

## **Enactment of Normative Acts Control Mechanism by Parliament for Legal and Practical Regulation of Victim Status**

### **The problem**

The June 2019 protest that took place in front of the Parliament in response to the visit of Russian MP Sergei Gavrilov to the Georgian Parliament resulted in the injury of multiple individuals. Health damages of varying degrees were inflicted on people as a result of the protest dispersal by police. Among them, two persons lost their eyes. Awarding the procedural status of the victim within the investigation to those who sustained physical damage turned out to be a problem, since many civilians, including those who were deprived of their eyes during the dispersal of the protest rally, were delayed in granting the status of the victim, while some others were not granted it at all.

According to the Prosecutor's Office, the delay in granting the victim status was due to the corresponding legislative provision. However, none of the human rights stakeholders has mentioned the legislative gap as the cause of the problem. Practically speaking, there was a problem with the implementation of the law, the reason for which is unknown. Given that Georgia is a country of parliamentary democracy, the Parliament has acquired a huge significance and its role in the enforcement of normative acts has increased.

In any cases, where the law is not implemented, the Parliament of Georgia should use the Normative Acts Control (NAC) mechanism at its disposal, which the Parliament has applied in certain cases in the recent period.

The analysis of the foregoing has revealed that: 1. the victim status is not granted in an effective and timely manner; 2. the reason for this shortcoming has not been identified; 3. it might be a problem related to case-law or the legislation; 4. the Parliament, through the Normative Acts Control mechanism that is aimed at identifying the reasons for non-fulfillment of the law, should effectively detect and eliminate the problem related to the victim status.

### **Factual overview**

On 20-21 June 2019, the Ministry of Internal Affairs deemed the protest held in front of the Parliament in Tbilisi as unlawful and took a decision to use force to disperse the demonstration.<sup>1</sup>

According to official figures, 275 persons sustained injuries as a result of the dispersal of the protest on 20-21 June, among them 187 civilians, 15 reporters (based on various sources, the number of the injured journalists is thirty-two) and 73 employees of the Interior Ministry.<sup>2</sup> Due to the inflicted injuries, 28 people needed surgery, among them eight persons underwent ophthalmologic surgery and four persons -

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<sup>1</sup> <<https://bit.ly/2qWFgRn>> viewed on 16.12.2019

<sup>2</sup> <<https://bit.ly/2PpQ9Ev>> viewed on 16.12.2019

neurosurgical surgery. It has been confirmed that two civilians lost an eye as a result of the sustained traumas, and several more victims suffered severe damage to their eyesight.<sup>3</sup>

The Office of the Chief Prosecutor of Georgia launched an investigation into an alleged power abuse by law enforcement officials during the June 20 protest rally.<sup>4</sup> *Initially, the Prosecutor's Office refused to grant the status of the victim in the framework of the investigation to some of those persons who suffered health injuries as a result of the dispersal of the rally, including M.G. and G.S. who lost their eyes when hit by rubber bullets.*<sup>5</sup>

In an effort to substantiate the refusal, the Office of the Prosecutor General indicated that the agency was waiting for the results of expert examinations to determine the degree, causes or means of the injuries sustained by M.G. and others. The investigation also has to determine whether special measures against each of these individuals were applied in violation of the law.<sup>6</sup>

As the Prosecutor's Office explained, there is no legal basis for granting the victim status.<sup>7</sup> Although the Prosecutor's Office confirms that the above-mentioned persons were injured during the dispersal of the protest rally on 20-21 June and the medical documentation/records obtained into the case has also confirmed serious damage to their health, the Office does not consider it to be a sufficient ground for granting the victim status and is waiting for the results of the forensic examination. According to the Prosecutor's Office, the expert examination shall determine the degree and mechanism of the inflicted injuries as well as specific circumstances and reasons for the use of active special means, based on which the issue relating to the victim status will be determined.<sup>8</sup>

The lawfulness of the refusal of the Prosecutor's Office has become the subject of the court litigation as well. The court noted that "in order to recognize a person as a victim, it is required to confirm based on reasonable evidence whether the crime was committed and what specific injuries were inflicted on the individuals as a result."<sup>9</sup>

When briefing about the investigation, the Prosecutor General noted that according to the legislation in force today, M.G. cannot be granted the status of the victim.<sup>10</sup> In particular, he said, "the court has taken into consideration the legal mechanisms and the current Georgian legislation based on which the Court decided not to grant the victim status to the persons. If the legislation is amended in this regard, then she will be granted the victim status. Under the current legislation, she cannot be granted the status of the victim, therefore, she does not have the status."<sup>11</sup>

At a press conference held on 5 November of this year, NGOs highlighted the necessity for granting the victim status to those who suffered health injuries as a result of the protest dispersal. Following the press

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<sup>3</sup> Id.

