

# **MEMORANDUM OF COOPERATION ON COLLECTION OF DATA ON CRIMES COMMITTED ON GROUNDS OF INTOLERANCE WITH DISCRIMINATION BASIS AND PUBLISHING A JOINT REPORT**

Parties of the Memorandum:

Supreme Court of Georgia

Prosecutor's Office of Georgia

Ministry of Internal Affairs of Georgia

LEPL National Statistics Office of Georgia (GeoStat)

## **Preamble:**

Parties of the Memorandum,

Recognize the special importance of data on crimes committed on grounds of intolerance with discrimination basis (hereinafter – “on grounds of intolerance”) for identification and implementation of criminal and human rights policy in the state,

Recognize that the fight for equality is a complex and dynamic objective and therefore, creating a data system for crimes committed on grounds of intolerance is a continuous process and needs constant improvement,

Aim to create a contemporary, comprehensive data system for crimes committed on grounds of intolerance, in compliance with international standards,

Believe that the data system for crimes committed on grounds of intolerance should be accurate, credible, transparent, foreseeable and public,

Realize that the data system for crimes committed on grounds of intolerance should comply with national and international human rights and equality standards, be responsive to contemporary challenges and serve the purpose of solving problems in the field concerned,

Recognize the importance of cooperation, express readiness for introducing the agreed principles and joint approach in the field of data collection on crimes committed on grounds of intolerance, and agree on the following Memorandum of Cooperation (hereinafter, „the Memorandum“).

## **1. Purpose of the Memorandum**

1.1. Determine the principles, standards and rules of cooperation between the Parties of the Memorandum in the field of collection, processing and analysis of data on crimes committed on grounds of intolerance and preparing and publishing a joint statistical report.

1.2. Determine the rules of collection, processing and analysis of data on crimes committed on grounds of intolerance and preparing and publishing a joint statistical report.

## **2. Contents of the Memorandum**

This Memorandum has Annex that forms an integral part of this Memorandum.

The following is determined by Annex:

2.1. The concept of joint statistics on crimes committed on grounds of intolerance;

2.2. Classification of crimes committed on grounds of intolerance and the data to be processed, for the purposes of joint reporting of data on crimes committed on grounds of intolerance;

2.3. The rules of collecting, processing and analysing the data on crimes committed on grounds of intolerance by the Parties and preparing and publishing a joint statistical report;

2.4. Distribution of information to be processed between the Parties, in consideration of their competencies.

### **3. Rights and obligations of the Parties:**

3.1. The Parties shall maintain and provide to GeoStat data on crimes committed on grounds of intolerance, according to the procedure provided in Annex of this Memorandum.

3.2. Annually and no later than March 1, GeoStat shall prepare and publish a joint report on crimes committed on grounds of intolerance for the previous year.

3.3. With the exception of GeoStat, the Parties shall, two times a year and no later than the last day of the month following the reporting period (July 31 and January 31), provide to each other information necessary for maintaining the data defined by Annex of this Memorandum during the reporting period.

3.4. The Parties shall, once a year and no later than February 20, provide to GeoStat data defined in Annex of this Memorandum, necessary for publishing a joint report on crimes committed on grounds of intolerance, for the period from January 1 through December 31 of the previous year, in Georgian and English languages.

3.5. The Parties shall, within the scope of their competencies, ensure accuracy of data on crimes committed on grounds of intolerance, collected, processed, analysed and published by them.

3.6. The Parties shall abide by the principles provided in the Preamble of this Memorandum in the process of collection, processing and analysis of data on crimes committed on grounds of intolerance.

3.7. The Parties are entitled to, within the scope of their competencies, carry out any and all legitimate actions for fulfilment of their obligations provided in this Memorandum.

3.8. The Parties are entitled to demand from each other fulfilment of the obligations specified in this Memorandum.

### **4. Entry into force, publishing, amendment and termination of this Memorandum**

4.1. This Memorandum shall begin with the signature and continue indefinitely.

4.2. Upon signature, the Memorandum shall be published pursuant to the procedure specified in Annex and public access to the Memorandum should be ensured for the duration of its term.

4.3. This Memorandum may be amended in writing, based on the agreement of the Parties.

4.4. Amending this Memorandum based on a written agreement of the Parties shall be necessary in an event of changes in functions, rights and obligations of the Parties based on a binding national or international legislation (including international agreements and case law of international courts) and in norms regulating crimes committed on grounds of intolerance, which make it objectively impossible to maintain the data specified in Annex of this Memorandum, and/or collection, processing and analysis of additional data is required.

