbilisi*.<sup>254</sup>
137. A number of municipalities across **Italy**, including Asiago, Cadoneghe, Montegrotto Terme, Noventa Padovana, Padua, Ponte San Nicolò, Rubano, Torino and Trento, also joined the Shelter City initiative in recent years and host foreign at-risk defenders on their territories, or are in the process of setting up this protection mechanism. The Ministry of Foreign Affairs and International Cooperation plays a key role in this process through the facilitation of visa procedures for temporary relocation. Rehabilitation and protection measures offered by municipalities commonly include accommodation, psycho-social support, capacity building and opportunities for at-risk defenders to engage with civil society organizations, academic and research institutions as well as local communities.<sup>255</sup> The Shelter City initiative in Trento was highlighted by interviewees as the most advanced, specifically focusing on the protection of women human rights defenders and serving as a model for other municipalities.
138. Furthermore, protection of human rights defenders remains among the priorities of Italy's foreign policy in the area of human rights. On 31 January 2017, the Foreign Affairs Committee of the Italian Chamber of Deputies adopted a Resolution on the protection of human rights defenders abroad.<sup>256</sup> It provides for strengthened engagement of Italy in promoting coordination with NGOs and religious bodies towards creating protection networks in activists' countries of origin, and adopting measures allowing for prompt issuance of visas for temporary relocation to Italy for human rights defenders at risk.

## CONCLUDING OBSERVATIONS

- ODIHR positively notes the policies, programmes and mechanisms put in place by the authorities of the participating States visited in the first assessment cycle contributing to strengthening protection of human rights defenders in those countries and abroad.
- Emphasizing that a stand-alone law on human rights defenders can strengthen the overall legal framework regulating civil society space, enhance the protection of defenders and send an important message about their crucial role in society, ODIHR welcomes the development of such a draft law through a consultation process in Mongolia and encourages its adoption.

<sup>252</sup> Batumi becomes the 16th city to join the Shelter City initiative for human rights defenders, Sheltercity.nl, 2 September 2019, available at: <https://sheltercity.nl/en/batumi-becomes-the-16th-city-to-join-the-shelter-city-initiative-for-human-rights-defenders/>.

<sup>253</sup> Post-Soviet activists find respite in Georgia, eurasianet.org, 4 March 2019, available at: <https://eurasianet.org/post-soviet-activists-find-respite-in-georgia>.

<sup>254</sup> Between September 2014 and December 2017, 126 individuals, including human rights defenders and members of their families, benefited from this program. In 2017, 20 families, including 38 individuals (16 men, 13 women and nine children), received assistance from Human Rights House Tbilisi. See, for more information, Protection Program Report - Support provided to exiled human rights defenders from Azerbaijan in Georgia, Human Rights House Tbilisi, 2018, available at: <https://hrht.ge/wp-content/uploads/2019/01/Protection-Program-Report-ENG.pdf>.

<sup>255</sup> For example, the municipality of Padua in co-operation with the University of Padua developed a programme allowing defenders to deliver lectures or otherwise engage at the University of Padua, for up to six months.

<sup>256</sup> Resolution no. 7-01051 "About the protection of human rights defenders", 31 January 2017, available at: <https://aic.camera.it/aic/scheda.html?numero=7-01051&ramo=C&leg=17>.

- Physical protection by police of at-risk human rights defenders, including journalists, is another positive step towards addressing challenges faced by vulnerable groups of defenders as a result of their work. In this regard, ODIHR positively notes measures adopted by the authorities of Montenegro to protect at-risk journalists and LGBTI activists and the system of physical protection by police in Italy, while encouraging the Italian authorities to address shortfalls in the system, including by integrating measures leading to long-term solutions for individuals who remain under the protection scheme for many years.
- As reported in Montenegro, improved co-operation of defenders with the police, including in preventing and responding to abuses targeting activists, can contribute to further strengthening the protection of human rights defenders who are most exposed to safety and security risks.
- The existing protection framework for witnesses and victims is noted as another good practice contributing to ensuring the safety, security and well-being of human rights defenders in the participating States visited the first assessment cycle, while ODIHR sees some areas that could be further improved. For example, in Italy, additional steps should be taken to ensure systematic monitoring and consistency in victims' assistance across the country. In Mongolia, ODIHR's findings point to a need to address existing legislative gaps, set up effective implementation mechanisms and ensure their adequate financing; to this end, ODIHR encourages the authorities of Mongolia to consider reestablishing the Marshall's Office.
- Free legal aid systems are important mechanisms contributing to the protection of activists and ODIHR encourages participating States to ensure that procedures to access such services are easy and quick.
- ODIHR welcomes existing protection mechanisms under the NHRIs of the Czech Republic, Georgia, Mongolia and Montenegro, including consideration of individual complaints and provision of free legal consultations. Further strengthening the presence and capacity of NHRIs outside the capital, as recommended in Mongolia, could help ensure full and equal accessibility of existing mechanisms by people in need of protection, including human rights defenders.
- ODIHR encourages the authorities of Italy to set up an NHRI and stresses the importance of inclusive, transparent and meaningful civil society consultations in the process of developing/reviewing a draft law on the establishment of an NHRI. Continued efforts to consolidate the mandate of the Public Defender of Rights in the Czech Republic to enable it to act as an NHRI in full conformity with the Paris Principles are also encouraged in this regard.
- ODIHR welcomes the commitment of national and local authorities in the Czech Republic, Georgia and Italy to assist at-risk human rights defenders from third countries, including in the framework of Shelter City and similar initiatives.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Develop and adopt, in consultation with civil society, protection policies, programmes and mechanisms ensuring the safety and security of human rights defenders as well as members of their families; ensure that adequate funds are allocated to such programmes and mechanisms.
- Undertake protection measures reflective of and able to respond to the specific protection requirements of particularly vulnerable categories of defenders, in accordance with the needs identified by affected individuals and groups.



- Consider establishing a system of temporary physical protection by police for at-risk human rights defenders, including journalists, facing danger as a result of their work. Ensure that such programmes and mechanisms have a preventative function and ensure an appropriate respect of defenders' rights to privacy and freedom of movement.
- Ensure consistency, throughout the country, in the quality and level of assistance made available to victims and other individuals who collaborate with the justice system; to this end, consider establishing a national victim support service to ensure systematic monitoring and consistency in provided assistance, including in the provision of compensation to victims.
- Apply, in a non-discriminatory manner, consistent criteria in the granting of victim status in an alleged criminal offense and, in case such a status is denied, inform relevant individuals of the reasons and ensure effective application of available remedies to challenge such a decision.
- Assess the effectiveness of the system of state funded legal aid and, where relevant, consider enhancing it, including by ensuring consistency and transparency in the practice of granting legal aid and increasing the scope of application of free legal aid provided to victims of discrimination.
- Strengthen the role of independent NHRIs and their mandates in accordance with the Paris Principles, and grant them the competence to receive individual complaints, if not yet in place. Ensure consistent and adequate funding of NHRIs.
- Build on positive practices in protecting human rights defenders at risk from third countries, including through programmes such as the Shelter City initiative.
- Implement training and awareness raising programmes for relevant state bodies, as well as broader human rights education, focusing on international standards on the protection of human rights defenders and their positive role in society.

## 1.2 PROTECTION FROM ADMINISTRATIVE OR JUDICIAL HARASSMENT, CRIMINALIZATION, RETALIATION AND ARBITRARY APPLICATION OF LEGISLATION

### **Overview of relevant standards and commitments**

139. In line with Article 12.3 of the UN Declaration on Human Rights Defenders, states shall ensure protection of human rights defenders against “retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action” as a result of their legitimate exercise of the rights referred to in the Declaration. The UN Human Rights Council has also called upon states to ensure that the promotion and protection of human rights are not criminalized, and human rights defenders are not prevented from enjoying universal human rights as a result of their work nor subjected to the “abuse of criminal and civil proceedings or threats of such acts”.<sup>257</sup>
140. In their commitments, OSCE participating States have further affirmed that “all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual”.<sup>258</sup> With specific reference to

<sup>257</sup> UN Human Rights Council, Resolution on protection of human rights defenders, A/HRC/RES/22/6, paras. 6 and 11(a), available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/22/6](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/6).

<sup>258</sup> *Op. cit.* note 5, para. 18.



journalists, participating States have condemned “all attacks on and harassment of journalists” and committed “to hold those directly responsible for such attacks and harassment accountable”.<sup>259</sup>

141. In the *Guidelines*, ODIHR recalled that human rights defenders must not be subjected to judicial harassment or other forms of misuse of administrative and judicial authority, criminalization, as well as other sanctions as a result of their human rights work. An essential part of this obligation is also ensuring that human rights defenders have access to effective remedies to challenge the lawfulness of sanctions imposed on them and that effective oversight mechanisms are put in place to investigate possible misconduct by law enforcement or other state bodies/officials.
142. Furthermore, the *Guidelines* call on States to amend or repeal any legal provisions directly or indirectly leading to the criminalization of activities that are protected by international standards, as well as legislation containing vague and ambiguous definitions, which might be broadly interpreted and could be abused to prosecute human rights defenders for their work. Of equal importance is ensuring that laws, administrative procedures and regulations are not used to intimidate, harass or retaliate against human rights defenders. In the *Guidelines*, participating States are also encouraged to take steps to reinforce the independence of judicial and prosecution authorities and ensure the proper functioning of law enforcement bodies.<sup>260</sup>

### ***Reported cases of administrative or judicial harassment, criminalization, retaliation and abusive application of legislation in selected OSCE participating States***

143. Issues related to the protection of human rights defenders from administrative and judicial harassment, criminalization and other forms of pressure as a consequence of their human rights work were brought to ODIHR’s attention in the Czech Republic, Italy, Mongolia and Montenegro. In particular, a number of defenders faced pressure or harassment for expressing critical views of the authorities or the human rights situation in their countries.
144. For example, in **the Czech Republic**, a human rights defender who reported about abuse in closed wards of a psychiatric institution by publishing stories of victims, was reportedly threatened with a lawsuit by the hospital.<sup>261</sup> Furthermore, the Public Defender of Rights faced a criminal complaint alleging abuse of her powers as a result of her investigation into the case of a Muslim high-school student who was prohibited to wear her headscarf at school, an episode that the Defender assessed as discriminatory. The criminal complaint was later dismissed.<sup>262</sup> The Defender also faced a civil lawsuit after publishing a report on human rights violations in a social care institution.<sup>263</sup>
145. In **Italy**, the adoption of Decree-Laws 113/2018 and 53/2019,<sup>264</sup> also referred to as the ‘Security Decrees’, exposed to criminalization human rights defenders engaged in the protection of migrants, including those involved in search and rescue activities at sea.<sup>265</sup> Civil society interviewees further cited concerns over intrusive provisions of

<sup>259</sup> *Ibid.*, para. 37.

<sup>260</sup> *Op. cit.* note 9, paras 23-27.

<sup>261</sup> See, for example, (Ne)veřejné tabu. S Michalem Štinglem o traumatizující péči v pavilonu 27 [(Non)-public taboos. With Michael Štingl about traumatizing psychiatric care in ward 27], A2Alarm, 11 May 2019, available at: <https://a2alarm.cz/2019/05/neverejne-tabu-s-michalem-stinglem-o-traumatizujici-peci-v-pavilonu-27/>.

<sup>262</sup> Ochránkyně práv nepostupovala nestranně, tvrdí policie. Čeká za to Šabatovou trest? [The Public Defender of Rights did not act impartially, says the police. Will Šabatová be punished?], *Náš Region*, 5 October 2018, available at: <https://nasregion.cz/vsechny-regiony/ochrankyne-prav-nepostupovala-nestranne-tvrdi-policie-ceka-za-to-sabatovou-trest/>.

<sup>263</sup> See *Další lazaret hrůzy. Klientům říkali d\*menti a utírali jim obličej hadrem na podlahu!* [Another horrific institution. They referred to the clients as “demented” and wiped their faces with cloth for cleaning floors], *Blesk.cz*, 25 February 2015, available at: <https://www.blesk.cz/clanek/zpravy-udalosti/304576/dalsi-lazaret-hruzy-klientum-rikali-d-menti-a-utirali-jim-oblicej-hadrem-na-podlahu.html>.

<sup>264</sup> *Op. cit.* note 229.

<sup>265</sup> According to Decree-Law 53/2019, the entry or transit of ships into the territorial sea can be limited or prohibited for reasons of order and safety or for violation of immigration regulations; in case the ban on entry, transit or stop in Italian territorial waters is violated, administrative sanctions ranging from 150,000 to 1 million Euros can be imposed on the ship’s captain and the ship can be confiscated.

On 9 July 2020, the Constitutional Court declared Article 13 of Decree Law 113/2018 ‘unconstitutional’. For more information See Constitutional Court ruling no. 186, 9 July 2020, available at: [https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param\\_ecli=ECLI:IT:COST:2020:186](https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2020:186).

the Code of Conduct for NGOs working in the Mediterranean Sea, reportedly developed without meaningful and inclusive consultations with civil society and issued by the Ministry of Interior in August 2017.<sup>266</sup> The UN Special Procedures,<sup>267</sup> the UNHCR<sup>268</sup> as well as civil society organizations raised concern over these developments, which according to them constituted an “unprecedented act of criminalization of solidarity”.<sup>269</sup>

146. Criminalization of humanitarian action at sea and of solidarity resulted in a number of activists working on migrants’ rights facing arrests and criminal proceedings. For example, in June 2019, Carola Rackete<sup>270</sup> was placed under house arrest after docking a migrant rescue ship in the port of Lampedusa without the authorities’ permission. The activist was released several days later upon the decision of the preliminary investigations judge of Agrigento, who dismissed the charges and ruled that Rackete acted in compliance with her duty to save the lives of the people on the boat.<sup>271</sup> Charges relating to aiding and abetting irregular migration were filed against a number of NGOs conducting search and rescue operations at sea, including *Mediterranea Saving Humans*,<sup>272</sup> *Medici senza Frontiere*,<sup>273</sup> *Proactiva Open Arms*<sup>274</sup> and *Jugend Rettet*,<sup>275</sup> and members of their crews. In some cases, this resulted in the seizure or freezing of their assets and/or administrative sanctions against the organizations, which reportedly prevented many of them from operating effectively or at all. Other defenders of migrants’ rights who faced criminal proceedings in the reporting period as a result of their work include Don Mussie Zerai, the founder of the civil society organization *Habeshia*,<sup>276</sup> and Domenico Lucano, the former mayor of Riace.<sup>277</sup>

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On 5 October 2020, the Government of Italy approved amendments to Decree-Laws 113/2018 and 53/2019, including with regards to reinstating humanitarian protection for asylum seekers and reducing fines for NGOs rescuing migrants at sea. See for example I decreti sicurezza sono stati cambiati [The Security Decrees have been amended], Il Post, 6 October 2020, available at: <https://www.ilpost.it/2020/10/06/decreti-sicurezza-cambiati/>.

<sup>266</sup> The Code of Conduct for NGOs undertaking activities in migrants’ rescue operations at sea, issued by the Ministry of Interior on 7 August 2017, available at: <https://www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf>.

“Migranti, codice ONG: MSF non firma. Minniti: “Chi non sottoscrive regolamento è fuori” [Migrants, NGO Code of Conduct: MSF does not sign. Minniti: “Those who do not subscribe to the regulations are out”], La Repubblica, 31 July 2017, available at: [https://www.repubblica.it/cronaca/2017/07/31/news/migranti\\_msf\\_non\\_firma\\_codice\\_ong-172058967/](https://www.repubblica.it/cronaca/2017/07/31/news/migranti_msf_non_firma_codice_ong-172058967/).

<sup>267</sup> Legal changes and climate of hatred threaten migrants’ rights in Italy, say UN experts, OHCHR, 21 November 2018, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E>. See also Italy: UN experts condemn bill to fine migrant rescuers, OHCHR, 20 May 2019, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E>.

<sup>268</sup> UNHCR concerned at new measures impacting rescue at sea in the Central Mediterranean, Briefing Note, UNHCR, 6 August 2019, available at: <https://www.unhcr.org/news/briefing/2019/8/5d49370e4/unhcr-concerned-new-measures-impacting-rescue-sea-central-mediterranean.html>.

<sup>269</sup> See, for example, Italy is now formally criminalizing solidarity, Solidar, 6 August 2019, available at: <https://www.solidar.org/en/news/italy-is-now-formally-criminalizing-solidarity>.

<sup>270</sup> See, for more information on the case, para 56 of the present report.

<sup>271</sup> Sea-Watch, Carola Rackete è libera: “Commosa”. Gip annulla l’arresto: “Agi per portare in salvo i migranti”. L’ira di Salvini” [Sea-Watch, Carola Rackete is free: “Moved”. The judge calls off the arrest: “She acted to rescue migrants”. Salvini’s anger], La Repubblica, 2 July 2019, available at: [https://www.repubblica.it/cronaca/2019/07/02/news/inchiesta\\_carola\\_sea\\_watch\\_agrigento-230128225/](https://www.repubblica.it/cronaca/2019/07/02/news/inchiesta_carola_sea_watch_agrigento-230128225/).

In January 2020, the Court of Cassation confirmed the sentence. See “Carola Raketete agi correttamente”: le motivazioni della Cassazione sul caso Sea Watch [“Carola Raketete acted correctly”: the reasons of the Court of Cassation on the Sea Watch case], La Repubblica, 20 February 2020, available at: [https://www.repubblica.it/cronaca/2020/02/20/news/sea\\_watch\\_la\\_cassazione\\_su\\_carola\\_agi\\_correttamente\\_seguedo\\_le\\_regole\\_di\\_soccorso\\_in\\_mare\\_-249076754/](https://www.repubblica.it/cronaca/2020/02/20/news/sea_watch_la_cassazione_su_carola_agi_correttamente_seguedo_le_regole_di_soccorso_in_mare_-249076754/).

<sup>272</sup> Sequestro e 300mila euro di multa per la Mare Jonio [Seizure and a fine of 300 thousand Euros to Mare Jonio], Open, 3 September 2019, available at: <https://www.openonline.it/2019/09/03/mare-jonio-eleonore-cassiopea-e-le-altre-oltre-200-migranti-sbarcano-sulle-coste-siciliane-in-un-giorno/>.

<sup>273</sup> Aquarius: “Non ci fu alcun traffico illecito di rifiuti”. MSF: “Accuse sproporzionate per fermarci a tutti i costi” [Aquarius: “There was no illegal waste trafficking”. MSF: “Disproportionate accusations to stop us at all costs”], La Repubblica, 8 February 2019, available at: [https://www.repubblica.it/cronaca/2019/02/08/news/aquarius\\_non\\_ci\\_fu\\_alcun\\_traffico\\_illecito\\_di\\_rifiuti\\_-218662899/](https://www.repubblica.it/cronaca/2019/02/08/news/aquarius_non_ci_fu_alcun_traffico_illecito_di_rifiuti_-218662899/).

<sup>274</sup> Open Arms, saranno archiviate le accuse di associazione a delinquere per l’immigrazione clandestina [Open Arms, the charges of criminal association aimed at aiding illegal immigration will be dropped], La Stampa, 15 May 2019, available at: <https://www.lastampa.it/cronaca/2019/05/15/news/open-arms-saranno-archivate-le-accuse-di-associazione-a-delinquere-per-l-immigrazione-clandestina-1.33702103>.

<sup>275</sup> Migranti, la Cassazione conferma il sequestro: la nave luventa resta bloccata a Trapani [Migrants, the Court of Cassation confirms the seizure: the ship luventa remains stuck in Trapani], La Repubblica, 24 April 2018, available at: [https://palermo.repubblica.it/cronaca/2018/04/24/news/trapani\\_la\\_cassazione\\_conferma\\_il\\_sequestro\\_della\\_luventa-194679568/](https://palermo.repubblica.it/cronaca/2018/04/24/news/trapani_la_cassazione_conferma_il_sequestro_della_luventa-194679568/).

<sup>276</sup> See, for example, ONG, don Mussie Zerai sotto inchiesta: prete candidato al Nobel accusato di favoreggiamento immigrazione [NGOs, Don Mussie Zerai under investigation: Priest candidate for the Nobel Prize accused of aiding and abetting immigration], La Repubblica, 9 August 2017, available at: [https://palermo.repubblica.it/cronaca/2017/08/09/news/indagine\\_sulle\\_ong\\_avviso\\_di\\_garanzia\\_per\\_don\\_mussie\\_zerai-172705483/](https://palermo.repubblica.it/cronaca/2017/08/09/news/indagine_sulle_ong_avviso_di_garanzia_per_don_mussie_zerai-172705483/).

<sup>277</sup> See, for example, Chi è Mimmo Lucano e perché è stato arrestato [Who is Mimmo Lucano and why he was arrested], Internazionale, 2 October 2018, available at: <https://www.internazionale.it/bloc-notes/annalisa-camilili/2018/10/02/domenico-lucano-arresto>. See also Domenico Lucano: Italy’s migrant-friendly mayor banned from Riace, BBC News, 17 October 2018, available at: <https://www.bbc.com/news/world-europe-45887193>.

147. In **Mongolia**, environmental activists, including those working at the local/community level, are particularly vulnerable to administrative harassment and other forms of retaliation. For example, several human rights defenders from outside of Ulaanbaatar shared accounts of being questioned by police about their activities and motives following their participation in protests against mining companies, and being warned about possible criminal or administrative liability in case of continued activities “disruptive to legitimate operations of businesses”. In another instance, an environmental activist from Umnugobi province informed ODIHR of a claim she filed to the Ulaanbaatar Administrative Court in August 2017 alleging irregularities in the issuance of mining licences by Mongolia’s Mineral Resources and Petroleum Authority to a company operating in Umnugobi. Court proceedings, which the defender described as lengthy, onerous and intimidating, required her to travel to Ulaanbaatar (over 900 kilometres one way from her hometown) to attend court hearings nearly 30 times between August 2017 and January 2019.<sup>278</sup> In most cases, the court hearings were reportedly postponed on short notice. The human rights defender experienced physical and mental pressure as well as financial costs as a result of lengthy and frequent travels caused by repeated interruptions of court proceedings.
148. Ger community activists in Mongolia also reported to ODIHR accounts of administrative harassment and acts of retaliation. According to them, private companies regularly file cases to the Administrative Court alleging disturbance of public order by ger defenders or their interference with legitimate operations of companies. Businesses reportedly use threats of filing such claims to put pressure on activists and discourage them from raising sensitive issues. Furthermore, ODIHR received information about cases of administrative non-response in relation to requests and complaints submitted by ger activists to state bodies at the national and local levels.<sup>279</sup> According to interviewed activists, in some cases state institutions allegedly referred the defenders to former public officials who had been involved in decision-making processes in the past affecting the current situation of ger communities.<sup>280</sup>
149. In **Montenegro**, investigative journalist Jovo Martinović was arrested in October 2015 on suspicion of creating a criminal organization and of unauthorized production, possession and traffic of narcotics and remained in custody until January 2017, when he was released on bail. In January 2019, the Higher Court in Podgorica found him guilty and sentenced him to 18 months in prison.<sup>281</sup> As of March 2019, Jovo Martinović was free pending appeal.<sup>282</sup> Jovo Martinović alleged that evidence in his defence was not given due consideration and that his contacts with other suspects in the case were linked to his investigative journalistic work.<sup>283</sup> On 16 January 2019, in a letter to the Minister of Foreign Affairs of Montenegro, the OSCE Representative on Freedom of the Media expressed concern about the sentencing of the journalist.<sup>284</sup>
150. A number of civil society organizations raised concern over the decision of the Parliament of Montenegro of 5 July 2018 to remove Vanja Čalović Marković, Executive Director of the anti-corruption NGO *MANS*, from the Council of the Agency for Prevention of Corruption (APC).<sup>285</sup> The parliamentary vote followed the APC decision issued

<sup>278</sup> See, for more information on the case, Шийдвэр №508 [Decision No.508], Official website for court decisions, 22 August 2018, available at [http://new.shuukh.mn/zahirgaanhan/5292/view\\_and](http://new.shuukh.mn/zahirgaanhan/5292/view_and) Захиргааны хэргийн давж заалдах шатны шүүх хуралдааны магадлал №221/МА2019/0040 [Court decision of Administrative Court of Appeal No. 221/МА2019/0040], Official website of court decisions, available at <http://new.shuukh.mn/zahirgaadavah/2630/view>.

<sup>279</sup> The 17th status report on human rights and freedoms in Mongolia, National Human Rights Commission of Mongolia, 2018, available at: <http://en.nhrmc.gov.mn/doc/81/>.

<sup>280</sup> *Ibid.*

<sup>281</sup> Jovo Martinović osuđen na 18 mjeseci zatvora, evropske organizacije traže oslobađajuću presudu [Jovo Martinović Sentenced to 18 Months of Prison, European Organizations Demand Acquittal], SafeJournalists.net, 15 January 2019, available at: <http://safejournalists.net/me/jovo-martinovic-osuden-na-18-mjeseci-zatvora-evropske-organizacije-traze-oslobadaju-cu-presudu/>.

<sup>282</sup> Montenegro: EFJ demands the immediate acquittal of Jovo Martinovic, European Federation of Journalists, 15 January 2019, available at: <https://europeanjournalists.org/blog/2019/01/15/montenegro-efj-demands-the-immediate-acquittal-of-jovo-martinovic/>. See also Montenegro criticised over jail sentence for investigative journalist, The Guardian, 16 January 2019, available at: <https://www.theguardian.com/world/2019/jan/16/montenegro-criticised-jail-sentence-investigative-journalist-jovo-martinovic>.

<sup>283</sup> Montenegro Jails Crime Reporter for Drug Trafficking, Balkan Insight, 15 January 2019, available at: <https://balkaninsight.com/2019/01/15/montenegro-jails-crime-reporter-for-drug-trafficking-01-15-2019/>.

<sup>284</sup> In a letter to the Foreign Minister of Montenegro, the OSCE Representative expressed concern about the prison sentence decision against journalist Jovo Martinović, OSCE, 16 January 2019, available at: <https://www.osce.org/representative-on-freedom-of-media/409208>.

<sup>285</sup> Čalović Marković razriješana iz Savjeta ASK-a [Čalović Marković Removed from the APC Council], Poral Analitika, 5 July 2018, available at: <https://portalanalitika.me/clanak/306335/calovic-markovic-razrijesena-iz-savjeta-ask-a>.

in May 2018 that concluded that Čalović had a conflict of interest over a project that *MANS* implemented, as it reportedly gave her a personal interest in complaints that the NGO would submit to the APC.<sup>286</sup> On 17 July 2018, the Administrative Court repealed the APC's decision and requested it to adopt a new one.<sup>287</sup> On 30 August 2018, the APC reviewed the case, again finding that Čalović was in violation of the Law on Prevention of Corruption.<sup>288</sup>

## CONCLUDING OBSERVATIONS

- ODIHR's findings point to cases of direct and indirect pressure exerted on human rights defenders as a consequence of their human rights work. Taking various forms, including adopting and applying laws and policies exposing them to criminalization, such pressure leads to stifling critical voices and impedes the free and safe operation of civil society. Noting specific cases reported in the Czech Republic, Italy, Mongolia and Montenegro, ODIHR encourages robust efforts to ensure that defenders are not targeted with judicial, administrative or other types of pressure as a result of their human rights work.
- Spurious lawsuits, ungrounded civil claims or threats of lawsuits as well as misuse of administrative procedures amounting to harassment, cases of which were brought to the attention of ODIHR in the Czech Republic, Italy, Mongolia and Montenegro, further discourage defenders from engaging in or continuing human rights and journalistic work. Lawsuits and other types of pressure are equally problematic when coming from business actors, as was reportedly the case in Mongolia.
- Criminalization of humanitarian and human rights work has an adverse impact on affected activists and organizations, which have to defend themselves in legal proceedings, and contributes to a negative public perception of civil society. In this regard, ODIHR encourages the authorities to repeal relevant legal provisions criminalizing human rights and humanitarian work.
- ODIHR underlines that legal, policy and other measures should seek to facilitate human rights defenders' work, as opposed to being used to intimidate or retaliate against defenders or leading to such an effect.
- Of equal importance in this regard is ensuring inclusive and meaningful civil society participation in the development of policies or Guidelines affecting human rights work and maintaining regular dialogue between the state and civil society to assess their implementation.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Ensure that legal, policy or other measures do not directly or indirectly lead to criminalization of human rights defenders and their legitimate human rights work. Where relevant, amend or repeal such provisions.

Grupa NVO: Skupština da obustavi postupak razrješenja Čalović Marković [Group of NGOs: Parliament to Halt Removal Procedure for Čalović Marković], Fosmedia, 17 June 2018, available at: <https://fosmedia.me/infos/drustvo/grupa-nvo-skupstina-da-obustavi-postupak-razrjesenja-calovic-markovic>.

<sup>286</sup> Decision of the Agency for Prevention of Corruption, UPI-02-01-57/26-2017, 31 May 2018, available at: [https://www.antikorupcija.me/media/documents/Odluka\\_-\\_Vanja\\_%C4%86alovi%C4%87\\_Markovi%C4%87.pdf](https://www.antikorupcija.me/media/documents/Odluka_-_Vanja_%C4%86alovi%C4%87_Markovi%C4%87.pdf).

According to the Law on Prevention of Corruption, the procedure for dismissal of a member of the Council is prescribed in such a way that the Council sends a proposal for dismissal to the competent Parliamentary Board, if the legal conditions are met and which must be well elaborated. The Board decides on the proposal, which if adopted, is proceeded to the plenary for final decision.

<sup>287</sup> Administrative Court Decision, U. no 3789/17, 17 July 2018, available at: [http://sudovi.me/odluka\\_prikaz.php?id=299237](http://sudovi.me/odluka_prikaz.php?id=299237).

<sup>288</sup> Decision of the Agency for Prevention of Corruption, UPI-02-01-57/48-2017, 30 August 2018, available at: [https://www.antikorupcija.me/media/documents/Odluka\\_-\\_Vanja\\_%C4%86alovi%C4%87.pdf](https://www.antikorupcija.me/media/documents/Odluka_-_Vanja_%C4%86alovi%C4%87.pdf).

- Involve human rights defenders in an inclusive, transparent and meaningful manner in law- and policy-making processes pertaining to their operation or relevant to their work, and initiate regular impact assessment of relevant laws and policies on defenders' work.
- Prevent arbitrary or abusive application of laws and state policies and mechanisms against defenders, including journalists. Ensure that laws, administrative or other procedures and regulations are not used to intimidate, harass, persecute or retaliate against human rights defenders.
- Ensure that requests and complaints by human rights defenders addressed to state bodies are responded to in a timely manner, with a view to facilitate their human rights work.
- Investigate promptly, independently, impartially and effectively reported cases of administrative or judicial harassment of human rights defenders or any reported act of retaliation.
- Ensure access of human rights defenders to effective remedies to challenge the lawfulness of administrative measures, charges and requirements imposed on them, including compensation for damages caused by state bodies or officials.
- Safeguard or, where required, take steps to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to prevent any abuse in the application of laws or policies concerning the work of human rights defenders.

### **1.3 CONFRONTING STIGMATIZATION AND MARGINALIZATION OF HUMAN RIGHTS DEFENDERS/ SMEAR CAMPAIGNS AGAINST HUMAN RIGHTS DEFENDERS**

#### ***Overview of relevant standards and commitments***

151. The OSCE participating States have committed to respect “the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms”,<sup>289</sup> and “the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information”. They have also recognized the importance of ensuring the equal enjoyment and exercising of human rights and fundamental freedoms by all people, without distinction of any kind, and guaranteeing “equal and effective protection against discrimination on any ground” to everyone.<sup>290</sup>
152. Similarly, the UN Human Rights Council has urged states “to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law as an essential component of ensuring their protection, including by respecting the independence of their organizations and by avoiding the stigmatization of their work”.<sup>291</sup>
153. In line with OSCE commitments and other international standards, the *Guidelines* recall that State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatization of human rights defenders and their work and must take proactive measures to raise public awareness about the importance of human rights defenders' contributions in society. At the same time, states should also take steps to counter

<sup>289</sup> Vienna Document 1989, para. 13(5).

<sup>290</sup> Copenhagen Document, 1990, paras. 5.9 and 10.1.

<sup>291</sup> *Op. cit.* note 257.

stigmatization and smear targeting defenders as well as combat and publicly condemn any manifestation of “hatred and other forms of intolerance against human rights defenders that constitutes incitement to discrimination, hostility or violence, including where this is conducted online”.<sup>292</sup> As required by Article 20 of the International Covenant on Civil and Political Rights (ICCPR), such manifestation must be prohibited by law.

### **Confronting stigmatization and marginalization of human rights defenders/ smear campaigns against human rights defenders in selected OSCE participating States**

154. Civil society interviewees reported cases of negative portrayals and stigmatization of human rights defenders in the participating States visited by ODIHR, most frequently linked to their real or attributed political or other opinion, gender, sexual orientation and gender identity, ethnicity or disability status. Concerns were raised about smear campaigns in public discourse, in the press and on social media against activists and NGOs, involving the discrediting of their work or their overall role in society. For example, ODIHR received reports of human rights defenders being labelled as “grant seekers/eaters”, “foreign agents”, “traitors” or “people acting against the interests of the homeland”, while their work was portrayed as politically biased or as motivated by personal gains, especially when it involved criticizing state authorities.
155. In some reported cases, such remarks or statements were made by public officials or other influential political figures. According to interviewed defenders, negative portrayals by state officials have an adverse impact on defenders’ personal safety and public image, as they erode public trust in the work of civil society organizations and undermine support for their activities.
156. For example, in **the Czech Republic**, *Transparency International* was publicly labelled by a state official as being corrupt.<sup>293</sup> In response, the organization filed a defamation lawsuit.<sup>294</sup> In another example, in an October 2017 press conference, a state official held up a mock assault rifle with an inscription “against journalists”.<sup>295</sup> In May 2017, the same official had stated that there were too many journalists and they should be “liquidated”.<sup>296</sup> On 30 January 2018, the OSCE Representative on Freedom of the Media expressed deep concern about such statements, emphasizing that they legitimize violence against journalists.<sup>297</sup> *Reporters without Borders* shared the same concern; according to them, negative statements by public officials against journalists foster a climate of hatred against them and can encourage physical attacks.<sup>298</sup>
157. In **Georgia** in October 2018, following the release of a joint statement by several civil society organizations expressing concern over alleged corruption in the country,<sup>299</sup> a public official referred to the signatory NGOs as “political unions” and accused their leadership of having “politically biased views” and being “incompetent” and

<sup>292</sup> *Op. cit.* note 9, paras 37 and 39.

<sup>293</sup> Méně peněz neziskovkám na boj s korupcí. Možná je to odvěta za naši práci [Less funds for NGOs to fight corruption. Perhaps it is a retaliation against our work], Česká Televize, 12 April 2019, available at: <https://ct24.ceskatelevize.cz/domaci/2785631-mene-penez-neziskovkam-na-boj-proti-korupci-mozna-je-odveta-za-nasi-praci-rika>.

<sup>294</sup> Babiš trvá na tom, že Transparency International je zkorumpovaná. Soud bude pokračovat v únoru [Babiš insists that Transparency International is corrupt. The court proceeding will continue in February], Irozhlas.cz, 7 January 2020, available at: [https://www.irozhlas.cz/zpravy-domov/soud-babis-transparency-international-spor-kritika-zkorumpovana\\_2001071403\\_aur](https://www.irozhlas.cz/zpravy-domov/soud-babis-transparency-international-spor-kritika-zkorumpovana_2001071403_aur).

<sup>295</sup> Czech president waves mock rifle ‘at journalists’ during news conference, Washington Post, 23 October 2017, available at: <https://www.washingtonpost.com/news/worldviews/wp/2017/10/23/czech-president-brandished-a-mock-gun-toward-journalists-amid-fears-that-media-conditions-there-could-deteriorate/?noredirect=on>.

<sup>296</sup> FUNNY: There’re too many journalists, they should be eliminated - Czech president jokes with Putin, Russian Insight, 15 May 2017, available at: <https://www.youtube.com/watch?v=u2jMo0VPW8A>; Czech President sparks outrage with comments about journalists, Czech Radio, 15 May 2017, available at: <https://www.radio.cz/en/section/curaffrs/czech-president-sparks-outrage-with-comments-about-journalists>.

<sup>297</sup> The OSCE Media Freedom Representative condemns recent violence against journalists in the Czech Republic, urges safe environment for the media, OSCE, 30 January 2018, available at: <https://www.osce.org/fom/368581>.

<sup>298</sup> See Reporters without Borders – Czech Republic, available at: <https://rsf.org/en/czech-republic>.

<sup>299</sup> Informal Rule Has Triggered Crisis of Democratic Institutions, Transparency International Georgia, 1 October 2018, available at: <https://www.transparency.ge/en/post/informal-rule-has-triggered-crisis-democratic-institutions>.



“shameless”.<sup>300</sup> Another state official made similar claims relating to the alleged “political interests and ambitions” of signatory civil society organizations.<sup>301</sup> Several civil society organizations publicly condemned such statements, which they viewed as an attempt to delegitimize and discredit the work of NGOs.<sup>302</sup>

158. In **Italy**, civil society organizations and activists assisting migrants at sea reported being subject to negative labels and portrayals, including by public officials, as people aiding illegal migration and having “obscure” sources of funding.<sup>303</sup> Journalists and lawyers were also the target of negative portrayals by state officials. For example, in November 2018 a government official publicly stated that most journalists are “intellectually and morally corrupted”.<sup>304</sup> In the same period, a member of the government portrayed lawyers as “swindlers” drawing benefits from the judicial system.<sup>305</sup>
159. In **Mongolia** in June 2018, while calling for a renewed legal framework regulating the operation of NGOs, a high-level state official noted that NGOs in Mongolia remain “dependent on international donor organizations, which could lead to money laundering and terrorism”.<sup>306</sup> Statements were also made in 2018, including by state actors, about NGOs being established and misused for the purposes of money laundering or other criminal activity, such as participation in budget fraud.<sup>307</sup>
160. In **Montenegro** in 2018, NGOs and activists were labelled by some public officials as “unscrupulous fighters for power [...] and foreign donations”, who “humiliate the state”<sup>308</sup> and “act as parapolitical organizations, to illegitimately participate in governing, assuming the role of state institutions, most often to attain their material, political and other goals”.<sup>309</sup>

*“Many people do not recognize the value and contributions of human rights defenders’ work to support vulnerable individuals and groups. If you work on LGBTI rights, you are called a ‘lesbian’; if you work on women’s rights, people say you have problems with men; if you work on the rights of drug users, you are suspected of using drugs.”*

Excerpt from ODIHR’s meeting with a woman human rights defender in Montenegro, Podgorica, August 2018

<sup>300</sup> ეს არის 13 კაცი და ქალი, რომელსაც აქვს თავისი პოლიტიკური მიკერძობული შეხედულებები - ირაკლი კობახიძე მესამე სექტორზე [These are 13 men and women who have their own politically biased views - Irakli Kobakhidze on the third sector], Rustavi 2, 2 October 2018, available at: <http://rustavi2.ge/ka/news/115128>. See also ISFED 2nd Pre-Election Interim Report - 2018 Presidential Election, ISFED, 8 October 2018, available at: <http://old.isfed.ge/main/1421/eng/>.

