Submission on behalf of the Public Defender’s Office of Georgia to the Office of the High Commissioner for Human Rights on the question of the moratorium on the use of the death penalty and other issues as included in resolution 75/183 adopted by the UN General Assembly

In reply to the letter sent by you to national human rights institutions on March 16th 2022, the Public Defender’s Office of Georgia (hereinafter PDO) would like to provide the following information regarding the question of the moratorium on the use of the death penalty and other issues as included in resolution 75/183 adopted by the UN General Assembly.

The use of death penalty was officially abolished by law on November 11th 1997 in Georgia[[1]](#footnote-1). By resolution of the Parliament issued in 1999, Georgia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty[[2]](#footnote-2). Furthermore, in 2003, Georgia ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances[[3]](#footnote-3). Finally, the current Constitution of Georgia prohibits death penalty[[4]](#footnote-4).

In light of the abolition of capital punishment in our country, certain issues included in the aforementioned resolution (such as reduction of number of offences punishable by death penalty, moratorium on death penalty, the exercise of right to commutation and pardon, etc.) are not relevant in the case of Georgia and, consequently, the PDO is unable to provide information about them. However, the question of death penalty is not completely immaterial because citizens of Georgia may face such a sentence in other countries as demonstrated by one of the applications addressed to the PDO.

On May 6th 2021, the PDO received an application according to which a Georgian citizen was arrested in Belarus and could be extradited to Lebanon on request of the latter country where she was charged with a crime connected to terrorism. In response to the application, the PDO addressed an amicus curiae to the Chairman of the Minsk City Court, Mr. Pavel Korshunovich, calling on the Belarusian authorities not to extradite the Georgian citizen. In particular, the PDO argued that the extradition would breach Belarus’ obligation under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which prohibits the transfer of an individual to a country when there are substantial grounds for believing that that person would be in danger of being subjected to torture there. Relying on the General Comment No. 4 (2017) by the UN Committee Against Torture, the PDO argued that capital punishment and, therefore, extradition exposing a person to death penalty in the receiving state were incompatible with respect for human dignity and UN human rights standards. Thus, when deciding the question of extradition, the transferring state had to consider, inter alia, whether there were sufficient procedural guarantees for fair trial in the receiving state, whether the extradited person faced the risk of torture, other inhumane or degrading treatment/punishment (including in the form of death penalty), what were the conditions in detention facilities and whether the practice of torture, other inhumane or degrading treatment/punishment or other gross violations of human rights were widespread. Specifically in terms of death penalty, the transferring state had to assess whether an individual was being extradited to a country where the fundamental right to life was disrespected. It was obliged to take into account whether the transferred person was likely to be subjected to capital punishment without a court judgement and whether the death penalty itself amounted to torture, other inhumane or degrading treatment/punishment. In particular, the methods and circumstances of execution, the waiting time before carrying out the death penalty and the conditions in which an individual was being held could themselves constitute torture, other inhumane or degrading treatment/punishment in some cases.

Citing reports of local and international NGOs and organizations (such as Human Rights Watch, Amnesty international and UN Committee against Torture), the PDO found that in Lebanon human rights violations, specifically torture was systemic and especially frequent in cases of persons detained for security reasons, e.g., terrorism and spying. The conditions in detention facilities were characterized as acute due to, inter alia, lack of good quality food, lack or denial of medical services, frequent violence and bad hygiene. Moreover, the Lebanese legislation did not prohibit torture and failed to provide essential procedural guarantees including confidential communication with counsel, prohibition of evidence obtained by torture and sufficient competencies of judges. As to death penalty, 71 individuals were awaiting execution in Lebanon according to information obtained by the PDO. In light of this situation in Lebanon, the PDO concluded that Belarus’ consent to extradition request of Lebanon would violate its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as there were substantial grounds to believe that the Georgian citizen would be in danger of being subjected to death penalty or other forms torture, inhumane or degrading treatment/punishment.

In the end, the Belorussian authorities did not extradite the Georgian citizen to Lebanon and she was released from imprisonment, according to the information available to the PDO.

Finally, the PDO hopes that you find the provided information useful. The PDO is willing and ready for further collaboration with the Office of the High Commissioner for Human Rights.

1. The Law #1069 of Georgia on complete abolition of the special measure of punishment, death penalty, adopted on November 11th 1997, available on: <https://matsne.gov.ge/document/view/28372?publication=0> [↑](#footnote-ref-1)
2. The Resolution #1818 adopted by the Parliament of Georgia on March 2nd 1999 on accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, available on: <https://matsne.gov.ge/ka/document/view/39268?publication=0> [↑](#footnote-ref-2)
3. The Resolution #2110 adopted by the Parliament of Georgia on April 24th 2003 on ratification of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, available on: <https://matsne.gov.ge/ka/document/view/41950?publication=0> [↑](#footnote-ref-3)
4. Paragraph 1 of article 10 of the Constitution of Georgia, available on: <https://matsne.gov.ge/en/document/view/30346?publication=36> [↑](#footnote-ref-4)