4.5. This Memorandum may be terminated based on agreement of the Parties, and as a result of changes in the binding national or international legislation that make it objectively

impossible to fulfil the requirements of this Memorandum and they may not be overcome by amending this Memorandum.

**5. Authenticity and copies of this Memorandum:**

5.1. Authentic text of the Memorandum shall be made in writing, in Georgian and English;

5.2. This Memorandum shall be made in four original and equally valid copies, according to the number of the Parties, and shall be signed by a representative of each Party.

Date of signature            23 September, 2020

Signed by:  
Chairperson of the Supreme Court of Georgia  
Nino Kadagidze  
Signatory \_\_\_\_\_ Date: \_\_\_\_\_

Signed by:  
General Prosecutor of Georgia  
Irakli Shotadze  
Signatory \_\_\_\_\_ Date: \_\_\_\_\_

Signed by:  
Minister of Internal Affairs of Georgia  
Vakhtang Gomelauri  
Signatory \_\_\_\_\_ Date: \_\_\_\_\_

Signed by:  
Executive Director of LEPL National Statistics Office of Georgia  
Gogita Todradze  
Signatory \_\_\_\_\_ Date: \_\_\_\_\_

## Annex

### **CLASSIFICATION OF CRIMES COMMITTED ON GROUNDS OF INTOLERANCE WITH DISCRIMINATION BASIS**

For the purposes of joint reporting of data on crimes committed on grounds of intolerance with discrimination basis, crimes committed on grounds of intolerance consists of the following three categories:

**1. Crimes with the motive of intolerance as necessary element of their composition.**

Crimes provided in Articles 133<sup>2</sup>, 142 142<sup>1</sup>, 142<sup>2</sup>, 155, 156, 166, 239<sup>1</sup> of the Criminal Code of Georgia fall under this category;

**2. Crimes with the motive of intolerance as their qualifying element.**

Crimes provided in subparagraphs “d” and “d<sup>1</sup>”, para.2 of Article 109, paragraph 2”a” of Article 115, subparagraphs “d” and “d<sup>1</sup>” of paragraph 5 of Article 117, paragraph 3 of Article 118 (similar to subparagraphs “d” and “d<sup>1</sup>” of paragraph 5 of Article 117), paragraph 2”g” of Article 126, paragraph 2”f” of Article 144<sup>1</sup>, paragraph 2”f” of Article 144<sup>3</sup>, paragraph 3”b” of Article 258 of the Criminal Code of Georgia;

**3. Any deliberate crime provided in the Criminal Code of Georgia, in the process of commission of which the individual was acting based on the motive of intolerance with discrimination basis provided in paragraph 1 of Article 53<sup>1</sup> of the Criminal Code of Georgia.**

Basis of discrimination provided in Article 53<sup>1</sup>(1) of the Criminal Code of Georgia include: race, colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social affiliation, origin, property or social status, place of residence and other basis of discrimination.

For the purposes of joint reporting of data on crimes committed on grounds of intolerance with discrimination basis, data on crimes committed on grounds of intolerance will be territorially disaggregated based on the principle of regional division of Georgia, in the following way:

- Tbilisi;
- Autonomous Republic of Abkhazia;
- Autonomous Republic of Ajara;
- Kakheti;
- Shida Kartli;
- Kvemo Kartli;
- Imereti;
- Guria;
- Samegrelo and Zemo Svaneti;
- Samtskhe-Javakheti;
- Racha-Lechkhumi and Kvemo Svaneti;

- Mtskheta-Mtianeti.

**Note:**

Criminal cases subject to jurisdiction of the Police Patrol of the Ministry of Internal Affairs of Georgia and Departments of the Central Criminal Police, as well as the State Sub-Agency - Border Police of Georgia, in consideration of their specific nature, will not be disaggregated according to the principle of regional division of Georgia.

The Prosecutor's Office of Georgia, in regions of Georgia where the District Prosecutor's Office is not represented as a separate entity, will conduct territorial disaggregation of the data according to the territorial unit of the Prosecutor's Office of Georgia.

### **The Ministry of Internal Affairs of Georgia**

For the purposes of joint reporting of data, the Ministry of Internal Affairs of Georgia will present statistical information on crimes committed on possible grounds of intolerance, which will include investigations initiated during the reporting period, articles based on which the investigation was initiated and basis of possible discrimination.