<sup>301</sup> Tea Tsulukiani – Behavior of 13 NGOs casts shade to civil society, First Channel, 3 October 2018, available at: <https://1tv.ge/en/news/tea-tsulukiani-behavior-12-ngos-casts-shade-civil-society/>.

<sup>302</sup> არასამთავრობო ორგანიზაციების განცხადება ირაკლი კობახიძის ბრიფინგთან დაკავშირებით [Statement of non-governmental organizations regarding Irakli Kobakhidze’s briefing], EMC, 8 October 2018, available at: <https://emc.org.ge/ka/products/arasamtavrobo-organizatsiebis-gantskhadeba-irakli-kobakhidzis-brifingtan-dakavshirebit>.

<sup>303</sup> See, for example, Italian Senate, Hearing of the Minister of Interior, 13 June 2018, available at: [www.senato.it/leg18/3818?seduta\\_assemblea=11](http://www.senato.it/leg18/3818?seduta_assemblea=11).

<sup>304</sup> Assoluzione Raggi, Di Maio attacca la stampa: “La maggioranza dei giornalisti? Infimi sciaccali” [Acquittal of Raggi, Di Maio attacks the press: “The majority of journalists? Lowest jackals”], La Repubblica, 10 November 2018, available at: [https://www.repubblica.it/politica/2018/11/10/news/raggi\\_sentenza-211256699/](https://www.repubblica.it/politica/2018/11/10/news/raggi_sentenza-211256699/).

<sup>305</sup> Il Ministro Bonafede definisce gli avvocati “azzeccagarbugli”. L’ira di Aiga e Camere Penali [Minister Bonafede called lawyers “swindlers”. The anger of Aiga and Criminal Chambers], L’Inchiesta quotidiano, 4 November 2018, available at: <http://www.linchiestaquotidiano.it/news/2018/11/04/il-ministro-bonafede-definisce-gli-avvocati-azzeccagarbugli/24443>.

<sup>306</sup> See, for example, ТББ-уудын хуулийг шинэчлэх гуж буйка олон улсын хурал дээр зарлалаа, [An announcement to reform the Law on NGOs was made at an international conference], News website NewsPress, 9 July 2018, available at <https://newspress.mn/v1/p/news/5270>.

<sup>307</sup> Монгол Улс 18000 төрийн бус байгууллагатай, [Mongolia has 18000 NGOs], Official website of the Journalist Association of the Capital City, 10 July 2018. See also Төрөөс мөнгө аваад тайлангаа өгдөггүй төрийн бус байгууллага олон байна, [There are many non-governmental organizations that receive money from the government but don’t report back], New website of Asuudal, 10 May 2017, available at <http://43.231.113.96/more/702>.

<sup>308</sup> See for example statements by a high-level state official, available at: <https://www.vijesti.me/vijesti/politika/dukanovic-vijesti-promovisu-fasisticke-ideje> and <https://www.youtube.com/watch?v=DXnBzVfs70k>.

<sup>309</sup> See for example statements by high-level state officials and political figures, available at: <https://portalanalitika.me/clanak/305812/dukanovic-nvo-parapoliticke-organizacije-treba-da-shvate-da-se-vlast-osvaja-na-izborima>; <http://mondo.me/a670196/Info/Crna-Gora/Djukanovic-Ne-vracamo-se-u-balkanske-tmuse.html>; and <https://www.vijesti.me/vijesti/politika/knezevic-za-vijesti-u-radnoj-grupi-ne-treba-da-budu-predstavnici-nvo>.



161. According to interviewed defenders in all participating States covered in the first assessment cycle, public statements by state officials and influential political figures are widely picked up in the press and on social media, thus increasing activists' exposure to smear and intimidation, especially online. This is relevant to the situation of different groups of defenders, including women and LGBTI activists, defenders of migrants' rights and environmental activists.
162. In all countries visited by ODIHR, women human rights defenders, including those engaged in the promotion of women's rights or working on gender issues, were identified as particularly targeted with gender-specific verbal attacks and smear, mostly through social media. Women activists, especially those based in the regions or living in smaller communities, are often stigmatized as a result of their human rights work, including by members of their families, as 'breaking traditional values', 'ruining families' or as 'acting against moral values'. Furthermore, accounts of women defenders facing insults of a sexualized nature online were shared with ODIHR in **Italy**. For example, Laura Boldrini, a former Chair of the Italian Chamber of Deputies and an advocate for women's and migrants' rights, reportedly faced numerous sexist and gender-based smear attacks online in retaliation for her human rights activism.<sup>310</sup> In **Montenegro**, several civil society interviewees pointed to the chilling and long-lasting effect of the gender-specific smear campaign against the head of the anti-corruption NGO *MANS* in 2014.<sup>311</sup>
163. Similar challenges were reported in **Italy** and **Montenegro** by Roma women defenders, who face multiple layers of discrimination and pressure coming from within and outside of the communities they belong to/work with, often resulting in their marginalization.<sup>312</sup> In particular, in **Montenegro** Roma women activists are sometimes accused by members of their communities of 'eroding traditions' and reportedly struggle to be taken seriously by law enforcement officials, especially when they report cases of violence against Roma women.
164. In all countries visited by ODIHR, defenders belonging to the LGBTI community or working on LGBTI rights were also reported as being subject to frequent smear attacks, including online and in the media. According to some interlocutors, this is partly due to the general context of intolerance towards LGBTI people.
165. In **Georgia**, the *Media Development Foundation*, a civil society organization working on freedom of expression and other human rights in the country, reported in 2017 that based on their monitoring of 17 media outlets, the number of homophobic statements amounted to 731, of which 255 were made by the media, 153 by politicians, 172 by the public, 127 by civil organizations and 24 by the clergy.<sup>313</sup>
166. Accounts of online smear of LGBTI activists or human rights defenders working on LGBTI rights were shared in **the Czech Republic** and **Italy**, where LGBTI defenders reported being the target of verbal abuse as a result of both their human rights work and their sexual orientation and gender identity. Women lawyers defending LGBTI people in **Italy** also informed ODIHR that they faced gender-based verbal attacks as a result of their work.
167. LGBTI defenders from **Mongolia** shared with ODIHR screenshots of online comments posted by internet users in response to their social media posts and online publications calling for equality and non-discrimination on the grounds of gender, gender identity and sexual orientation. The posts contained derogatory language in relation to the activists and labelled LGBTI community members as 'a serious threat to society'.

<sup>310</sup> See, for example, Insulti sessisti a deputata, Boldrini contro Salvini: "Mi paragonò a bambola gonfiabile, vergogna" [Sexist insults to member of the Chamber, Boldrini against Salvini: "He compared me to an inflatable doll, shame"], fanpage.it, 28 November 2018, available at: <https://www.fanpage.it/politica/insulti-sessisti-a-deputata-boldrini-attacca-salvini-mi-paragono-a-bambola-gonfiabile-vergogna/>.

<sup>311</sup> *Op.cit.* note 10.

<sup>312</sup> See, for example, Conferenza nazionale di presentazione dei risultati e delle proposte del progetto europeo "Sposati quando sarai pronta" [National Conference to present the results and proposals of the European project "Get married when you're ready"], Radio Radicale, 23 May 2017, available at: <http://www.radioradicale.it/scheda/509647/conferenza-nazionale-di-presentazione-dei-risultati-e-delle-proposte-del-progetto>.

<sup>313</sup> Reported data indicate an increase in homophobic comments compared to 2016, when 454 such statements were identified. See Hate Speech report, Media Development Foundation, 2017, available at: <http://www.mdfgeorgia.ge/eng/view-library/91>.

168. In **Montenegro**, civil society interviewees reported that discrimination of LGBTI people in society continues to remain a major factor leading to smear campaigns against LGBTI defenders, which reportedly intensify in the run up to and after Pride assemblies as well as during pre-election periods. In 2017, *LGBT Forum Progress* filed 203 complaints to the police against 206 persons for cases of verbal threats and hate speech during the Montenegro Pride held in September 2017 in Podgorica, noting an increase in the number of negative comments and threats compared to those recorded during Pride events in 2016 and 2015.<sup>314</sup>
169. An intensification of negative portrayals of human rights defenders in the period preceding elections was also reported in **Georgia**. For example, NGOs conducting election observation activities were targeted with smear ahead of the 2018 presidential elections, including reportedly by some public officials.<sup>315</sup> On 24 October 2018, echoing the *ODIHR Guidelines on the Protection of Human Rights Defenders*, the Public Defender of Georgia called upon state officials to refrain from any acts aimed at discrediting and undermining human rights defenders and their activities, “take proactive steps against their stigmatization” and acknowledge the importance of their work.<sup>316</sup> Similar calls were made in October 2018 by 49 civil society organizations based in Georgia and abroad.<sup>317</sup>

*“Public hostility and the lack of trust towards civil society organizations are becoming widespread. State authorities contribute to these worrying developments by framing civil society in a negative light and discrediting our work. Anti-NGO narratives intensify prior to elections, when watchdog organizations are most frequently targeted with systematic smear. This is a dangerous development because smear campaigns might escalate into other kinds of attacks.”*

Excerpt from ODIHR’s meeting with a civil society organization in Georgia,  
Tbilisi, November 2018

170. In **Italy**, the narrative around activists and NGOs assisting migrants has progressively deteriorated in recent years. A number of civil society interviewees reported cases when defenders working on the protection of migrants were portrayed, including by political and public figures, as colluding with traffickers and smugglers or being criminal organizations themselves.<sup>318</sup> Furthermore, civil society organizations and activists assisting migrants at sea in Italy were largely depicted as constituting a “pull factor” for immigration into Europe and thus contributing to the number of deaths at sea.<sup>319</sup> Reportedly, such statements were widely disseminated through social media and large media outlets, which, according to civil society interviewees, played a major role in changing the

<sup>314</sup> *Op. cit.* note 71.

<sup>315</sup> See, for example, Georgian Dream continues ‘anti-NGO rhetoric’, oc-media.org, 26 October 2018, available at: <https://oc-media.org/georgian-dream-continues-anti-ngo-rhetoric/> and ODIHR Election Observation Mission Final Report – Presidential election 28 October and 28 November 2018 (Georgia), OSCE/ODIHR, 28 February 2019, available at: [https://www.osce.org/files/f/documents/9/4/412724\\_2.pdf](https://www.osce.org/files/f/documents/9/4/412724_2.pdf). See also ISFED presented social media monitoring report, ISFED, 26 October 2018, available at: <http://old.isfed.ge/main/1428/eng/>.

As part of its pre-election social media monitoring, ISFED reported that many fake media pages disseminated information discrediting a number of civil society organizations. From June 2018 to January 2019, 5,986 such posts were reportedly published on Facebook by 27 fake media pages. See *Creating an alternative reality in Georgia: false media pages on Facebook*, ISFED, 25 January 2019, available at: <https://isfed.ge/eng/blogi/alternatiuli-realobis-sheqmnis-mtsdeloba-sagartveloshi-tsrui-media-gverdebi-Facebook-ze>.

<sup>316</sup> Public Defender Calls for Restraint on Criticism against CSOs, civil.ge, 25 October 2018, available at: <https://civil.ge/archives/260965>. The original statement by the Public Defender can be accessed at: [https://www.facebook.com/OmbudsmanofGeorgia/posts/1846768968693957?\\_tn\\_\\_=K-R](https://www.facebook.com/OmbudsmanofGeorgia/posts/1846768968693957?_tn__=K-R).

<sup>317</sup> Political leaders in Georgia must stop slandering civil society organizations, Human Rights House Foundation, 17 October 2018, available at: <https://humanrightshouse.org/letters-of-concern/political-leaders-in-georgia-must-stop-slandering-civil-society-organisations/>.

<sup>318</sup> See, for example, Di Maio: “In Italia troppa ipocrisia, basta taxi del mare per i migranti” [Di Maio: “In Italy too much hypocrisy, stop to sea-taxis for migrants”], Fanpage.it, 23 April 2017, available at: <https://www.fanpage.it/politica/di-maio-in-italia-troppa-ipocrisia-basta-taxi-del-mare-per-i-migranti/>; Migranti, La Russa vs Don Zerai: “Lei è in contatto con scafisti e ha ucciso persone. Si confessi dal vescovo” [Migrants, La Russa vs Don Zerai: “You are in touch with smugglers and you kill people. Go confess to the Bishop”], Il Fatto Quotidiano, 10 August 2017, available at: <https://www.ilfattoquotidiano.it/2017/08/10/migranti-la-russa-vs-don-zerai-lei-e-in-contatto-con-scafisti-e-ha-ucciso-persone-si-confessi-dal-vescovo/3788051/>.

<sup>319</sup> Roberto Saviano, “In mare non esistono taxi” [There are no taxis in the sea], Roberto Koch Editore srl, 2019.

This assumption was disproved by two parliamentary inquiries which rebutted the alleged link between rescue NGOs and traffickers. See, for more information, Charles Heller and Lorenzo Pezzani, “Blaming the rescuers, criminalising solidarity, re-enforcing deterrence”, 9 June 2017, available at: <https://blamingtherescuers.org/report/>; and Conclusions of the

public perception about defenders of migrants' rights in Italy.<sup>320</sup> The legal regulations on migration, including the 'Security Decrees', as well as numerous criminal investigations involving defenders, also contributed to smear attacks against them.

171. Environmental defenders also frequently become targets of negative portrayals and smear attacks, including by representatives of state bodies and local authorities.
172. In **Mongolia**, according to interviewed defenders, environmental activists are framed by some representatives of state bodies and private companies as pursuing financial gains rather than the public interest and face harassment and threats as a result.<sup>321</sup> Furthermore, environmental activists shared with ODIHR accounts of being portrayed as "obstacles for attracting investments" and "obstructors of the legitimate activities of businesses". Similar challenges were also reported by ger activists in Mongolia.<sup>322</sup>

*"Some state officials and companies discredit us [environmental defenders] by saying that we seek material gains from mining companies and that we are trying to extort money from them by covering up our true intentions with human rights activism. Such allegations quickly spread among the public, especially in rural areas, and lead to harassment and even threats of physical violence against us and our families. I repeatedly received calls from different individuals with threats and demands to stop my activities. This is a major concern for all activists working on the protection of the environment, and public health as well as land and housing rights."*

Excerpt from ODIHR's meeting with a civil society organization in Mongolia,  
Ulaanbaatar, September 2018

173. In **Montenegro**, environmental NGOs also alleged being labelled by some state officials as those responsible for impeding investments because of their work on environmental impact assessments of businesses and regional development projects, while in **Italy**, several environmental activists from Veneto region shared their experiences of being blamed by some public officials for instilling groundless fear among people about environmental and public health issues.
174. Marginalization of persons with disabilities and NGOs representing them was also raised as a concern in some countries visited by ODIHR. For example, in **Italy**, civil society interviewees noted that the public continues to perceive disability as a medical, not a social issue, which is not conducive to eradicating the stigma and discrimination that people with disabilities face. Similar reports were received in **Montenegro**, where human rights defenders stressed the importance of replacing the current medical model of disability with a human rights-based approach,<sup>323</sup> including through adoption of proactive measures to change attitudes and behaviours that stigmatize and marginalize persons with disabilities.

fact-finding inquiry of the Senate Standing Committee on Defence on the contribution of Italian militaries to the control of migration flows in the Mediterranean Sea and the impact of NGOs activities, 16 May 2017, available at: <http://www.senato.it/service/PDF/PDFServer/BGT/1023441.pdf>.

<sup>320</sup> See, for example, L'Europa smaschera le Ong: "Aiutano scafisti e clandestine" [Europe unmasks NGOs: "They help smugglers and illegal immigrants"], Il Giornale, 17 February 2017, available at: <https://www.ilgiornale.it/news/politica/leuropa-smaschera-ong-aiutano-scafisti-e-clandestini-1365197.html>.

<sup>321</sup> *Op. cit.* note 218. See also *op. cit.* note 69, #Mongolia, Frontline Defenders.

<sup>322</sup> *Op. cit.* note 80.

<sup>323</sup> In 2017, the UN Committee on the Rights of Persons with Disabilities also made similar calls. See UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Montenegro, CRPD/C/MNE/CO/1, 22 September 2017, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MNE/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MNE/CO/1&Lang=En).

175. As positive practices, interviewees in the participating States visited by ODIHR noted cases when state representatives publicly condemned negative statements targeting defenders and when authorities took measures to counter smear campaigns.
176. For example, in **the Czech Republic**, on 10 December 2018, the Government Plenipotentiary for Human Rights publicly highlighted the importance of the work of human rights NGOs and criticized their negative portrayal as unjustified.<sup>324</sup> Furthermore, the Government Agency for Social Inclusion has implemented a Hate Free Culture project since 2014, with a view to countering smear, stigmatization and marginalization of human rights activists and the vulnerable groups they defend.<sup>325</sup> Having large outreach in the online as well as offline space,<sup>326</sup> the project aims at promoting tolerance and countering hate-motivated fake news spread online, publishing positive stories of tolerance and promotion of human rights, or correcting misinformation fueled by racism or hatred.
177. Positive examples of state bodies and the NHRI publicly condemning attacks against human rights defenders were also noted in **Montenegro**. According to interviewees, such statements signal much needed support to and solidarity with civil society at large and are essential steps towards improved prevention of and accountability for attempts to stigmatize and marginalize defenders.
178. Furthermore, ODIHR received information that in **Georgia** in February 2019, the Parliament issued a Code of Ethics of the Member of Parliament of Georgia, with the aim to reduce and prevent the use of hate speech among public officials.<sup>327</sup> Article 3 of the Code stipulates that a Member of Parliament shall refrain from using degrading, obscene, sexist or discriminatory language as well as hate speech while exercising his/her public functions. To monitor the effective application of the Code, an Ethics Council has been established within the Parliament; in case violations to the Code of Conduct are identified, the Council is authorized to provide recommendations to any Member of Parliament who uses hate speech.

## CONCLUDING OBSERVATIONS

- ODIHR's findings highlight that negative statements by state officials and influential public figures about human rights defenders and their work can have an adverse impact on defenders' dignity, their work as well as their safety. Such statements, echoed in the press and on social media, fuel a negative image of civil society organizations, which may in turn undermine public trust in their work and, as observed in all the countries covered in the assessment cycle, potentially expose individual defenders to further smear and intimidation.

<sup>324</sup> Expertka: Útoky na neziskovky jsou problém. A pro Čechy nejsou lidská práva dost důležitá [Expert: Attacks against NGOs are a problem. Czech people downplay the significance of human rights], Blesk.cz, 9 December 2018, available at: <https://www.blesk.cz/clanek/zpravy-politika/582314/expertka-utoky-na-neziskovky-jsou-problem-a-pro-cechy-nejsou-lidska-prava-dost-dulezita.html>

<sup>325</sup> The website of the project is available at: <https://www.hatefree.cz>.

<sup>326</sup> One of the initiatives in this framework is creating safe "hate free zones", public spaces which proclaim their tolerance and positive acceptance of diversity by placing a "hate free" sticker on their doors. As of the end of 2019, there were 305 registered zones and 6,760 individual members part of the initiative. See the project's website: <https://www.hatefree.cz/hatefree-cesko>.

<sup>327</sup> The Code of Ethics of the Member of Parliament of Georgia, Parliament of Georgia, 2019, available at: [http://www.parliament.ge/ge/ajax/downloadFile/128924/%E1%83%94%E1%83%97%E1%83%98%E1%83%99%E1%83%98%E1%83%A1\\_%E1%83%99%E1%83%9D%E1%83%93%E1%83%94%E1%83%A5%E1%83%A1%E1%83%98-english](http://www.parliament.ge/ge/ajax/downloadFile/128924/%E1%83%94%E1%83%97%E1%83%98%E1%83%99%E1%83%98%E1%83%A1_%E1%83%99%E1%83%9D%E1%83%93%E1%83%94%E1%83%A5%E1%83%A1%E1%83%98-english).

- Defenders belonging to or working on the protection of the rights of vulnerable groups such as women, migrants, Roma, or LGBTI people are particularly subject to attacks and smear. Women human rights defenders are frequently exposed to gender-based verbal attacks and smear on social media, while LGBTI activists are reportedly subject to online smear and intimidation due to their human rights work, their sexual orientation and gender identity as well as the overall context of intolerance towards LGBTI people.
- Defenders who work on issues touching on business interests, such as environmental activists, are vulnerable to being stigmatized as a result of their activities, as reflected in reported instances in Italy, Mongolia and Montenegro.
- Where a pattern is observed that smear campaigns targeting human rights defenders intensify around certain events – for example, as reported to ODIHR, Pride events in Montenegro and elections in Georgia – proactive efforts to monitor and prevent such tendencies are warranted.
- ODIHR welcomes positive examples of state bodies and officials publicly condemning attacks and threats against human rights defenders as well as initiatives aimed at countering negative narratives and smear campaigns targeting them, such as those reported in the Czech Republic, Georgia and Montenegro. ODIHR encourages states to build on these positive practices, while raising public awareness about the positive role played by human rights defenders in society, through both designated programmes and projects and regular statements by public officials recognizing their vital contributions and the importance of their work.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Publicly condemn and counter smear campaigns, negative portrayals and stigmatization of human rights defenders, including journalists and lawyers; raise public awareness of the positive role defenders play in society.
- Take proactive measures to discourage state officials from making public statements discrediting and stigmatizing human rights defenders and their work, through adopting relevant codes of conduct, implementing awareness-raising and training programmes about the rights of human rights defenders and their role in a democratic society.
- Adopt and implement gender-sensitive measures to safeguard the dignity of women human rights defenders and LGBTI activists who are targeted with gender-specific smear attacks, including online; to this end, proactively counter attempts to marginalize and silence civically active women, and address prejudice and discrimination against LGBTI individuals.
- Adopt and implement measures, including educational programmes that foster tolerance in society, to change attitudes and behaviours that stigmatize and marginalize the Roma, migrants and refugees, persons with disabilities as well as defenders working on the protection of or belonging to these groups.
- Rebut negative statements targeting environmental and housing rights activists as well as NGOs working on anti-corruption or other issues, and take steps to counter smear campaigns against them.

## II. A SAFE AND ENABLING ENVIRONMENT CONDUCTIVE TO HUMAN RIGHTS WORK

179. As elaborated in the *Guidelines*, states should respect, encourage and facilitate human rights activity. They should put in place practical measures aimed at creating safe and conducive environments that enable and empower human rights defenders to pursue their activities freely and without undue limitations.<sup>328</sup> A safe and enabling environment requires the realization of a variety of other fundamental human rights that are necessary to carry out human rights work both individually and collectively, and domestically and across borders. These include the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, and the right to private life.<sup>329</sup>
180. The constitutional frameworks of all countries visited by ODIHR provide guarantees of the human rights and fundamental freedoms that are essential to the conduct of human rights defenders' work, as well as reinforce the states' obligations under international law.<sup>330</sup>

### 2.1 FREEDOM OF OPINION AND EXPRESSION AND OF INFORMATION/ FREEDOM OF THE MEDIA

#### *Overview of relevant standards and commitments*

181. The right to freedom of opinion and expression, which "includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers," is enshrined in Article 19 of the Universal Declaration on Human Rights (UDHR). Similar safeguards are enshrined in Article 19 of the ICCPR and regional human rights treaties.<sup>331</sup>
182. OSCE participating States have reaffirmed the right to freedom of expression and opinion and the freedom to receive and impart information without interference; reiterated the central role of freedom of expression as a basic component of a democratic society; and emphasized the importance of the free flow of information and of a free media in safeguarding human rights and fundamental freedoms.<sup>332</sup> They have also committed to efforts to facilitate the freer and wider dissemination of information of all kinds, to improve the working conditions for journalists and to refrain from measures restricting the legitimate pursuit of journalists' professional activity.<sup>333</sup>
183. In recognition of the critical importance of the enjoyment of the right to freedom of expression for the protection and promotion of human rights, a link which the UN Human Rights Committee has emphasized,<sup>334</sup> the UN Declaration on Human Rights Defenders in Article 6 reaffirms the right of individuals to know, seek, obtain, receive and hold information about human rights; to freely publish, impart or disseminate views, information and

<sup>328</sup> *Op.cit.* note 9, para. 41.

<sup>329</sup> *Ibid.*, para. 6.

<sup>330</sup> See The Constitution of the Czech Republic (1993), available at: <http://www.psp.cz/en/docs/laws/constitution.html>; and The Charter of Fundamental Rights and Freedoms of the Czech Republic (1993), available at: <http://www.psp.cz/en/docs/laws/listina.html>.

The Constitution of Georgia, adopted on 24 August 1995, last amended on 23 March 2018, available at: <https://matsne.gov.ge/en/document/view/30346?publication=35>.

The Constitution of the Italian Republic, available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).

The Constitution of Mongolia, available at: [https://www.conscourt.gov.mn/?page\\_id=842&lang=en](https://www.conscourt.gov.mn/?page_id=842&lang=en).

The Constitution of Montenegro (2007, amended in 2013), available at: [https://www.constituteproject.org/constitution/Montenegro\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Montenegro_2013.pdf?lang=en).

<sup>331</sup> Article 10 of the ECHR and Article 13 of the American Convention on Human Rights (ACHR).

<sup>332</sup> See, respectively, Copenhagen 1990, para. 9.1; Budapest 1991, "Decisions: VIII. The Human Dimension", para. 34; Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 26; and Moscow 1991, para. 26; Astana 2010, para. 6.

<sup>333</sup> Vienna 1989, "Co-operation in Humanitarian and Other Fields," paras. 34 and 39.

<sup>334</sup> UN Human Rights Committee, General Comment 34 on Article 19, para. 3.



knowledge on human rights; to study, discuss, form or hold opinions on the observance of human rights; and to draw public attention to human rights issues.

184. The *Guidelines* call on States to review legislation concerning freedom of opinion and expression and to repeal or amend any provisions that do not comply with relevant international human rights standards, including eliminating vaguely worded provisions that may be arbitrarily applied to limit the work of human rights defenders. Any limitations on freedom of opinion and expression should be in strict compliance with principles of legality, necessity and proportionality.<sup>335</sup> Of equal importance in this regard is the principle of non-discrimination, including in the context of restrictions on freedom of expression imposed by laws designed to guarantee public safety, public order or to protect public morals.<sup>336</sup>
185. The *Guidelines* call for the repeal of criminal defamation laws and for ensuring that sanctions imposed under civil laws regulating speech offences are not disproportionate.<sup>337</sup> Citing opinions of the OSCE Representative on Freedom of the Media, the *Guidelines* note that “there is full agreement among international organizations and institutions that defend freedom of expression that criminal defamation is unnecessary for the protection of reputation and must be abolished in view of its chilling effect on free expression.”<sup>338</sup> Furthermore, the *Guidelines* underscore that anyone detained or imprisoned for expressing his or her views or opinions or otherwise sanctioned under laws that are inconsistent with international standards on freedom of opinion and expression should be immediately released and any other sanctions overturned.<sup>339</sup>
186. Importantly, the *Guidelines* emphasize the need to protect the safety of journalists and ensure that they are not subject to arbitrary prosecution or other interference with their work. The *Guidelines* recommend states to take measures to create a strong, pluralistic media to which human rights defenders enjoy access. They call on states to review media laws, policies and practices in this regard, and remind of the obligation to refrain from censorship and the exertion of formal or informal control of the media by state or non-state actors with the aim to discourage criticism or reporting on human rights violations or controversial or sensitive issues.

### ***Freedom of opinion and expression/ freedom of the media in selected OSCE participating States***

187. The legal frameworks in the countries visited in the first assessment cycle generally provide conditions for the enjoyment of freedom of opinion and expression and for a pluralistic media environment. The Constitutions of **Georgia** (Article 17), **Italy** (Article 21), **Montenegro** (Articles 47 and 49) and **Mongolia** (Article 16) include guarantees of freedom of expression and media. In **the Czech Republic**, the Charter of Fundamental Rights and Freedoms guarantees freedom of expression, freedom of press and the right to information and prohibits censorship (Article 17). Constitutional provisions in Georgia (Article 17), Italy (Article 21) and Montenegro (Article 50) prohibit censorship; in Mongolia the Law on Freedom of the Media prohibits state control or censorship of public information (Article 3).<sup>340</sup> In Georgia, the Law on Freedom of Speech and Expression prescribes that restrictions on these rights can only be applied based on incontrovertible evidence and in limited circumstances defined in line with international human rights standards; any person may file a request with the court to “prevent

<sup>335</sup> *Op. cit.* note 9, para. 137.

<sup>336</sup> A/HRC/RES/22/6, para. 4, and UN Human Rights Committee, General Comment No. 34 on Article 19, para. 26.

<sup>337</sup> *Op. cit.* note 9, paras. 42-44.

<sup>338</sup> *Ibid.*, para. 139.

<sup>339</sup> *Ibid.*, para. 142.

<sup>340</sup> Law on Freedom of the Media of Mongolia, 1998, available at: <https://www.legalinfo.mn/law/details/546>.



violation of the rights” or “to restore the rights violated as a result of unlawful impact and intervention”.<sup>341</sup> Judicial remedies for a violation of this right are also guaranteed in the Czech Republic, Italy, Mongolia and Montenegro.

188. In three participating States covered in ODIHR’s assessment visits, defamation is decriminalized and is addressed through civil defamation laws, while in two countries it remains a criminal offense.
189. Defamation was decriminalized in **Georgia** in 2004.<sup>342</sup> As stipulated in the Law on Freedom of Speech and Expression, an individual who commits an act of defamation in relation to a private or public person may be required to make a correction to his/her statement and reimburse property and non-property damages to the plaintiff in a form determined by the court (Article 17). In case defamation is published by a journalist at a media outlet, the owner of that outlet will be the respondent in a litigation case (Article 6). The Law further prescribes that an individual who did not know and could not have known that he/she was disseminating defamation shall be released from liability (Article 16). It is also prohibited to file clearly groundless claims for defamation (Article 18).
190. Defamation was decriminalized in **Mongolia** in 2017. Article 6.21 of Mongolia’s Law on Administrative Offences establishes fines for publication of false information that could damage the reputation of individuals or business entities.<sup>343</sup> Interviewed human rights defenders assessed the Law as vague and expressed concerns about the disproportionately high fines and their applicability to posts of individual internet users.<sup>344</sup> According to the *Confederation of Mongolian Journalists*, as of April 2018, 49 journalists were charged with defamation and ordered to pay fines of 98 million tugriks, in total.<sup>345</sup> Interviewed defenders referred to this as a potentially concerning development. The *Media Council of Mongolia*, which reviews complaints from individuals and entities alleging a violation of Mongolia’s Media Ethics Principles by media organizations and print, online, radio and television journalists,<sup>346</sup> informed ODIHR that 80 per cent of complaints they receive relate to allegations of defamation, while the Council generally establishes only about 20 per cent of the reported claims as ‘defamation’. In the assessment of the *Media Council*, its individual complaints mechanism, which allows for the non-judicial settlement of cases, ensures greater protection of journalists and media organizations as well as complainants due to its specialized expertise.
191. The Ministry of Justice and Home Affairs of Mongolia informed ODIHR that it has initiated amendments to re-introduce ‘defamation’ into the Criminal Code. According to the Ministry, classifying ‘defamation’ as a criminal offence would lead to more detailed and nuanced investigations.
192. Defamation was decriminalized in **Montenegro** in 2011. The number of civil cases of defamation in the country remains high.<sup>347</sup> Civil society interviewees reported that the possibility of being sued in civil suits by those who feel insulted by their work disincentivizes many journalists and human rights defenders from reporting on/investigating corruption-related or other cases involving powerful actors.<sup>348</sup>

<sup>341</sup> The Law of Georgia on Freedom of Speech and Expression, 2004, available at: <https://matsne.gov.ge/en/document/view/33208?publication=5>.

<sup>342</sup> Law on Making Amendments to the Criminal Code of Georgia, 2004, available at: <https://matsne.gov.ge/ka/document/view/33232?publication=0>.

<sup>343</sup> Law on Administrative Offences of Mongolia, adopted in 2017, available at: <https://www.legalinfo.mn/law/details/12695>.

<sup>344</sup> See Report on Mongolia 2017/2018, Amnesty International, available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/mongolia/report-mongolia/>; and Final Report of the OSCE/ODIHR Limited Election Observation Mission, Mongolia: Presidential Election 26 June and 7 July 2017, 27 October 2017, available at: <https://www.osce.org/odihr/elections/mongolia/352876?download=true>.

<sup>345</sup> Among 95 defamation and libel cases filed against journalists and media outlets between July 2017 and May 2018, the majority of the claimants were civil servants and political figures. See *op. cit.* note 56 and Сэтгүүлчийн мэргэжлийн үйл ажиллагаатай холбоотойгоор тагнаж, чагнасан асуудал байх юм бол тэмцэнэ [We will fight if journalism has been spied and listened to], News website ikon, 26 April 2018, available at <https://ikon.mn/n/19y2>.

<sup>346</sup> Operational and Complaints Procedure, Media Council of Mongolia, available at: <http://www.mediacouncil.mn/p/17>.

<sup>347</sup> Report of the European Commission on Montenegro 2018, 17 April 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf>

<sup>348</sup> Nations in Transit: Montenegro Country Profile 2018, Freedom House, available at: <https://freedomhouse.org/report/nations-transit/2018/montenegro>.

193. Defamation is criminalized in **the Czech Republic** by Section 184 of the Criminal Code, punishable by up to two years of imprisonment. In 2016, criminal responsibility for the crime of defamation was extended to legal persons, contrary to recommendations of various international bodies, including the OSCE Representative on Freedom of the Media.<sup>349</sup> In November 2018, a group of Members of the Chamber of Deputies of the Parliament submitted a draft amendment to the Criminal Code proposing deletion of Section 184.<sup>350</sup> The number of prosecuted cases of defamation is low in the Czech Republic. In 2017 and 2018,<sup>351</sup> three individuals were prosecuted for the crime, reflecting a long-term trend.<sup>352</sup> In the same period, nobody was prosecuted for the crime of ‘wrongful accusation’ under Section 345 of the Criminal Code.
194. In **Italy**, defamation remains a criminal offence punishable by imprisonment ranging from six months to three years. Article 595 of the Criminal Code provides that an offence of defamation is considered aggravated if it is committed through the press or by any other means of advertising, and if it is directed against a political, administrative or judicial body, or other authority.<sup>353</sup> Interviewed defenders expressed concern over this regulation, noting that it can disincentivize from reporting on cases or developments involving state actors. Civil society interviewees also raised concerns over a high number of defamation complaints filed against journalists in Italy, the unfounded nature of many complaints and the imposition of harsh sentences and fines.<sup>354</sup> Furthermore, the absence of an upper limit for the financial penalties applicable to defamation was raised as a major problem, which may jeopardize the survival of some media outlets.<sup>355</sup>
195. Political influence on the media, including in some cases on public broadcasters, was raised as a concern in four out of five countries visited by ODIHR, often connected to a lack of transparency in media ownership and the weak financial stability of the media sector.
196. In **the Czech Republic**, ODIHR was informed of concerns about alleged political influence over private national media. Reportedly, at least 14 journalists left their jobs at such media outlets during the reporting period in protest against alleged meddling into their editorial policies.<sup>356</sup> Civil society interviewees also shared their concern that the division between media owned by political figures and those not owned by them sometimes leads to polarized reporting. This reportedly results in a lack of public trust in the independence and credibility of the media.
197. Interviewed defenders in **Georgia** reported concerns about cases of alleged undue influence on the media and polarization of the media environment along the lines of political and business interests. According to information provided by the Prosecutor’s Office, three individuals were prosecuted under Article 154 of the Criminal Code for unlawful interference with journalists’ professional activities in 2017; in 2018 and 2019, two and three individuals, respectively, were prosecuted for this crime. Several civil society interviewees highlighted the case of a long-running legal dispute over the ownership of *Rustavi 2* as demonstrating undue interference with media

<sup>349</sup> See, for example, the OSCE Representative on Freedom of the Media’s statement towards the Czech Republic: OSCE media freedom representative urges Czech Parliament to use penal code reform to decriminalize speech offences, 22 April 2008, available at: <https://www.osce.org/fom/49646>. See also Concluding Observations of the UN Human Rights Committee of 22 August 2013, CCPR/C/CZE/CO/3, § 21.

<sup>350</sup> The draft amendment is available at: <https://www.psp.cz/sqw/historie.sqw?o=8&t=325>.

The Government of the Czech Republic has issued an opinion in support of the draft; however as of October 2020, the draft was not yet discussed in the Chamber of Deputies.

<sup>351</sup> Přehledy Statistických Listů 2017 a 2018 [The overview of statistical sheets], Ministry of Justice, available at: <https://cslav.justice.cz/InfoData/prehledy-statisticky-listu.html>.

<sup>352</sup> See OSCE Comparative Study on Defamation and Insult Laws in the OSCE Region, OSCE, March 2017, available at: <https://www.osce.org/fom/303181?download=true>.

<sup>353</sup> Criminal Code of Italy, available at: <https://lexscripta.it/codici/codice-penale>.

<sup>354</sup> According to Ossigeno per l’Informazione, annually defamation complaints are filed against nearly 6,000 journalists in Italy, while nine out of ten complaints are allegedly unfounded. See Defamation: A Reform Required, Ossigeno per l’Informazione, 10 June 2019, available at: <https://www.ossigeno.info/defamation-a-sentence-says-reform-quickly/?lang=en>.

<sup>355</sup> Opinion on the Legislation on Defamation of Italy 715/2013, European Commission for Democracy through Law (the Venice Commission), December 2013, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)038-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e).

<sup>356</sup> See, for example, Kvůli Babišovi už z MF Dnes mělo odejít 14 novinářů a několik externích dopisovatelů [More than 14 journalists and several external reporters are said to have left MF Dnes due to Babiš], Forum24.cz, 15 May 2017, available at: <https://www.forum24.cz/kvuli-babisovi-uz-z-mf-dnes-melo-odejit-14-novinaru-a-nekolik-externich-dopisovatelu/>.

independence.<sup>357</sup> In another case, the private TV station *Iberia* allegedly faced pressure with regards to its editorial policy, suspending its operations in October 2018 after its parent company's assets were seized and accounts frozen by the authorities, allegedly for non-payment of taxes.<sup>358</sup> Interviewees also noted that the lack of sustainable funding hinders the operation of smaller local media channels.