<sup>4</sup> <<https://bit.ly/2PSMYEi>> viewed on 16.12.2019

<sup>5</sup> <<https://bit.ly/2YTCRDw>> viewed on 16.12.2019

<sup>6</sup> <<https://bit.ly/2Mo8wxU>> viewed on 16.12.2019

<sup>7</sup> Id.

<sup>8</sup> <<https://bit.ly/2YzqCMj>>

<sup>9</sup> <<https://bit.ly/2YlbyMp>> viewed on 13.12.2019

<sup>10</sup> <<https://bit.ly/2RGAdzx>> viewed on 11.12.2019

<sup>11</sup> <<https://bit.ly/2RGAdzx>> viewed on 11.12.2019

conference, the NGOs released a statement ruling out any legislative gaps with respect to granting the victim status:

“The current legislation explicitly provides the legal basis for granting the victim status. A victim is a person that has been incurred moral, physical or material damage as a result of a crime. Accordingly, when it is established that the crime has caused any type of damage, the prosecutor is obliged to grant the victim status to a person, regardless of whether the person who has committed a crime has been identified or not. The June 20-21 cases clearly show that a part of the victims sustained injuries as a result of illegal use of rubber bullets, among them bullets were targeted at journalists who were present on the scene to cover the events. Some of the victims sustained injuries when they were under effective police control. All the above-listed cases contain obvious signs of crime,” says the statement.<sup>12</sup>

Against the background of divergent opinions, until 23 November 2019, the Prosecutor's Office had granted the status of the victim to several victims only.<sup>13</sup>

The legal proceedings concerning the events of 20-21 June are still in progress.<sup>14</sup> Until now, the statements and positions expressed by the court, the Prosecutor's Office (including the Prosecutor General's Office) and non-governmental organizations prove that the processes are defective.<sup>15</sup>

In summary, the actual circumstances have shown that the problem of granting the victim status exists in practice, the exact cause of which is unknown.

## Legal overview

The current definition of the victim

The problem identified in practice as to granting the victim status is related to the current definition provided in the law, which does not explicitly indicate the moment at which a person may be considered a victim in a case proceeding.

The point is that according to the Criminal Procedure Code of Georgia, the victim can be a state, physical or legal person who has suffered moral, physical or property damage as a result of a crime.<sup>16</sup> It seems that in order to obtain the victim's status, two prerequisites are required to be present cumulatively: a) sustained damage; and b) a crime in causal connection to the sustained damage;

According to the Procedure Law, a person shall be granted the status of the victim by a prosecutor. If there are appropriate grounds for recognizing a person as a victim or as a legal successor of the victim, the prosecutor shall issue a decree on his/her own initiative, or upon the filing of the relevant application by that person. If a prosecutor does not satisfy the application within 48 hours after it has been filed, the person in question may apply once to a superior prosecutor for recognizing him/her as a victim or a legal

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<sup>12</sup> <https://bit.ly/2rFdn0B> viewed on 16.12.2019

<sup>13</sup> <<https://bit.ly/2rzXCYD>> viewed on 11.12.2019

<sup>14</sup> <<https://bit.ly/35pWOUN>> viewed on 16.12.2019

<sup>15</sup> <<https://bit.ly/2PeXpmF>> viewed on 13.12.2019

<sup>16</sup> Criminal Procedure Code of Georgia, Article 2

successor of the victim. If a superior prosecutor does not satisfy the appeal, the person in question may appeal the decision of the prosecutor to a district (city) court according to the place of investigation.<sup>17</sup>

Concerning the 20-21 June events and recognizing M.G as a victim, the court argued that “the standard of proof required to identify a victim and the standard of proof of a person being charged are the same, but the recognition of a person as a victim does not depend on obtaining sufficient evidence to prosecute specific persons in a criminal case. However, it is necessary to make a reasonable assumption on the case of whether the crime was committed and what kind of damage the person suffered as a result of the crime.”<sup>18</sup>

The Court's reasoning may stem from the case-law established over the years or from specific guiding principles developed by the Court and the Prosecutor's Office. However, it is clear that the reasoning is neither way based on the Criminal Procedure Law.