At the Ministry of Internal Affairs of Georgia, the Department of Human Rights Protection and Investigation Quality Monitoring is responsible for collection of data required for the Memorandum purposes. The department exercises its functions using internal and external control mechanism.

- The mechanism of internal control entails monitoring of investigation quality on a daily basis by the department staff, through the electronic case management system for criminal cases and other means of communication.
- The mechanism of external control entails receiving information about a particular case from external sources (media, NGOs, Public Defender's Office, etc.), both verbally and in writing.

For the purposes of joint data reporting, units of observation for data gathered by the Ministry of Internal Affairs of Georgia on crimes committed on grounds of intolerance include:

**1. The number of investigations into crimes committed on possible grounds of intolerance, initiated by the Ministry of Internal Affairs of Georgia – unit of observation – a criminal case.**

This entails all criminal cases where, based on a preliminary examination, indicator/indicators of the motive of intolerance are evident, in particular:

- (possible) victim's perception;

- (possible) victim's affiliation and/or association with a minority group;
- witness' perception;
- (possible) defendant's perception;
- drawings, symbols and inscriptions made at the scene of the incident;
- ethnic, national, religious and cultural differences between the (possible) defendant and the (possible) victim;
- (possible) defendant's membership of and/or association with an organized criminal group involved in crimes committed on grounds of intolerance;
- place and time of commission of the crime;
- nature and means of commission of the crime;
- nature and frequency of crimes and incidents committed by the (possible) defendant in the past.

This type of data will also be territorially disaggregated.

## **2. Relevant article** – unit of observation – a criminal case

For the purposes of joint data reporting, the Ministry of Internal Affairs will record investigations initiated about crimes committed on possible grounds of intolerance according to articles that served as grounds for initiating the investigation.

## **3. Basis of discrimination** – unit of observation – a criminal case.

The Ministry of Internal Affairs of Georgia will record investigations initiated about crimes committed on possible grounds of intolerance according to a concrete basis of discrimination, based on indicator(s) of motive of intolerance identified as a result of preliminary examination.

## The Prosecutor's Office of Georgia

For the purposes of joint reporting of data, the Prosecutor's Office of Georgia will present statistical information on decisions to initiate/not to initiate a criminal prosecution, to terminate criminal prosecution and investigation during the reporting period, in connection to crimes committed on grounds of intolerance, and information about victims.

For the purposes of joint reporting of data, units of observation for the data collected by the Prosecutor's Office of Georgia include:

### **1. Initiation of criminal proceedings** – unit of observation - a person.

The Prosecutor's Office of Georgia will record the number of individuals subjected to criminal prosecution (this entails overall data on initiation of criminal prosecution, including data about criminal prosecution initiated in a case where investigation has been launched during the reporting period), as well as their sex (male or female), age group (minors from 14 to 18, adults – 18 or older) and territorial distribution.

This includes recording of the following:

- a) The number of criminal prosecutions initiated for a concrete crime provided in the Criminal Code, according to the number of persons;
- b) The number of criminal prosecutions initiated in connection to a concrete basis of discrimination, according to the number of persons;

### **2. Diversion** – unit of observation – a person.

The Prosecutor's Office of Georgia will record the number of individuals that have been diverted from criminal liability (it entails overall data about diverted individuals, including data on diverted individuals in cases where investigation was initiated during the reporting period), as well as their sex (male or female), age group (minors from 14 to 18, adults – 18 or older) and territorial distribution.

This includes recording of the following:

- a) The number of diverted individuals for a concrete crime provided in the Criminal Code;
- b) The number of individuals diverted from criminal liability, in connection to a concrete basis of discrimination.

### **3. Termination of criminal prosecution** – unit of observation – a person.

The Prosecutor's Office of Georgia will record the number of persons against whom criminal prosecution has been terminated (it entails overall data about termination of criminal prosecution, including data on criminal prosecutions terminated in cases where investigation was initiated during the reporting period), as well as their sex (male or female), age group (minors from 14 to 18, adults – 18 or older) and territorial distribution.

This includes recording of the following:

- a) The number of criminal prosecutions terminated for a concrete crime provided in the Criminal Code, according to the number of persons;
- b) The number of criminal prosecutions terminated for a concrete basis of discrimination, according to the number of persons.

**4. Criminal prosecutions not initiated** - unit of observation – a person.

The Prosecutor's Office will record the number of persons against whom criminal prosecution was not initiated (it entails overall data about criminal prosecutions not initiated, including data on criminal prosecutions not initiated in cases where investigation was initiated during the reporting period), as well as their sex (male or female), age group (minors from 14 to 18, adults – 18 or older) and territorial distribution.