198. In **Mongolia**, ODIHR was informed that the lack of financial autonomy of media outlets makes them susceptible to undue influence, leading to censorship or self-censorship, including through conclusion of so-called informal 'non-disclosure agreements' with political or business figures or entities, which reportedly *de facto* restrict publication of content that is 'not favourable' to individuals or entities in question in exchange for financial contributions to media outlets. At the same time, progress has been made in the implementation of the objectives of the Action Plan of the Government of Mongolia for 2016-2020 relating to freedom of expression,<sup>359</sup> for example, through putting forward legislative initiatives aimed at ensuring greater transparency in media ownership and independence.<sup>360</sup>
199. In **Montenegro**, both state and civil society actors reported cases of political influence on the media, including the public broadcaster, as a concern. Interviewees pointed out that a lack of financial autonomy often contributes to media outlets being susceptible to pressure; this reportedly results in polarized and politicized reporting. In the case of the public broadcaster, some civil society and intergovernmental organizations considered that significant changes in its management were a result of undue political influence.<sup>361</sup> Attacks and threats against journalists and other defenders and the lack of effective investigation into a number of such abuses were also raised as factors affecting freedom of expression and of the media and reportedly resulting in self-censorship among activists and journalists.<sup>362</sup>
200. Issues related to the confidentiality of journalistic sources were noted in two countries. In **the Czech Republic**, three journalists investigating fraud allegedly committed by a political figure reported pressure from the police in relation to their work.<sup>363</sup> Following this incident, the OSCE Representative on Freedom of the Media expressed concern that during repeated questionings of the journalists, police allegedly forced them to uncover their sources and reminded that confidentiality of sources is a prerequisite for investigative journalism.<sup>364</sup> Defenders in **Italy**

<sup>357</sup> See, for more information on the case, *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, ECHR, 18 July 2019, available at: <http://hudoc.echr.coe.int/?i=001-194445>; and *Rustavi 2 TV Journalists Resign En Masse, Citing Expected Changes to the Critical Editorial Policy*, Transparency International Georgia, 22 August 2019, available at: <https://www.transparency.ge/en/post/rustavi-2-tv-journalists-resign-en-masse-citing-expected-changes-critical-editorial-policy/>.

<sup>358</sup> ფინანსთა სამინისტროს შემოსავლების სამსახურის განცხადება, [Statement of the Revenue Service of the Ministry of Finance], 2 October 2018, available at: <https://mof.ge/News/8664>.

<sup>359</sup> The Action Plan of the Government of Mongolia for 2016-2020, available at: [http://www.mfa.gov.mn/wp-content/uploads/2015/06/2016-2020\\_Gov\\_AP\\_Eng\\_Revised.pdf](http://www.mfa.gov.mn/wp-content/uploads/2015/06/2016-2020_Gov_AP_Eng_Revised.pdf).

<sup>360</sup> The Draft Law on Broadcasting was submitted to the Parliament for review in December 2016 and was enacted in December 2019. See for more information: <http://www.parliament.mn/n/pwpo> and <http://cita.gov.mn/?p=12156>. See also Law on Broadcasting adopted, montsame.mn, 12 December 2019, available at: <https://montsame.mn/en/read/209738>.

<sup>361</sup> See, for more information on the case, *Šta piše u Ugovoru između RTCG-a i CGO-a zbog kojeg je Kadija razriješena* ["What Is in the Contract between RTCG and CGO that Got Kadija Dismissed?"], CDM, 7 June 2018, available at: <https://www.cdm.me/drustvo/sta-pise-u-ugovoru-između-rtcg-a-i-cgo-a-zbog-kojeg-je-kadija-razriješena/>; and Agency for Prevention of Corruption, UPI 02-01-282/4, 28 September 2017, available at: [http://www.hracion.org/wp-content/uploads/Odluka\\_-\\_Goran\\_%C4%90urovic%CC%81\\_-ASK-03102017-1.pdf](http://www.hracion.org/wp-content/uploads/Odluka_-_Goran_%C4%90urovic%CC%81_-ASK-03102017-1.pdf). See also OSCE Media Freedom Representative raises concern following dismissal of Montenegrin Public Service Broadcaster Director General, OSCE, 7 June 2018, available at: <https://www.osce.org/representative-on-freedom-of-media/383826>.

In March 2019, the Basic Court in Podgorica ruled that the dismissal of a member of the RTCG Council was illegal. See Basic Court in Podgorica judgment, P.no.503/2018, available at: <http://www.hracion.org/wp-content/uploads/2019/03/Presuda.pdf>.

<sup>362</sup> See the section on Reported threats, attacks and abuses against human rights defenders in selected OSCE participating States of the present report.

<sup>363</sup> Slonková, Kroupa, Kmenta. Trojice novinářů tvrdí, že je policie zastrašuje kvůli Babišovi [Slonková, Kroupa, Kmenta. The three journalists claim that the police intimidate them because of Babiš], Irozhlas.cz, 5 April 2018, available at: [https://www.irozhlas.cz/zpravy-domov/sabina-slonkova-janek-kroupa-jaroslav-kmenta-novinari-gibs-andrej-babis\\_1804051312\\_dp](https://www.irozhlas.cz/zpravy-domov/sabina-slonkova-janek-kroupa-jaroslav-kmenta-novinari-gibs-andrej-babis_1804051312_dp).

<sup>364</sup> OSCE Representative on Freedom of the Media Harlem Désir calls upon the Czech authorities to protect journalists' rights to confidential sources, OSCE, 13 April 2018, available at: <https://www.osce.org/representative-on-freedom-of-media/377752>.

informed ODIHR that while Article 200 of the Criminal Procedure Code protects the right to professional secrecy, which is interpreted to include the right to protect journalists' sources, this safeguard can reportedly be lifted upon the order of a judge. Defenders noted as a positive development a 2017 judgement of the Appeal Court of Caltanissetta, which ruled that both 'professional' and 'non-professional' journalists have the right to protect their sources, since there is no qualitative difference in services that they deliver.<sup>365</sup>

## CONCLUDING OBSERVATIONS

- ODIHR's findings underscore that the undue application of defamation provisions in both criminal and civil law can have an adverse effect on free expression and the ability of human rights defenders, including journalists, to carry out their work to shed light on and push for accountability for human rights abuses, which often involves reporting on and investigating issues that are politically and otherwise sensitive or controversial.
- ODIHR echoes interviewed defenders in recalling that criminal defamation is unnecessary for the protection of reputation and can have a stifling effect even if few cases are prosecuted. In this regard, the decriminalization of defamation in Georgia, Mongolia and Montenegro is a good practice contributing to the full enjoyment of freedom of expression and of the media; the legislative initiative in the Czech Republic to replace criminal defamation with civil liability is a welcome development.
- The continued criminalization of defamation in the Czech Republic and Italy, and proposals to re-criminalize defamation in Mongolia, are of concern and inconsistent with the recommendations of intergovernmental organizations and institutions that defend freedom of expression and the media.
- Overly broad civil defamation laws or their undue application, which was noted in several countries, appears to contribute to a high number of questionable cases, underscoring the importance of reviewing such laws and sanctions to ensure their consistency with international human rights standards.
- Political influence on media outlets, which ODIHR identified as a common challenge, adversely impacts on the overall media and civil society environment and contributes to polarized reporting and erosion of public trust in the media. The lack of access to sustainable funding of local media outlets may exacerbate their vulnerability to political pressure. These tendencies point to a need for greater efforts to shield the media from political influence, including through stronger regulations to ensure transparency of media ownership and through providing media, particularly smaller outlets, with sustainable funding opportunities.
- Mechanisms for non-judicial consideration of complaints against the media, such as that provided by the Media Council in Mongolia, may offer a positive practice to reduce or prevent unfounded defamation cases against journalists and media outlets.
- The extension of the right to protect journalistic sources to 'non-professional' journalists, such as that confirmed by a court in Italy, can help to ensure more comprehensive protection of the right to freedom of expression and freedom of the media.

<sup>365</sup> In some earlier cases, only 'professional journalists' registered with the Italian Order of Journalists were considered as falling within the scope of Article 200. See Italy: a case endangering journalists' rights to report and protect their sources by Sofia Verza, columbia.edu, 9 May 2017, available at: <https://globalfreedomofexpression.columbia.edu/updates/2017/05/italy-case-endangering-journalists-rights-report-protect-sources/>.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Ensure that legal frameworks are in full compliance with international standards and OSCE commitments related to freedom of opinion and expression and freedom of the media, and that any limitations on these rights are in strict compliance with principles of legality, necessity and proportionality, and are non-discriminatory.
- Where defamation remains a criminal offence, take steps to decriminalize defamation.
- Ensure that civil defamation laws are applied only when strictly necessary, in line with national legislation. Ensure that defamation charges or sanctions are not applied in retaliation for human rights and journalistic work.
- Review the proportionality of sanctions imposed for defamation, including by abolishing imprisonment as a possible sanction and introducing an appropriate upper limit for financial penalties. Remove provisions that increase sanctions in cases when defamation is directed against a political, administrative or judicial body, or other authority.
- Provide effective and prompt remedy in cases of undue application of defamation laws.
- Ensure that no undue political influence or other form of pressure is exerted on the media, including public broadcasters. Establish and implement legal safeguards for the media's financial autonomy and sustainability in a manner that ensures its independence and impartiality.
- Adopt measures to ensure transparency of media ownership.
- Provide appropriate protections for all journalists to maintain the confidentiality of their sources.

### 2.1.1. ACCESS TO INFORMATION OF PUBLIC INTEREST AND PROTECTION OF WHISTLEBLOWERS

#### *Overview of relevant standards and commitments*

201. Human rights monitoring, an essential aspect of the work of human rights defenders, is closely connected to the right to seek and impart information as enshrined in Article 19.2 of the ICCPR. The UN Human Rights Council has called on states to ensure that information held by public authorities is proactively disclosed and that transparent, clear laws and policies provide for the general right to request and receive information.<sup>366</sup> It has also recognized the importance of new forms of communication and dissemination of information online and has stated that states should promote access to and use of information technologies and the media of one's choice.<sup>367</sup> Furthermore, as outlined by the Parliamentary Assembly of the Council of Europe (PACE), business enterprises also have a responsibility to disclose information regarding activities that may have an impact on human rights.<sup>368</sup>
202. A number of OSCE documents reinforce participating States' commitments on seeking, receiving and imparting information of all kinds.<sup>369</sup> In the Helsinki Final Act (1975), participating States committed to "to facilitate the freer and wider dissemination of information of all kinds",<sup>370</sup> while in Istanbul in 1999 participating States reiterated the importance of the public's access to information.<sup>371</sup>

<sup>366</sup> A/HRC/RES/22/6, para.11(e)

<sup>367</sup> A/68/362, paras. 68, 107 and 108.

<sup>368</sup> PACE Resolution 1954 (2013), para. 9.

<sup>369</sup> Concluding Document of Vienna (1989), para. 34 and Copenhagen Document (1990), para. 9.1.

<sup>370</sup> Helsinki Final Act (1975) Heading 2, "Information".

<sup>371</sup> Istanbul Document (1999), para. 26.

203. According to the *Guidelines*, states should not impose undue limitations on the dissemination of information, including online, and should adopt and implement legislation that provides for effective and equal access to official documents. The public should be made aware of such legislation, the right to access official documents and the procedures for doing so. The *Guidelines* encourage the review of relevant laws, regulations and practices and their amendment as needed to ensure that they do not unduly restrict access to information of public interest.
204. The need for the protection of whistleblowers acting in good faith when releasing information on government wrongdoing or human rights violations has been emphasized by a number of international mechanisms for promoting freedom of expression.<sup>372</sup> In this regard, the *Guidelines* highlight the important role of whistleblowers and advise states to adopt legislation and practices to provide whistleblower protection, emphasizing that information uncovering serious human rights abuses by state or non-state actors must not be protected as state secrets. The *Guidelines* also underscore the importance of facilitating access to online content, avoiding undue restrictions on Internet service providers, and protecting bloggers and social media users from repercussions for posting critical content.<sup>373</sup>

### ***Access to information of public interest and protection of whistleblowers in selected participating States***

205. Legal provisions to regulate and facilitate access to information of public interest are in place in all the countries visited by ODIHR.
206. In **the Czech Republic**, the right to access information from public institutions is regulated by the Freedom of Information Act<sup>374</sup> and the Act on Information about the Environment.<sup>375</sup> Under the former, a request for information must be dealt with within 15 days with a possible 10-day extension. If information is denied, the applicant can appeal to a hierarchically superior authority. If the information is still refused, a lawsuit can be filed in accordance with the Code on Administrative Procedure.<sup>376</sup> Information of public interest, including various police and court statistics, is regularly published online.
207. In **Georgia**, access to information is regulated by the General Administrative Code of Georgia.<sup>377</sup> It provides that everyone is entitled to request public information, including through the electronic resources of a public institution, and obliges state authorities to proactively publish information of public concern. Requested information should be provided within a 10-day period. In cases of refusal to disclose information, within 3 days after the decision is made applicants must be given a written explanation of the reasons, of their rights and the appeal procedure. In 2019, the Constitutional Court of Georgia ruled that full access to judicial acts, which also entails access to personal data contained in such acts, shall be provided in cases in which the right to access information related to judicial proceedings is deemed to prevail over the right to privacy and data protection.<sup>378</sup>

<sup>372</sup> International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur on Freedom of Expression of the Organization of American States, OSCE, 6 December 2004, available at: <http://www.osce.org/fom/38632>.

<sup>373</sup> *Op. cit.* note 9, paras. 45-50.

<sup>374</sup> Freedom of Information Act (1999), available at: <https://www.zakonyprolidi.cz/cs/1999-106>.

<sup>375</sup> Act on Information about the Environment (1998), available at: <https://www.zakonyprolidi.cz/cs/1999-106>.

<sup>376</sup> An amendment of the Freedom of Information Act, which came into effect in August 2020, provides that the appellate administrative body can order disclosure of the requested information. The Office for the Protection of Personal Data will have the same power in a newly introduced review procedure, in cases when both the first instance and appellate administrative bodies refuse the request for information.

<sup>377</sup> The General Administrative Code of Georgia, 1999, Chapter III, available at: <https://matsne.gov.ge/en/document/view/16270?publication=33>.

<sup>378</sup> See Judgment N1/4/693,857, Constitutional Court of Georgia, 7 June 2019, available at: <https://constcourt.ge/en/judicial-acts?legal=1268>.

According to information provided by the Parliament of Georgia, legislative amendments in line with the Constitutional Court's ruling, which would allow individuals to have full access to judicial acts while not violating the right to privacy and data protection, are under discussion within the Legal Issues Committee of the Parliament, as of October 2020.



208. In **Italy**, access to information of public interest, including to documents and other information related to public administration, is regulated by Legislative Decree 97/2016, also referred to as the Freedom of Information Act.<sup>379</sup> The decree introduced a number of improvements, including eliminating a previous requirement to demonstrate direct interest in the requested information, and adding a requirement for public bodies to communicate reasons for refusal of information and the possibility to challenge such decisions. Interviewed state officials shared that, pursuant to the Freedom of Information Act, most public bodies consistently make information related to their activities, budget, and procedures publicly available on their websites.
209. In **Mongolia**, the Law on Information Transparency and Right to Information regulates access to information of public interest.<sup>380</sup> The Law obliges state organizations to disclose information to ensure their operational, human, budget and financial and procurement transparency except for special circumstances it prescribes, including when public release of information might be detrimental to national security and public interests, as well as for the protection of intellectual property, privacy and organizational secrets. The Criminal Code provides that interruption of citizens' rights to seek and receive information is subject to imposition of fines, community service or temporary restriction of mobility rights.
210. In **Montenegro**, access to information of public interest is regulated by the Law on Free Access to Information.<sup>381</sup> Improving public access to information is also part of Montenegro's 2018-2020 Action Plan for Implementing the Strategy on Reform of Public Administration, which envisages analysing and amending the Law.<sup>382</sup>
211. Despite existing legal guarantees and procedures to protect and facilitate the right to access information of public interest, challenges in this area were reported in all countries.
212. In **the Czech Republic**, interviewed defenders reported that costs potentially imposed on the applicant for requested information might pose a barrier in accessing information of public interest. Some civil society interviewees further noted that court decisions, apart from those of the Supreme Court and Constitutional Court, are not systematically made public.<sup>383</sup>
213. Civil society interviewees in **Georgia** noted that existing provisions provide for baseline guarantees to access to information but called for a renewed commitment to develop a stand-alone law on freedom of information, a process initiated in 2014. They also highlighted delays in accessing requested information in some instances, as well as cases of administrative non-response. According to the *Institute for Development of Freedom of Information*, a Tbilisi-based NGO, in 2018, out of 6,413 information requests sent to public institutions, 959 remained unanswered. Furthermore, 37 per cent of responses from the authorities were received beyond the 10-day timeframe established by the law.<sup>384</sup> A number of interviewed defenders based outside of Tbilisi raised concern over irregular publication of information of public interest by regional and local authorities, and noted that such information is not always systematized, or it is outdated or incomplete.<sup>385</sup> Access to information about

<sup>379</sup> Legislative Decree 97, "Revision and simplification of the provisions relating to the prevention of corruption, advertising and transparency", Gazzetta Ufficiale, 25 May 2016, available at: <https://www.gazzettaufficiale.it/eli/id/2016/06/08/16G00108/sg>.

<sup>380</sup> Law on Information Transparency and Right to Information of Mongolia, 16 June 2011, available at: <https://www.legalinfo.mn/law/details/374>.

<sup>381</sup> Law on Free Access to Information, adopted in 2012 and amended in May 2017, available at: <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>.

<sup>382</sup> The 2018-2020 Action Plan for Implementing the 2016-2020 Strategy on Reform of Public Administration in Montenegro, available at: <http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=302277&rType=2&file=Akcioni%20plan%202018-2020,%20%202016-2020.pd>.

<sup>383</sup> In November 2020, in the Action Plan for Open Governance 2020-2022, the Government of the Czech Republic committed to take steps to make judgments and decisions of lower courts publicly available online. See the Action Plan for Open Governance 2020-2022, available at: <https://korupce.cz/vlada-schvalila-akcni-plan-cr-partnerstvi-pro-otevrene-vladnuti-na-obdobi-let-2020-az-2022/>.

<sup>384</sup> Access to public information in Georgia, Institute for Development of Freedom of Information, 2018, available at: [https://idfi.ge/foi-statistics/#!excel\\_id=39&lang=en](https://idfi.ge/foi-statistics/#!excel_id=39&lang=en).

<sup>385</sup> Similar concerns were documented by Transparency International Georgia in a series of studies conducted in 2018 in Chkhorotsku, Abasha, Kutaisi and Adjara. See for example, How transparent and informative are the websites of Chkhorotsku Municipality, Transparency International, 8 February 2018, available at: [https://transparency.ge/en/blog/how-transparent-and-informative-are-websites-chkhorotsku-municipality/?custom\\_searched\\_keyword=access+to+information](https://transparency.ge/en/blog/how-transparent-and-informative-are-websites-chkhorotsku-municipality/?custom_searched_keyword=access+to+information).

judicial cases was highlighted as a challenge by the Public Defender of Georgia, who informed ODIHR that a limitation that provides the Public Defender with access to such cases only when court decisions enter into force<sup>386</sup> constitutes an impediment for the effective work of her Office.

214. In **Italy**, some civil society interviewees noted gaps in the implementation of safeguards pertaining to access to information.<sup>387</sup> For example, environmental defenders raised concern that some public bodies continue requiring proof of ‘direct interest’ in relation to requested information; that challenging decisions of public administrations not to release information is costly; and that information received in response to their requests is often incomplete or in a “raw” form. A study by Italy’s National Anti-Corruption Authority (ANAC) conducted in 2017 found that in 18 per cent of cases reported by 240 public entities, including ministries, regional public bodies and municipalities, requests for information were denied.<sup>388</sup>
215. Interviewed defenders in **Mongolia** informed ODIHR that information available on state institutions’ websites is not always complete, updated and systematized, and requests for information are sometimes ignored or responded to in a generic manner. Several defenders further indicated some authorities’ practice of declaring requested documents restricted or confidential as another challenge hindering their access to information. Based on the evaluation of 81 official websites of government agencies conducted in 2018, the *Independent Research Institute of Mongolia* found that 57 per cent of government agencies were ‘transparent in some ways’, 27 per cent – ‘transparent’, 16 per cent – ‘closed’, and none – ‘fully transparent’.<sup>389</sup> Similar findings were reported by the Communications and Information Technology Authority of Mongolia in its 2017 study.<sup>390</sup>
216. According to interviewed defenders in **Montenegro**, while the implementation of the Law on Free Access to Information is gradually improving, challenges remain. They noted that information of public interest made available by state institutions on their websites is sometimes difficult to retrieve, incomplete or not systematized. Data obtained through filing official information requests was alleged to be of poor quality in some cases, which is reportedly linked to the lack of capacity and resources among state bodies on information management technology. A number of civil society interviewees further reported concerns relating to the practice of declaring the requested documents as classified, as well as cases when requests remained unanswered.<sup>391</sup>
217. Various legal provisions and practices providing protection for whistleblowers are in place in all of the participating States visited by ODIHR.
218. Protection of whistleblowers is one of the priorities of the Anti-Corruption Strategy of **the Czech Republic**.<sup>392</sup> A government regulation establishes the protection of whistleblowers in civil service.<sup>393</sup> According to information

<sup>386</sup> The Organic Law of Georgia on the Public Defender of Georgia, 1996, available at: <https://matsne.gov.ge/en/document/view/33034?publication=18>.

<sup>387</sup> Such concerns were also raised in the context of a monitoring exercise conducted by civil society organizations in 2017. See True Freedom of Information Remains Elusive in Italy, Liberties, 28 April 2017, available at: <https://www.liberties.eu/en/news/freedom-of-information-and-ignorance-of-state-still-much-to-be-done-in-italy/11787>.

<sup>388</sup> This included cases in which the requested data was not held by the public entity or because legitimate limitation grounds applied. ANAC informed ODIHR that in 2018, it received over 900 complaints related to denials of requested information and started proceedings in 200 of them. In cases when denial of information was unjustified, ANAC is in the position to compel the disclosure of information and/or impose a fine, ranging from 500 to 1,000 Euro, on a public entity.

<sup>389</sup> The Independent Research Institute of Mongolia also concluded that while the agencies appear to have improved website designs, “timeliness”, “reliability” and the overall quality of information remain rather poor. See Monitoring of Transparency in Websites of State Agencies, Independent Research Institute of Mongolia, 2018, available at: [http://khamtdaa.mn/media/khamtdaa/content/IRIM\\_IRIM\\_Web-Monitoring-2018-Eng.pdf](http://khamtdaa.mn/media/khamtdaa/content/IRIM_IRIM_Web-Monitoring-2018-Eng.pdf).

<sup>390</sup> *Op. cit.* note 279.

<sup>391</sup> See Montenegro 2018 Report of the European Commission, 17 April 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf>. According to the Report, in 2017, 5,577 initial requests for access to information were made to public bodies. Of these, the information requested was not provided in 1,951 cases; the Agency for Data Protection and Free Access to Information received 1,086 complaints of which it upheld 356; the Administrative Court ruled in 12 cases against the public body’s decision not to grant access to information.

<sup>392</sup> Government Anti-Corruption Strategy for 2018-2022, available at: <https://www.vlada.cz/cz/urad-vlady/protikorupcni-program/interni-protikorupcni-program-uradu-vlady-ceske-republiky-119436/>.

<sup>393</sup> Government Regulation no. 145 of 15 June 2015, available at: <https://www.epravo.cz/top/zakony/sbirka-zakonu/narizeni-vlady-ze-dne-15-cervna-2015-o-opatrenich-souvisejicich-s-oznamovanim-podezreni-ze-spachani-protipravniho-jednani-ve-sluzebnim-uradu-20576.html>.

provided by the Ministry of Justice, the regulation sets responsibilities for public authorities and establishes that each public body has an inspector in charge of receiving whistleblowers' reports and investigating reported allegations. Civil servants reporting suspicion of unlawful conduct occurred in relation to service-related tasks may file a report anonymously or request the inspector not to disclose their identity. The inspector is obliged to investigate the case within 20 days after receipt or referral of a report, or within up to 40 days in extremely complicated cases. Furthermore, the prohibition of victimization and harassment in the Anti-Discrimination Act and the Labour Code grants whistleblowers protection against possible retaliatory measures.<sup>394</sup> Apart from employment-related protection, whistleblowers who report a crime or are witnesses in criminal proceedings can obtain short-term protection in line with the Police Act,<sup>395</sup> or extended protection during criminal proceedings.<sup>396</sup> Long-term protection can also be provided to whistleblowers in accordance with the Act on Protection of Witnesses.<sup>397</sup>

219. The Government of the Czech Republic is currently discussing a comprehensive law on the protection of whistleblowers in all employment arrangements. In February 2019, the Ministry of Justice submitted the Draft Law on the Protection of Whistleblowers to the government, following a series of consultations with various public bodies and civil society representatives.<sup>398</sup> The Draft Law envisages both internal and external reporting mechanisms for whistleblowers and the establishment of a specialized agency for reporting and introduces various protective measures for whistleblowers and their families. The Draft Law, however, does not foresee any specific sanctions for violating these provisions nor compensation to whistleblowers.<sup>399</sup> Discussions on the Draft Law were suspended in April 2019 to reopen in October 2019.<sup>400</sup>
220. In **Georgia**, Article 12 of the Law on Freedom of Speech and Expression protects disclosure of information intended to promote the legitimate interests of society and stipulates that information cannot be withheld for reasons of privacy and the protection of confidentiality in case protected public interests exceed the damage caused by disclosure of a secret. In such cases, the Law enables individuals to claim compensation if they face negative consequences because of their reporting of information of public interest. The rights of whistleblowers are further protected by the Chapter V.1 of the Law on Conflict of Interest and Corruption in Public Service,<sup>401</sup> which envisages internal and external reporting mechanisms and provides that reporting can be made anonymously. The Law introduces protective measures for whistleblowers and their close family members, including prohibition of intimidation, harassment, coercion, or any other illegal act against them in retaliation for whistleblowing. It also forbids to initiate administrative or civil proceedings or criminal prosecution against a whistleblower or to impose a respective liability on him/her due to circumstances connected to the fact of disclosure.

<sup>394</sup> According to Section 4.3 of the Anti-Discrimination Act, retaliation against persons in relation to their activity pursuing protection of rights of themselves or others constitutes unlawful discrimination. See Anti-Discrimination Act (2009), Section 4.3, available at: <https://www.zakonyprolidi.cz/cs/2009-198>.

According to the Labour Code, defenders are protected against unlawful dismissals or disciplinary penalties in relation to their work. See Labour Code (2006), Sections 16-17, available at: <https://www.zakonyprolidi.cz/cs/2006-262>.

Representatives of the Ministry of Justice informed ODIHR that in case a human rights activist or a whistleblower is unlawfully dismissed or otherwise harassed, the court can, based on the lawsuit filed in line with the Anti-Discrimination Act or the Labour Code, order various remedies, including restoration of the employment contract, termination of the action considered as harassment, award of an apology or financial damages.

<sup>395</sup> *Op. cit.* note 203.

<sup>396</sup> Code on Criminal Procedure (1961), Section 55.2, available at: <https://www.zakonyprolidi.cz/cs/1961-141>.

<sup>397</sup> Act on Special Protection of the Witness (2001), available at: <https://www.zakonyprolidi.cz/cs/2001-137>.

<sup>398</sup> The Draft Law on the Protection of Whistleblowers of the Czech Republic is available at: <https://apps.odok.cz/veklep-detail?pid=ALBSB63F32SK>. On consultations, See for example, Notes of the meetings of the Committee on Whistleblowing, available at: <https://korupce.cz/rada-vlady/pracovni-komise-predsedy-rady-vlady-pro-koordinaci-boje-s-korupci/komise-k-whistleblowingu/>; and Notes of a meeting of the Government Council on the Coordination of Fight against Corruption, 16 July 2019, available at: <https://korupce.cz/zaznamy/?a=3201>.

<sup>399</sup> See *Vláda chce chránit oznamovatele trestných činů. Náhradu škody ani odměnu jim ale nedá [The Government wants to protect whistleblowers of crimes. But they will not get compensation or remuneration]*, Právní rádce, 5 November 2018, available at: <https://pravnicaradce.ihned.cz/c1-66327810-vlada-chce-chronit-oznamovatele-trestnych-cinu-nahradu-skody-ci-odmenu-jim-ale-neda>; and *Ochrana oznamovatelů (whistleblowerů) v České republice? [Protection of whistleblowers in the Czech Republic?]*, Epravo.cz, 16 April 2019, available at: <https://www.epravo.cz/top/clanky/ochrana-oznamovatelu-whistlebloweru-v-ceske-republice-109097.html>.

<sup>400</sup> Better protection of whistleblowers: new EU-wide rules to kick in in 2021, Press Release of the European Council, 7 October 2019, available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/10/07/better-protection-of-whistle-blowers-new-eu-wide-rules-to-kick-in-in-2021/>.

<sup>401</sup> The Law of Georgia on Conflict of Interest and Corruption in Public Service, 1997, available at: <https://matsne.gov.ge/en/document/view/33550?publication=72>.

221. According to information provided by the Ministry of Justice of Georgia, one of the main mechanisms for ensuring confidentiality and simplicity of the disclosure procedure for whistleblowers is the Red Button online platform operated by the Civil Service Bureau (CSB), where any individual can anonymously report wrongdoings in civil service; law enforcement agencies have the duty to initiate an investigation, where relevant, and the Public Defender is tasked to provide oversight of the investigation process. The Ministry of Justice informed ODIHR that between 2015 and 2018, various state bodies received and reviewed more than 100 whistleblowing cases; in 2019, 26 cases were registered on the CSB website.<sup>402</sup>
222. Protection of whistleblowers in **Italy** is regulated by Law 179/2017, which stipulates safeguards for individuals reporting unlawful conduct in the public and private sectors.<sup>403</sup> Such safeguards include protection from any retaliatory or discriminatory dismissal or other measures as a consequence of reporting; guarantee of confidentiality of a whistleblower's identity; and mechanisms to remedy alleged infringement of these protections, including through filing complaints online to ANAC.<sup>404</sup> It is a private or public entity's responsibility to prove that actions taken in relation to a whistleblower were not connected to the act of whistleblowing. ANAC informed ODIHR that, while whistleblowers' reports should serve the public interest, the Law does not limit what the 'public interest' is, allowing for a broad and inclusive approach to protection. The Law further provides that ANAC can apply sanctions ranging from 5,000 to 30,000 Euros against those responsible for retaliatory measures, while a whistleblower is entitled to compensation of damages.<sup>405</sup> Multiple reporting avenues are made available to whistleblowers.<sup>406</sup> In 2017 and 2018, ANAC received 364 and 783 whistleblower reports, respectively.<sup>407</sup> In 2018, 16 cases were transmitted to the Public Prosecutor's Office, 10 to the Court of Auditors and 15 to the inspectorate for the Public Service.<sup>408</sup> In 2019, of 706 reports received between January and September, ANAC sent 41 cases for the consideration of the Public Prosecutor's Office and 35 to the Court of Auditors.<sup>409</sup>
223. **Mongolia's** Anti-Corruption Law establishes the mandate of the Independent Authority against Corruption (IAAC).<sup>410</sup> Although whistleblower protection is not specified as a function of the IAAC, the Law authorizes it to "accept and inspect corruption related requests and complaints" and "if necessary, place witnesses and other persons who assisted in anti-corruption work under the protection of the police". A Public Oversight Council is mandated to oversee IAAC performance and can act as a 'bridge' between the citizens and the IAAC, including through receipt and referral of corruption-related complaints.<sup>411</sup> Also of importance to the protection of whistleblowers is Mongolia's Law on the Protection of Witnesses and Victims.<sup>412</sup> The National Anti-Corruption Strategy of Mongolia for 2016-2023 indicates the need for the adoption of a specialized legal framework to protect

<sup>402</sup> Civil Service Bureau Activity Report for 2019, available at: <http://www.csb.gov.ge>.

<sup>403</sup> Law 179 of 30 November 2017, Provisions for the protection of whistleblowers who report crimes or misconduct of which they become aware in the context of private or public employment, available at: <https://www.anticorruzione.it/portal/public/classic/MenuServizio/ENG/RelevantLegislation>.

<sup>404</sup> See the official website of ANAC: <http://www.anticorruzione.it/portal/public/classic/Servizi/ServiziOnline/SegnalazioneWhistleblowing>.

<sup>405</sup> ANAC imposed a penalty for retaliatory measures against a whistleblower for example in September 2019, when a manager and a member of a disciplinary committee in a municipality based in Campania were suspended from work for a total of 22 days after they filed a report with the judicial authority alleging negligence of a public official and the abuse of public office by members of the committee. After investigating the case, ANAC considered actions undertaken by the administration against the manager to be retaliation and imposed a fine of 5,000 Euros on those responsible for suspension. See Resolution no. 782 of 4 September 2019, ANAC, available at: <https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Attivita/Atti/Delibere/2019/Del.782.2019.omiss.pdf>.

<sup>406</sup> This includes focal points in charge of anti-corruption and transparency-related matters within each public body and in private sector entities; ANAC; and judicial authorities, including the Court of Auditors.

<sup>407</sup> Third and fourth annual reports on whistleblowing in Italy, ANAC, 2018 and 2019, available at: [http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Comunicazione/News/2018/Rapp.Whistleblowing.28.06.2018\\_.pdf](http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Comunicazione/News/2018/Rapp.Whistleblowing.28.06.2018_.pdf) and <https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Comunicazione/Eventi/2019/Anac.4.Rapporto.WB.pdf>.

<sup>408</sup> *Ibid.*, 2018 report.

<sup>409</sup> Italy (finally) protects a whistleblower, issues first penalty for retaliation by V. Cherepanova, the FCPA blog, 17 October 2019, available at: <https://fcpablog.com/2019/10/17/italy-finally-protects-a-whistleblower-issues-first-penalty-for-retaliation/>.

<sup>410</sup> The Law of Mongolia on Anti-Corruption, 2006, available at: <https://www.legalinfo.mn/law/details/8928>.

<sup>411</sup> The list of individuals appointed in August 2017 by the President of Mongolia to serve as members of the Council is available at: <https://president.mn/en/2017/08/29/members-of-public-council-under-independent-agency-against-corruption-appointed/>.

<sup>412</sup> *Op. cit.* note 213. More information about Mongolia's protection framework for witnesses and victims is available at para 118 of the present report.

whistleblowers and to reward officials and citizens who report corruption and illegal acts.<sup>413</sup> The President of Mongolia announced 2018 as a year for strengthening the protection of whistleblowers, witnesses and victims.<sup>414</sup>

224. In **Montenegro**, protection of whistleblowers is one of the core functions of the APC. Montenegro's Law on Prevention of Corruption provides the framework for APC's work in this area and stipulates legal safeguards guaranteed to whistleblowers, including protection of their identity and anonymity.<sup>415</sup>
225. The APC conducts proceedings to verify whistleblowers' allegations, makes relevant recommendations to the entity that is the subject of the allegations, and can file a request to initiate misdemeanor proceedings before the competent court in case it receives no information on the implementation of the recommendations. The APC can also inform the authority overseeing the work of such entity, as well as the public, and submit a report to the Parliament. Furthermore, the APC reviews requests for whistleblower protection and can provide expert assistance to the whistleblower during court proceedings in cases of retaliation. Opinions of the APC are not binding and cannot be challenged before the Administrative Court, but as provided by Article 68 of the Law on Prevention of Corruption, whistleblowers can still be entitled to judicial protection in accordance with the Law on Prohibition of Discrimination and Law on Prohibition of Harassment at Work. According to information provided by the APC, since its establishment in 2016 until end of 2019, the Agency received 345 reports of threat to the public interest that indicates the existence of corruption.<sup>416</sup> The APC received 19 requests for whistleblower protection and granted protection in six cases, while two cases are pending. In addition, between 2016 and 2018, the APC established a threat to the public interest in 15 cases and issued 33 recommendations to remove corruption risks.<sup>417</sup>
226. Human rights defenders interviewed by ODIHR in several countries pointed to a number of challenges concerning whistleblower protection.
227. In **Georgia**, interviewed defenders highlighted the need for developing a consistent approach in identifying whistleblowing statements as well as minimum standards on internal procedures and rules for whistleblowing across public bodies.<sup>418</sup> They also expressed concern that information on whistleblowers' reports as well as the authorities' responses to them are not always properly recorded or published.<sup>419</sup> They highlighted the need for comprehensive evaluation of the existing reporting channels' effectiveness; introduction of measures for the protection of whistleblowers in the law enforcement system; and expansion of the protection framework to include

<sup>413</sup> National Anti-Corruption Strategy, IAAC official website, available at <https://iaac.mn/files/d8faf0f3-92d8-470f-bb01-c1b0b25490be/3.Mongolian%20National%20Anti-Corruption%20Strategy.pdf>. See also Interview of IAAC communications and media relations officer on the need for a Law to protect whistleblowers, IAAC, 14 October 2016, available at: <https://www.iaac.mn/news/awligiin-esreg-shugel-uleegch-iig-khamgaalsan-khuuli-shaardlagatai>.

<sup>414</sup> Монгол Улсын Ерөнхийлөгч Х.Баттулга: 2018 оныг "Авлигыг илчлэх, авлигын гэрч, мэдээлэгч, шүгэл үлээгч, хохирогчийг хамгаалах жил" болгон зарлах санаачилга гаргаж байгааг бүх талаар дэмжин ажиллах болно [The President of Mongolia Kh.Battulga announced 2018 as a year for "revealing corruption and protecting whistleblowers, witnesses and victims" and said will work to support the initiative], 8 December 2017, available at: <https://president.mn/1483/>.

<sup>415</sup> The Law on Prevention of Corruption, adopted in December 2014, and amended in April 2017. See also ODIHR's Opinion on the Law on Prevention of Corruption of Montenegro, 29 October 2018, available at: <https://www.osce.org/odihr/403763?download=true>.