The procedural law does not require the existence of reasonable proof of a crime and the defendant to grant a person the victim's status. The procedure code only requires a crime as a mandatory prerequisite. Accordingly, if we are guided by the literal interpretation of the law, then we may arrive at the necessity of not only the standard of reasonable proof but also a conviction verdict as a binding precondition for granting the victim status.

At the same time, the theoretical interpretation of the definition of the victim, as set forth in the Criminal Procedure Code, may lead to absurd reasoning. The existence of a crime, actually, means a guilty verdict of a court in force, while granting the victim's status is necessitated during the procedural or investigative stages before rendering the final verdict, which means that the above interpretation can deprive the status of its significance and procedural purpose.

As noted above, the existence of reasonable evidence of crime necessary for granting the victim status does not depend on the law but might be stemming from the established practice. In order to add more clarity to the issue in practice, the NGO Democracy Index - Georgia applied to the Prosecutor's Office of Georgia in writing. In the letter, the following information was requested regarding the practice of granting the victim status: in particular, the number of investigations initiated into offences committed with violence into which no one was charged from 1 June 2019 to 1 September 2019; the number of individuals granted the victim status into the aforementioned investigations on which no one has been prosecuted; the number of cases in which individuals have not been granted the victim status but forensic examinations were assigned to determine health injuries and the number of cases on which the examination reports were obtained.<sup>19</sup>

In response to the above letter, the Prosecutor's Office indicated that the agency does not record the requested information.<sup>20</sup>

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<sup>17</sup> Criminal Procedure Code of Georgia, Article 56, paragraph 5.

<sup>18</sup> <<https://bit.ly/2YIbyMp>> viewed on 13.12.2019

<sup>19</sup> Statement N01/13-105700

<sup>20</sup> Letter N13 / 86318 of the General Prosecutor's Office of Georgia, dated 10 December 2019

## The practice of other countries

The analysis has shown that the procedures for recognizing a person as a victim are significantly simplified in countries where the principle of discretionary and adversarial prosecution is in place.

The Code of Practice for Crime Victims developed by the Ministry of Justice of the United Kingdom states that everyone has the right to benefit from a Victim Personal Statement (VPS) if they believe that they sustained material or moral damage due to an offence.<sup>21</sup> Consequently, it is clear that in the UK, unlike Georgian legislation, no specific standard of proof is needed to grant the victim status. The justice system is focused more on protecting the rights of and rehabilitating victims rather than building barriers on their way to the status.

Through the VPS, a person becomes a participant of a case proceeding. Anyone can apply to the local police authority and submit a VPS that will definitely be forwarded to the Prosecutor's Office. It is noteworthy that no permit from the police or the Prosecutor's Office or the court is required to obtain the victim status.<sup>22</sup>

Canada also has a simple procedural approach. Specifically, according to the Canadian Victims' Bill of Rights enacted on 23 July 2015, a person has to fill out a special form to be granted the victim status. The procedure depends solely on the efforts of the victim. The survivor shall prepare a Victim Impact Statement and return it to the victim services, the prosecutor or the clerk of the Court.<sup>23</sup>

As per the United States District of Alaska procedure code, the website of the US Department of Justice indicates that once the victim submits a Victim Impact Statement, he or she is immediately involved in a case proceeding and is entitled to appear before a court for oral questioning.<sup>24</sup>

Unlike the simplified rules with respect to granting the victim status in the above-mentioned countries, international tribunals that determine an individual criminal liability envisage procedural prerequisites for granting the victim status.

For example, according to the Rome Statute of the International Criminal Court and other legal regulations, awarding the victim status depends on a *reasonable proof* that a crime was committed, insofar as *this reasonable evidence serves as the ground for the initiation of an investigation*. Unlike the legislation of the above countries and the procedural law of Georgia, pursuant to the Rome Statute, for example, any information that contains signs of a crime may not become the basis of an investigation. For this, a relevant evidentiary ground shall be provided, which procedurally is referred to as a reasonable basis. Therefore, the status of the victim during the investigation shall be corroborated by a reasonable basis to allow the person to enjoy the status.<sup>25</sup>

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<sup>21</sup> <<https://bit.ly/35ewzAS>> viewed on 11.12.2019

<sup>22</sup> Id.