This includes recording of the following:

- a) The number of persons against whom criminal prosecution was not initiated, for concrete crimes provided in the Criminal Code;
- b) The number of persons against whom criminal prosecution was not initiated, for crimes motivated by a concrete basis of discrimination.

**5. Termination of investigation** – unit of observation – a case.

For the purposes of joint reporting of data, the Prosecutor's Office of Georgia will record decisions to terminate investigation initiated in a criminal case during the reporting period, according to relevant article of the Criminal Procedure Code of Georgia (CPC), basis of termination of investigation and territorial distribution.

**6. Victims** - the Prosecutor's Office will record the number of persons recognized as victims during the reporting period (it entails overall data about persons recognized as victims, including information about persons recognized as victims in cases where investigation was initiated during the reporting period), as well as their sex (male or female), age group (minors from 14 to 18, adults – 18 or older), in case of a legal person – the number of legal persons victimized, and territorial distribution.

This includes recording of the following:

- a) The number of victims of a concrete crime provided in the Criminal Code;
- b) The number of victims of a crime motivated by a concrete basis of discrimination.

**7. Social connection** – the Prosecutor's Office will record social connection of persons provided in paragraphs 1-4 with the victim.



## The Supreme Court of Georgia

For the purposes of joint data reporting, the Supreme Court of Georgia will present statistical information about cases received and handled by regional (city) courts, according to crimes committed on grounds of intolerance, the number of persons convicted and the types of punishment imposed, as well as information about application of Article 53<sup>1</sup>(1) of the Criminal Code of Georgia as an aggravating factor in verdicts imposed by courts.

For the purposes of joint data reporting, the Supreme Court of Georgia will record the following data in connection to crimes committed on grounds of intolerance:

**1. The number of cases received by courts** – unit of observation – a case. The Supreme Court will record the number of cases received by regional (city) courts, where the prosecutor’s decree of indictment indicates that the crime has been committed on grounds of intolerance.

**2. The number of criminal cases handled** – unit of observation - a case/person (entails the total number of cases handled by regional (city) courts of Georgia, including the number of cases where investigation was initiated during the reporting period).

Data on handled cases will be disaggregated according to regional divisions.

The following will be recorded:

- **The number of cases where verdict was delivered** (following a main hearing or based on a plea agreement);
- **The number of terminated cases**, by indicating relevant CPC article and grounds;
- **The number of cases remanded to the Prosecutor’s Office** (withdrawn by the Prosecutor’s Office by reason of diversion, approval of plea agreement was denied).

**3. Verdicts of guilty and verdicts of not guilty** – unit of observation – a person. The Supreme Court will record the number of individuals for whom a verdict of guilty or a verdict of not guilty has been delivered (it entails the total number of persons according to all the verdicts delivered by courts during the reporting period, including according to cases where investigation was initiated during the reporting period).

**4. Convicted persons** - unit of observation – a person. The Supreme Court will record the number of convicted persons according to their sex (male or female), age (minors from 14 to 18, adults – 18 or older), relevant article of the Criminal Code, concrete basis of discrimination, as well as social connection between the convicted person and the victim (entails total number of persons convicted by courts, including the number of convicted persons according to cases where investigation was initiated during the reporting period).

**5. Types of punishments imposed** – unit of observation – a person. The Supreme Court will record types of punishments imposed on convicted persons, according to a concrete article of the Criminal Code.

**6. Application of Article 53<sup>1</sup>(1) of the Criminal Code** - unit of observation – a case. The data will be disaggregated by a concrete basis of intolerance, a concrete article of the Criminal Code, as well as regional divisions.

**Transitional provisions:**

1.1. Upon signing the Memorandum of Cooperation on collection of data on crimes committed on grounds of intolerance with discrimination basis and publishing a joint report, the Parties shall prepare and publish a pilot report of data for the reporting period of October 1 - December 31, 2020;

1.2. The Parties shall, no later than February 20, 2021, provide to GeoStat in Georgian and English languages the data specified in Annex of this Memorandum, required for publishing a joint report on crimes committed on grounds of intolerance, for the period of October 1 – December 31, 2020.

1.3. GeoStat shall, no later than March 1, 2021, prepare and publish a joint statistical report for the period of October 1 – December 31, 2020;

1.4. The Parties, with the exception of GeoStat, shall provide to each other, no later than by February 1, 2021, information for the period of October 1 – December 31, 2020, required for recording the data specified in Annex of this Memorandum.