The APC informed ODIHR that in 2020, with the aim of further strengthening existing regulations pertaining to the protections of whistleblowers and ensuring a more efficient and effective work of the Agency in this area, the Council of the APC initiated towards the Parliament further amendments to the Law on Prevention of Corruption. The APC also informed ODIHR about ongoing efforts to align the Law with EU Directive 2019/1937 on the protection of persons who report breaches of Union law, including participating as an observer to meetings of the working group on alignment of the Network of European Integrity and Whistleblowing Authorities.

<sup>416</sup> According to information provided to ODIHR by the APC, in 2020 the Agency received 75 reports.

<sup>417</sup> See Annual reports of the APC for 2016, 2017 and 2018, available at: [https://www.antikorupcija.me/media/documents/ASK\\_lzvjestaj\\_2016.pdf](https://www.antikorupcija.me/media/documents/ASK_lzvjestaj_2016.pdf); [https://www.antikorupcija.me/media/documents/lzvi%C5%A1taj\\_o\\_radu\\_Agencije\\_za\\_2017\\_godinu.pdf](https://www.antikorupcija.me/media/documents/lzvi%C5%A1taj_o_radu_Agencije_za_2017_godinu.pdf); and [http://www.antikorupcija.me/media/documents/lzvi%C5%A1taj\\_o\\_radu\\_ASK\\_za\\_2018\\_.pdf](http://www.antikorupcija.me/media/documents/lzvi%C5%A1taj_o_radu_ASK_za_2018_.pdf).

<sup>418</sup> The dysfunctional whistleblowing mechanism in the Georgian public service, Transparency International, 25 June 2020, available at: [https://www.transparency.ge/en/blog/dysfunctional-whistleblowing-mechanism-georgian-public-service/?custom\\_searched\\_keyword=Rustavi+2+TV](https://www.transparency.ge/en/blog/dysfunctional-whistleblowing-mechanism-georgian-public-service/?custom_searched_keyword=Rustavi+2+TV).

<sup>419</sup> *Ibid.* For example, of the 36 public institutions included in the assessment, only 12 provided statistics, with a total of 252 cases recorded between 2015 and 2020, most of which (225) were related to only five public bodies.



temporary employees, contractors and interns, as well as private sector employees.<sup>420</sup> Interviewed defenders also cited a case in 2018 when law enforcement authorities allegedly pressured NGOs to reveal the identity of a whistleblower.<sup>421</sup>

228. In **Mongolia**, interviewed defenders pointed to challenges the IAAC faces in implementing its mandate due to scarcity of financial and human resources amidst a growing workload, and noted the lack of public awareness about the Public Oversight Council of the IAAC and its activities. According to interviewed defenders and the IAAC, the current framework does not offer adequate protection to witnesses and victims, including whistleblowers, due to legislative and regulatory gaps as well as lack of funding.<sup>422</sup> The UN Special Rapporteur on the situation of human rights defenders and a number of civil society organizations have raised concerns regarding the deterrent message sent to those speaking out against corruption or injustice as a result of amendments to a number of laws adopted in an emergency session in 2019 which authorize the National Security Council to revoke the mandate of chief judges, the heads of the Public Prosecutor's Office and the IAAC.<sup>423</sup>
229. In **Montenegro**, a number of civil society organizations welcomed the introduced legislative and institutional measures to protect whistleblowers but raised concern over some cases in which whistleblowers were not granted protection.<sup>424</sup> Many interviewed defenders further stressed the need to raise public awareness on rules and procedures pertaining to the whistleblower reporting and protection.

## CONCLUDING OBSERVATIONS

- Stand-alone laws on freedom of information can help ensure a robust legal framework for the exercise of the right to seek and impart information. ODIHR welcomes the existence of such laws in the Czech Republic, Italy, Mongolia and Montenegro, and the civil society interest to revive the process of developing such a law in Georgia. Increasing the knowledge and skills of civil servants to ensure consistent and efficient application of legislation regulating access to information at national and local levels is also important to ensure the full enjoyment of this right.
- Improvements to the law on access to information in Italy, for example elimination of the previous requirement to demonstrate direct interest in the information requested, is noted as a positive development, as is the commitment of Montenegro to analyse and improve its legislation pertaining to access to information.
- Appropriate access to information on judicial cases, highlighted as a gap in Georgia and the Czech Republic, can facilitate the full exercise of the right to seek and impart information, particularly in the context of human rights investigations.

<sup>420</sup> See Annual Progress Report on the Implementation of the Action Plan of the National Strategy on the Protection of Human Rights for 2014-2020, 3 June 2019, available at: <http://myrights.gov.ge/uploads/files/docs/5726HRAPAnnualReport-2019.pdf>; and Anti-corruption reforms in Georgia, Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2016, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>.

<sup>421</sup> See Due to the lack of action under the Criminal Code, the Prosecutor's Office of Georgia has suspended the investigation into the ongoing criminal case on the production of fake IDs in order to falsify the presidential election, website of the Prosecutor's Office of Georgia, 17 June 2020, available at: [http://pog.gov.ge/en/news/saqarTvelos-prokuraturam-sisxlis-samarTlis-kodeqsiT-gaTvaliswinebuli-qmedebis-ararsebobis-gamo-sapr?fbclid=IwAR33QFzJjgotG-r-4QKZ28Ry79PTa6m\\_NhgVMKS9EHeW1cjVFwaU7YJzmYE](http://pog.gov.ge/en/news/saqarTvelos-prokuraturam-sisxlis-samarTlis-kodeqsiT-gaTvaliswinebuli-qmedebis-ararsebobis-gamo-sapr?fbclid=IwAR33QFzJjgotG-r-4QKZ28Ry79PTa6m_NhgVMKS9EHeW1cjVFwaU7YJzmYE). See also ODIHR Election Observation Mission Final Report – Presidential election 28 October and 28 November 2018 (Georgia), OSCE/ODIHR, 28 February 2019, available at: [https://www.osce.org/files/f/documents/9/4/412724\\_2.pdf](https://www.osce.org/files/f/documents/9/4/412724_2.pdf).

<sup>422</sup> More information about Mongolia's protection framework for witnesses and victims is available at para 118 of the present report.

<sup>423</sup> *Op. cit.* note 218. See also Parliament of Mongolia Should Uphold the Independence of the Judiciary and Anti-Corruption Agency, Transparency International, 29 March 2019, available at: [https://www.transparency.org/news/pressrelease/parliament\\_of\\_mongolia\\_should\\_uphold\\_the\\_independence\\_of\\_the\\_judiciary](https://www.transparency.org/news/pressrelease/parliament_of_mongolia_should_uphold_the_independence_of_the_judiciary).

<sup>424</sup> See In Montenegro, to obtain the status of whistleblower is a major challenge. Even those who succeed risk being mobbed or fired, Osservatorio Balcani e Caucaso, 15 December 2017, available at: <https://www.balcanicaucaso.org/eng/Areas/Montenegro/Montenegro-how-not-to-protect-whistleblowers184622>.



- While the provision of information online by state institutions is generally a well-established practice in countries that participated in the first assessment cycle, common gaps noted in this regard include the quality, consistency and systematic nature of information provided.
- ODIHR welcomes the various existing legal and institutional provisions related to whistleblowers, such as anonymous reporting mechanisms, safeguards of the confidentiality of whistleblowers' identities, and measures to protect them against reprisals, while noting that further efforts may be needed to provide a comprehensive protection framework. Raising public awareness about whistleblowing and protections available, including through the collection and dissemination of reliable and consistent statistical data, can reinforce recognition of the importance of whistleblowers who act in the public interest to uncover human rights abuses and corruption. In this regard, ODIHR welcomes the announcement by the President of Mongolia of 2018 as a year for strengthening the protection of whistleblowers, witnesses and victims.
- A dedicated law on whistleblower protection that applies to both public and private sectors, makes available multiple reporting avenues, and includes strong provisions for protecting the identity of whistleblowers, among other features, can be noted as a positive practice in Italy. The initiative to develop a comprehensive law on whistleblower protection in the Czech Republic and civil society engagement in those discussions is a welcome development, as is the stated commitment of the authorities in Mongolia to adopt a comprehensive and effective whistleblower protection framework.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Ensure that the national legal framework is consistent with international standards concerning the right to seek and impart information and provides for appropriate remedies if this right is unduly restricted.
- Put in place transparent procedures for accessing public information and respond to information requests in a timely manner, with a clearly stated policy that requests for information are always entitled to a response. Remove administrative, financial or other obstacles to accessing information, including by ensuring that any costs charged to the requester of information are low and that accurate information is provided in advance about any such costs.
- Strengthen the capacity of state bodies to provide information promptly and efficiently.
- In case a request for access to information is not granted, provide appropriate and timely information to the requester about the reason for denying access.
- Take measures to ensure that public information is of appropriate quality, including in terms of consistency, accuracy and accessibility.
- Ensure that public information is accessible in a systematized manner on government websites and that information is disaggregated according to sex, ethnicity, age and other relevant factors.
- Adopt a comprehensive and effective whistleblower protection framework, following inclusive, transparent and meaningful consultations with civil society. This should provide for the adequate financing of protection measures and include a sufficiently strong framework and mechanisms to inter alia protect the identity of whistleblowers and secure the protection of witnesses and victims.
- Create a robust and effective mechanism to access remedies when whistleblower protection is not granted or is ineffective.

- Raise public awareness about existing whistleblower reporting and about protection rules and procedures, including by collecting and publishing reliable statistical data about whistleblowing.
- Provide sufficient financial and human resources for bodies and mechanisms designed to facilitate the reporting of corruption, human rights violations and other forms of wrongdoing.

## 2.2 FREEDOM OF PEACEFUL ASSEMBLY

### **Overview of relevant international standards and commitments**

230. The right to freedom of peaceful assembly is enshrined in the UDHR, ICCPR and a number of regional human rights instruments.<sup>425</sup> The ICCPR stipulates that no restrictions may be placed on this right which are not in conformity with the law and necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others. Limitations must also comply with the principles of legality, necessity, proportionality, and non-discrimination.<sup>426</sup>
231. The right to freedom of peaceful assembly enables human rights defenders to communicate their defense of human rights causes. Human rights defenders also protect others' right to freedom of peaceful assembly through their work on monitoring assemblies. OSCE participating States have committed to respect the right to freedom of peaceful assembly<sup>427</sup> and have affirmed that any restrictions on this right must be prescribed by law and consistent with international standards.<sup>428</sup> The *Guidelines on Freedom of Peaceful Assembly*, developed by ODIHR and the Venice Commission of the Council of Europe,<sup>429</sup> emphasize that states have a positive duty to facilitate and protect the exercise of the right to peaceful assembly. This should include facilitating spontaneous assemblies of a peaceful nature and ensuring that assemblies can take place within "sight and sound" of target audiences. Furthermore, law enforcement officials should avoid the use of force during assemblies, or, if this is not practicable, should refrain from excessive and indiscriminate use of force.<sup>430</sup> The *Guidelines* as well as international institutions and actors recognize the right to freedom of peaceful assembly both online and offline.<sup>431</sup> Notably, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has pointed out that the right to peaceful assembly protects the right of those monitoring peaceful assemblies.<sup>432</sup> Facilitating independent media coverage of assemblies has also been highlighted as an important part of protecting and promoting the right to freedom of peaceful assembly.<sup>433</sup> The *Guidelines on the Protection of Human Rights Defenders* further encourage states to involve defenders in training law enforcement officials in human rights compliant policing of

<sup>425</sup> UDHR, Article 20; ICCPR, Article 21; ECHR, Article 11; ACHR, Article 15.

Furthermore, Article 5 of the UN Declaration on Human Rights Defenders puts special emphasis on the importance of freedom of peaceful assembly for the promotion and protection of human rights and fundamental freedoms.

<sup>426</sup> See UN Human Rights Committee General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant," UN Doc. CCPR/C/21/Rev.1./Add.13, 26 May 2005, para. 6.

<sup>427</sup> Copenhagen 1990, para 9 (2); Charter of Paris 1990, preamble; Final Document of the Sixteenth Meeting of the Ministerial Council, Helsinki, 4 and 5 December 2008, p. 5.

<sup>428</sup> Copenhagen 1990, para 9 (2).

<sup>429</sup> ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (third edition: 2019), available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e).

<sup>430</sup> *Ibid.* See also the UNGA Resolution 34/169; A/RES/68/181; A/HRC/RES/19/35 and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>431</sup> See for example A/HRC/20/27, 21 May 2012, paras. 32 and 84 (k), and A/HRC/RES/24/5, 8 October 2013.

<sup>432</sup> See A/HRC/20/27, Summary; and General Comment No. 37 on Article 21 of the ICCPR (Right of peaceful assembly), 2020, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11).

<sup>433</sup> See for example, Special Report "Handling of the media during political demonstrations, Observations and Recommendations", OSCE Representative on Freedom of the Media, 22 June 2007, <https://www.osce.org/fom/25744>.

assemblies. Highlighting the crucial watchdog role of human rights defenders, the *Guidelines* call on authorities to support and facilitate independent monitoring of and reporting on assemblies.<sup>434</sup>

### ***Freedom of peaceful assembly in selected OSCE participating States***

232. The right to freedom of peaceful assembly is guaranteed in the constitutions of **Georgia** (Article 21), **Italy** (Article 17), **Mongolia** (Article 16) and **Montenegro** (Article 52), and in the Charter of Fundamental Rights and Freedoms of **the Czech Republic** (Article 19). In addition to constitutional guarantees, the legal frameworks of countries visited in the first assessment cycle include other laws which govern the implementation of this right, addressing inter alia the rights and responsibilities of assembly organizers and the grounds for prohibition or dispersal of an assembly.
233. In **the Czech Republic**, the right to freedom of peaceful assembly is regulated by the Act on the Right to Assembly.<sup>435</sup> Holding an assembly does not require prior authorization (Section 1.4) and the law does not prohibit spontaneous assemblies or assemblies lacking an organizer. In cases of organized assemblies, the Act requires organizers to notify the local municipal authority five days in advance. Failure to do so is subject to a possible misdemeanor charge and fine but does not constitute a lawful reason for dissolution of the assembly. A municipal authority can decide to prohibit an assembly for reasons specified by the law, for example if its purpose is to interfere with the rights of others on the basis of their nationality, gender, race or other grounds, or to perpetuate violence. In case of assemblies taking place at the same time and place, one or all of them can be prohibited if their simultaneous facilitation is not possible. In such cases, the organizers must be notified about the decision without undue delay and no later than three days before the planned date of the event.<sup>436</sup> The decision prohibiting an assembly can be challenged in court within 15 days after issuance of the prohibition order and the administrative court must decide within three days after filing of a complaint (Section 11.3). If an assembly takes place despite the prohibition order issued by the municipal authority, the police can intervene to terminate the assembly, if the organizers do not do so voluntarily upon the municipality's notice (Section 12.5). The assembly can lawfully take place if the prohibition order is not issued within three days. Organizers have the right to request police protection (Section 6.3) but are expected to adopt measures to ensure that the assembly takes place in accordance with the law and peacefully (Section 5.3 c).
234. Article 21 of the Constitution of **Georgia** establishes that everyone shall have the right to assemble publicly and unarmed, without permission, and that prior notification may be required if an assembly is held on a public thoroughfare. The Law on Assemblies and Demonstrations prescribes that gatherings which obstruct traffic or are held on a roadway must be notified to local authorities five days prior to a scheduled assembly date.<sup>437</sup> The responsible executive body or a local self-government may recommend changing the venue and time of an assembly, if it poses a real threat to public order or normal operation of various bodies and enterprises or if another notified action is planned at the same venue and at the same time (Article 10). The Law prohibits holding assemblies within a 20-metre radius of the Prosecutor's Office, penitentiary institutions, law enforcement bodies, railway stations, airports and ports; within 100 metres from military units and facilities; and blocking the entrances of buildings, motorways and railways (Article 9) or blocking traffic roadways unless it is required due to the number of participants (Article 11).<sup>438</sup> The authorities can prohibit an assembly if there is proof that its holding

<sup>434</sup> *Op. cit.* note 9, paras. 55-62.

<sup>435</sup> Act on the Right to Assembly (1990), available at: <https://www.zakonyprolidi.cz/cs/1990-84>.

<sup>436</sup> ODIHR previously evaluated the practice of notifications within short periods as positive, and called for facilitation of simultaneous assemblies, with emphasis on practical solutions that can be found through dialogue and negotiation. ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2013 – July 2014, 17 December 2014, <https://www.osce.org/odihhr/132281?download=true>, paras 150-151 and 160.

<sup>437</sup> The Law of Georgia on Assemblies and Demonstrations (1997), available at: <https://matsne.gov.ge/en/document/view/31678?publication=10, Article 5>.

<sup>438</sup> In its review of Georgia's Law on Assemblies and Demonstrations, the Venice Commission of the Council of Europe advised the authorities to reconsider limitations imposed on the use of public space due to traffic considerations, noting that public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space

may pose “a direct threat to the constitutional order, or the life and health of citizens”; such a decision may be appealed before a court (Article 14). The Code of Administrative Offences envisages penalties, including fines and administrative detention for up to 15 days, for violating the rules for organizing or holding assemblies.<sup>439</sup>

235. In **Italy**, while no previous notification is required for gatherings taking place in ‘sites that are open to the public’, assemblies held in ‘public spaces’ must be notified to the authorities in advance.<sup>440</sup> According to Article 18 of the Consolidated Text of Public Safety Laws (TULPS), notification must be provided at least three days before the event.<sup>441</sup> The lack of previous notice does not constitute sufficient grounds for preventing people from holding assemblies.<sup>442</sup> Pursuant to Article 17 of the Constitution, assemblies held in public spaces may be prohibited by the authorities only “for proven reason of security or public safety”. Likewise, Article 20 of the TULPS prescribes that assemblies might be dispersed in case they could endanger “public order or the security of citizens” or if their message is seditious or detrimental to the public image of national institutions and authorities. Decree-Law 53/2019 introduced new regulations pertaining to management of public order during assemblies and sports events, including establishing a penalty of up to three years of imprisonment and fines from 2,000 to 6,000 Euros for anyone who uses helmets or other means that make it difficult to recognize a person during public demonstrations.<sup>443</sup> Increased penalties were also introduced for illegitimate use of smoke or gas-emitting devices, violence or threats against a public official, or destruction of property during assemblies.
236. **Mongolia’s** Law on Regulation of Assemblies requires organizers to notify a respective governor of a planned assembly and provides that the governor shall decide within three working days upon the receipt of a notification whether or not the assembly in question is registered and can therefore take place (Articles 9 and 10).<sup>444</sup> If a demonstration goes ahead without a successful registration with the governor’s office, the police have the right to terminate the assembly (Article 14). The Law does not provide for protections of spontaneous assemblies and imposes a fine or arrest for up to 30 days for violating the provisions of the Law, including for conducting a demonstration without registration (Article 15).
237. **Montenegro’s** Law on Public Assemblies and Public Performances,<sup>445</sup> adopted in 2016, introduced a number of positive changes to the previous framework, in particular, by recognizing spontaneous assemblies, securing the possibility of organizing assemblies closer to the premises of the Government, Parliament, Constitutional Court and the President, and expanding the scope of state obligations with regards to ensuring safety and security of people and property during assemblies.<sup>446</sup> The Law stipulates that the Police Directorate is responsible for ensuring public security, the protection of human rights and freedoms, including minorities’ rights, as well as of public health during assemblies. According to the Law, public assemblies can only be restricted for public safety reasons, always respecting international human rights standards and the proportionality principle. During the

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as the more routine purposes for which such space is used. See European Commission for Democracy Through Law (Venice Commission) Comments on the Law on Assembly and Manifestations of the Republic of Georgia, 1 October 2009, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)152-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)152-e).

<sup>439</sup> Code of Administrative Offences of Georgia, 1984, available at: <https://matsne.gov.ge/en/document/view/28216?publication=381>, Article 1741.

<sup>440</sup> Under the national legal framework, public places are those through which individuals can pass freely, including streets and squares, whereas places open to the public are spaces publicly accessible as long as certain conditions are fulfilled, such as a cinema or stadium that can be entered only after buying a ticket. Further on the distinction between “assemblies in places open to public” and “assemblies in public places” See the judgement of the Court of Cassation no. 0008, 31 March 1951, available at: <http://www.giurcost.org/decisioni/Corte%20di%20Cassazione%20Sezioni%20Unite%20Penalesentenza%2031%20marzo%201951bis.htm>.

<sup>441</sup> Royal Decree no. 773 of 18 June 1931, “Consolidated Text of Public Safety Laws (TULPS)”, Article 18, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1931-06-18:773>.

<sup>442</sup> Constitutional Court ruling no. 11 of 1979, available at: <http://www.giurcost.org/decisioni/1979/0011s-79.html>.

<sup>443</sup> *Op. cit.* note 229, Decree-Law 53/2019, Article 6.

<sup>444</sup> Law on Regulation of Assemblies, 7 July 1994, available at: <https://www.legalinfo.mn/law/details/252>.

<sup>445</sup> Law on public assemblies and public performances, August 2016, available at: <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-javnim-okupljanjima-i-javnim-priredbama.pdf>.

<sup>446</sup> Monitoring Right to Free Assembly, Country Report on Montenegro 2016-2017, Institute Alternative, December 2017, available at: <http://media.institut-alternativa.org/2018/02/ECNL-FoPA-Montenegro-20171.pdf>.

reporting period, the notification procedure was simplified, and police facilitated 221 non-notified assemblies in 2017.<sup>447</sup>

238. ODIHR was informed about good practices in regard to the facilitation of peaceful assemblies in four countries.
239. According to interviewed human rights defenders in **the Czech Republic**, freedom of assembly is generally effectively upheld in practice.<sup>448</sup> Throughout the reporting period, a series of large-scale demonstrations counting thousands of protesters took place peacefully without noticeable interference from the authorities. According to the Prague Metropolitan Authority, in 2017, 2018 and 2019 Prague hosted about 30 assemblies per month, whereas no assemblies have been prohibited.<sup>449</sup>
240. In **Georgia**, the Ministry of Internal Affairs reported that police arrested a number of counterdemonstrators who attacked LGBTI activists during assemblies in 2018. The Georgian authorities also informed ODIHR about undertaking numerous awareness raising and capacity building initiatives, including in co-operation with ODIHR, to further enhance the capacity of law enforcement authorities to prevent and respond to violations of LGBTI activists' and other defenders' right to peaceful assembly.
241. Interviewed **Mongolian** LGBTI defenders noted improvements in the process of co-operation with the authorities in organizing equality marches in Ulaanbaatar in 2017 and 2018. They informed that in earlier years they faced considerable challenges in acquiring registration of assemblies from the city government and holding marches on proposed routes, often due to personal biases of public servants involved in decision-making or framed as related to 'moral grounds'.<sup>450</sup>
242. In **Montenegro**, state representatives and human rights defenders noted the active role of law enforcement authorities during assemblies in both preventing incidents and violations and ensuring the safety and security of participants, including during Pride events.
243. Notwithstanding the existence of legal guarantees of the right to freedom of peaceful assembly and certain positive practices, human rights defenders in three countries described challenges related to the exercise of the right to freedom of peaceful assembly as a result of the authorities' interpretation and/or application of relevant legislation.
244. According to civil society interviewees from **Georgia**, restrictions in relation to blocking of buildings can in practice lead to undue limitations of the right to assembly, even when demonstrations held close to public buildings do not interrupt the normal functioning of institutions. Interviewed defenders also reported that on some occasions police used legal provisions to justify unwarranted interference with assemblies and detain some peaceful participants on various grounds, including putting up placards, slogans, or banners at places not allocated for this purpose.<sup>451</sup> In relation to such cases, the *Georgian Young Lawyer's Association (GYLA)* reported that both the police and the courts tend to use a broad interpretation of the limits of an administrative offence.<sup>452</sup>

<sup>447</sup> *Ibid.*

<sup>448</sup> Freedom in the World 2018, Czech Republic, Freedom House, available at: <https://www.refworld.org/docid/5b7bcc8d8.html>; See also 2017 report, available at: <https://freedomhouse.org/country/czech-republic/freedom-world/2017>.

<sup>449</sup> The list of notified and prohibited assemblies in Prague are available on the webpage of the Prague Metropolitan Authority at: [http://www.praha.eu/jnp/cz/o\\_meste/vyhlasaky\\_a\\_narizeni/prehled\\_veřejnych\\_shromazdeni/index.html](http://www.praha.eu/jnp/cz/o_meste/vyhlasaky_a_narizeni/prehled_veřejnych_shromazdeni/index.html).

<sup>450</sup> See, for example, *op. cit.* note 69, the LGBTI Centre Report on the Human Rights Situation of the Lesbian, Gay, Bisexual, Transgender and Intersex People in Mongolia; and Concluding Observations on the sixth periodic report of Mongolia, CCPR/C/MNG/CO/6, the Human Rights Committee, 22 August 2017, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MNG/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MNG/CO/6&Lang=En).

<sup>451</sup> In 2019, the Constitutional Court ruled that liability under Article 150 of the Code of Administrative Offences of Georgia shall not be imposed for spontaneous assembly, and individuals shall be allowed to temporarily put up slogans, banners and posters at places not allocated for this purpose, as part of their spontaneous protest. See Decision N1/5/1271 of the Constitutional Court of Georgia, 4 July 2019, available at: <https://www.constcourt.ge/en/judicial-acts?legal=1867>.

<sup>452</sup> Protest Considered to be an Offence, Georgian Young Lawyers' Association, 2017, available at: <https://www.gyla.ge/ge/post/samartaldarghvevad-michneuli-protesti#sthash.2nQU8QR9.dpbs>.

245. Several civil society interviewees in **Italy** raised concern over negative implications that provisions of Decree-Law 113/2018, particularly concerning road blockage, might have on their right to freedom of peaceful assembly and their ability to draw public attention to issues facing vulnerable groups.<sup>453</sup> The Decree-Law prescribes that road blockage aiming at preventing or hindering people's free movement through obstructive objects or other means can be punished with one to six years of imprisonment.<sup>454</sup> Administrative sanctions from 1,000 to 4,000 Euros can be imposed on "anyone preventing the free circulation on the ordinary road, obstructing the same with his/her own body", as well as on promoters and organizers of assemblies.<sup>455</sup>
246. In **Mongolia**, according to civil society interviewees, the lack of a governor's written approval to hold an assembly is sometimes used as a ground to forcibly terminate protests and press charges against organizers.<sup>456</sup> In this regard, human rights defenders raised concern that the authorities often treat assemblies as requiring their authorization or permission, as opposed to a notification procedure. In the assessment of some defenders, this discretionary power of governors sometimes results in the imposition of undue limitations on the exercise of the right to freedom of peaceful assembly.<sup>457</sup> According to official data, 12 complaints were filed in 2017 and 2018 against governors' decisions to reject requests to organize assemblies, including nine complaints filed by defenders in Ulaanbaatar and three by local/community activists; seven of the 12 cases were ruled in favour of the claimants.<sup>458</sup>
247. Challenges in the effective exercise of the right to freedom of peaceful assembly due to judicial or administrative harassment and other forms of pressure on defenders were brought to ODIHR's attention in two countries.
248. In **Italy**, interviewed environmental defenders alleged harassment of activists in retaliation for their participation in assemblies, involving the imposition of criminal charges and penalties, in some cases years after the assemblies took place.<sup>459</sup> They also reported being subject to restrictions on their movement in retaliation for their activism.<sup>460</sup> For example, in January 2019, 13 activists of the *No-TAV* movement opposing a high-speed railway project ("TAV") were reportedly prevented from accessing certain areas of the town of Lonato, in Lombardy, for two days, following their participation in a peaceful assembly on the margins of a conference dedicated to environmental matters.<sup>461</sup> Similarly, several environmental rights defenders from the *No-TAP* movement, a citizen's initiative opposing the construction of the Trans Adriatic Pipeline (TAP), were reportedly prevented from entering the cities of Lecce and Melendugno in Puglia region for an extended period of time as a result of their participation in a peaceful assembly that took place in San Foca di Melendugno in November 2017.<sup>462</sup> Twenty-five *No-TAP* activists faced charges relating to participation in the abovementioned demonstration. Interviewed defenders informed ODIHR

<sup>453</sup> See, for more information on Decree-Law 113/2018, paras 123 and 145 of the present report.

<sup>454</sup> *Op. cit.* note 229, Decree-Law 113/2018. See also Law 132, converting Decree-Law 113/2018 into law, 1 December 2018, available at: <https://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg>.

<sup>455</sup> *Ibid.*

<sup>456</sup> For example, on 8 March 2017, three women, who protested against corruption in Ulaanbaatar, were stopped by police for violating the Law on Regulation of Assembly as they had not submitted notice about the assembly to a respective governor. They were later fined by 50,000 MNT each by a court decision. See, for more information, Харгас нүүцгэн жагссан эмэгтэйчүүдийн торгуулийг нэгэн иргэн төлжээ, [An anonymous citizen paid the penalty of the half-naked women demonstrators], News website of Eagle TV, 23 March 2017, available at <http://eagle.mn/r/26400>.

<sup>457</sup> For example, when declaring a protest to a respective governor, some groups of activists, including LGBTI defenders, children defenders, unionists, and environmental activists, are often asked to find another day or venue for an assembly or denied registration. See *op. cit.* note 218.

<sup>458</sup> See, for more information, the official website of court decisions of Mongolia at: [www.shuukh.mn](http://www.shuukh.mn).

<sup>459</sup> See, for example, Finisce in carcere Nicoletta Dosio, la pasionaria No Tav ha rifiutato misure alternative [Nicoletta Dosio ends up in jail, the No Tav activist has refused alternative measures], La Repubblica, 30 December 2019, available at: [https://torino.repubblica.it/cronaca/2019/12/30/news/va\\_in\\_carcere\\_nicoletta\\_dosio-244658824/](https://torino.repubblica.it/cronaca/2019/12/30/news/va_in_carcere_nicoletta_dosio-244658824/).

<sup>460</sup> Defenders mentioned that a provision called D.A.SPO. (the Italian abbreviation for "Divieto di accedere alle manifestazioni sportive" [Prohibition to access sport events]), which allows authorities to prevent individuals deemed a danger to public safety from participating in sports events and being present at places where such events are conducted, was broadened with the adoption of Decree-Laws 14/2017 and 113/2018, making it possible for local authorities to use this measure beyond the context of sports events. See Decree-Law 14 of 20 February 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/02/20/17G00030/sg>., and *op. cit.* note 227.

<sup>461</sup> Lonato, attivisti no Tav ricorrono contro i Daspo [Lonato, No-TAV activists appeal against the Daspo], Giornale di Brescia, 25 February 2019, available at: <https://www.giornaledibrescia.it/garda/lonato-attivisti-no-tav-ricorrono-contro-i-daspo-1.3342110>.

<sup>462</sup> See, for example, Upcoming trial of 25 No-TAP activists, Frontline Defenders, 8 January 2020, available at: <https://www.frontlinedefenders.org/en/case/upcoming-trial-25-no-tap-activists>.



that the protest was carried out peacefully and opined that sanctions and charges against activists were issued to “intimidate people”.

249. Women human rights defenders reported being targeted with verbal and physical attacks during some assemblies dedicated to women’s rights. This included an incident in January 2019 when a member of a far-right civil society group shoved women activists protesting the so-called “Pillon” draft law<sup>463</sup> at a municipal building in Rome; the women were also reportedly subjected to gender-based and sexist insults by other individuals.<sup>464</sup>
250. In **Montenegro**, some participants of the *Mothers’ Protests* in 2017<sup>465</sup> reported that they faced pressure from public authorities in the form of negative statements and other hindrances for exercising their right to freedom of peaceful assembly. Public officials reportedly made gender-based comments, such as “they should go to their homes to care about their families”,<sup>466</sup> both in non-public interactions with protesters and in public remarks. Some protest organizers were accused of using rallies to promote politically motivated agendas, including the views of the opposition parties.<sup>467</sup> Several civil society activists alleged that in one instance the authorities in Berane prevented transportation companies from engaging with local protest organizers and exerted pressure on organizers’ family members, especially those employed in public institutions.
251. Disproportionate use of force by law enforcement officials and detentions of protesters in the context of assemblies was reported in four countries.
252. In **the Czech Republic**, interviewed human rights defenders alleged inadequate police handling of assemblies taking place during the annual environmental festival Klimakemp in 2017 and 2018. On 24 June 2017, a group of activists protested against intensifying coal exploitation by entering and occupying the Bílina mine, temporarily disabling its functioning. As a result of a reportedly disproportionate response by police to the protesters,<sup>468</sup> activists filed five separate complaints to the General Inspection of Security Forces (GISF), which did not identify any police misconduct.<sup>469</sup> In one case, an activist complained that police officers held her in handcuffs, although she was not attempting to flee, under direct sun without water, for more than three hours. The Prague Municipal Court decided that the police conduct in this case was unlawful,<sup>470</sup> while in a similar lawsuit filed by another participant, the same court reached a different conclusion.<sup>471</sup> According to information from the government, both cases are currently pending before the Supreme Administrative Court. During Klimakemp 2018, activists

<sup>463</sup> The “Pillon” draft law aims at amending the current legislation on separation, divorce and shared custody of minors.

<sup>464</sup> Ddl Pillon, a Roma i suoi sostenitori hanno mostrato il loro vero volto: quello della violenza [Ddl Pillon, in Rome his supporters showed their real face: that of violence], Il Fatto Quotidiano, 1 February 2019, available at: <https://www.ilfattoquotidiano.it/2019/02/01/ddl-pillon-a-roma-i-suoi-sostenitori-hanno-mostrato-il-loro-vero-volto-quello-della-violenza/4940012/>.

<sup>465</sup> In December 2016, the Government of Montenegro decided to reduce pension fees to mothers of three or more children, introduced in July 2015 by the Law on Amendments to the Law on Social and Child Protection, which sparked protests of mothers across Montenegro. The subsequent ruling of the Constitutional Court in April 2017, which declared the Amendments to the Law granting lifelong pensions to mothers of three and more children as unconstitutional, reignited the protests. According to organizers and participants, Mother’s Protests turned into a movement, registered in some parts of the country as local NGOs.

<sup>466</sup> See Statement by Duško Marković made on 4 March 2017, and reported by Vijesti, available at: <https://www.vijesti.me/vijesti/drustvo/markovic-majkama-idite-kuci-na-ovakav-nacin-necete-dobiti-nista>.

<sup>467</sup> Montenegrin Mothers Threaten ‘Radical’ Action Over Benefit Cut, BalkanInsight, March 2017, available at: <https://balkaninsight.com/2017/03/14/montenegrin-mothers-threaten-radical-action-over-benefit-cut-03-13-2017/>.

<sup>468</sup> Aktivista po zásahu močil krev, napadajj ekologové postup policie v Bílině [An activist was peeing blood after the police intervention, the ecologists are attacking the police conduct in Bílina], Idues.cz, 26 June 2017, available at: [https://www.idnes.cz/usti/zpravy/aktiviste-limity-j sme-my-vnik-do-dolu-zakrok-provereni-postupu-policie.A170626\\_141539\\_usti-zpravy\\_vac2](https://www.idnes.cz/usti/zpravy/aktiviste-limity-j sme-my-vnik-do-dolu-zakrok-provereni-postupu-policie.A170626_141539_usti-zpravy_vac2).

<sup>469</sup> Zásah policie na Klimakempu byl podle policie v pořádku. Aktivisté nesouhlasí [According to GISF, the police response at Klimakemp was lawful. The activists disagree], Deník Referendum, 27 November 2017, available at: <http://denikreferendum.cz/clanek/26587-zasah-policie-na-klimakempu-byl-podle-gibs-v-poradku-aktiviste-nesouhlasí>.

GISF is an impartial and independent state organization, headed by a director responding to the Prime Minister and appointed and dismissed by the government upon compulsory consultation with the Chamber of Deputies Committee on Security.

<sup>470</sup> Judgment of the Municipal Court in Prague of 25 September 2019, 8A 195/2017. See also Policie při zadržení aktivistky v dolu Bílina porušila zákon, rozhodl soud [Police acted unlawfully during the detention of an activist in Bílina mine], Idues.cz, 14 February 2020, available at: [https://www.idnes.cz/usti/zpravy/dul-bilina-aktiviste-limity-j sme-my-policie-soud-nezakonny-zasah.A200214\\_104609\\_usti-zpravy\\_pakr?](https://www.idnes.cz/usti/zpravy/dul-bilina-aktiviste-limity-j sme-my-policie-soud-nezakonny-zasah.A200214_104609_usti-zpravy_pakr?).

<sup>471</sup> Judgment of the Municipal Court in Prague of 27 February 2019, 9A 206/2017.

again entered the Bílina mine; they also alleged a disproportionate response from the police,<sup>472</sup> who fined 91 people<sup>473</sup> and detained 243.<sup>474</sup> According to the Ministry of Interior, the police intervened against the participants of the Klimakemp events in 2017 and 2018 in response to their illegal entry into coal mining areas and illegal occupation of mining machinery.

253. In **Georgia**, the Public Defender and a number of civil society interviewees raised concern over instances of disproportionate use of force against participants during dispersal of assemblies.<sup>475</sup> For example, on 18 and 26 November 2019, special police forces injured several protesters when using water cannons to disperse an assembly in front of the Parliament in Tbilisi to call for electoral system reform.<sup>476</sup> According to information provided by the Ministry of Internal Affairs, police notified participants before using special means and requested that they free the road, which protesters reportedly blocked for several days, as well as the entrances to the Parliament building. Thirty-seven individuals were reportedly detained on 18 November and 28 people on 26 November for ‘unlawfully resisting police orders’.<sup>477</sup> The Public Defender raised concern that the administrative detention and trials of participants of the assembly on 18 November failed to meet “minimum human rights standards” and questioned the necessity of the use of water cannons on both occasions.<sup>478</sup>
254. In another instance, on 20 June 2019 in Tbilisi, riot police used rubber bullets and teargas, allegedly without prior warning, against protesters outside the Parliament; following a warning, police used water cannons to disperse the protest. Two hundred forty people were reportedly injured, including journalists covering the demonstration.<sup>479</sup> According to information provided by the Ministry of Internal Affairs, police made use of special means a few hours after the protest turned violent and a number of demonstrators started attacking the police cordon separating protesters from the Parliament building. The Ministry acknowledged individual cases of disproportionate use of force by police while dispersing the rally. After an investigation by the Chief Prosecutor’s Office, three police officers were charged with abuse of power and were arrested in July 2019; in October 2019, they were all released on bail.<sup>480</sup> Several NGOs raised concern that as a result of the investigation, 19 injured protesters, including 11 journalists, were not granted the status of victims, whereas 68 law enforcement officials were recognized as victims, and called for analysis of the legality and proportionality of the actions of police officers.<sup>481</sup>

<sup>472</sup> Chyť ho za čelist a pūjde. “ Policie v Bílině lámala žebra a sbírala i novináře [“Take him by the jaw and he will go.” Police in Bílina broke ribs and took journalists as well], Deník Referendum, 1 July 2018, available at: <http://denikreferendum.cz/clanek/27897-chyt-ho-za-čelist-a-pujde-policie-v-biline-lamala-zebra-a-sbirala-i-novinare>.