<sup>23</sup> <<https://bit.ly/38u63Wb>> viewed on 11.12.2019

<sup>24</sup> <<https://bit.ly/2YCSa3e>> viewed on 11.12.2019

<sup>25</sup> Rome Statute of the International Criminal Court, Article 53

<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> ; Rules of Procedures and Evidence of the

The similar approach is stipulated in the former Yugoslavia United Nations International Residual Mechanism for Criminal Tribunals, which requires a *sufficient basis* for the initiation of an investigation and this standard - sufficient basis for investigating a crime- shall be needed to grant the victim status to a participant involved in a case during the investigation stage.<sup>26</sup>

### **Normative Acts Control Mechanism - Parliament's Mandate**

With the view to thorough examination and elimination of the problem relating to the practice of granting the victim status, the Parliament should use the available Normative Acts Control (NAC) mechanism, as far as NAC in the hands of the parliament is an important tool, which the body can use to perform both legislative and regulatory functions.

Lawmaking and monitoring of the enforcement of normative acts altogether create a sound political cycle where the adoption of a law, its monitoring and development of new initiatives are interchangeable.<sup>27</sup>

Unfortunately, the NAC is not an established practice in the Georgian parliamentary system. The NAC mechanism is somewhat a novelty in Georgian parliamentarism. The Rules of Procedure of the Parliament of Georgia do not provide detailed procedures for implementing the NAC.<sup>28</sup>

In the Georgian Parliament, the NAC is mainly planned in advance and outlined in action plans. Ongoing political, legal, social or other processes may give rise to the urgent need to conduct the NAC.<sup>29</sup>

The Committee does not carry out the NAC in isolation from other executive bodies. The Committee is obliged to involve in the process all those persons whose views might be important in decision-making.

Stakeholders can be experts and specialists in the field, representatives of academic circles and professional associations, NGOs and any other individuals who have relevant expertise to contribute to the NAC with their well-reasoned opinions.<sup>30</sup>

Identification of specific questions is a part of the NAC. The analysis of answers to the questions may identify the gaps associated with the implementation of the law.

After discussing all the above questions, it is clear that the basis for initiating control over the enforcement of normative acts in practice has been established.

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International Criminal Court, Rule 85, 89

<https://www.icc-cpi.int/resource-library/Documents/RulesProcedureEvidenceEng.pdf#page=32>

<sup>26</sup> The former Yugoslavia United Nations International Residual Mechanism for Criminal Tribunals as of 2009, Article 18, <[https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)>; Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses as of 26 November 2019, Article 1,

[https://www.irmct.org/sites/default/files/documents/191126-practice-direction-provision-support-victims-witnesses-mict-4.0\\_en.pdf](https://www.irmct.org/sites/default/files/documents/191126-practice-direction-provision-support-victims-witnesses-mict-4.0_en.pdf) ;

<sup>27</sup> Guidelines for the Office of Parliamentary Committees of Georgia, UNDP, 2019, pp. 34-35.

<sup>28</sup> Normative Acts Control Mechanism (Parliamentary Guide), USAID, 2019 p.3

<sup>29</sup> Id.

<sup>30</sup> Id.

The Legal Issues Committee of the Parliament, with the involvement of the broader public, should initiate the NAC procedure for the effective implementation of granting the victim status and to identify: 1. whether the delay in awarding the victim status is a problem of the legislation or case-law; 2. if it is a legal problem, introduce amendments to the law; 3. if it is a problem with the practice, provide specific recommendations to the Prosecutor's Office for defining concrete guidelines and regulations in practice.

## **Recommendations**

Democracy Index - Georgia calls on the Parliament of Georgia to start monitoring of normative acts to define specific steps in the Criminal Procedure Code relating to the victim status:

- Study the practice of recognizing a victim in court and Prosecutor's Office, in particular at what stages and based on which evidence a person is granted the victim status in practice;
- Hear the views of the Prosecutor General's Office, the Public Defender, the Ministry of Internal Affairs and other relevant authorities concerning the matter;
- Invite the non-governmental sector and stakeholders actively involved in criminal justice and protection of the rights of survivors/victims;
- Review research, reports and recommendations elaborated by NGOs and international organizations;
- Involve in the process as stakeholders those persons who requested the victim status due to the injuries sustained as a result of the June 2019 events;
- Start elaborating draft legislative amendments upon the identification of any gaps in the current legislative regulation.