Concerns were raised that police issued fines to a number of people who were not present in the area at the time. The police acknowledged that they identified the individuals based on the list of participants of Klimakemp of the previous year and stopped the proceedings in relation to them; the mining company filed a lawsuit requesting damages from the same list of persons. Severočeské doly žádají náhradu škody i po lidech, kteří ji nezpůsobili [The North Bohemian mines request compensation also from people, who did not cause it], Deník Referendum, 9 April 2019, available at: <http://denikreferendum.cz/clanek/29397-severoceske-doly-zadaji-nahradu-skody-i-po-lidech-keri-ji-nezpusobili>.

<sup>473</sup> Loni protestovali proti těžbě uhlí v dole Bílina. Teď mají aktivisté uhradit škodu 661 tisíc korun [Last year they protested against coal mining in Bílina mine. Now the activists are requested to pay damages of 661 thousand crowns], Irozhlas.cz, 29 March 2019, available at: [https://www.irozhlas.cz/zpravy-domov/demonstrace-protestujici-pokuta-vyzva-povrchovy-dul-bilina-mostecko\\_1903290905\\_dok](https://www.irozhlas.cz/zpravy-domov/demonstrace-protestujici-pokuta-vyzva-povrchovy-dul-bilina-mostecko_1903290905_dok).

<sup>474</sup> Stovky lidí zastavily těžbu v lomu Bílina. Policie dvě stě z nich zadržela [Hundreds of people stopped mining in Bílina mine. Police detained two hundred of them], Deník Referendum, 30 June 2018, available at: <http://denikreferendum.cz/clanek/27895-stovky-lidi-zastavily-tezbu-v-lomu-bilina-policie-dve-ste-z-nich-zadrzela>.

<sup>475</sup> See, for example, Georgian ombudsperson names key human rights challenges on int’l Human Rights Day, agenda.ge, 10 December 2019, available at: <https://agenda.ge/en/news/2019/3363>.

<sup>476</sup> *Ibid.* See also Police disperse rally at parliament again, 28 detained, agenda.ge, 26 November 2019, available at: <https://agenda.ge/en/news/2019/3209>; and Georgia police use water cannon on protesters in Tbilisi, BBC, 26 November 2019, available at: <https://www.bbc.com/news/world-europe-50554510>.

<sup>477</sup> *Ibid.*

<sup>478</sup> Public Defender Responds to the Trials of Persons Arrested During the 18 November Rally outside Parliament, 22 November 2019, available at: <http://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsveli-ekhmianebe-2019-tslis-18-noembersparlamentan-aktsiis-dros-dakavebuli-pirebis-sasamartlo-protsebebs>.

<sup>479</sup> Georgia: Police use teargas, rubber bullets against protesters, Human Rights Watch, 21 June 2019, available at: <https://www.hrw.org/news/2019/06/21/georgia-police-use-teargas-rubber-bullets-against-protesters#>. See also Many journalists injured during protest outside Georgian parliament, RSF, 22 June 2019, available at: <https://rsf.org/en/news/many-journalists-injured-during-protest-outside-georgian-parliament>.

<sup>480</sup> Activists Protest Release of Police Officers Involved in Dispersal of June 20 Protests, civil.ge, 2 October 2019, available at: <https://civil.ge/archives/322421>.

<sup>481</sup> ხელმომწერი ორგანიზაციები 20-21 ივნისს დაზარალებული პირებისთვის სტატუსის მინიჭებას მოითხოვენ [CSO demand legal status for victims of June 20 - 21 ], Transparency International, 5 November 2019, available at: [https://transparency.ge/ge/post/xelmomceri-organizaciebi-20-21-ivniss-dazaralebuli-pirebistvis-statusis-minichebas-moitxoven?fbclid=IwAR3KpzYWo472IzUfLAdayqnN\\_AHCJwLE1U1neraZmUPAchN7WIZMkHUOE](https://transparency.ge/ge/post/xelmomceri-organizaciebi-20-21-ivniss-dazaralebuli-pirebistvis-statusis-minichebas-moitxoven?fbclid=IwAR3KpzYWo472IzUfLAdayqnN_AHCJwLE1U1neraZmUPAchN7WIZMkHUOE); Beyond the lost eye, Legal Assessment of June 20-21 events, Georgian Young Lawyers’ Association, 2019, available at: <https://gyla.ge/en/post/20-21-ivnisis-movlenebi-gamoudziebelia#sthash.KUKN2o71.dpbs>; OSCE Media Freedom Representative deplores violence against media workers during demonstration in Tbilisi, 21 June 2019, available at: <https://www.osce.org/representative-on-freedom-of-media/423824>.

255. In **Italy**, in December 2017, police forces allegedly used shields, batons and teargas to disperse peaceful protests of the *No-TAP* movement that were taking place in San Foca di Melendugno, as well as reportedly handcuffed and arrested a number of activists, keeping them in police departments for several hours and hindering their access to communication and legal assistance.<sup>482</sup>
256. In **Mongolia**, peaceful protests calling for infrastructure development in ger areas on 17 May 2018 and 30 March 2019 were forcibly terminated; the housing rights protesters raised concern about the use of force by police in dispersing the assemblies and removing their tents from Sukhbaatar square in Ulaanbaatar and about arrests of several assembly leaders and activists during dispersals.<sup>483</sup> The National Police Authority stated publicly that the forced termination of the demonstration of ger activists on 17 May 2018 was in line with the Law on Regulation of Assemblies, which prohibits installation of any other temporary dwelling and staying overnight on the Sukhbaatar square.<sup>484</sup> Local/community activists from Burentogtokh soum who organized a protest in July 2018 against allegedly illegal coal mining operations also voiced concerns pertaining to forceful dispersal of the assembly<sup>485</sup> and complained about instances of law enforcement officials beating up herders.<sup>486</sup>
257. Concerns regarding the ability of members of specific groups, and human rights defenders working to protect their rights, to exercise the right to peaceful assembly were noted in three countries.
258. Interviewed LGBTI defenders in **Georgia** raised concern over their inability to effectively exercise the right to assembly due to security risks posed by counterdemonstrations of far-right groups. They noted that between 2014 and 2019, LGBTI organizations were either unable to hold an assembly on the International Day against Homophobia or to freely choose the assembly's venue and format due to persistent safety concerns.<sup>487</sup>
259. In **Mongolia**, a number of interviewed human rights defenders expressed concern about challenges faced by deaf children activists in exercising their rights to freedom of peaceful assembly and to free expression. On 27 March 2017, children from Ulaanbaatar's Special School #29 for deaf children protested for their right to education, raising concerns about their teachers' insufficient knowledge of sign language.<sup>488</sup> Defenders also alleged that teachers prevented girls from taking part in the demonstration.<sup>489</sup> Mongolia's *Association of Deaf Citizens* reported that children involved in the protest faced threats and harassment from teachers and the school administration in retaliation for their activism.<sup>490</sup> Journalists also reported being subject to pressure by the school administration and the police prior to releasing a documentary about the protest.<sup>491</sup>

According to information provided by the Prosecutor's Office to ODIHR, as of October 2020, investigation remains open with regards to the alleged unlawful use of special means against protesters, including journalists.

<sup>482</sup> Defend the defenders of the Earth: a dossier on the repression of the Salentinian movements, Elena Papadia, 2018, available at: <https://contropiano.org/img/2018/10/01-Elena-Papadia-DEFEND-THE-DEFENDERS-OF-THE-EARTH.pdf>.

<sup>483</sup> See, for example, Гэр хороолол хөдөлгөөн тавдугаар сарын 31-нд хийх жагсаалаа тодорхойгүй хугацаагаар хойшууллаа [The 'Ger District Movement' moved the next protest to an indefinite date], 30 May 2018, Sonin.mn agency, available at: <http://www.sonin.mn/news/politics-economy/91443>; and Я.Мөнгөнцэцэг: цагдаа нар бүгдийнх нь нүдийг таглаж байгаад бусармаг хүчирхийллээ эхлүүлсэн, 3 April 2019, available at: <http://dnn.mn/я-мөнгөнцэцэг-цагдаа-нар-бүгдийнх-нь-нүдийг-таглаж-байгаад-бусармаг-хүчирхийллээ-эхлүүлсэн/>.

<sup>484</sup> Б.Баатархуу: Хууль Тогтоомжийн дагуу талбай дээрх цуглааныг албадан тараасан, Olloo News, 18 May 2018, available at: <http://www.olloo.mn/n/53508.html>.

<sup>485</sup> Хөвсгөлчүүд суулт зарлажээ, [Residents of Khuvsgul announce a sit in protest], News website ZariG, 5 August 2018, available at <http://zariG.mn/91a>.

<sup>486</sup> See, for example, Хөвсгөл аймгийн Бүрэнтогтох сумын иргэд 6 өдрийн суулт хийжээ, [Residents of Burentogtokh soum of Khuvsgul province have protested 6 days], Website of VIP, 6 August 2018, available at: <https://vip76.mn/content/54307>.

<sup>487</sup> See Tbilisi Pride: Protect the rights of LGBT community and defenders in Georgia, Human Rights House, 19 June 2019, available at: <https://humanrightshouse.org/letters-of-concern/protect-rights-lgbt-community-defenders-georgia/>.

<sup>488</sup> Эрэн сурвалжлагч: Чимээгүй хашгираан, [Investigative journalism: Silent Scream], YouTube channel of Eagle TV, 24 April 2017, available at: <https://www.youtube.com/watch?v=3uoRbLtlrrk&feature=youtu.be>.

<sup>489</sup> According to a journalistic investigation dedicated to the situation of children at the Special School #29, girls students were locked up in a classroom at the time of the assembly to obstruct their participation. Эрэн сурвалжлагч: Чимээгүй хашгираан, [Investigative journalism: Silent Scream], YouTube channel of Eagle TV, 24 April 2017, available at: <https://www.youtube.com/watch?v=3uoRbLtlrrk&feature=youtu.be>.

<sup>490</sup> Шүгэл үлээсэн хүүхдүүд хохирод үлдэх үү? [Should the whistleblower children be left victims?], News website ikon, 17 May 2017, available at: <https://ikon.mn/n/10fw>.

<sup>491</sup> "Чимээгүй хашгираан"-ы эргэн тойронд юу болов, [What happened around the "Silent Scream"], Official website of Eagle TV, 25 April 2017, available at <http://eagle.mn/r/28169>.

260. In **Montenegro**, state bodies and human rights defenders, including the Office of the Protector of Human Rights and Freedoms, stressed the need to strengthen the implementation of standards when facilitating and protecting public assemblies organized by LGBTI defenders. In September 2018, the Constitutional Court of Montenegro ruled that the right of LGBTI activists to freedom of peaceful assembly was violated.<sup>492</sup> The decision of the Court addressed the repeated banning by the authorities of a Pride march in Nikšić in 2015 on security grounds.<sup>493</sup> While establishing that the competent bodies failed to conduct a thorough risk assessment and undertake necessary measures to address threats of extremist violence, the Constitutional Court did not accept the Supreme Court's position that the security risk was so high as to justify the prohibition of the assembly and returned the case for reconsideration.<sup>494</sup> Human rights defenders expressed concern over the excessive duration of the ongoing judicial process.<sup>495</sup>

## CONCLUDING OBSERVATIONS

- ODIHR welcomes legal provisions concerning notification of assemblies that are consistent with a presumption in favor of holding assemblies, as in the Czech Republic, Georgia, Italy and Montenegro, and efforts to further improve the legal framework concerning the right to freedom of peaceful assembly, for example, changes to legislation in Montenegro to recognize spontaneous assemblies and simplify notification procedures. Legal requirements of 'notification' which amount to de facto authorization, as appears to be the case in Mongolia, may lead to arbitrariness or abuse in decision-making and is inconsistent with a presumption in favor of holding assemblies.
- ODIHR's findings point to incidents in three participating States visited by ODIHR involving the arbitrary application of legislation with the purpose or effect of obstructing the full realization of the right to freedom of peaceful assembly or retaliation against defenders for the exercise of this right. Such incidents, as well as the imposition of harsh penalties for the exercise of freedom of peaceful assembly, may lead to stifling civil society voices.
- Reported retaliation against human rights defenders for their involvement in peaceful assemblies, and negative statements by public officials regarding participants in certain assemblies, including remarks drawing on gender stereotypes, are not conducive to an environment that supports the effective exercise of freedom of peaceful assembly. Similarly of concern are alleged judicial and administrative harassment of activists as a result of their participation in protests, as well as reported attempts to prevent messages critical of state policies from being conveyed during some peaceful assemblies.
- Limitations imposed on the use of public space due to traffic considerations or restrictions in relation to specific locations, as in Georgia and Mongolia, have potential to limit protesters' ability to be within "sight and sound" of their target audience. Legal provisions allowing for dispersal of an assembly if its message is detrimental to the public image of national institutions and authorities, as in Italy, is not consistent with the full and effective exercise of freedom of peaceful assembly.

<sup>492</sup> Decision of the Constitutional Court of Montenegro, U-III no. 778/16 of 24 September 2018.

<sup>493</sup> The decision by the Police Directorate was upheld by the Ministry of Interior; the Administrative Court dismissed the complaint made by the NGOs, and the Supreme Court dismissed the appeal. See Decision of the Supreme Court Uvp. No. 247/16 of 16 September 2016, available at: <http://www.hracion.org/wp-content/uploads/2018/10/Odluka-Vrhovnog-suda.pdf>. See also Third time: Pride Parade in Niksic prohibited, CDM, 15 September 2015, available at: <https://www.cdm.me/english/third-time-pride-parade-in-niksic-prohibited/>.

<sup>494</sup> Decision of the Constitutional Court of Montenegro, U-III no. 778/16 of 24 September 2018.

<sup>495</sup> Following the decision of the Constitutional Court, in December 2018, the Supreme Court remanded the case to the Administrative Court. See the Decision of the Supreme Court Už.Uvp.no.1/18, available at: <http://www.hracion.org/wp-content/uploads/2019/01/Presuda-Vrhovnog-suda.pdf>.

- Noting reported cases of disproportionate use of force, including through forced dispersal of assemblies, and examples of alleged misconduct by police in relation to participants of some peaceful assemblies, ODIHR underlines that reported allegations of such actions should be investigated and, if relevant, prosecuted in accordance with the law.
- ODIHR highlights that the duty of the state to protect peaceful assembly is of particular significance when the persons holding or attempting to hold an assembly belong to minorities and/or espouse an unpopular view. Actions to protect peaceful protesters by non-peaceful actions of counter-protesters and to prevent clashes between groups are a positive practice, as are efforts to build the capacity of the police to protect the right to freedom of peaceful assembly of LGBTI people.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Ensure that prior notification requirements are implemented for the purpose of facilitating the exercise of the right to freedom of peaceful assembly and protection of public order, public safety and the rights and freedom of others, rather than used to regulate and authorize the conduct of assemblies. Take measures to prevent the arbitrary application of legislation with the purpose or effect of obstructing the full realization of the right to freedom of peaceful assembly; all such cases should be investigated and addressed, in line with the national legislation.
- Recognize, protect in law and facilitate any spontaneous assembly as long as it is peaceful in nature.
- Facilitate peaceful assemblies organized by human rights defenders, including by small civil society groups and grassroots activists, through the adoption of adequate protection measures, without discrimination in relation to disability status, age, gender, sexual orientation, gender identity and political or other opinions of the organizers and participants.
- Facilitate the conduct of simultaneous assemblies, when possible; in cases of counterdemonstrations, apply appropriate safeguards to ensure safety and security of protesters and the public, including representatives of minorities who may be targeted. Develop and implement context-specific gender-sensitive strategies to ensure tailored protection of women protesters during assemblies.
- Ensure prompt, impartial, independent and effective investigation of reported harassment, threats or other forms of pressure from state, businesses or other actors on assembly organizers and participants prior, during and after assemblies.
- Investigate allegations with regards to excessive use of force or other police misconduct during assemblies. Ensure access of individuals who sustained injuries as a result of use of excessive law enforcement force during assemblies to appropriate social services, compensation and reimbursement of damages, as relevant.
- Ensure in law and practice that dispersal or forced termination of assemblies are treated and applied as a last resort in case of an imminent threat of violence. Restrictions to the use of tents or other non-permanent constructions should be proportionate and should not render the message of the assembly difficult or impossible to communicate.
- Ensure that administrative and other sanctions envisaged for misconduct by protesters during assemblies are applied in strict conformity with relevant laws. Where relevant, abolish imprisonment and excessive fines as possible punishment in the context of peaceful assemblies.

## 2.3 FREEDOM OF ASSOCIATION AND THE RIGHT TO FORM, JOIN AND PARTICIPATE EFFECTIVELY IN NGOS

### *Overview of relevant international standards and commitments*

261. Article 20 of the UDHR provides that “everyone has the right to freedom of peaceful assembly and association”. The right to freedom of association is also enshrined in the ICCPR and in regional human rights treaties.<sup>496</sup> In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right of all individuals to form and join trade unions.<sup>497</sup> Article 5 of the UN Declaration on Human Rights Defenders reaffirms the right to form, join and participate in NGOs, associations or groups for the purpose of promoting and protecting human rights. Freedom of association has been recognized as integral to the defense of human rights.<sup>498</sup>
262. According to international law, any limitations on the exercise of freedom of association must be prescribed by law, serve a legitimate aim, be necessary in a democratic society, and be consistent with principles of non-discrimination and proportionality. The only permissible grounds under international law for limitations of the right are national security interests, the protection of public safety, public health or morals, the prevention of disorder or crime, and the protection of the rights and freedom of others.
263. OSCE participating States have reaffirmed the right to association, including the right to form, join and participate effectively in NGOs which seek the promotion and protection of human rights and fundamental freedoms.<sup>499</sup> They have also pledged to “enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.”<sup>500</sup>
264. The *Guidelines* recommend that states review legislation relevant to freedom of association to ensure its compliance with international human rights standards and consult with civil society in this process. They also highlight that conducting human rights activity without registration of an organization should not be considered a criminal offense and that registration should be available to facilitate human rights defenders’ work, with clear and transparent procedures and reporting requirements, and non-intrusive oversight measures. The *Guidelines* further recommend that states assist NGOs to seek and obtain funding while not interfering with their independence, as well as facilitate NGOs’ efforts to seek and receive other resources, including from abroad. Meanwhile, state funding schemes should be transparent, fair and accessible to all.

### *Freedom of association in selected OSCE participating States*

265. Guarantees of the right to freedom of association are enshrined in the constitutions of **Georgia** (Article 22), **Italy** (Article 18), **Mongolia** (Article 16), and **Montenegro** (Article 53). The Charter of Fundamental Rights and Freedoms of **the Czech Republic** also provides for the freedom of association (Article 20). In addition, all countries have other legislation and in some cases policy documents relevant to the right to freedom of association and the funding of NGOs.
266. The establishment and administration of NGOs in **the Czech Republic** is governed by Civil Code,<sup>501</sup> which provides that NGOs can be established in the legal form of associations, foundations, endowment funds or

<sup>496</sup> ICCPR, Article 22(1); ECHR, Article 11(1); ACHR, Article 16.

<sup>497</sup> ICESCR, Article 8.

<sup>498</sup> As underscored by the UN Declaration on Human Rights Defenders, which provides for the right of human rights defenders to engage in activities individually or in association with others, in Articles 5-9, 11-13 and 17.

<sup>499</sup> Copenhagen 1990, paras. 9.3 and 10.3.

<sup>500</sup> Istanbul 1999, “Charter for European Security: III. Our Common Response”, para. 27.

<sup>501</sup> The Civil Code of the Czech Republic (2012), available at: <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>.



institutes. To become an entity with legal personality, an NGO is required to register in the relevant public register, administered by regional courts.<sup>502</sup> An organization becomes a legal entity upon issuing of a decision by the regional court, or automatically 30 days after filing of the request if no decision is issued. Organizations can be dissolved by court order if they engage in illegal activities or force their membership.<sup>503</sup> The Civil Code does not prohibit unregistered entities to pursue activities in the public interest, but as legal personalities, NGOs can engage in a broad range of non-commercial and income generating activities and more easily access grants from the state budget and other sources. NGOs, as well as donors, enjoy certain forms of tax relief.<sup>504</sup> In 2017, almost 130,000 NGOs were registered in the country.<sup>505</sup>

267. A State Policy with Respect to NGOs for the Years 2015–2020 (State Policy on NGOs), adopted by the Government of the Czech Republic, aims to enhance state co-operation with the non-governmental sector, including by improving the normative framework pertaining to the operation of NGOs and supporting volunteering and donors funding.<sup>506</sup> One of the goals of the State Policy was to adopt an Act on Social Businesses; the draft law was prepared and civil society organizations were consulted,<sup>507</sup> but the government has not yet proposed it to the Parliament. The State Policy on NGOs included the adoption of a Concept on the Development of Volunteering for 2019–2025, published by the Ministry of the Interior in July 2019,<sup>508</sup> which plans the creation of new regional volunteer centres in each of the 14 regions of the country.<sup>509</sup> Based on the State Policy, the government annually adopts a resolution on Main Areas of State Budget Policy towards NGO after consultations held at the Government Council for NGOs, an advisory body of civil society members and relevant state authorities.<sup>510</sup> The resolutions for 2017, 2018 and 2019 show a trend of prioritizing state financial support to sport activities and cultural organizations.<sup>511</sup> Since 2017, the government has also allocated yearly funds to support interdisciplinary networks and umbrella civil society organizations. Other relevant strategic documents include the Strategy for Equality of Women and Men for 2014–2020<sup>512</sup> and the Action Plan for the Prevention of Domestic and Gender-based Violence for 2015–2018<sup>513</sup>; in both documents, the government committed to ensure sustainable financing of organizations working on gender equality and protection of victims of domestic and other forms of violence, and to improve information-sharing between NGOs and public bodies in these areas.<sup>514</sup> Similarly, the Strategy for Roma Integration for 2015–2020 contains a number of pledges contributing to an enabling environment for civil society work.<sup>515</sup>

<sup>502</sup> The Act on Public Registers (2013), available at: <https://www.zakonyprolidi.cz/cs/2013-304>.

<sup>503</sup> *Op. cit.* note 501, Section 268, 217.2, 306, 398.2 and 403.

<sup>504</sup> Income Tax Act (1992), Sections 15.1, 18a, 19b.2b and 20.7, available at: <https://www.zakonyprolidi.cz/cs/1992-586>.

<sup>505</sup> 2017 Civil Society Sustainability Index, USAID, available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-regional-report.PDF>.

<sup>506</sup> State Policy with Respect to NGOs for the Years 2015–2020, the Government of the Czech Republic, available at: [https://www.vlada.cz/assets/ppov/rnno/dokumenty/statni\\_politika\\_EN.pdf](https://www.vlada.cz/assets/ppov/rnno/dokumenty/statni_politika_EN.pdf).

<sup>507</sup> See, for example, the proposal for consultation by the National Council for Persons with Disabilities, 29 January 2019, available at: <https://nrzp.cz/2019/01/29/informace-c-6-2019-navrh-zakona-o-socialnim-podniku/>.

<sup>508</sup> Draft Concept for Development of Volunteering for 2019–2025, available at: <https://www.mvcr.cz/clanek/vystupy-projektu-rozvoj-dobrovolnictvi.aspx>.

<sup>509</sup> The overview of measures adopted in accordance with the State Policy with Respect to NGOs for the Years 2015–2020 is available at: [https://www.vlada.cz/assets/ppov/rnno/aktuality/Priloha2\\_Prehled\\_plneni\\_ukolu\\_Statni\\_politika\\_NNO.pdf](https://www.vlada.cz/assets/ppov/rnno/aktuality/Priloha2_Prehled_plneni_ukolu_Statni_politika_NNO.pdf).

<sup>510</sup> For consultation on the Main Areas of State Budget Policy towards NGOs for 2018 See Office of the Government Minutes from the meeting of the Government Council for Non-Governmental Organizations, 10 September 2017, available at: [https://www.vlada.cz/assets/ppov/rnno/zapisy-ze-zasedani/zapis\\_RVNN0\\_2018\\_09\\_10.pdf](https://www.vlada.cz/assets/ppov/rnno/zapisy-ze-zasedani/zapis_RVNN0_2018_09_10.pdf).

<sup>511</sup> Main Areas of State Budget Policy towards NGOs for 2017, available at: <https://apps.odok.cz/attachment/-/down/RCIAABJEJED1>; Main Areas of State Budget Policy towards NGOs for 2018, available at: <https://apps.odok.cz/attachment/-/down/IHOAAP8FT4RP>; <https://apps.odok.cz/attachment/-/down/RCIAB5TAMCGS>; Main Areas of State Budget Policy towards NGOs for 2019, available at: <https://apps.odok.cz/attachment/-/down/RCIAB5TAMCGS>.

<sup>512</sup> Government Strategy for Equality of Women and Men in the Czech Republic for 2014–2020, available at: [https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/Government\\_Strategy\\_for-Gender\\_Equality\\_2014\\_2020.pdf](https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/Government_Strategy_for-Gender_Equality_2014_2020.pdf).

<sup>513</sup> Action Plan for the Prevention of Domestic and Gender-based Violence for 2015–2018, available at: <https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/AP-Prevention-DGBV-2019.pdf>.

<sup>514</sup> State Policy with Respect to NGOs for the Years 2015–2020, the Government of the Czech Republic, available at: [https://www.vlada.cz/assets/ppov/rnno/dokumenty/statni\\_politika\\_EN.pdf](https://www.vlada.cz/assets/ppov/rnno/dokumenty/statni_politika_EN.pdf). See also Tasks related to the State Policy with Respect to Non-Governmental Organisations for the Years 2015–2020, Government Resolution no. 608 of 29 July 2015, available at: <https://apps.odok.cz/attachment/-/down/VPRA9Z9H62PE>.

<sup>515</sup> Strategy for Roma Integration for 2015–2020, available at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/Strategie-romske-integrace-do-roku-2020.pdf>.

268. In **Georgia**, the legal framework for associations is defined by the Civil Code,<sup>516</sup> which regulates registration and operation of not-for-profit organizations and defines legal persons that carry out non-profit activities as non-entrepreneurial legal entities. The suspension and prohibition of the activities of associations are solely permitted on the basis of a court decision and in line with the legislation.<sup>517</sup> Organizations carrying out not-for-profit activities can register in the Register of Non-entrepreneurial (Non-commercial) Legal Entities by submitting an application to the National Agency of Public Registry (NAPR) (Article 29). The Civil Code also envisages the existence of non-registered associations (Article 39). Specific procedures for registration of several types of organizations are elaborated in other laws such as the Law on Trade Unions. Registered organizations have the right to carry out supplementary entrepreneurial activities (Article 25). According to the data provided by the NAPR, as of May 2018, the number of registered civil society organizations in Georgia exceeded 24,000.<sup>518</sup>
269. The Tax Code of Georgia provides that registered charitable organizations are eligible for a number of tax exemptions.<sup>519</sup> The Law on Grants regulates the allocation of funds, including those provided by state bodies to civil society organizations.<sup>520</sup> Other legislative acts envisage a possibility for state institutions to issue grants to civil society organizations.<sup>521</sup> Public funding is made available to NGOs through different mechanisms including open calls for project proposals or tenders. According to information provided by the Ministry of Justice, national and local authorities' budgets allow them to include funding for civil society organizations in their estimated expenditures for the budget year as well as the next three years. Interlocutors mentioned the so-called 'voucher system' as one of the forms of financial support by public institutions, including at the local level.<sup>522</sup> Municipalities may also allocate budgetary funds to civil society organizations through tenders or in the form of 'subventions' financing their projects, and provide in-kind contributions such as the provision of spaces for NGOs to conduct their activities.<sup>523</sup>
270. Georgia's National Strategy for the Protection of Human Rights for 2014-2020 is part of the framework contributing to civil society development.<sup>524</sup> Aimed at developing a systematic approach to addressing human rights issues, the Strategy was devised in consultation with the Public Defender, civil society and international organizations. A number of Action Plans followed the adoption of the Strategy, most recently for the period of 2018–2020.<sup>525</sup>
271. In **Italy**, a number of different laws make up the legal framework related to freedom of association. The Civil Code of Italy distinguishes associations (recognized and unrecognized), foundations and committees.<sup>526</sup> According to the law, an association is granted legal personality status upon registration with the prefecture of the province where it is based; one of the key conditions to be met for obtaining legal personality status as an association is the availability of assets adequate for the realization of a legitimate purpose of an association. It is not required for associations to be recognized as legal persons but doing so provides access to some benefits such as the ability to apply for public funding. Foundations must apply for recognition as legal persons. For a committee,

<sup>516</sup> Civil Code of Georgia (1997), available at: <https://matsne.gov.ge/en/document/view/31702?publication=107>.

<sup>517</sup> Organic Law of Georgia on the suspension and prohibition of activities of associations, 14 November 1997, available at: [https://www.legislationline.org/download/id/7556/file/Georgia\\_law\\_suspension\\_prohibition\\_activities\\_public\\_associations\\_1997\\_am2006\\_en.pdf](https://www.legislationline.org/download/id/7556/file/Georgia_law_suspension_prohibition_activities_public_associations_1997_am2006_en.pdf).

<sup>518</sup> 2018 წლის 10 მაისის მდგომარეობით რეგისტრირებული სამოქალაქო საზოგადოების ორგანიზაციების ბაზა [Registered civil society organizations as of May 10, 2018], csogeorgia.org, available at: [https://csogeorgia.org/storage/app/media/organisation\\_list.pdf](https://csogeorgia.org/storage/app/media/organisation_list.pdf).

<sup>519</sup> Tax Code of Georgia, Article 82 and Article 129, available at: <https://matsne.gov.ge/en/document/view/1043717?publication=152>.

<sup>520</sup> Law of Georgia on Grants, adopted in 1996, last amended in 2019, available at: <https://matsne.gov.ge/ka/document/view/31510?publication=28>.

<sup>521</sup> This includes the Law on Political Union of Citizens of Georgia and the Law on the Public Service Development Agency.

<sup>522</sup> Vouchers are allocated on a competitive basis to NGOs providing services in the areas of education and social protection.

<sup>523</sup> Public Financing of Civil Society Organizations: Considerations for Georgia, Europe Foundation, 2018, available at: <http://www.epfound.ge/wp-content/uploads/2018/11/Report-CSO-Public-Funding-Final.pdf>.

<sup>524</sup> The National Strategy of Georgia for the Protection of Human Rights for 2014-2020, available at: [http://gov.ge/files/429\\_51454\\_924779\\_STRATEGYENG.pdf](http://gov.ge/files/429_51454_924779_STRATEGYENG.pdf).

<sup>525</sup> Action Plans for the Implementation of the National Strategy of Georgia for the Protection of Human Rights for 2014-2020, available at: <http://myrights.gov.ge/en/Policy%20Documents/action-plans-1/>.

<sup>526</sup> Civil Code, Libro I, Titolo II "Delle Persone giuridiche", available at: <https://www.altalex.com/documents/news/2013/04/11/delle-persone-giuridiche>.

there is no obligation to obtain legal personality status.<sup>527</sup> According to the Civil Code, dissolution of a recognized association can be due to causes provided for in the constitutive act of the association or in its statute, when the purpose has been achieved or has become impossible or when all members have passed away.<sup>528</sup> According to the National Institute of Statistics, as of 2017, there were 350,492 non-profit organizations reported as active in Italy.<sup>529</sup>

272. Laws and regulations were introduced in Italy in 2016 and 2017 as part of a reform of the “third sector”.<sup>530</sup> The reform sought to simplify the legal and regulatory environment and attract more resources for third sector actors.<sup>531</sup> The Law 106/2016 defines the ‘third sector’ as including subjects and bodies that promote solidarity, civic and social unity and carry out activities pursuing public benefit goals through voluntary actions and the exchange of goods and services.<sup>532</sup> The Code of the Third Sector (Legislative Decree 117/2017) provides for regulations in a wide range of areas pertaining to the operation of third sector organizations.<sup>533</sup> The Code provides for the establishment of the Single National Registry and specifies that the registration process may take up to 60 days.<sup>534</sup> Under the Code, third sector entities, including the ‘Onlus’ (non-profit organizations for social utility, as defined in the 1997 Onlus Law<sup>535</sup>), will be able to benefit from tax exemptions provided that they register in the Single National Registry.<sup>536</sup> Legislative Decree 117/2017 requires entities, except for voluntary organizations (*organizzazione di volontariato*) and social promotion associations (*associazione di promozione sociale*), to modify their statutes in accordance with the law and re-register in the Single National Registry.<sup>537</sup> Legislative Decree 112/2017<sup>538</sup> expanded areas of engagement and funding opportunities for social enterprises, defining them as third sector actors.<sup>539</sup> For example, the reform establishes a system of public financial resources for voluntary organizations and social promotion associations.<sup>540</sup>

273. **Mongolia’s** Law on Non-Governmental Organizations (Law on NGOs) provides for the right to establish and join NGOs. It defines NGOs as organizations that pursue public or mutual benefit goals and are “independent from the state, self-governing, not-for-profit and established voluntarily by citizens or by legal persons other than state bodies” as well as by “foreign citizens and stateless persons legitimately residing in Mongolia”.<sup>541</sup> Among other provisions, the law provides that the state shall protect the legitimate rights of NGOs and support their activities; it also sets the procedure for voluntary dissolution of an NGO and prescribes conditions for compulsory dissolution, which include repeated violation of laws by an NGO and conduct of activities inconsistent with its mission.<sup>542</sup>

<sup>527</sup> Consiglio Nazionale del Notariato, available at: <https://www.notariato.it/en/associations>, <https://www.notariato.it/en/foundations> and <https://www.notariato.it/en/committees>.

<sup>528</sup> *Op. cit.* note 526, Articles 27 and 30.

<sup>529</sup> Struttura e profili del settore non-profit [Structure and profiles of non-profit sector], Italian National Institute of Statistics, 2017 available at: <https://www.istat.it/it/files/2019/10/Struttura-e-profilo-settore-non-profit-2017.pdf>.

<sup>530</sup> See for information on Third Sector reform: Civil participation in the decision-making process, Fact finding visit to Italy, Council of Europe, October 2019, available at: <https://rm.coe.int/report-visit-of-the-conference-of-ingos-to-italy-2019/1680981493>; Italy: Code to Regulate Nongovernmental Organizations, Library of Congress, 4 October 2017, available at: <https://www.loc.gov/law/foreign-news/article/italy-code-to-regulate-nongovernmental-organizations/>.

<sup>531</sup> The Third Sector Reform, EVPA, June 2018, available at: [https://evpa.eu.com/uploads/publications/Policy\\_Nexus\\_-\\_IT\\_The\\_Third\\_Sector\\_Reform\\_2018.pdf](https://evpa.eu.com/uploads/publications/Policy_Nexus_-_IT_The_Third_Sector_Reform_2018.pdf).

<sup>532</sup> Law 106, “Delegation to the Government for the reform of the Third Sector, of social enterprises and for the regulation of the universal civil service”, 6 June 2016, available at: <https://www.gazzettaufficiale.it/eli/id/2016/06/18/16G00118/sg>.

<sup>533</sup> Legislative Decree 117, “The Code of the Third Sector” 3 July 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/08/2/17G00128/sg>.

<sup>534</sup> According to Article 47 of Legislative Decree 117, a simplified registration procedure, taking up to 30 days, is made available to entities that have their statutes drafted in accordance with standardized, approved templates. As of January 2020, the new registry had not yet been established. See Registro Unico Nazionale del Terzo Settore in arrivo (forse) [Single National Registry of the Third Sector coming soon (maybe)], Tornacontoe., 20 November 2019, available at: <https://www.tornacontoe.it/registo-unico-terzo-settore-in-arrivo-forse/>.

<sup>535</sup> Consiglio Nazionale del Notariato, available at: <https://www.notariato.it/en/non-profit-organisations-onlus>.

<sup>536</sup> *Op. cit.* note 533, Articles 102(2)(a) and 104(2). On the Onlus Law, See Legislative Decree 460, “Reorganization of the tax discipline of non-commercial entities and non-profit organizations of social utility” (“ONLUS Law”), 4 December 1997, available at: <http://www.parlamento.it/parlam/leggi/deleghe/97460dl.htm>.

<sup>537</sup> Runts - Registro unico nazionale del terzo settore [Runts – Single National Registry of the Third Sector], 3 July 2019, available at: <https://www.cantiereterzosettore.it/riforma/vita-associativa/runts-registo-unico-nazionale-del-terzo-settore#>.

<sup>538</sup> Legislative Decree 112, “Review of social enterprise regulations”, 3 July 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/07/19/17G00124/sg>.

<sup>539</sup> The Third Sector Reform, EVPA, June 2018, available at: [https://evpa.eu.com/uploads/publications/Policy\\_Nexus\\_-\\_IT\\_The\\_Third\\_Sector\\_Reform\\_2018.pdf](https://evpa.eu.com/uploads/publications/Policy_Nexus_-_IT_The_Third_Sector_Reform_2018.pdf).

<sup>540</sup> ETS - Ente Del Terzo Settore [ETS - Entity of the Third Sector], available at: <https://www.cantiereterzosettore.it/riforma/ets-enti-del-terzo-settore>.

<sup>541</sup> The Law on NGOs of Mongolia (1997), available at: <https://www.legislationline.org/search2/runSearch/1/key/mongolia/rows/10/page/2>, Articles 4 and 5.

<sup>542</sup> *Ibid.*, Articles 7-9.

Registration is not mandatory, but as legal personalities, NGOs can engage in a broader range of activities and access state budget funds and foreign grants. As of June 2019, NGOs in Mongolia were not exempted from tax.<sup>543</sup> During the reporting period, the authorities initiated a reform of the Law on NGOs.<sup>544</sup> Another significant development related to the legal framework was the process of drafting the Law on Human Rights Defenders by a working group comprised of representatives of the National Human Rights Commission and civil society organizations during 2016–2018, and further reviews of the Draft Law by this group in 2019.<sup>545</sup> According to the State Registration Authority, as of December 2018, 18,727 NGOs were registered in Mongolia, with 9,336 of them reported as active as of March 2019.<sup>546</sup>

274. Policy documents making up the framework contributing to civil society development in Mongolia include the Action Plan of the Government of Mongolia for 2016-2020,<sup>547</sup> Strategic Plan of the National Human Rights Commission of Mongolia for 2015-2020,<sup>548</sup> and the National Action Plan on Implementation of the UPR Recommendations for 2016-2019.<sup>549</sup> Furthermore, a State Policy Concept on Civil Society Development was elaborated in extensive consultations with human rights defenders across the country with the aims to establish a framework for reform of the Law on NGOs, boost public funding opportunities for civil society organizations, and strengthen the co-operation between NGOs and the government.<sup>550</sup> However, the Parliament has not yet approved the Policy Concept.<sup>551</sup>
275. State budget funds are made available to NGOs through open calls for project proposals or tenders that are administered by ministries. According to the Deputy Minister of Justice and Home Affairs, as of 2018, about 70-80 per cent of active NGOs in Mongolia were being funded from abroad, while financial resources provided to NGOs by the state remain scarce.<sup>552</sup>
276. **Montenegro's** Law on Non-Governmental Organizations (Law on NGOs) is a key pillar of the national legal framework concerning the civil sector.<sup>553</sup> The Law defines NGOs as associations, foundations and foreign non-governmental organizations that pursue public or mutual benefit goals.<sup>554</sup> It provides that an association can be established by three natural or legal persons, where only one founder must have a domicile, residence or seat of office in Montenegro. Registration is not mandatory, but registered NGOs can engage in a broader range of activity, access domestic funding schemes and foreign grants and benefit from tax exemptions. In addition, any legal entity with an annual turnover of less than 18,000 EUR is exempt from paying value added tax (VAT).<sup>555</sup> The Law prescribes that an NGO will be denied registration if its goals are contrary to the Constitution and provides

<sup>543</sup> On 22 March 2019, the Parliament of Mongolia passed a package of revised tax laws, which will be effective from 1 January 2020. The newly adopted laws do not provide for tax exemptions for NGOs. The Law on Income Tax of an Entity of Mongolia (adopted in 2006, amended in 2007 and declared invalid since the adoption of the Tax Law Package on 22 March 2019) provided that donations of up to 1,000,000 tugriks made by entities and individuals to NGOs founded by person(s) with disabilities shall be exempted from taxation. The Law is available at: <https://www.legalinfo.mn/law/details/33>.

<sup>544</sup> ТББ-ын тухай хуулийг шинэчлэх шаардлагатай юу? [Should the Law on NGOs be revised?], 25 October 2018, available at: <http://oroltsuo.mn/news/56>.

<sup>545</sup> See, for more information on further developments in relation to the Draft Law, note 187.

<sup>546</sup> Official website of the General State Registration Authority, available at: [https://www.burtgel.gov.mn/index.php/news/statistical-rating-item/2212-2018-06?fbclid=IwAR1i\\_Bm2\\_dJL3iTF7yJyiTemZijapqFYRcUCYNutwH4kddOG\\_bYToaG4Ukg](https://www.burtgel.gov.mn/index.php/news/statistical-rating-item/2212-2018-06?fbclid=IwAR1i_Bm2_dJL3iTF7yJyiTemZijapqFYRcUCYNutwH4kddOG_bYToaG4Ukg).

<sup>547</sup> *Op. cit.* note 359.

<sup>548</sup> Strategic Plan of the National Human Rights Commission of Mongolia for 2015-2020 is available at: <http://en.nhrcom.gov.mn/news/strategic-plan-of-the-national-human-rights-commission-nhrcom-of-mongolia-2015-2020/>.

<sup>549</sup> Midterm Progress Report by Mongolia on its Implementation of UPR Recommendations, Report by Human Rights Forum (HRF), May 2018, available at: [http://upr-mongolia.mn/images/UPR\\_Midterm\\_report\\_HRF\\_Jul5\\_2018Final.pdf](http://upr-mongolia.mn/images/UPR_Midterm_report_HRF_Jul5_2018Final.pdf).

<sup>550</sup> *Op. cit.* note 188.

<sup>551</sup> *Op. cit.* note 189. More information about the Policy Concept is available at para 107 of the present report.

<sup>552</sup> Улс төрийн намууд дэргэдээ ТББ-тай байхыг хориглоно, [It is prohibited for political parties to have an NGO reporting to them], News website iToim, 25 October 2018, available at <http://itoim.mn/article/DEtKX/14644>.

<sup>553</sup> The Law on NGOs of Montenegro was adopted in 2011 and amended in 2017; it is available at: <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-nevladinim-organizacijama-1.pdf>.

<sup>554</sup> The Law on NGOs provides that associations and foreign non-governmental organizations can be established for mutual benefit or public benefit purposes, while foundations can only be established to pursue public benefit goals.

<sup>555</sup> Non-profit Law in Montenegro, Council on Foundations and International Centre for Non-profit Law, April 2018, available at: <https://www.cof.org/country-notes/montenegro>.

for a remedy to appeal against such decisions in the Administrative Court. Legal protections are equally afforded to NGOs facing dissolution.<sup>556</sup> As of March 2019, 4,685 NGOs were registered in Montenegro.<sup>557</sup>

277. Amendments to the Law on NGOs adopted in 2017 introduced a new mechanism for public funding of civil society organizations, stipulating that at least 0.3 per cent of the annual budget must be allocated for financing of projects and programmes implemented by NGOs in the public interest; 0.1 per cent is earmarked for funding NGOs working on protection of persons with disabilities; and at least 0.1 per cent is designated to co-finance EU-funded projects and programmes.<sup>558</sup> A civil society initiative calling for increased public financing of NGOs contributed to this reform.<sup>559</sup> Allocated state funds are made available to civil society organizations through open calls for project proposals that are administered by ministries.
278. On 11 January 2018, the Government of Montenegro adopted a Strategy for Enhancing Conducive Environment for Activities of the Non-Governmental Organizations for 2018–2020 (the Strategy), along with the Action Plan on its implementation.<sup>560</sup> Analysis of the previous Strategy for 2014–2016<sup>561</sup> was taken into account in developing the current Strategy. The goals of the Strategy include improving the legal and institutional framework relevant to the functioning of NGOs, including their financial sustainability, and enhancing co-operation between the state and NGOs.<sup>562</sup> The government established the Council for Cooperation of State Administration Bodies and Non-Governmental Organizations to monitor the implementation of the Strategy and its Action Plan.<sup>563</sup> According to official data, six out of 18 activities planned to be implemented in 2018 in the scope of the Strategy were fully implemented, while three activities were ongoing as of March 2019.<sup>564</sup>
279. Human rights defenders in several countries reported that registration procedures were generally conducive to the exercise of the right to freedom of association.
280. In **the Czech Republic**, interviewed defenders did not consider the process of registration to be burdensome. They also highlighted the development of the State Policy on NGOs as a positive example of civil society involvement in policy-making processes.
281. Civil society interviewees in **Georgia** consistently described the registration procedure as simple, fast, accessible and conducive to their activities. Several interviewed human rights defenders also described tax exemptions available to NGOs as a good practice that considerably facilitates their operations.
282. Most interviewed human rights defenders in **Mongolia** reported that registration procedures are generally easy to follow and have significantly improved in recent years. However, several interviewees noted that groups fighting corruption or wrongdoings of mining companies may face arbitrariness during the registration process.
283. Access to sustainable funding sources for civil society organizations working both at national and local levels was reported as a challenge in all countries.

<sup>556</sup> *Op. cit.* note 553.

<sup>557</sup> See the website of the Ministry of Interior of Montenegro, available at: <http://www.dokumenta.me/nvo/>.

<sup>558</sup> *Op. cit.* note 553. See also the Decree on financing NGO projects/ programmes in areas of public interest, 1 February 2018, available at: <http://www.nvo.mju.gov.me/ResourceManager/FileDownload.aspx?rid=305074&rType=2&file=Uredba%20o%20finansiranju.pdf>; and Law Amending the Law on Non-governmental Organizations (Official Gazette of Montenegro 37/17).

Other funding schemes for vulnerable groups and for civil society include Professional Rehabilitation Fund and the Fund for Protection and Exercise of Minority Rights.

<sup>559</sup> Vlada Crne Gore da povuče predloge zakona o NVO i o igrama na sreću [Government of Montenegro should revoke draft Laws on NGO and on Games of Chance], *Dijalog.Net*, 26 April 2017, available at: <https://www.dijalog.net/vlada-crne-gore-da-povuce-predloge-zakona-o-nvo-o-igrama-na-srecu/>.

<sup>560</sup> The Strategy and the Action Plan (adopted on 11 January 2018) are available at the website of the Ministry of Justice: <http://www.strategijanvo.nvo.mju.gov.me/>.

<sup>561</sup> *Ibid.* See also <http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=269414&rType=2>.

<sup>562</sup> *Ibid.*

<sup>563</sup> The decision on the establishment of the Council is available on the website of the Ministry of Justice: <http://www.strategijanvo.nvo.mju.gov.me/2018/07/17/295/>. The decision was published in the Official Gazette on 10 July 2018: <http://www.sluzbenilist.me/pregled-dokumenta/?id={6A1B2439-5A3A-4BB6-BF6D-B27E8BCA4E39}#>.

<sup>564</sup> *Op. cit.* note 560. See Sections on tracking the implementation of the Strategy.



284. In **the Czech Republic**, several civil society organizations as well as the representatives of the Government Councils reported that funding for social services NGOs is usually provided on a yearly basis and organizations obtain funds several months into the funding year, thus forcing them to run on their provisional resources or turn to loans.<sup>565</sup> According to the implementation monitoring report published by the Office of the Government, encouraging the authorities to conclude long-term co-operation agreements with strategic NGO partners partly remedied these shortcomings.<sup>566</sup> The National Audit Office praised the practice of the Ministry of Education concluding such agreements with NGO partners.<sup>567</sup> Some human rights defenders also viewed a decrease in funding for anti-corruption activities as possible retaliation for their activities.<sup>568</sup> Further, interviewed defenders working in the area of gender rights alleged that the decrease of financing for these issues was influenced by the negative media portrayal of women human rights defenders. Generally, civil society interviewees attributed weak growth in private and corporate donations<sup>569</sup> partly to a negative public image of NGOs allegedly fuelled by statements of some politicians.<sup>570</sup> Representatives of smaller, grassroots organizations, including Roma rights and LGBTI organizations, reported an inability to access sustainable financing. Increasingly, civil society organizations reportedly opt for other ways of financing, such as using crowdfunding platforms or developing income-generating activities.<sup>571</sup>
285. In **Georgia**, civil society organizations have called for improvement of the Law on Grants to address “fragmentation” of the public grants system.<sup>572</sup> They noted that while the law provides for general guidance on the granting process, it does not lay down clear rules and procedures for ministries and other public bodies to follow. Civil society interviewees noted that local authorities’ funding mechanisms and practices vary considerably across municipalities and regions, and identified a lack of a regulatory framework allowing local government bodies to issue grants to NGOs as a challenge.<sup>573</sup> Furthermore, some interviewed defenders reported that grants from public bodies were insufficient to cover their long-term planning and operations. They also noted that due to bureaucratic delays, service providers that apply for vouchers<sup>574</sup> usually wait lengthy periods of time before receiving them or do not receive them at all despite the availability of funds in the budget. Both Tbilisi-based and

<sup>565</sup> Na sociálních službách chybí 2 miliardy. Systém financování je špatný, tvrdí zástupce poskytovatelů [Two billion are missing for social services. The system of financing is wrong, says the representative of social service providers], Rozhlas.cz, 26 April 2019, available at: <https://plus.rozhlas.cz/na-socialnich-sluzby-chybi-2-miliardy-system-financovani-je-spatny-tvrdi-7903687>.

<sup>566</sup> The overview of measures adopted in accordance with the State Policy with Respect to NGOs for the Years 2015–2020 is available at: [https://www.vlada.cz/assets/ppov/rnno/aktuality/Priloha2\\_Prehled\\_plneni\\_ukolu\\_Statni\\_politika\\_NNO.pdf](https://www.vlada.cz/assets/ppov/rnno/aktuality/Priloha2_Prehled_plneni_ukolu_Statni_politika_NNO.pdf).

<sup>567</sup> See the Minutes from the meeting of the Committee for the European Union of the Government Council for Non-Profit Non-Governmental Organizations, 13 June 2019, available at: [https://www.vlada.cz/assets/ppov/rnno/aktuality/zapis\\_VEU\\_13062019\\_FIN.pdf](https://www.vlada.cz/assets/ppov/rnno/aktuality/zapis_VEU_13062019_FIN.pdf).

<sup>568</sup> Místo potírání korupce boj s alkoholem za volantem. Dotace určené neziskovkám dá vníro policistům [Fight against alcohol behind the wheel instead of anti-corruption activities. Subsidies originally allocated for NGOs will be given to the police], Irozhlas.cz, 12 April 2019, available at: [https://www.irozhlas.cz/zpravy-domov/korupce-ministerstvo-vnitro-neziskove-organizace-boj\\_1904120600\\_kno](https://www.irozhlas.cz/zpravy-domov/korupce-ministerstvo-vnitro-neziskove-organizace-boj_1904120600_kno).

<sup>569</sup> See, for example, Na penězích záleží: České neziskové organizace v 21. století [Money matters: Czech NGOs in 21st century], Špalek, Hyánek, Fónánová et coll., Masarykova univerzita, 2017, available at: <https://munispace.muni.cz/library/catalog/view/869/2739/595-1/#preview>.

<sup>570</sup> According to surveys conducted by the Centre for Public Opinion (CVVM), only about 1/3 of the surveyed population in 2017, 2018 and 2019 expressed trust in NGOs. Tisková zpráva - Důvěra k vybraným institucím veřejného života - září 2019 [Press release - Trust in chosen public institutions - September 2019], Centrum pro výzkum veřejného mínění, September 2019, available at: [https://cvvm.soc.cas.cz/media/com\\_form2content/documents/c2/a5011/f9/po191008.pdf](https://cvvm.soc.cas.cz/media/com_form2content/documents/c2/a5011/f9/po191008.pdf); Tisková zpráva - Důvěra k vybraným institucím veřejného života - listopad 2018 [Press release - Trust in chosen public institutions November 2018], Centrum pro výzkum veřejného mínění, November 2018, available at: [https://cvvm.soc.cas.cz/media/com\\_form2content/documents/c2/a4767/f9/po181213.pdf](https://cvvm.soc.cas.cz/media/com_form2content/documents/c2/a4767/f9/po181213.pdf); Tisková zpráva - Důvěra k vybraným institucím veřejného života - říjen 2017 [Press release - Trust in chosen public institutions - October 2017], Centrum pro výzkum veřejného mínění, October 2017, available at: [https://cvvm.soc.cas.cz/media/com\\_form2content/documents/c2/a4460/f9/po171127.pdf](https://cvvm.soc.cas.cz/media/com_form2content/documents/c2/a4460/f9/po171127.pdf).

<sup>571</sup> For example, the platform darujme.cz; other organizations, such as Foundation Veronika or League of Human Rights have charitable second-hand shops, See for example <https://nadace.veronica.cz/page/nadacni-obchody.php> and <https://lp.cz/dobrocinnny-obchudek-suplig/>.

<sup>572</sup> *Op. cit.* note 523.

<sup>573</sup> In line with the Law on Grants, local bodies are not included among entities that can issue grants.

<sup>574</sup> More information on the voucher system is available at para 269 of the present report.



regional NGOs mainly rely on grants from international donor organizations,<sup>575</sup> which also mainly cover short-term projects. Reportedly, six per cent of the Georgian population donates to civil society organizations.<sup>576</sup>

286. Interviewed human rights defenders in **Italy** noted that while local, regional and national bodies generally administer the procedure guiding the selection of project proposals or tenders in a transparent manner, delays in the transfer of funds to civil society organizations' accounts cause serious financial problems. Several associations working on the protection of vulnerable groups, including Roma and LGBTI people, reported experiencing difficulties in finding public sources of funding. Civil society interviewees informed of a progressive decrease in public funding for projects relating to women's and migrants' rights in recent years. Challenges in accessing public funding particularly affect smaller local organizations and community activists who usually have limited self-funding capacities. Journalists and media outlets also face challenges in accessing adequate and sustainable funding. While two-thirds of NGOs' funds are from local, regional, national and international public sources, one-third come from private donations.<sup>577</sup> Private citizens can donate a small percentage of the taxes they pay on their income to non-profit associations.<sup>578</sup> Interviewed defenders also reported several examples of in-kind state support to civil society organizations in different parts of Italy.<sup>579</sup>
287. In **Mongolia**, while larger NGOs finance most of their programmes from foreign funds, community activists often rely on their own resources. It was reported that most civil society groups at the local level lack sufficient knowledge and skills related to fundraising and have limited opportunities to develop their capacity. Interviewed human rights defenders raised concern regarding a lack of clear information about the procedure and criteria guiding tender/project selection processes for state budget funds and stressed the need for proactive and consistent information-sharing on funding decisions online by relevant authorities. While policies adopted by some ministries provide for the possibility to dispute decisions on public funding with the respective ministry or a court,<sup>580</sup> some civil society interviewees noted the absence of an effective non-judicial/interim complaint mechanism on funding issues.
288. In **Montenegro**, civil society respondents noted that they had no clear information about the procedure and criteria used by ministries in identification of priority areas for funding, and emphasized the importance of relying on NGO expertise and data collected through systematic monitoring in such processes. Human rights defenders consistently stressed the need for ensuring transparency in decision-making with regard to allocation of public funds, including through information-sharing on funding decisions online. While the Law on NGOs provides for a possibility to dispute the decisions on public funding before the Administrative Court,<sup>581</sup> respondents noted the absence of an effective non-judicial/interim complaint mechanism on funding issues. Civil society organizations further reported that they have no possibility to apply for public funding exceeding 20 per cent of funds dedicated per call.<sup>582</sup> A number of NGOs informed ODIHR of their applications to different ministries to secure adequate funding and the need to split larger projects into smaller fragments or sub-projects, while several civil society or-

<sup>575</sup> 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia, United States Agency for International Development (USAID), July 2017, available at: [https://www.usaid.gov/sites/default/files/documents/1866/CSOSI\\_Report\\_7-28-17.pdf](https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf). See also Civil Society Organizations' State Funding Reform - Policy Paper, Civil Society Institute (CSI), 2018, available at: [http://civilin.org/pdf/State\\_funding\\_Reform\\_Policy\\_Eng.pdf](http://civilin.org/pdf/State_funding_Reform_Policy_Eng.pdf).

<sup>576</sup> World Giving Index 2017, Charities Aid Foundation, September 2017, available at: [https://www.cafonline.org/docs/default-source/about-us-publications/cafworldgivingindex2017\\_2167a\\_web\\_210917.pdf](https://www.cafonline.org/docs/default-source/about-us-publications/cafworldgivingindex2017_2167a_web_210917.pdf).

<sup>577</sup> Walter Rotonda, Luca Ciccotti, "Associazioni Non-Governative in Italia" [Non-governmental associations in Italy], 8 June 2017, available at: <https://www.dirittopenaleglobalizzazione.it/wp-content/uploads/2017/06/Associazioni-non-governative-in-Italia-1.pdf>. See also Tutto quello che non ti hanno mai detto sulle Ong (e anche qualcosa di più) [Everything you have never been told about NGOs (and even something more)], Linkiesta, 30 March 2019, available at: <https://www.linkiesta.it/it/article/2019/03/30/ong-finanziamenti/41613/>.

<sup>578</sup> 5 per mille [5 per mil], Italianoprofit.it, available at: <https://italianoprofit.it/risorse/definizioni/5-per-mille/#ambiti-del-5-per-mille>.

<sup>579</sup> For example, organizations in Padua were allowed to use public spaces for free to conduct their human rights activities. Some interviewees based in Rome and Palermo described the state's reallocation of properties confiscated from organized crime to civil society organizations as a positive practice.

<sup>580</sup> See, for example, Order of the Minister of Health A/25 issued on 25 January 2019, available at: <https://www.legalinfo.mn/law/details/14116>.

<sup>581</sup> *Op. cit.* note 553.

<sup>582</sup> *Ibid.*

ganizations had to suspend their activities due to lack of funding. Furthermore, many NGOs working in social and child protection reported that the legal requirement to obtain a license to perform activities in these fields<sup>583</sup> is an additional obstacle, stressing that such measures should have been implemented gradually and in consultation with relevant civil society organizations.

## CONCLUDING OBSERVATIONS

- In the countries that participated in the first assessment cycle, registration requirements and procedures are generally conducive to the development and functioning of NGOs. ODIHR encourages ongoing vigilance to ensure consistency and transparency in the application of provisions on registration. The possibility of tax exemptions for NGOs is noted as a good practice and in this regard, Mongolia is encouraged to address this gap in the relevant legislation.
- Efforts to further simplify and improve the legal and regulatory environment for civil society are highly welcomed, for example through the harmonization of registration procedures underway in Italy, and reported improvement in the NGO registration process in Mongolia.
- Policy and strategic documents aimed at supporting civil society development and strengthening co-operation between the state and civil society can help facilitate enjoyment of the right to freedom of association. Adoption of such documents in the Czech Republic, Georgia and Montenegro, and pending approval in Mongolia, is positively noted in this regard. ODIHR reminds of the importance of meaningful consultations with civil society regarding issues relevant to the enjoyment of freedom of association, including in the development of such documents.
- While welcoming states' various legal and policy measures and mechanisms aimed at provision of public funds and other resources to civil society organizations, ODIHR notes that lack of access to adequate and sustainable funding is one of the key shared challenges of defenders, and particularly affects smaller local organizations and those working with vulnerable groups. This situation highlights the importance of consulting with civil society on issues related to funding.
- A lack of consistent and transparent rules and procedures pertaining to allocation of grants and other forms of public funding to civil society organizations across state institutions can result in an unpredictable and non-transparent funding environment, undermining the ability of human rights defenders to obtain funding for and conduct their activities. Negative perceptions or lack of knowledge about the work of the civil society sector can further undermine civil society organizations' fundraising opportunities.
- ODIHR welcomes the good practice of promoting private donors funding of NGOs, including by allowing taxpayers to dedicate a portion of taxes owed to a chosen civil society organization, as is the case in Italy and as the authorities in the Czech Republic have committed to introduce.
- The practice of authorities providing in-kind support to NGOs, for example through the provision of space for their activities as in Georgia and Italy, is recognized as a positive practice.

<sup>583</sup> Law on Social and Child Protection of Montenegro, (Official Gazette of Montenegro, No. 050/17 of 31 July 2017), available at: <http://www.minradiss.gov.me/en/library/zakoni>.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Ensure that registration procedures serve to facilitate defenders' work and are transparent, expeditious, inexpensive and allow the possibility to appeal.
- Adopt measures to strengthen financial sustainability of NGOs, including by consistent allocation of adequate public funds to organizations working across all human rights issues, with particular attention to the needs of grassroots NGOs working at the local level, those working on behalf of vulnerable and marginalized individuals and groups, and those providing social services. Also support civil society organizations with appropriate in-kind resources, for example, by providing free of charge spaces for human rights work.
- Across various state institutions and at national and local levels, develop transparent and consistent legal standards, rules and procedures pertaining to allocation of grants and other forms of public funding to civil society organizations, including an effective non-judicial/interim review procedure on public funding decisions.
- Ensure transparency in governance and allocation of public funds for civil society organizations through regular publication of information about funding decisions and of relevant oversight reports, and through proactive awareness raising with regard to procedures and decision-making concerning funding.
- Draw on the expertise of human rights defenders in the process of identification of priority areas for public funding through inclusive, transparent and meaningful consultations.
- Adopt and implement measures to encourage and facilitate private donors funding of NGOs, such as by introducing the possibility for taxpayers to dedicate a portion of their tax obligations to a chosen NGO and facilitating the establishment of social businesses. Support an environment that is conducive to private donors funding of civil society work by proactively raising public awareness about the important role of civil society and human rights defenders in a democratic society.
- Ensure that licensing requirements for NGOs working on providing social services do not pose an undue obstacle for those NGOs' operation or their ability to seek public funding.

## 2.4 THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

### *Overview of relevant international standards and commitments*

289. The right to participate in public affairs, which includes the right to take part in the conduct of public affairs by exerting influence through engaging in public debate and dialogue with freely chosen representatives as well as the right to vote and be elected,<sup>584</sup> is enshrined in the ICCPR and regional human rights conventions.<sup>585</sup> The UN Declaration on Human Rights Defenders includes several provisions relevant to participation in public affairs, specifying inter alia the right to disseminate information and knowledge on human rights issues; to develop, discuss and advocate new human rights ideas and principles; and to have access to participating in the conduct of public affairs on a non-discriminatory basis.<sup>586</sup>

<sup>584</sup> UN Human Rights Committee General Comment 25, UN Doc. CCPR/C/21/Rev. 1/Add.7, 12 July 1996, para. 8.

<sup>585</sup> ICCPR, Article 25; ACHR, Article 23; FCNM, Article 15.

<sup>586</sup> UDHR, Articles 6-8.

290. OSCE participating States, which have reaffirmed the vital role that NGOs, groups and individuals play in promoting democracy, human rights and the rule of law,<sup>587</sup> have committed to strengthen “modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions”.<sup>588</sup>
291. The Council of Europe Committee of Ministers has emphasized that governments at all levels “should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions” and in the drafting of legislation which affects NGOs’ status, financing or spheres of operation.<sup>589</sup> Furthermore, as emphasized by international human rights bodies and is enshrined in relevant international instruments, states should proactively reach out to human rights defenders with specific expertise on the subject matter under discussion and ensure that consultation mechanisms are open to those with special needs.<sup>590</sup> The Special Rapporteur on the situation of human rights defenders has recommended that states help to strengthen the capacity of traditionally marginalized or excluded groups, and human rights defenders advocating for their rights, to facilitate their meaningful participation.<sup>591</sup>
292. The *Guidelines* call on states to set up appropriate mechanisms and procedures that provide for human rights defenders and their organizations to engage in regular, ongoing, institutionalized and open dialogue to facilitate their effective participation in public decision-making. As noted in the *Guidelines*, such mechanisms and procedures should be inclusive, reflect the diversity of human rights defenders and take into account those with specific needs or from marginalized groups so that they may participate on an equal basis.

### ***The right to participate in public affairs in selected OSCE participating States***

293. In the participating States visited by ODIHR in the first assessment cycle, the right to participate in public affairs is addressed in constitutional and other legal and policy frameworks, which specify mechanisms and procedures for participation of civil society in law- and policy-making.
294. In **the Czech Republic**, according to the Legislative Rules of the Government, consultations on legislative drafts or regulation proposals are held at the initial stages of relevant processes.<sup>592</sup> The Legislative Rules oblige the government to consult draft laws with selected public authorities and the Public Defender of Rights, and in some cases with trade-unions and their associations,<sup>593</sup> they do not oblige the government to consult the proposals with civil society. Legislative and policy proposals and comments received during mandatory consultations are available online.<sup>594</sup> Consultations with civil society can be conducted upon the initiative of the public body responsible for the development of the draft law. The State Policy on NGOs contains a commitment to adopt measures towards ensuring participation of civil society at the earliest stages of policy- and law-making. For example, all government proposals with relevance to the implementation of human rights must, according to the Legislative Rules of the Government, be consulted with the Government Plenipotentiary for Human Rights.<sup>595</sup>

<sup>587</sup> See, for example, Paris 1990; Helsinki 1992, para. 1; Istanbul 1999, para. 27.

<sup>588</sup> Moscow 1991, para. 43.1.

<sup>589</sup> CM/REC (2007)14, paras. 76 and 77.

<sup>590</sup> See, for example, the UN Committee on the Rights of the Child, “Concluding Observations: Netherlands”, UN Doc. CRC/C/NLD/CO/3, 27 March 2009, para. 25; the UN Committee on the Elimination of Racial Discrimination (CERD), “Concluding Observations: Canada”, UN Doc. CERD/C/CAN/CO/19-20, 4 April 2012, para. 26; and Article 29 of the Convention on the Rights of Persons with Disabilities.

<sup>591</sup> Report of the Special Rapporteur on the situation of human rights defenders on the relationship between large-scale development projects and the activities of human rights defenders, UN Doc. a/68/262, para. 81(g).

<sup>592</sup> Legislative Rules of the Government (1998), Section 2.3, available at: [https://www.vlada.cz/assets/jednani-vlady/legislativni-pravidla/LEGISLATIVNI-PRAVIDLA-VLADY\\_platne-od-1-2-2018.pdf](https://www.vlada.cz/assets/jednani-vlady/legislativni-pravidla/LEGISLATIVNI-PRAVIDLA-VLADY_platne-od-1-2-2018.pdf).

<sup>593</sup> *Ibid*, Section 5.

<sup>594</sup> Online application ODOK, available at: <https://apps.odok.cz/home>.

<sup>595</sup> *Op. cit.* note 592.

The Plenipotentiary in turn consults the proposals with the Government Council for Human Rights, an advisory body with state and civil society members.

295. In **Georgia**, according to Article 77 of the Constitution, the Parliament shall make draft constitutional amendments public “for nation-wide public discussions”. Article 102 of the Rules of Procedure of the Parliament prescribes that legislative initiatives must be submitted for comments to parliamentary committees and other relevant state actors and must be published on the official website of the Parliament for public comments.<sup>596</sup> The Law of Georgia on Normative Acts requires that a draft law must always be accompanied by an explanatory note containing information about the stakeholders consulted in the drafting process, if any, and their assessment.<sup>597</sup> Draft laws are regularly published and available for comment on the website of the Legislative Herald of Georgia.<sup>598</sup> On 22 December 2017, the Government launched an e-petition platform where any Georgian citizen can propose an electronic draft petition relating to issues that fall within the scope of the government’s competence and gather signatures for support.<sup>599</sup>
296. In **Italy**, Decree 169/2017 stipulates that public consultations should be clearly notified on an official website of a national authority putting forward a legislative initiative or policy proposal.<sup>600</sup> According to the Decree, the consulting authority might decide to make the process accessible to anyone interested, or to involve in the working group only selected stakeholders, and consultation processes should be transparent and not onerous in terms of costs and duration for those participating. In May 2017, the Government of Italy adopted Directive 2/2017, which recommended public authorities to enhance participation of citizens and civil society in public affairs and to consult them in every decision-making process.<sup>601</sup> In addition, national institutions were encouraged to comply with the newly introduced Guidelines on Public Consultation in Italy issued by the government.<sup>602</sup> In September 2017, the Senate issued similar guiding principles.<sup>603</sup> At the regional level, norms generally contained in each region’s statute regulate participation in public affairs. Some regions, including Emilia Romagna, Tuscany and Umbria, have adopted laws on public/civil society participation.<sup>604</sup> Some regional and local authorities, including in Lombardy and Palermo, have set up consultation mechanisms.<sup>605</sup>

<sup>596</sup> Article 102, Rules of Procedure of the Parliament of Georgia, 2019, available at: [http://www.parliament.ge/en/ajax/downloadFile/131641/ROP\\_as\\_of\\_27\\_Dec\\_2018\\_ENG](http://www.parliament.ge/en/ajax/downloadFile/131641/ROP_as_of_27_Dec_2018_ENG).

<sup>597</sup> Law of Georgia on Normative Acts, 2009, available at: <https://matsne.gov.ge/en/document/view/90052?publication=25>.

<sup>598</sup> See Legislative Herald of Georgia, available at: <https://matsne.gov.ge/>.

<sup>599</sup> Ordinance of the Government of Georgia no. 245 on creating an electronic platform (ichange.gov.ge) for submitting online petitions and approving the terms and conditions pertaining to its use, 2017, available at: <https://matsne.gov.ge/ka/document/view/3672138>.

Petitions with at least 10,000 signatures collected online within 30 days from the publication of the initiatives on the platform will be sent for consideration to the Electronic Petition Expert Commission. Upon the decision of the Commission, the e-petition can be discussed within the government, which is obliged to communicate the outcome of the discussions to the author of the e-petition within a three-month period; the response should also be published online.

<sup>600</sup> Decree of the President of the Council of Ministers 169, “Rules regulating the analysis and verification of the impact of regulations and the consultation”, 15 September 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/11/30/17G00182/sg>.

<sup>601</sup> Directive 2, Guidelines on Public Consultation in Italy, 31 May 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/07/14/17A04797/sg>.

<sup>602</sup> Guidelines on public consultation in Italy, 2017, available at: [https://www.gazzettaufficiale.it/do/atto/serie\\_generale/caricaPdf?cdimg=17A0479700100010110001&id\\_gu=2017-07-14&art.dataPubblicazioneGazzetta=2017-07-14&art.codiceRedazionale=17A04797&art.num=1&art.tiposerie=SG](https://www.gazzettaufficiale.it/do/atto/serie_generale/caricaPdf?cdimg=17A0479700100010110001&id_gu=2017-07-14&art.dataPubblicazioneGazzetta=2017-07-14&art.codiceRedazionale=17A04797&art.num=1&art.tiposerie=SG).

<sup>603</sup> The document calls for the dissemination of the outcomes of consultations, which should be made available to the public through different modalities, including ad hoc events and periodic reports. See Linee guida per le consultazioni pubbliche promosse dal Senato della Repubblica [Guidelines on the public consultations promoted by the Senate of the Republic], Senate of the Italian Republic, September 2017, available at: [http://www.senato.it/application/xmanager/projects/leg18/attachments/documento/files/000/028/616/Linee\\_guida\\_consultazioni\\_ITA.pdf](http://www.senato.it/application/xmanager/projects/leg18/attachments/documento/files/000/028/616/Linee_guida_consultazioni_ITA.pdf).

<sup>604</sup> For Emilia Romagna, See Regional Law 15, Law on participation in the development of public policies, 22 October 2018, available at: <http://demetra.regione.emilia-romagna.it/al/articolo?urn=er:assemblealegislativa:legge:2018:15>; For Tuscany, See Regional Law 46, Regional public debate and promotion of participation in the development of regional and local policies, 2 August 2013, available at: <http://raccoltanormativa.consiglio.regione.toscana.it/articolo?urndoc=urn:nir:regione.toscana:legge:2013-08-02:46>; For Umbria, See Regional Law 14, Discipline of the mechanisms of participation in the functions of regional institutions, 16 February 2010, available at: [http://leggi.crumbria.it/mostra\\_atto.php?id=47211&v=FI.SA.TE.IS.VE.RA.MM&m=5](http://leggi.crumbria.it/mostra_atto.php?id=47211&v=FI.SA.TE.IS.VE.RA.MM&m=5).

<sup>605</sup> In Lombardy, a Table for the Consultation of the Third Sector was created to ensure participation of third sector entities in the planning, design and implementation of regional social policies. Lombardy Region, Table for the Consultation of the Third Sector, available at: <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioRedazionale/servizi-e-informazioni/enti-e-operatori/terzo-settore/tavolo-consultazione-terzo-settore>.

In Palermo, to promote public participation, a Council of Cultures was established within the municipality to give the possibility to minority groups and their defenders to be involved in the elaboration of local policies. Council of Cultures, Municipality of Palermo, available at: <https://www.comune.palermo.it/partecipa.php?sel=3&asel=15>.

297. In **Mongolia**, the Law on Legislation stipulates that legislative processes should inter alia be carried out with effective public participation.<sup>606</sup> Public consultations are prescribed to be held before the submission of a draft law to the Parliament through publication of relevant documents on the official website of the state body initiating the draft. The call for comments is to remain open for at least 15 days, while received public input shall be taken into account in finalizing the draft law.<sup>607</sup> Other forms of consultations include civil society participation in roundtable discussions and working groups and contributions through online forums, surveys, polls or inquiries, as relevant. Public participation in law-, policy-, decision-making and oversight processes is further guaranteed by the Law on NGOs, the Law on Public Procurement, the Law on the Government, the Law on Public Hearings, the Law on Development Policy and Planning and the Law on Glass Accounts, among others.<sup>608</sup> These laws provide for a wide range of public participation methods, including involvement of NGOs in drafting and implementation of decisions of legislative and executive authorities; oversight by local communities of public procurement processes; and participation of experts, researchers and the wider public in shaping development policies, plans and projects through public polling and debate. Legal provisions guarantee the involvement of professional associations and NGOs in public hearings concerning administrative rules and planning as well as budget control, among other areas.
298. **Montenegro's** Law on State Administration<sup>609</sup> provides that consultations with civil society in drafting laws and strategies are mandatory, except in limited circumstances stipulated by the Law.<sup>610</sup> The Office for Cooperation with NGOs reported that the Government of Montenegro strives to ensure a consistent and systematic approach to conducting public consultations, including by means of a newly launched E-Government platform.<sup>611</sup> According to the Office for Cooperation with NGOs, consultations on draft laws and policies begin with a public call for comments and recommendations launched on the public administration portal and the website of the relevant ministry. The respective ministry also shares a call for contributions with relevant organizations and individuals. The Decree regulating the procedure for the conduct of public consultations provides that at least 15 days must be provided for the submission of initiatives, comments and suggestions in written and electronic form in response to a public call.<sup>612</sup> Other forms of consultations include civil society participation in roundtable discussions and working groups on draft laws and policies. The Office for Cooperation with NGOs informed ODIHR that ensuring a consistent and systematic approach to conducting public consultations is among the priority areas for the Government of Montenegro.
299. In all states covered in the first assessment cycle, consultative mechanisms such as governmental advisory bodies and working groups help to facilitate civil society participation in the development and discussion of laws and policies.
300. In **the Czech Republic**, civil society representatives participate in various governmental advisory bodies. Such bodies regularly discuss policy and legislative proposals and sometimes are charged with development of policy

<sup>606</sup> Law on Legislation of Mongolia (adopted in 2015, amended in 2017), available at: <https://www.legalinfo.mn/law/details/11119>.

The Law provides for participation of citizens and legal persons, including NGOs, research organizations, experts and scientists, in initiation (Article 5) drafting and providing comments on draft laws (Articles 9.5 and 38).

<sup>607</sup> *Ibid.*

<sup>608</sup> The Laws are available at Mongolia's official online legal portal [www.legalinfo.mn](http://www.legalinfo.mn).

<sup>609</sup> Law on State Administration (2003), most recent amendments to the Law are adopted in November 2018, available at: <http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=343584&rType=2&file=Zakon%20o%20drzavnoj%20upravi%20ENG.docx>.

<sup>610</sup> Article 52 of the Law stipulates that consultations are not mandatory in following cases: when a law and/or strategy regulate the issues from the area of defence and security and annual budget; in extraordinary circumstances, emergencies or unforeseeable circumstances; and in case of minor amendments to laws which do not regulate certain issue in a substantially different manner.

<sup>611</sup> The E-Government portal of Montenegro can be accessed at: <https://www.euprava.me/en>.

<sup>612</sup> Decree on selection of representatives of non-governmental organizations for working bodies of state administration organs and conduct of public consultations in drafting laws and strategies, adopted in June 2018, available at: <http://www.sluzbenilist.me/pregled-dokumenta/?id={2DB2EE81-221E-4759-848D-150D5F754D9A}>.



papers, analysis, or other documents.<sup>613</sup> The Plenipotentiary for Human Rights oversees the Council for Human Rights and appoints its members, who are representatives of the state, civil society and academia; the Council has six permanent Committees which propose and comment on various policy or legislative proposals.<sup>614</sup> As of April 2019, there were 10 civil society members in the Council and 55 members in the six Committees.<sup>615</sup> Other permanent advisory bodies with civil society members include Government Councils.<sup>616</sup> ODIHR was informed during the meeting with the members of such Councils that the selection process and appointments of members are at the discretion of the government and no official selection criteria exist. State bodies also establish permanent, semi-permanent or ad-hoc working groups to consult specific topics with civil society experts. Working groups were formed for the drafting of thematic strategies, including the Strategy for Roma Integration and the State Policy on NGOs. Some state bodies highlighted to ODIHR their co-operation with specific NGOs.<sup>617</sup>

301. In **Georgia**, civil society organizations are frequently invited to consultations conducted within governmental councils and institutions, including the Prime Minister's Human Rights Inter-Agency Council.<sup>618</sup> Representatives of the Office of the State Minister for Reconciliation and Civic Equality reported involving defenders working on the rights of ethnic minorities as well as ethnic minority representatives in discussions on policy issues, including at the local and grassroots level<sup>619</sup> and highlighted collaboration with NGOs in the framework of the National Minority Council within the Office of the Public Defender. The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs reported that consultations with NGOs working on disability issues are often organized to jointly develop policy measures or explore possibilities of co-operation, and that such meetings were also held outside of Tbilisi to foster public participation of local NGOs. According to the Ministry of Justice, the first draft of the law on the rights of persons with disabilities was submitted to the government by civil society organizations and was further developed through a series of open and inclusive consultations, in which participation of persons with disabilities was facilitated and most input received by human rights defenders was incorporated into the final draft.
302. In **Italy**, state actors named the National Observatory on the Condition of People with Disabilities<sup>620</sup> and the Permanent Consultation Table for the Promotion of Rights and the Protection of LGBT People<sup>621</sup> as positive examples of mechanisms that promote public participation of human rights defenders. National authorities informed ODIHR of public consultations on the elaboration of the third National Action Plan on Women, Peace and Security

<sup>613</sup> For example, the Committee on Lobbying under the Council for Coordination of the Fight Against Corruption developed a background analysis on the basic premises of the new legislative proposal on lobbying, and then was further closely involved in discussing the draft law with the Ministry of Justice. For details *See* the records of meetings of the Committee on Lobbying available at: <https://korupce.cz/rada-vlady/pracovni-komise-predsedy-rady-vlady-pro-koordinaci-boje-s-korupci/komise-k-lobbingu/>.

<sup>614</sup> These include the Committee Against Torture, Committee for the Rights of the Child, Committee for Fundamental Rights and Prevention of Discrimination, Committee for the Rights of Foreigners, Committee for the Rights Sexual Minorities and the Committee for Human Rights and Modern Technology. *See* the webpage of the Council of Human Rights: <https://www.vlada.cz/cz/ppov/rlp/vybory/vybory-rady-vlady-cr-pro-lidska-prava-17502/>.

<sup>615</sup> *See* information about the members of the Council for Human Rights available at: <https://www.vlada.cz/cz/ppov/rlp/clenove/>.

<sup>616</sup> The Council for Non-Governmental Non-Profit Organizations, the Council for People with Disabilities, the Council for Equality of Women and Men, the Council for Roma Community Affairs, the Council for National Minorities and the Council for Coordination of the Fight Against Corruption. *See* information about the Government Councils and their members available at: <https://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/>.

<sup>617</sup> This included the General Prosecutor's Office cooperation with In Iustitia in the organization of regular training for judges, prosecutors and police officers on the effective investigation and prosecution of hate crimes, and cooperation between the Ministry of Interior and La Strada, White Circle of Safety, Czech Helsinki Committee, Centre for Integration of Foreigners, and various local and regional organizations. This co-operation reportedly often takes place through targeted financing for the NGOs to provide services supported by the Ministry, such as the operation of an emergency helpline to victims of crime, or provision of legal assistance to foreigners and asylum-seekers.

<sup>618</sup> Within the Council, 12 NGOs are represented as members and, as such, have the right to vote, and up to 70 interested organizations may be represented as members of the Council's Advisory Body. In this format, human rights defenders contributed to the development of the National Strategy for the Protection of Human Rights in Georgia for 2014-2020 and the respective Action Plans.

<sup>619</sup> For example, the State Strategy for Civic Equality and Integration and its 2015-2020 Action Plan were reportedly elaborated and implemented in consultation with civil society.

<sup>620</sup> The Observatory was instituted in March 2009 with the purpose to involve civil society in the formulation of policies on disability issues. *See* National Observatory on the Condition of People with Disabilities, available at: <http://www.osservatoriodisabilita.gov.it/it/>.

<sup>621</sup> The Table was established in October 2018 to promote dialogue between the government and LGBTI associations on countering discrimination of LGBTI people. *See* Department for Equal Opportunities, Establishment of a Permanent Consultation Table for the Promotion of Rights and the Protection of LGBT People, 24 October 2018, available at: <http://www.pariopportunita.gov.it/news/costituzione-del-tavolo-di-consultazione-permanente-per-la-promozione-dei-diritti-e-la-tutela-delle-persone-lgbt/>.

Representatives of the Ministry of Foreign Affairs and International Cooperation reported to ODIHR that the latter gathered every two months between the end of 2018 and the beginning of 2019, and all meetings were attended by civil society organizations.

(2016-2020)<sup>622</sup> and the first National Action Plan on Business and Human Rights (2016-2021).<sup>623</sup> As a result of civil society contributions, both documents contain commitments to strengthen co-operation with human rights defenders; a Working Group on Business and Human Rights was also established in the framework of the National Action Plan on Business and Human Rights.<sup>624</sup> The involvement of civil society organizations increased over time in the formulation of the three Open Government Partnership (OGP) Action Plans, which aimed at promoting transparency, participation and accountability within public institutions. The third OGP Action Plan (2016-2018)<sup>625</sup> provided for the establishment of the “Open Government Forum”,<sup>626</sup> which periodically brought together over 100 civil society organizations<sup>627</sup> and contributed to the formulation of the abovementioned Guidelines on Public Consultation in Italy.

303. The Government of **Mongolia** has also made improving civic engagement in and transparency of decision-making processes a priority in the framework of the OGP initiative.<sup>628</sup> Mongolia committed to train public officials on ways to engage with and provide feedback to the public on decision-making processes, ensure that decisions are presented to the public in a transparent and accessible manner with sufficient time for feedback, and evaluate the level of public engagement in decision-making processes.<sup>629</sup> The OGP’s Independent Reporting Mechanism made a number of recommendations to the government on strengthening public participation and accountability mechanisms after assessing that the implementation of the three milestones remained incomplete by the end of 2017.<sup>630</sup> The Action Plan of the Government focuses on Mongolia’s Sustainable Development Vision 2030 includes a component on promotion of public participation, with a focus, among other areas, on strengthening public participation in environmental protection activities.<sup>631</sup>
304. In **Montenegro**, as positive examples of mechanisms that, *inter alia*, promote participation of human rights defenders with specific needs or from minority groups, state actors named Minority Councils established by the Law on Minority Rights and Freedoms;<sup>632</sup> the Strategy for Social Inclusion of Roma and Egyptians in Montenegro for 2016-2020 and the Model Local Action Plan for Inclusion of Roma and Egyptians for 2017-2020; and the Strategy for Integration of Persons with Disabilities for 2016-2020 and corresponding action plans.
305. In all participating States visited, ODIHR was informed of positive examples of civil society participation in public affairs and co-operation with authorities at various levels.
306. In **the Czech Republic**, most interviewed human rights defenders considered civil society participation in the government’s advisory bodies to be satisfactory. Several defenders singled out as a good practice the example of the Collegium on the Implementation of the Judgments of the European Court of Human Rights (ECTHR), under the Ministry of Justice – a working group that gathers experts and civil society members to develop plans for

<sup>622</sup> Italy’s Third National Action Plan, in accordance with UN Security Council Resolution 1325 (2000), 2016 – 2019, Inter-Ministerial Committee for Human Rights, available at: [https://cidu.esteri.it/comitatodirittiumani/resource/doc/2017/09/brochure\\_cidu\\_2017\\_eng\\_hr.pdf](https://cidu.esteri.it/comitatodirittiumani/resource/doc/2017/09/brochure_cidu_2017_eng_hr.pdf).

<sup>623</sup> Italian National Action Plan on Business and Human Rights (2016-2020), Inter-Ministerial Committee for Human Rights, available at: [http://cidu.esteri.it/comitatodirittiumani/resource/doc/2020/02/cidu\\_napbhreng\\_2018def.pdf](http://cidu.esteri.it/comitatodirittiumani/resource/doc/2020/02/cidu_napbhreng_2018def.pdf).

<sup>624</sup> *Ibid.*

<sup>625</sup> Open Government in Italy, 3rd Action Plan (2016-2018), Ministry of Public Administration, available at: <http://open.gov.it/wp-content/uploads/2016/10/2016-10-07-3rd-NAP-Italy-English-version.pdf>.

<sup>626</sup> Italia Open Gov, Open Government Forum, available at: <http://open.gov.it/open-government-forum/>.

<sup>627</sup> *Op. cit.* note 532.

<sup>628</sup> Open Government Partnership: Mongolia, available at: <https://www.opengovpartnership.org/members/mongolia/>.

<sup>629</sup> Independent Reporting Mechanism: Mongolia Progress Report 2016-2017, 2018, available at: [https://www.opengovpartnership.org/wp-content/uploads/2018/11/Mongolia\\_Mid-Term\\_IRM-Report\\_2016-2018\\_EN.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/11/Mongolia_Mid-Term_IRM-Report_2016-2018_EN.pdf).

<sup>630</sup> *Ibid.* The Independent Reporting Mechanism also noted that the lack of details on the mode and procedure of implementation makes the level of completion of the milestones difficult to assess.

<sup>631</sup> *Op. cit.* note 359. See also: <http://nli.gov.mn/images/plan2020.pdf>.

<sup>632</sup> Law on Minority Rights and Freedoms, adopted in 2006, last amended in 2017, available at: <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=332479&rType=2&file=The%20Law%20on%20Minority%20Rights%20integral%20text.pdf>.

national implementation of the judgments of the ECtHR.<sup>633</sup> Interviewees also informed ODIHR that establishing working relations with the members of the parliament, government representatives or other decision-makers is a common way of voicing civil society opinions in the policy-making or legislative processes. Often NGOs act in coalitions and influence proposals through campaigning and advocacy. For example, in 2018, a civil society coalition publicly opposed a proposed amendment to the School Act.<sup>634</sup> Human rights defenders highlighted the development of the State Policy on NGOs as a positive example of civil society involvement in policy-making processes.<sup>635</sup>

307. In **Georgia**, the majority of interviewed defenders described access to public bodies for civil society organizations and media representatives as ‘easy’ and ‘non-problematic’. They noted that if defenders are not invited to consultations, they can express interest in participating by directly contacting the relevant public authority, and institutions generally approve such requests.<sup>636</sup> Interviewed defenders also shared a number of positive practices pertaining to civil society participation at the local level, including in Marneuli, Zugdidi, Batumi and Guria. In Kutaisi, local NGOs and media outlets communicate and engage with municipal authorities and contribute to the local decision-making process through the Civil Advisory Council, a consultative platform which is chaired by a civil society representative.<sup>637</sup> The establishment of the Council and similar bodies is in line with the provisions of the Local Self-Government Code, which encourages local authorities to involve civil society organizations in discussions/consultations on draft laws and to set up consultative bodies within municipalities.<sup>638</sup> Representatives of the Georgian Parliament also informed ODIHR of regular consultations with civil society organizations through a number of parliamentary committees. They highlighted that around 40 NGOs frequently participate in the meetings of the Permanent Parliamentary Council on Gender Equality, while 15 are part of a consultative group within the Parliament’s Open Governance Permanent Council. The Human Rights and Civil Integration Committee works in close co-operation with representatives of NGOs, including since 2019 in the process of parliamentary oversight of the implementation of decisions/rulings of the ECtHR.<sup>639</sup>

308. In **Italy**, defenders highlighted the Chamber of Deputies and the Senate’s Parliamentary Committees as important forums enabling civil society participation in the legislative process. The Standing Committee on Labour and Social Security and the Standing Committee on the Environment in recent years involved civil society organizations in public consultations on draft bills and proposals,<sup>640</sup> while other bodies, including the Extraordinary Commission for the Protection and Promotion of Human Rights, regularly hosted hearings of human rights defenders. ODIHR received accounts of civil society organizations being requested to provide expertise and participate in the elaboration of laws and policies relating to criminalization of torture,<sup>641</sup> the protection of whistleblowers,<sup>642</sup> and

<sup>633</sup> See information about the working group available at: <https://www.justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp>.

<sup>634</sup> The amendment reportedly took a retrogressive step in the implementation of inclusive education. See the Open letter against the amendment of the Regulation no. 27/2016, Forum for Human Rights, 6 December 2018, available at: <http://forumhr.eu/otevreny-dopis-k-navrhu-novelizace-vyhlasaky-o-vzdelavani-deti-zaku-a-studentu-se-specialnimi-vzdelavacimi-potrebam/>.

<sup>635</sup> Nová státní politika přináší řadu příslibů [The new State Policy brings many promises], Svět neziskovek, 5 August 2015, available at: <https://svetneziskovek.cz/fundraising/nova-statni-politika-prinasi-radu-prislibu>.

<sup>636</sup> For example, civil society organizations can join the Intergovernmental Anti-Corruption Council under the Ministry of Justice by sending a written request containing information about their areas of work and explaining the reasons why they want to become members. The Intergovernmental Anti-Corruption Council is a consultative body that was set up in 2008. It is mandated to coordinate the anti-corruption policy of the country. Of its 55 members, 14 are representatives of NGOs, including Transparency International Georgia, GYLA, OSF Georgia and ISFED. See in this regard Gov’t confirms 2017-2018 anti-corruption strategy, agenda.ge, 27 September 2017, available at: <http://agenda.ge/en/news/2017/2091>.

<sup>637</sup> See in this regard ქუთაისის მერის მრჩეველთა საბჭოს სხდომა [Meeting of the Advisory Board of Kutaisi Mayor], Kutaisi Municipality website, 30 July 2018, available at: <http://kutaisi.gov.ge/ge/kutaisis-meris-mrchevella-sabchos-sxdoma>.

<sup>638</sup> Organic Law of Georgia Local Self-Government Code, 2014, available at: <https://matsne.gov.ge/en/document/view/2244429?publication=44>.

<sup>639</sup> See About Human Rights and Civil Integration Committee, Parliament of Georgia website, available at: <http://www.parliament.ge/en/saparlamento-saqmianoba/komitetebi/adamianis-uflebata-dacvisa-da-samoqalaqo-integraciis-komiteti/komitetis-shesaxeb>.

<sup>640</sup> See, for more information about consultations within Parliamentary Commissions, <https://www.senato.it/4804>.

<sup>641</sup> See, in this regard, Law 110, Introduction of the crime of torture in the Italian legal framework, 14 July 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/07/18/17G00126/sg>.

<sup>642</sup> See, in this regard, Law 179, Provisions for the protection of perpetrators of reports of crimes or irregularities that have come to their knowledge in the context of a public or private employment relationship, 30 November 2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/12/14/17G00193/sg>.

countering violence against women.<sup>643</sup> Several interviewed defenders working on the rights of people with disabilities informed ODIHR of having a 'steady dialogue' with national and regional authorities and about their contribution to the establishment of UNAR. ODIHR was also informed of collaboration between human rights defenders and independent authorities, including ANAC and the Data Protection Authority, which regularly involve civil society in the development of their regulatory acts through online consultations. ODIHR also heard examples of successful co-operation with local authorities. Civil society interviewees from Naples informed of their fruitful collaboration with the municipality, which periodically organizes meetings and roundtables with third sector organizations.<sup>644</sup> Human rights defenders based in Naples and Palermo, especially those working on LGBTI rights, described having good relations with the police. In Padua, respondents reported working closely with the local authorities in the framework of the Shelter City initiative.<sup>645</sup>

309. In **Mongolia**, an NGO working on the protection of children's rights informed ODIHR of its involvement in parliamentary discussions of draft laws pertaining to the rights of the child and fruitful co-operation with the Ministry of Labour and Social Protection in drafting legislation, noting that some of its proposals were reflected in draft laws. In another positive example, respondents highlighted the instrumental role of women's rights NGOs in development and approval of the Law on Combating Domestic Violence (2016) and the elaboration and adoption of the National Programme for Women (1996-2020).
310. The Parliament of **Montenegro** reported good co-operation with civil society organizations. For example, in July 2016 they signed an Agreement on Cooperation with NGOs in order to promote civil society participation in the law-making process.<sup>646</sup> In November 2018, the parliamentary Committee on Human Rights and Freedoms, the Legislative Committee and the Committee on European Integration, signed a Memorandum of Cooperation with the human rights organization Civic Alliance regarding activities and information exchange pertaining to Montenegro's accession to the EU.
311. Despite existing good practices, human rights defenders interviewed by ODIHR also pointed to a number of concerns regarding the participation of human rights defenders in public affairs.
312. In **the Czech Republic**, several environmental activists voiced concern about an amendment to the Construction Code in 2018,<sup>647</sup> which removed the possibility for civil society organizations to participate in administrative proceedings concerning building permission in cases when new constructions are not subject to environmental impact assessment.<sup>648</sup> Some defenders also noted that the Draft Law on Lobbying, which was passed by the government in July 2019 and submitted to the Parliament for discussion, includes human rights NGOs in the definition of a lobbyist, if they lobby in their own interest or in the interest of a third party.<sup>649</sup> In this regard, they

<sup>643</sup> See, in this regard, Department for Equal Opportunities, National Strategic Plan on Violence against Women (2017-2020), available at: <http://www.pariopportunita.gov.it/wp-content/uploads/2018/03/testo-piano-diramato-conferenza.pdf>.

<sup>644</sup> See, for example, Citizens' Table of the Municipality of Naples, available at: <http://www.comune.napoli.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/30580>.

<sup>645</sup> See, for more information on the Shelter City initiative, paras 135-137 of the present report.

<sup>646</sup> See for example Contribution to the European Commission Report on Montenegro for the period 1 October 2016 – 20 October 2017, Ministry of European Affairs, October 2017, available at: <http://www.kei.gov.me/ResourceManager/FileDownload.aspx?rid=301225&rType=2&file=CONTRIBUTION%20TO%20THE%20EUROPEAN%20COMMISSION%20REPORT%20ON%20MONTENEGRO%20October%202016%20-%20October%202017.pdf>.

<sup>647</sup> Účast dotčené veřejnosti v řízeních po novele stavebního zákona [Participation of the public in administrative proceedings after the amendment of the Construction Code], Frank Bold, 13 January 2018, available at: <https://frankbold.org/poradna/zivotni-prostredi/ucast-verejnosti/ucast-v-rozenich/rada/ucast-dotcene-verejnosti-v-rozenich-po-novele-stavebnihozakona>. The amendment is under reviewed by the Constitutional Court (no. Pl. ÚS 22/17). The Public Defender of Rights has entered in the proceedings. See the Defender's intervention in the case available at: [https://www.ochrance.cz/fileadmin/user\\_upload/Zvladni\\_opravneni/ustavni\\_soud/SZD\\_28-2017-stavebni-zakon.pdf](https://www.ochrance.cz/fileadmin/user_upload/Zvladni_opravneni/ustavni_soud/SZD_28-2017-stavebni-zakon.pdf).

<sup>648</sup> The Act on Protection of Environment and Landscape (1992), available at: <https://www.zakonyprolidi.cz/cs/1992-114> and the Act on Environmental Impact Assessment (2001), available at: <https://www.zakonyprolidi.cz/cs/2001-100> provide that environmental organizations can become parties to administrative proceedings concerning building permission in cases when new constructions are subject to environmental impact assessment (EIA), which mainly concerns large-scale constructions with high environmental impact.

<sup>649</sup> The Draft Law on Lobbying is available at: <https://apps.odok.cz/veklep-detail?pid=KORN4B9CNQE>.

reported a lack of certainty as to when their activity would qualify as lobbying for the purposes of the law.<sup>650</sup> Once adopted, the law would oblige lobbyists to register and report their lobbying activity.

313. According to civil society interlocutors in **Georgia**, as public consultations are not fully institutionalized due to the lack of a unified legal framework regulating civil society participation, opportunities for civil society organizations to contribute to draft laws and policies are not systematic and generally occur upon the discretion of authorities.<sup>651</sup> They also reported that the impact of consultations is sometimes not visible due to lack of feedback. According to interviewed defenders, information about consultations is not always made public and in cases when it is shared on the website of the public institution organizing them, meetings are often announced on short notice. Interviewed representatives of the Public Defender Office in Zugdidi noted that similar problems exist at the local level.
314. In **Italy**, a number of interviewed human rights defenders criticized the growing practice of issuing decrees instead of laws to speed up the decision-making process, which does not allow for meaningful public/civil society consultations. This issue was raised in relation to the Decree-Law 113/2018,<sup>652</sup> which was reportedly adopted without consultation with civil society. Some defenders called for improved co-operation with civil society, especially at the national level, on issues including the promotion of Roma people's and migrants' rights. Activists belonging to these groups or engaged in defending their rights reported that they were rarely able to engage in discussions or in joint projects despite their requests for meetings with authorities. Some interviewees also identified the lack of consistently published outcome reports following consultations as a gap.<sup>653</sup>

*“We are given the opportunity to speak and participate, but the impact of our contributions is not visible. Despite our efforts to put forward proposals, not much attention is given to them. This way, consultations do not produce any outcome and there is no follow-up by the relevant authorities. We engage to give a voice to those who do not have one, but often our voices are also not being heard.”*

Excerpt from ODIHR's meeting with a human rights defender in Italy,  
Rome, 2019

315. In **Mongolia**, according to defenders, many consultations are conducted as a formality and at later stages of law-making or policy development, while opportunities to meaningfully contribute to drafting of laws and policies at initial stages are rare and ad-hoc.<sup>654</sup> Human rights defenders called for reports to be regularly published with information about recommendations received through consultations, how those were incorporated into draft laws/policies and if not, why certain recommendations were not taken on board. They also emphasized the need for

<sup>650</sup> See an online statement of Rekonstrukce státu from 20 November 2019, available at: <https://www.rekonstrukcestatu.cz/archiv-novinek/v-cim-zajmu-novy-zakon-zpruhledni-lobbovani-zatim-ma-vsak-velke-mezery>. As stated by a representative of the Ministry of Justice in an interview for an online magazine for civil society organizations, private interests of NGOs and public interests they lobby for may, at times, concur. See Interview with Jiří Kapras, Štěpán Drahokoupil, Svět neziskovek, 11 December 2019, available at: <https://svetneziskovek.cz/management/co-znamena-navrh-zakona-o-lobbovani-pro-obcanskou-spolecnost>.

<sup>651</sup> See also Civil Participation in Decision Making in the Eastern Partnership Countries - Part One: Laws and Policies, Council of Europe, May 2016, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168065755a>.

<sup>652</sup> *Op. cit.* note 229.

<sup>653</sup> The Senate has also noted the absence of consistent follow-up on the impact of consultations as a major challenge, along with a lack of consistency in the use of consultation tools and mechanisms. See *Recenti sviluppi in materia di consultazioni dei cittadini e dei portatori di interesse* [Recent developments relating to the consultations of citizens and relevant stakeholders], Senate of the Italian Republic, September 2017, available at: [https://www.senato.it/application/xmanager/projects/leg18/file/repository/UVI/Esperienze\\_n\\_29.pdf](https://www.senato.it/application/xmanager/projects/leg18/file/repository/UVI/Esperienze_n_29.pdf).

<sup>654</sup> See, for more information Anti-Corruption Reforms in Mongolia, Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, OECD, 2019, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Mongolia-4th-Round-Monitoring-Report-2019-ENG.pdf>; Mongolia: Systematic Country Diagnostic, World Bank, 2018, available at: <http://documents.worldbank.org/curated/en/576101543874150141/pdf/mongolia-scd-final-version-november-2018-11282018-636792121231072289.pdf>; Open Government Partnership: Mongolia, available at: <https://www.opengovpartnership.org/members/mongolia/>; and *op. cit.* note 629.



participation mechanisms and procedures to be inclusive and reflective of the diversity of human rights defenders, including those with specific needs or from marginalized groups, to ensure their participation on an equal basis.<sup>655</sup>

316. In **Montenegro**, according to civil society interviewees and participants of the roundtable on the situation of human rights defenders organized by ODIHR in Podgorica on 30 August 2018,<sup>656</sup> NGO recommendations made during consultations are often not taken into account. A number of interviewees also flagged that in most cases, consultation meetings are conducted at later stages of law-making or strategy development, thus limiting opportunities for contributions to drafting of such documents. For example, a number of NGOs raised concerns that civil society was not included in the drafting of the Strategy for Enhancing Conducive Environment for Activities of the Non-Governmental Organizations for 2018–2020<sup>657</sup> and that the government accepted only partially one out of many NGO proposals for the Strategy’s improvement.<sup>658</sup> Human rights defenders working on the rights of persons with disabilities noted that important strategy documents related to the rights of persons with disabilities were developed without their effective participation. Defenders identified the lack of regularly published reports of public/civil society consultations as another challenge. Several organizations also alleged being excluded from participation at roundtables or consultation meetings convened by local or national authorities because of pointing out shortcomings in their policies with regards to specific human rights issues.<sup>659</sup>
317. Human rights defenders in several countries raised specific concerns about the composition and functioning of advisory/consultative bodies.
318. In **the Czech Republic**, some interviewed defenders raised concerns regarding transparency, effectiveness and inclusivity of consultative/advisory bodies. Representatives of Roma community organizations reported their concern that the Roma are not duly represented in other consultative bodies than the Council for Roma Community Affairs. Some defenders also shared that the Council for Human Rights did not hold its regular meetings between June 2017 and March 2019, which affected the work of the Committees and their ability to meaningfully contribute to legislative and policy processes.

*“My recommendation for the state officials is to expand their understanding of participation. It means to be involved in the process, not just here and there, but having consultations with the public at the inception, implementation and evaluation stages. Not only inviting civil society to the room but involving them.”*

Excerpt from ODIHR’s meeting with a woman human rights defender from the Czech Republic,  
Prague, April 2019

319. In **Georgia** a number of interviewed defenders highlighted the lack of transparent criteria on the process of selecting NGOs for consultative processes as a challenge. According to NGOs that participated in working group discussions of constitutional amendments within the State Constitutional Commission in 2017,<sup>660</sup> the criteria

<sup>655</sup> See, for example, *op. cit.* notes 69, the LGBTI Centre Report on the Human Rights Situation of the Lesbian, Gay, Bisexual, Transgender and Intersex People in Mongolia; *op. cit.* note 78; and *op. cit.* note 218.

<sup>656</sup> ODIHR roundtable event in Podgorica focuses on situation of human rights defenders, 30 August 2018, OSCE/ODIHR, available at: <https://www.osce.org/odihr/392177>.

<sup>657</sup> See, for more information, para 278 of the present report.

<sup>658</sup> Montenegro: between reform leader and reform simulacrum, Institute Alternative, Centre for Civic Education, CRNVO, CEMI, March 2018, available at: [http://www.crnvo.me/sites/crnvo/files/article\\_files/montenegro\\_-\\_reform\\_leader\\_or\\_reform\\_simulacrum.pdf](http://www.crnvo.me/sites/crnvo/files/article_files/montenegro_-_reform_leader_or_reform_simulacrum.pdf).

<sup>659</sup> *Op. cit.* note 45.

<sup>660</sup> The State Constitutional Commission was established by the Parliament in December 2016 to prepare draft amendments to the Constitution and ensure that those were fully in compliance with the fundamental constitutional law principles.



for selecting civil society organizations and experts were not clear, and defenders working on environmental problems reportedly were not invited to attend discussions on amendments pertaining to introducing the right of environmental protection in the Constitution.<sup>661</sup> The absence of defined selection criteria might allegedly affect the possibilities for smaller organizations based in the regions outside of Tbilisi to participate in public affairs. For example, some civil society interviewees reported limited participation of women human rights defenders and NGOs working on women's rights at the grassroots level in some consultation processes as well as low engagement of local activists and communities in environmental affairs. Defenders working on the rights of persons with disabilities noted that physical access to buildings where consultations are held has improved, including at the local level.<sup>662</sup>

320. Defenders in **Mongolia** considered the selection of NGO representatives to participate in working groups involved in drafting of laws and policies to be lacking transparency and consistency. According to activists, the state body in charge of leading a group decides on membership, without making public information about the group's formation, membership criteria or other relevant details. Several defenders raised concern that individuals who have ties with the authorities but lack sufficient expertise take some seats in working groups, and that consultations are insufficiently inclusive of NGOs from outside the capital. Furthermore, representatives of an NGO reported to ODIHR that their co-operation with several ministries worsened because of critical remarks they made about governmental projects and practices pertaining to the human rights of people with disabilities. For example, they alleged being excluded from participation in meetings convened by particular ministries following the submission of a civil society report to a UN treaty body.

## CONCLUDING OBSERVATIONS

- ODIHR welcomes the variety of legal provisions, mechanisms and procedures in place to ensure participation of civil society in all countries visited in the first assessment cycle. This includes established procedures for public input on draft laws and policies, and permanent and temporary advisory bodies and consultation forums, including online platforms. Instances where human rights defenders' input was integrated in the development of laws and policies since early stages illustrate good practice.
- ODIHR notes positive examples of robust co-operation between civil society and local authorities and established mechanisms for such co-operation, as reported in certain localities in Georgia and Italy.
- ODIHR shares the concern of human rights defenders that the lack of consistency and sufficient transparency in the conduct of consultations at various levels results in irregular opportunities for human rights defenders to contribute, reflecting the need for a unified legal or policy framework regulating mechanisms for civil society participation. ODIHR also underlines the importance of providing sufficient advance notice of consultation processes and providing opportunities to give input at the early stages of law or policy development.

<sup>661</sup> Joint Assessment of the Work of the State Constitutional Commission of Georgia, ISFED, Transparency International, GYLA, OSGF, 8 May 2017, available at: [https://www.transparency.ge/sites/default/files/georgian\\_csos\\_assessment\\_of\\_the\\_constitutional\\_commission\\_for\\_venice\\_commission.pdf](https://www.transparency.ge/sites/default/files/georgian_csos_assessment_of_the_constitutional_commission_for_venice_commission.pdf). See also Opinion on the Draft Revised Constitution, Council of Europe's European Commission for Democracy Through Law (Venice Commission), 19 June 2017, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)013-e).

<sup>662</sup> The Tbilisi City Hall informed ODIHR that, in recent years, they have been undertaking renovation works on a number of buildings owned by the municipality, in order to ensure full and effective participation of persons with disabilities in public life.

- A pattern emerged from assessment visits that civil society contributors' input and recommendations are not consistently taken into account. Noting that effective participation goes beyond merely formal consultations, ODIHR reminds that consultations must be meaningful. This should include sharing feedback about received recommendations and their incorporation [or lack thereof] into draft laws/policies and making this feedback publicly available.
- Alleged attempts to discredit or pressure activists who raise concerns about the negative impacts of business activities, as reported in Mongolia and Montenegro, may constrain defenders' ability to effectively participate in and inform public discussion about the human rights responsibilities of businesses. Good practices in this regard may include, as in Italy, adoption of a national action plan on business and human rights in consultation with defenders, with a working group to engage stakeholders in implementation.
- The absence of transparent criteria on the selection of NGOs for participation in various consultative mechanisms was a commonly identified gap. Participation should be proactively encouraged and facilitated including for defenders of all genders and ages, those working at the local level, human rights defenders with disabilities and those belonging to national minority or marginalized groups.
- While law- and policy-making processes can vary, procedures allowing for meaningful and inclusive civil society participation should be made part of all law- and policy-making mechanisms. Mechanisms that do not provide for such procedures, for example the reportedly growing practice of issuing decrees instead of laws in Italy, are of concern in this regard.

## **RECOMMENDATIONS TO OSCE PARTICIPATING STATES**

- Ensure effective and meaningful participation of human rights defenders in public affairs at the national and local level by engaging civil society in all stages of law- and policy-making processes, including initial discussions and drafting.
- Establish a unified legal and policy framework with consistent, transparent, institutionalized and inclusive mechanisms and procedures regulating civil society participation in law- and policy-making processes and other initiatives of public interest, to ensure consistency, transparency and predictability of procedures.
- Ensure transparency and a criteria-based approach in selecting members for consultative and advisory bodies, such as working groups and taskforces established to develop or comment on draft legislative or policy documents. Extend effective opportunities to participate in such bodies and groups to human rights defenders working at the local level and those belonging to or representing marginalized or vulnerable groups.
- Take measures to ensure the meaningful participation in decision-making processes of women human rights defenders and defenders working on the protection of/belonging to Roma and other minority groups, LGBTI defenders, environmental defenders and persons with disabilities, among others. Recognize and draw on the expertise of human rights defenders belonging to these groups.
- Publish on a consistent basis reports with feedback on consultation processes with civil society, including authorities' responses to civil society recommendations and reasons why these were not taken into account, as relevant.

- Ensure that expedited law- or policy-making processes, when used, allow for reasonable consultation with civil society. Refrain from adopting laws, policies, decrees or other documents pertaining to public interest without consulting civil society.
- Encourage and facilitate dialogue among and between environmental defenders, state bodies and non-state actors (such as private businesses), with the view to facilitating the work of environmental defenders and their meaningful participation in public affairs related to development projects and protection of the environment, among other areas.

## 2.5 RIGHT TO PRIVATE LIFE

### ***Overview of relevant international standards and commitments***

321. The right not to be subjected to “arbitrary or unlawful interference with one’s privacy, family, home, or correspondence,” nor to unlawful attacks on one’s honor or reputation, is enshrined in Article 17 of the ICCPR. The UN Human Rights Committee has emphasized that any interference with the right to private life must strictly comply with the principles of legality, necessity and proportionality.<sup>663</sup>
322. OSCE participating States have reiterated “the right to the protection of private and family life, domicile, correspondence and electronic communications” and stated that the exercise of the right to private life should be subject only to restrictions that are prescribed by law and consistent with internationally recognized human rights standards.<sup>664</sup> Also relevant given the potential for data processing and broad surveillance to undermine the confidentiality rights of certain professions, participating States have committed to take measures to ensure respect for the confidentiality of the lawyer-client relationship.<sup>665</sup>
323. Various international bodies and actors have emphasized the particular need to safeguard the right to privacy in the digital age, for example in the context of covert surveillance.<sup>666</sup> They have highlighted that states’ duty not to engage in arbitrary or unlawful interference with private life extends to protecting human rights defenders from such abuse by non-state actors and should include criminalizing illegal surveillance by public or private actors.<sup>667</sup> The UN Human Rights Committee has stressed the need for states to take measures to ensure that personal information gathered and held in databases or other forms does not reach the hands of those not authorized by law to receive it.<sup>668</sup> The UNGA has recognized information technology-related violations and abuses against women, including women human rights defenders, as a growing concern.<sup>669</sup>
324. The *Guidelines* encourage states to acknowledge the special need of human rights defenders for protection from undue interference in their private life and protection of the identities of their sources and clients. In addition to reminding of the duty of states to refrain from unlawful or arbitrary interference with human rights defenders’ privacy, family life, home or correspondence, the *Guidelines* encourage states to ensure that private companies

<sup>663</sup> UN Human Rights Committee, General Comment No. 16 on Article 17, paras. 3 and 4. The ECHR (Article 8 (1)) and ACHR (Article 11) also guarantee the right to respect for private and family life.

<sup>664</sup> Moscow 1991, para. 24.

<sup>665</sup> Brussels 2006, “Brussels Declaration on Criminal Justice Systems”.

<sup>666</sup> See, for example, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 59; and ECtHR, Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria, Application no. 62540/00, 28 June 2007, para. 76.

<sup>667</sup> See, for example, General Comment No. 16, para. 10; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, HRC/C/23/40, para. 84.

<sup>668</sup> General Comment No. 16, para. 10.

<sup>669</sup> A/RES/68/181, adopted 18 December 2013, preambular para. 12.

subject to their jurisdiction, but operating internationally, do not facilitate undue interference in other states, and call for states to support human rights defenders' efforts to build their knowledge and capacity on digital security. The *Guidelines* also remind that information or data obtained through unlawful or arbitrary interference with private life should be inadmissible in legal proceedings and states should take steps to make sure that such information or data is not used to publicly discredit defenders.<sup>670</sup>

### ***The right to private life in selected OSCE participating States***

325. Issues related to human rights defenders and the right to private life were brought to ODIHR's attention in Georgia and Mongolia. The constitutions of both countries include guarantees of the right to private life,<sup>671</sup> and other laws are also relevant in this context.
326. In **Georgia**, the Law on Electronic Communications includes guarantees pertaining to privacy of communication and allows their limitation by authorized bodies that carry out investigative activities, and in circumstances stipulated in a number of other laws.<sup>672</sup> The unlawful obtaining, storage, use or dissemination of personal data, including through internet or social networks, resulting in 'considerable damage' is illegal under Article 157 of the Criminal Code. The Law on Intelligence Activities and the Law on Counter-Intelligence Activities also include provisions on human rights protection and accountability.<sup>673</sup> The State Inspector's Service (SIS) is responsible for the oversight of data protection legislation in Georgia.<sup>674</sup> In 2018, the Inspector's Office examined up to 70 data processing operations by law enforcement authorities and revealed 39 violations.<sup>675</sup> According to the SIS, this represented a significant decrease in comparison to earlier years, but challenges remain including related to collection, disclosure and storage of data without a legitimate purpose and legal basis.
327. Following a 2016 Constitutional Court ruling establishing the unconstitutionality of provisions enshrined in Article 83 of the Law on Electronic Communications,<sup>676</sup> on 22 March 2017 the Parliament adopted a package of legislative amendments which *inter alia* provide for the possibility to carry out electronic surveillance measures and stipulated the establishment of a new Operative-Technical Agency (OTA) under the State Security Service as the authority responsible for carrying out such measures.<sup>677</sup> The State Security Service informed ODIHR that the package of legislative amendments also provides for legal safeguards of the independence of the OTA<sup>678</sup> as well as for a number of oversight mechanisms.<sup>679</sup> In 2017, the Constitutional Court ruled in an *ad interim* decision that law-making bodies have the power to allow the OTA to conduct electronic surveillance in accordance with

<sup>670</sup> *Op. cit.* note 9, paras. 85-89.

<sup>671</sup> *Op. cit.* note 330, Article 15 of the Constitution of Georgia and Article 16 of the Constitution of Mongolia.

<sup>672</sup> The Law of Georgia on Electronic Communications, 2005, available at: <https://matsne.gov.ge/en/document/view/29620?publication=26>.

<sup>673</sup> See Article 6 of the Law on Intelligence Activities and Articles 13.1, 16 and 25 of the Law on Counter-Intelligence Activities (2005), available at: <https://matsne.gov.ge/en/document/view/27364?publication=4>.

<sup>674</sup> If a violation is identified, the SIS is authorized to impose administrative fines or, in case the act of intrusion into data privacy under examination constitutes a crime, address a competent authority in charge of the investigation of those crimes.

<sup>675</sup> To address identified gaps, the SIS issued 30 legally binding instructions and nine recommendations and provided over 140 written and verbal consultations. See Report "The State of Personal Data Protection and Activities of the Inspector", 2018, available at: <https://personaldata.ge/cdn/2019/07/Report-on-the-state-of-personal-data-protection-in-Georgia-2018.pdf>.

<sup>676</sup> The Constitutional Court ruled as unconstitutional provisions pertaining to the technical access of the State Security Service to servers of telecommunication operators and instalment of interception management systems. A provision allowing for copying and storing extracted identification data for two years was ruled invalid. Decision of the First Chamber Constitutional Court of Georgia, № 1/1/625,640, 14 April 2016, available at: <https://matsne.gov.ge/ka/document/view/3263731#>.

<sup>677</sup> According to information provided by the State Security Service, the OTA is authorized to conduct covert investigative activities upon request of law enforcement authorities and security services and on the basis of a judicial authorization, as well as to obtain, store for 12 months and transfer electronic communications identification data upon a court order or prosecutor ruling. See, for example, Article 14 of the Law of Georgia on Changes to the Law on Counter-Intelligence Activities, 22 March 2017, available at: <https://matsne.gov.ge/ka/document/view/3597527?publication=0>.

<sup>678</sup> For example, the OTA is responsible for managing its own budget and appointing its own staff, while the Head of the Agency is nominated to the Prime Minister for appointment by a special commission composed of seven members representing different state institutions and the Public Defender.

<sup>679</sup> Oversight mechanisms include the SIS's electronic monitoring system and a Group of Trust within the Parliament. The SIS is authorized to suspend the OTA's covert investigative activities in case it detects inconsistencies in the process of obtaining and transferring electronic communications identification data; the SIS can also conduct scheduled or unscheduled inspections and provide recommendations to the OTA or establish administrative liability in case violations are identified. According to the legislation, the OTA has

the law; the Constitutional Court also pointed out that the package of legislative amendments differ from the previous provisions enshrined in Article 83 of the Law on Electronic Communications and the constitutionality of the new regulations remains to be established.<sup>680</sup>

328. In **Mongolia**, the Law on Intelligence Operation provides that the use by authorized law enforcement bodies of secret surveillance, inspection and searches, access to communication and other information networks requires the permission of the prosecutor.<sup>681</sup> The Law specifies that the conduct of intelligence operations should be respectful of human rights and freedoms, justice and equality, confidentiality and other standards and principles. Similar safeguards are enshrined in the Law on Intelligence Organization, which provides that citizens or a legal person alleging infringement of their rights and freedoms can submit a complaint to the intelligence organization.<sup>682</sup> The Law further stipulates that rights and legitimate interests of citizens and entities shall be restored by the intelligence organization, or the prosecutor and court. Unlawful interference with the right to privacy foresees criminal liability.<sup>683</sup>
329. Human rights defenders in Georgia and Mongolia reported to ODIHR several challenges related to the right to private life and data protection, despite existing legal safeguards.
330. Several civil society organizations in **Georgia** raised concern about legislative amendments adopted in 2017, including with regards to the establishment of the OTA under the State Security Service. According to *Transparency International Georgia*, the legal package does not align with the 2016 Constitutional Court ruling, as it authorizes the OTA to inspect telecommunication infrastructure of the electronic communications companies and monitor and extract electronic communications.<sup>684</sup> In the assessment of the Institute for *Development of Freedom of Information*, the amendments do not provide for sufficient safeguards to protect the independence of the new agency and did not establish strong oversight mechanisms.<sup>685</sup> Nearly 300 citizens (as a part of the civil society initiative *This Affects You*, calling for strengthened measures to protect privacy), the Public Defender<sup>686</sup> and several political parties filed constitutional complaints against the new amendments.<sup>687</sup>
331. In **Mongolia**, several civil society respondents alleged instances of undue interference with the right to privacy of human rights defenders. In particular, ODIHR received unverified accounts of surveillance of three NGOs through phone tapping or other means and reports of social media accounts of activists being hacked by unknown individuals. Several defenders raised concern about a case of alleged unlawful surveillance of nine journalists and members of their families. According to the local media, in this case, over 30 individuals were subject to

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to submit periodical activity reports to the Prime Minister and the Group of Trust of the Parliament, which is authorized to request access to the agency's documents and conduct inspections of its activities, provide recommendations and address a relevant investigatory body in case of detected violations.

<sup>680</sup> See Record doc. of the Constitutional Court, 29 December 2017, available at: <https://constcourt.ge/ka/judicial-acts?legal=1958>.

As of beginning of 2020, the case relating to the constitutionality of legislative amendments was still pending with the Court.

<sup>681</sup> Law on Intelligence Operation, adopted on 19 December 1997, available at: <https://www.legalinfo.mn/law/details/229>.

<sup>682</sup> Law on Intelligence Organization, adopted on 8 July 1999, available at: <https://www.legalinfo.mn/law/details/468>.

<sup>683</sup> *Op. cit.* note 67.

<sup>684</sup> New legislation regulating secret surveillance violates Georgian Constitution, Transparency International, 23 March 2017, available at: <https://www.transparency.ge/en/post/general-announcement/new-legislation-regulating-secret-surveillance-violates-georgian-constitution>; See also Article 8 of the Law of Georgia on Legal Entity of Public Law – Operational-Technical Agency of Georgia, 2017, available at: <https://matsne.gov.ge/ka/document/view/3597534?publication=6>.

<sup>685</sup> Regulating Secret Surveillance in Georgia (January-August 2017), Institute for Development of Freedom of Information, 2017, available at: [https://idfi.ge/en/regulating\\_secret\\_surveillance\\_georgia\\_january\\_august\\_2017](https://idfi.ge/en/regulating_secret_surveillance_georgia_january_august_2017). See, for more information about oversight mechanisms, note 679.

<sup>686</sup> სახალხო დამცველი ე.წ. მოსმენების კანონს საკონსტიტუციო სასამართლოში გაასაჩივრებს [Public Defender to File a Constitutional Complaint on the New Law of Surveillance], on.ge, 5 April 2017, available at: <http://go.on.ge/b79>.

<sup>687</sup> ფარული მოსმენების კანონის წინააღმდეგ სასამართლოში 300 მოქალაქის სარჩელი შევა [300 citizens will file constitutional complaints against the Law on Surveillance], netgazeti.ge, 6 April 2017, available at: <https://netgazeti.ge/news/185338/>.

surveillance without any lawful grounds and without the permission of the prosecutor, reportedly as a result of the journalists' professional reporting on corruption issues.<sup>688</sup> In a press conference held on 26 April 2018 in Ulaanbaatar, the Prosecutor's Office informed the public about the ongoing investigation of the alleged surveillance by police officers.<sup>689</sup>

## CONCLUDING OBSERVATIONS

- ODIHR welcomes the legal and institutional measures adopted by the authorities of Georgia and Mongolia to ensure the right to private life and encourages robust efforts to ensure their implementation. In Georgia, ODIHR notes the positive role of the SIS in upholding these safeguards by law enforcement authorities, including in data processing operations.
- ODIHR notes the importance of effective and functional oversight mechanisms over the lawful use of surveillance and the activities of state institutions that are involved in the conduct of covert investigative activities. To this end, dialogue with civil society is essential to identify and address possible concerns with regards to legislative or other gaps.
- Reports of unauthorized surveillance of human rights defenders raise concerns. ODIHR recalls the obligation of the state to conduct prompt, independent, impartial and effective investigation of alleged violations and to ensure victims' access to an effective remedy and adequate reparation for suffered damages, including guarantees of non-repetition.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Ensure full compliance of national laws and practices with international standards on the establishment and operation of appropriate oversight mechanisms to prevent potential undue interference in the collection of personal data.
- Ensure effective protection of human rights activists, including journalists, and members of their families, from undue interference with the right to private life, including by implementing in good faith existing national laws and international standards and by conducting prompt, thorough, independent, impartial and effective investigations into alleged violations of this right.
- Conduct prompt and thorough investigations into alleged cases of undue interference with privacy and confidentiality safeguards.
- Ensure access of human rights defenders, including journalists, and members of their families, to an effective remedy and adequate reparation for suffered damages, including guarantees of non-repetition.

<sup>688</sup> See, for example, Үүргээ гүйцэтгэж байсан сэтгүүлчдийг тагнасан гэх цагдаагийн алба хаагчид ял аваад өнгөрөх үү? [Will the police officers who spied on journalists get convicted, that's it?], News website Zasgiin Gazriin Medee, May 2018.

<sup>689</sup> Сэтгүүлчдийг тагнасан асуудлаар мэдээлэл хийлээ [Press conference on issue of spying on journalists], News website www.peak.mn, 26 April 2018, available at: <https://www.peak.mn/news/setguulchdiig-tagnasan-asuudlaar-medeelel-khiilee>.



### III. FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES

#### *Overview of relevant international standards and commitments*

332. Article 2 of the UN Declaration on Human Rights Defenders calls on states to adopt legislative, administrative and other steps as may be necessary to ensure effective guarantees of the rights and freedoms referred to in the Declaration. The UN Human Rights Council has encouraged states to seek assistance in the development, review or amendment of legislation that affects the work of human rights defenders, while stressing the important contribution of NHRIs, civil society and other stakeholders in this process.<sup>690</sup> It has also encouraged the creation and strengthening of mechanisms for consultation and dialogue with human rights defenders regarding their protection.<sup>691</sup> The UNGA has encouraged states to translate, broadly disseminate, and raise awareness of the UN Declaration on Human Rights Defenders.<sup>692</sup>
333. OSCE participating States have committed to facilitate the establishment and strengthening of independent national institutions in the area of human rights and rule of law.<sup>693</sup> The UN Special Rapporteur on the situation of human rights defenders has highlighted the important role that NHRIs play in the protection of human rights defenders and recognized members and staff of independent NHRIs that operate in compliance with the Paris Principles as human rights defenders.<sup>694</sup> Parliaments have been noted as actors with a role in shaping the environment for human rights defenders, for example through relevant legislation, engaging in dialogue with human rights defenders and publicly recognizing their work.<sup>695</sup>
334. States should make use of international co-operation frameworks and instruments to ensure the protection of human rights defenders; of relevance in this context are OSCE participating States' commitments to joint measures of co-operation, and to using the OSCE and its institutions to the fullest, towards enhancing compliance with OSCE principles and commitments.<sup>696</sup> Various intergovernmental organizations have recognized that efforts to ensure the protection of human rights defenders should extend beyond states' own borders.<sup>697</sup>
335. To ensure the practical implementation of the above commitments, the *Guidelines* encourage participating States in consultation with civil society to carry out baseline reviews of laws and practices affecting human rights defenders. They also recommend that states provide NHRIs with the mandate and resources to monitor and report on the situation of human rights defenders and provide them with necessary support. In consultation with human rights defenders, states are encouraged to consider the establishment of an inter-institutional coordinating body to develop strategies, policies, programmes and mechanisms related to the protection of human rights defenders. They are also encouraged to translate, disseminate and promote the *Guidelines* with relevant state and non-state actors. To support human rights defenders in other participating States and third countries, the *Guidelines* encourage states to set up mechanisms and develop national guidelines, including on how to respond to situations of defenders at imminent risk. States are urged to proactively raise

<sup>690</sup> A/HRC/RES/22/6, paras. 17 and 22.

<sup>691</sup> UN Human Rights Council Resolution A/HRC/RES/13/13 para. 5.

<sup>692</sup> See A/RES/66/164, paras. 11 and 12, and A/RES/68/68/181, 18 December 2013, para. 1.

<sup>693</sup> Copenhagen 1990, para. 27.

<sup>694</sup> See report of the UN Special Rapporteur to the Human Rights Council, UN Doc. A/HRC/22/47, 16 January 2013.

<sup>695</sup> See, for example, OSCE Parliamentary Assembly, "Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions", para. 20; PACE Resolution 1660 (2009), para. 3.

<sup>696</sup> Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 14; Maastricht 2003, "OSCE Strategy to Address Threats and Security and Stability in the Twenty-First Century", para. 20.

<sup>697</sup> See Council of Europe Committee of Ministers Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted 6 February 2008, para. 2(xi); Ensuring Protection: European Union Guidelines on Human Rights Defenders, adopted in 2004, [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_hrd\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf); and PACE Resolution 1660 (2009), paras. 12.2 and 13.5.

cases of human rights defenders at risk through public and non-public interventions and to extend protection through measures such as relocation of defenders and, as appropriate, their family members.

336. Finally, the *Guidelines* recommend that states engage in robust co-operation with the OSCE and other relevant international and regional organizations to strengthen protection of human rights defenders, including by promptly providing information and following up recommendations or court judgements. Specifically, states are encouraged to co-operate with ODIHR concerning the implementation of the *Guidelines*.

### **Framework for implementation of the Guidelines in selected OSCE participating States**

337. ODIHR was informed of the growing contributions of the NHRIs of the Czech Republic, Georgia, Mongolia and Montenegro to more effective national human rights protection systems and across a broad range of issues through activities such as monitoring, providing recommendations on laws and policies, awareness raising and training. ODIHR was also made aware of a number of recommendations to strengthen their work.
338. Civil society respondents in **the Czech Republic** praised the monitoring activities of the Office of the Public Defender of Rights, including in closed social or psychiatric institutions and detention facilities, as well as the Defender's pro-active approach in promoting and protecting the human rights of minorities and other vulnerable groups.<sup>698</sup> Interviewees also highlighted its active co-operation with civil society organizations; for example, the Office holds regular seminars, conferences and roundtables for and with civil society organizations.<sup>699</sup> The Public Defender also serves as the NPM, National Equality Body, and the monitoring mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities, as well as the monitoring body for detention, expulsion or transfers of foreigners.<sup>700</sup> Interviewed defenders noted that competences of the Public Defender should be further strengthened to effectively fight discrimination, including harassment and persecution of human rights defenders. According to them, the possibility of the Public Defender to file actions in public interest in discrimination cases could improve the protection of defenders and their work as well as the effectiveness of the country's overall anti-discrimination framework.<sup>701</sup> Several UN bodies further called on the authorities of the Czech Republic to facilitate, as soon as possible, the process of consolidating the mandate of the Office to enable it to act as an NHRI in compliance with the Paris Principles.<sup>702</sup>
339. The capacity of the Office of the Public Defender of **Georgia** was enhanced in recent years. In 2014, it was mandated to ensure the implementation of the UN Convention on the Rights of Persons with Disabilities through a monitoring mechanism. The Office also exercises the role of NPM and oversees the implementation of the Law on the Elimination of All Forms of Discrimination. Representatives of the NHRI described to ODIHR the growing efforts of the Office to expand its methodologies and develop tools and mechanisms to monitor attacks and other

<sup>698</sup> Activities or actions in this area include initiation of situation testing to prove pervasive discrimination of the Roma on the housing market, active promotion of Roma children and children with disabilities' right to equal and non-segregated education, insistence on human treatment of migrants and asylum seekers, or active stance in defending the rights of LGBTI community and countering discrimination against them. See, for example, Cesta ke společnému vzdělávání romských a neromských dětí [A road towards common education of Roma and non-Roma children], Press release of the Public Defender of Rights, 12 December 2018, available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2018/cesta-ke-spolecnemu-vzdelavani-romskych-a-neromskych-deti/>; and Být LGBT v Česku [To be LGBT in Czechia], Public Defender of Rights, 2019, available at: [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Vyzkum-LGBT.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum-LGBT.pdf).

<sup>699</sup> See the list of roundtables and seminars organized with or for civil society organizations by the Public Defender of Rights, available at: <https://www.ochrance.cz/dalsi-aktivity/archiv-vzdelavacich-akci/>.

<sup>700</sup> *Op. cit.* note 237, Section 1.

<sup>701</sup> According to the Public Defender, very few victims of discrimination take their case to court, as they are deterred, inter alia, by a limited likelihood of success. See, for example, Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti [Discrimination in the Czech Republic: the victims of discrimination and their barriers in access to justice], Public Defender of Rights report, 2015, available at: [https://www.ochrance.cz/fileadmin/user\\_upload/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf).

An amendment of the Anti-discrimination Act, including adoption of the action in public interest by civil society organizations, is under discussion at the Chamber of Deputies, as of March 2019. See Chamber of Deputies Document no. 424, proposed amendment to the Anti-discrimination Act, 12 March 2019, available at: [https://www.psp.cz/sqw/historie\\_sqw?o=8&t=424](https://www.psp.cz/sqw/historie_sqw?o=8&t=424).

<sup>702</sup> See the HRC Concluding Observations to the Czech Republic, 6 December 2019, CCPR/C/CZE/CO/4, para 7; the CERD Concluding Observations to the Czech Republic, 19 September 2019, CERD/C/CZE/CO/12-13, para 9; or the CAT Concluding Observations to the Czech Republic, 6 June 2018, CAT/C/CZE/CO/6, para 36; Report of the Working Group on the Universal Periodic Review, 27 December 2017, A/HRC/37/4.

violations targeting defenders.<sup>703</sup> On 6 December 2017, the Public Defender introduced the Rules of Cooperation with NGOs, according to which NGOs can submit proposals to the institution for joint activities with the Public Defender.<sup>704</sup> Joint monitoring visits to penitentiary facilities have taken place within this framework.<sup>705</sup> Interviewed defenders also shared positive examples of collaboration with the NHRI at the local level, where regional offices have been established in a number of cities.<sup>706</sup> While most interviewees considered the decision to open regional branches of the Public Defender's Office throughout the country as a good practice, ensuring greater staff presence in the regions, especially in the most remote areas, was identified as an area requiring improvement.

340. The role of the National Human Rights Commission of **Mongolia** in public affairs has reportedly improved in the past several years, as has the institution's overall capacity. The Commission noted its improved co-operation with ministries and other executive state structures, the Parliament and civil society organizations.<sup>707</sup> To further enhance public awareness of the Commission's work, which reportedly remains low in rural areas, interviewed defenders recommended ensuring greater presence of the National Human Rights Commission in the provinces and local communities, enhancing communication with the public about its mechanisms and activities,<sup>708</sup> and establishing more effective processes to monitor and report on the implementation of the Commission's recommendations. Defenders also pointed out the need to enhance the Commission's access to public funding, noting that its capacity building and public awareness activities remain largely dependent on external funding.<sup>709</sup>
341. In **Montenegro**, the Office of the Protector of Human Rights and Freedoms informed ODIHR that its work is increasingly resulting in changes leading to more effective exercise of human rights and freedoms in the country, partly as a result of improved co-operation with ministries and other executive state structures, municipalities, the Parliament, media and civil society organizations. Ensuring greater presence in local communities, enhancing communication with the public, as well as establishing more effective mechanisms to monitor the implementation of the Protector's recommendations addressed to public authorities and other entities, were among reported challenges and areas for further improvement.<sup>710</sup>
342. **Italy** lacks an accredited NHRI in compliance with the Paris Principles, although steps have been taken in this regard, and other state bodies contribute to the system of human rights protection.<sup>711</sup> In 2015, in the framework of the second cycle of the UPR, Italy accepted 23 recommendations on the establishment of an independent national body for the promotion and protection of human rights.<sup>712</sup> In 2019, during the third cycle of the UPR, Italy reaffirmed its commitment to this objective.<sup>713</sup> While the establishment of an NHRI is pending, a number of regional and national human rights bodies and mechanisms operate throughout the country, including the Senate's Extraordinary Commission for the Protection and Promotion of Human Rights, the Inter-Ministerial Committee for Human Rights, UNAR, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, the National Guarantor for Children and Adolescents, as well as regional ombuds institutions.

<sup>703</sup> In 2018, the Public Defender included in her annual report a separate chapter focusing on human rights defenders, to highlight the challenges they face and provide recommendations on how to better protect them. *op. cit.* note 157.

<sup>704</sup> არასამთავრობო ორგანიზაციებთან თანამშრომლობის წესი [The Rules of Cooperation with NGOs], Public Defender of Georgia, available at: <http://www.ombudsman.ge/geo/arasamtavrobo-organizatsiebtan-tanamshromlobis-tsesi>.

<sup>705</sup> The Report of the National Preventive Mechanism 2018, Public Defender of Georgia, 2019, available at: <http://www.ombudsman.ge/res/docs/2019121617001233141.pdf>.

<sup>706</sup> These cities include Akhalkalaki, Batumi, Gori, Kutaisi, Marneuli, Mestia, Ozurgeti, Telavi and Zugdidi.

<sup>707</sup> See *op. cit.* note 279. See also, for example, Involving police officers in training on human rights for trainers, 15 December 2017, available at: <http://en.nhrm.gov.mn/news/involving-police-officers-in-human-rights-trainers-re-training/>; and A human rights training was organized for officers of the correction facility No. 409 of the General Executive Agency for Court Decisions, 26 April 2019, available at: <http://en.nhrm.gov.mn/news/human-rights-training-was-organized-officers-correction-facility-no409-general-executive-agency-court-decision/>.

<sup>708</sup> For example, several human rights defenders interviewed by ODIHR called for regular reporting on the progress of implementation of the Strategic Plan of the National Human Rights Commission for 2015-2020. *op. cit.* note 548.

<sup>709</sup> Mongolia 2018 Human Rights Report, the US Department of State, available at: <https://www.state.gov/wp-content/uploads/2019/03/MONGOLIA-2018.pdf>.

<sup>710</sup> Zamjenica na konferenciji o braniocima ljudskih prava [Deputy at Human Rights Defenders Conference], the Protector of Human Rights and Freedoms of Montenegro, 10 December 2018, available at: <http://www.ombudsman.co.me/article.php?id=34061>.

<sup>711</sup> See, for more information, paras 131-132 of the present report.

<sup>712</sup> *Op. cit.* note 108.

<sup>713</sup> *Ibid.*

343. Concerning international co-operation and dialogue regarding the protection of human rights defenders, all five participating States visited by ODIHR in the first assessment cycle fully co-operated with ODIHR in the organization of its country visits, including through facilitating ODIHR's meetings with a broad range of official interlocutors. In addition, several states have engaged in other forms of international and national dialogue, co-operation and awareness-raising concerning the protection of human rights defenders. It is also noted that all countries that participated in the first assessment cycle have issued standing invitations to the UN thematic special procedures.<sup>714</sup>
344. In the framework of its 2019-2021 membership at the UN Human Rights Council, **Italy** reaffirmed the important role played by human rights defenders in the promotion and protection of human rights at all levels and pledged to step up its efforts against all forms of reprisal targeting defenders; to continue supporting the work of the Special Rapporteur on the situation of human rights defenders; and to foster a continuous open dialogue with civil society organizations, including by involving them in the elaboration of actions and policies through permanent consultative mechanisms.<sup>715</sup> On 18 June 2018, the OSCE Italian Chairpersonship organized a workshop focusing on good practices and the role of Italy in relation to the protection of human rights defenders, which took place at the Ministry of Foreign Affairs and International Cooperation in Rome.<sup>716</sup>
345. In 2018, the Government of **Italy** supported the translation of the *Guidelines* into Italian, with the view to raising awareness of state and civil society actors about the standards elaborated in the *Guidelines*. With a similar objective, in 2019, upon requests of the NHRIs in **Georgia** and **Mongolia**, ODIHR facilitated the translation of the *Guidelines* into Georgian and Mongolian.
346. The Government of **Mongolia** facilitated an official mission of the UN Special Rapporteur on the situation of human rights defenders from 30 April to 13 May 2019.
347. In **Montenegro**, on 12 October 2018, a panel discussion on the situation of human rights defenders was organized in Podgorica by the Ministry of Foreign Affairs, UN in Montenegro and the Faculty of Law of the University of Montenegro.<sup>717</sup> The discussion was organized to mark the twentieth anniversary of the adoption of the UN Declaration on Human Rights Defenders, and gathered participants from state bodies, civil society, academia, the Office of the Protector of Human Rights and Freedoms, and intergovernmental organizations.

## CONCLUDING OBSERVATIONS

- The openness and co-operation demonstrated by the authorities of the Czech Republic, Georgia, Italy, Mongolia and Montenegro in the facilitation of ODIHR's country assessment visits reflect a strong and welcome commitment to effectively implement the *Guidelines* and to strengthen the protection of human rights defenders.
- ODIHR encourages meaningful implementation of recommendations set out in the present report by the five states visited as well as all other participating States, and the establishment of mechanisms to track the implementation progress.

<sup>714</sup> See full list of standing invitations at <https://spinternet.ohchr.org/standinginvitations.aspx>.

<sup>715</sup> Candidature of Italy to the Human Rights Council, 2019–2021, 26 February 2018, available at: <https://undocs.org/en/A/73/72>.

<sup>716</sup> The event aimed at raising awareness on issues pertaining to the protection of human rights defenders, analysing good practices from other countries and enhancing co-operation among OSCE participating States. The discussion brought together representatives of OSCE participating States and intergovernmental bodies, as well as civil society organizations and other stakeholders engaged in the protection of human rights defenders. See International workshop "Protection of Human Rights Defenders: good practices and the role of Italy" (Rome, MFA, 18 June 2018), available at: <https://unipd-centrodirittumani.it/en/news/International-workshop-Protection-of-Human-Rights-Defenders-good-practices-and-the-role-of-Italy-Rome-MFA-18-June-2018/4650>.

<sup>717</sup> More information on the panel discussion is available at: <http://www.mvp.gov.me/vijesti/192574/Svako-moze-i-treba-da-bude-branilac-ljudskih-prava-bez-obzira-na-bilo-kakvo-licno-svojestvo.html>; <http://kontrolapolicije.me/blog/dvadeset-godina-un-deklaracije-o-branionicima-ljudskih-prava>; <http://www.ombudsman.co.me/article.php?id=34061>.

- To ensure that NHRIs have a sufficiently broad mandate and the necessary autonomy, independence, pluralism and resources to support the protection of human rights defenders, ODIHR encourages steps to bring NHRIs into full compliance with the Paris Principles, noting as positive that the NHRIs in Georgia and Mongolia have achieved this status (and Montenegro partially). Continued efforts to consolidate the mandate of the Public Defender of Rights in the Czech Republic to enable it to act as an NHRI in full conformity with the Paris Principles, and to establish a fully Paris Principles-compliant NHRI in Italy, are encouraged in this regard.
- Efforts to strengthen the capacity and role of NHRIs, as reported in Georgia, Mongolia and Montenegro, and the Georgian NHRI's proactive approach to improving the situation of human rights defenders, are welcomed as positive examples underscoring the important role of NHRIs in supporting the protection of human rights defenders and as human rights defenders themselves.
- Initiatives at the international and national levels to bring attention to the need to protect human rights defenders, as undertaken by Italy and Montenegro, are noted as good practice, as is openness to co-operation with the UN special procedures, as exemplified by Mongolia's facilitation of a visit by the UN Special Rapporteur on the situation of human rights defenders.

## RECOMMENDATIONS TO OSCE PARTICIPATING STATES

- Adopt measures to implement in good faith ODIHR recommendations in the present report; to this end, co-operate with and draw on the expertise of ODIHR, among other relevant actors, in strengthening the protection of human rights defenders. Facilitate ODIHR's future country-specific assessments on the situation of human rights defenders, if not covered in the first assessment cycle.
- Adopt measures to allow for systematic monitoring of the situation of human rights defenders and the status of implementation of the present recommendations, to track progress and identify and address new challenges. Regularly inform the public about implementation progress.
- Consider assigning a focal point in one or more state bodies and in the NHRI to monitor the situation of human rights defenders, including the status of implementation of the recommendations in this report.
- Consider adopting national guidelines for authorities on the protection of human rights defenders, to ensure a sustainable, systematic and institutionalized approach to efforts aimed at strengthening the protection of human rights defenders.
- Take measures to safeguard and strengthen the independence of NHRIs and to ensure sufficient budgetary and human resources for their effective functioning, including in different localities/regions as relevant. Where an NHRI is not yet established or is not yet in full compliance with the Paris Principles, undertake to close these gaps. Strive for effective implementation of NHRIs' recommendations on the protection of human rights defenders and on other issues.
- Where the *Guidelines* are not yet available in local languages, undertake steps to facilitate their translation and dissemination. Disseminate them widely among law enforcement agencies, the judiciary, teachers and educators, journalists and other professional groups, civil society and other relevant actors.

## ANNEX 1: KEY OSCE COMMITMENTS PERTAINING TO THE PROTECTION OF HUMAN RIGHTS DEFENDERS

<p><b>Helsinki 1975</b></p>	<p>The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States.</p> <p>[...]</p> <p>They confirm the right of the individual to know and act upon his rights and duties in this field.</p>
<p><b>Copenhagen 1990</b></p>	<p>The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include</p> <p>[...]</p> <p>(11.2) — the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;</p>
<p><b>Budapest 1994</b></p>	<p>[The participating States] emphasize the need for protection of human rights defenders and look forward to the completion and adoption, in the framework of the United Nations, of the draft declaration on the “Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.</p> <p><i>Role of NGOs</i></p> <p>17. The participating States and CSCE institutions will provide opportunities for increased involvement of NGOs in CSCE activities as foreseen in Chapter IV of the Helsinki Document 1992. They will search for ways in which the CSCE can best make use of the work and information provided by NGOs. The Secretary General is requested to make a study on how participation of NGOs can be further enhanced.</p>
<p><b>Astana 2010</b></p>	<p>We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.</p>



## ANNEX 2: KEY OSCE COMMITMENTS PERTAINING TO ODIHR'S MONITORING MANDATE

### Prague 1992

6. The Ministers agreed that monitoring and promoting progress in the human dimension remains a key function of the CSCE.

[...]

9. In order to extend practical co-operation among participating States in the human dimension, the Ministers decided to give additional functions to the Office for Free Elections which will henceforth be called the Office for Democratic Institutions and Human Rights.

10. Under the general guidance of the CSO, the Office should, *inter alia*:

[...]

- serve as an institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programmes aimed at assisting the new democracies in their institution-building;
- facilitate contacts between those offering such resources and those wishing to make use of them;

[...]

- establish contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise;

### Helsinki 1992

ODIHR will, as the main institution of the Human Dimension:

(5a) assist the monitoring of implementation of commitments in the Human Dimension by:

72. serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document;

73. receiving any comments from States visited by CSCE missions of relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual comments to all participating States with a view to discussion at the next implementation meeting or review conference;

74. participating in or undertaking missions when instructed by the Council or the CSO;

[...]

(5c) assist other activities in the field of the Human Dimension, including the building of democratic institutions by:

[...]

communicating, as appropriate, with relevant international and non-governmental organizations;

<p><b>Stockholm 1992</b></p>	<p><i>Decisions</i></p> <p>(2) The Ministers welcomed the strengthened role of the Office for Democratic Institutions and Human Rights and the appointment of the High Commissioner on National Minorities as especially useful steps towards integrating the human dimension more fully into the political consultations and concerted action of the participating States [...] Compliance with CSCE commitments is of fundamental importance. Monitoring of compliance provides governments of participating States with crucial information on which they can formulate policy [...] .”</p>
<p><b>Rome 1993</b></p>	<p>[...] <i>Inter alia</i>, the ODIHR will enhance its activities under its mandate in the following areas:</p> <p>[...]</p> <ul style="list-style-type: none"> <li>• receiving information provided by NGOs having relevant experience in the human dimension field;</li> <li>• serving as a point of contact for information provided by participating States in accordance with CSCE commitments;</li> <li>• disseminating general information on the human dimension, and international humanitarian law.</li> </ul>
<p><b>Budapest 1994</b></p>	<p>[The ODIHR] will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received.</p> <p>[...]</p> <p>The participating States recognize the need for enhanced co-operation through the ODIHR [...] for the exchange of information, including reports, and for further developing of future-oriented activities, such as outlined in the present document.</p>
<p><b>Oslo 1998</b></p>	<p>The OSCE and its institutions and instruments should further develop practical programs to foster democratic institutions, human rights and the rule of law in the OSCE area. The ability to react in a flexible and quick manner to emerging needs should be increased and the participating States should be encouraged to forward their requests for assistance to the relevant OSCE institutions and instruments. In particular the ODIHR should develop further its short-term advisory missions (“democratization teams”).</p>
<p><b>Istanbul 1999</b></p>	<p>We individually confirm our willingness to comply fully with our commitments. We also have a joint responsibility to uphold OSCE principles. We are therefore determined to co-operate within the OSCE and with its institutions and representatives [...] . We will co-operate in a spirit of solidarity and partnership in a continuing review of implementation.</p>

<p><b>Bucharest 2001</b></p>	<p>22. ODIHR: Will provide continued advice to participating States, at their request, on strengthening domestic legal frameworks and institutions that uphold the rule of law, such as law enforcement agencies, the judiciary and the prosecuting authorities, bar associations and defence attorneys.</p>
<p><b>Maastricht 2003</b></p>	<p>41. Full use will be made of ODIHR's monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority.</p> <p><i>VI. Follow-up and co-ordinating mechanisms</i></p> <p>Besides monitoring the implementation of the OSCE commitments by participating States through existing OSCE mechanisms, including the annual Human Dimension Implementation Meeting, Review Conferences and relevant human dimension events, The Permanent Council</p> <p>[...]</p> <p>9. Tasks the ODIHR with the further development of its clearing-house function for the exchange of information, contacts, materials and good practices and with the enhancement of its project activities.</p>
<p><b>Helsinki 2008</b></p>	<p>We recognize the valuable contribution of the OSCE in promoting and protecting the rights enshrined in the Universal Declaration. We recognize, in particular, the work of the Office for Democratic Institutions and Human Rights (ODIHR) in assisting the participating States, in accordance with its mandate, in implementing human dimension commitments.</p>

## ANNEX 3: ODIHR TOOLBOX IN THE AREA OF PROTECTION OF HUMAN RIGHTS DEFENDERS

ODIHR stands ready to assist OSCE participating States in the implementation of its commitments pertaining to the protection of human rights defenders. The following is an overview of the types of assistance that ODIHR can provide.

Tool	Description
<b>Legislative Review</b>	<p>Upon request of governments, parliaments, national human rights institutions and OSCE field offices, ODIHR provides legal reviews of draft and existing legislation of OSCE participating States. As part of this work, ODIHR formulates recommendations to assist States in ensuring full compliance of [draft] laws with international human rights standards. ODIHR reviews/ opinions are available at:</p> <p><a href="https://www.legislationline.org/">https://www.legislationline.org/</a>.</p>
<b>Guidelines on the Protection of Human Rights Defenders</b>	<p>The <i>Guidelines</i> aim to support OSCE participating States in the implementation of their human dimension commitments related to the protection of human rights defenders. They are based on OSCE commitments and universally recognized human rights standards that OSCE participating States have undertaken to adhere to. The <i>Guidelines</i> concentrate on the protection of human rights of those who are at risk as a result of their human rights work, and measures to create and consolidate a safe and enabling environment in which human rights defenders are empowered to carry out their vital human rights work; available at:</p> <p><a href="https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders">https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders</a>.</p>
<b>Guidelines on Freedom of Association</b>	<p>The Guidelines are primarily, but not exclusively, intended for use by legislators tasked with drafting laws that regulate or affect associations. They are also intended to serve public authorities, the judiciary, legal practitioners, academics and others concerned with the exercise of the right to freedom of association, including associations, their members, human rights defenders and the general public; available at:</p> <p><a href="https://www.osce.org/odihr/132371?download=true">https://www.osce.org/odihr/132371?download=true</a>.</p>

<p><b>Guidelines on Freedom of Peaceful Assembly</b></p>	<p>The Guidelines offer a practical toolkit for legislators and practitioners responsible for implementing laws by drawing on good-practice examples from national legislations in European and OSCE participating States and the case-law of the ECtHR to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly. The Guidelines demarcate parameters for implementation consistent with international standards and illustrate key principles with examples of good practice from individual states; available at: <a href="https://www.osce.org/odhr/73405?download=true">https://www.osce.org/odhr/73405?download=true</a>.</p>
<p><b>Monitoring of and expert advice on the situation of human rights defenders (country-specific and regional focus)</b></p>	<p>In 2017, ODIHR published its baseline study of the situation of human rights defenders in the OSCE region, covering the 2014-2016 period, and offered recommendations to OSCE participating States on addressing identified challenges; the report is available at: <a href="https://www.osce.org/odhr/341366">https://www.osce.org/odhr/341366</a>.</p> <p>In 2018, ODIHR launched its first country-specific assessment on the situation of human rights defenders, which aims at providing tailored recommendations to selected OSCE participating States on the protection of human rights defenders.</p>
<p><b>Monitoring of individual cases of human rights defenders at risk</b></p>	<p>ODIHR conducts regular monitoring of individual cases of human rights defenders at risk and raises issues of concern with relevant participating States through diplomatic correspondence, meetings and public statements.</p>
<p><b>Capacity building for national human rights institutions (NHRI)</b></p>	<p>ODIHR specializes in the delivery of capacity building activities for NHRIs, civil society and State actors in the following areas:</p>
<p><b>Capacity building for State bodies (including law enforcement authorities)</b></p>	<ul style="list-style-type: none"> <li>• Human rights monitoring and reporting and the use of open source tools for human rights work;</li> <li>• Human rights advocacy;</li> <li>• International standards on the protection of human rights defenders;</li> <li>• Human rights monitoring and safety and security of human rights defenders, including digital security;</li> <li>• Digital communications;</li> <li>• Open source human rights monitoring;</li> <li>• Independent monitoring of the freedom of peaceful assembly.</li> <li>• Human rights compliant policing of assemblies.</li> </ul>
<p><b>Capacity building for civil society actors</b></p>	