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Meeting: 1362nd meeting (December 2019) (DH)

Item reference: Action plan (25/10/2019)

Communication from Georgia concerning the case of Tsintsabadze v. Georgia (Application No. 35403/06)

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Réunion : 1362^e réunion (décembre 2019) (DH)

Référence du point : Plan d'action

Communication de la Géorgie concernant l'affaire Tsintsabadze c. Géorgie (Requête n° 35403/06)
(anglais uniquement)

DGI

25 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



საქართველოს იუსტიციის სამინისტრო MINISTRY OF JUSTICE OF GEORGIA



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25 / October / 2019

Mr. Fredrik SUNDBERG

Head of the Department for the Execution of
Judgments of the European Court of Human Rights

Tsintsabadze group v. Georgia (Application No. 35403/06)

Dear Sir,

Please, find enclosed the updated action plan including the individual and general measures undertaken by the Government of Georgia in the course of the execution of the *Tsintsabadze* group of cases.

Sincerely,

Head of the Department of the State Representation to
the International Courts

SIGNED/SEALED
ELECTRONICALLY

Beka DZAMASHVILI

DGI

25 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

The Government of Georgia

**UPDATED ACTION PLAN CONCERNING INDIVIDUAL AND GENERAL MEASURES IN
RESPECT OF THE EXECUTION OF CASES OF TSINTSABADZE GROUP**

**Department of State Representation to the International Courts
Ministry of Justice of Georgia**

25 October, 2019

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I. INTRODUCTION

1. The Government of Georgia (hereinafter - “Government”) furnished the Committee of Ministers (hereinafter – “Committee”) with the respective action plan in regards to the individual and general measures carried out in the course of execution of the cases of *Gharibashvili* group in August 2017.¹
2. At the 1294th meeting of September 2017 of the Ministers' Deputies, the Committee closed for the very first time the examination of the cases *Gharibashvili v. Georgia* and *Khaindrava v. Georgia* by means of resolution and the group has been renamed as *Tsintsabadze* group², subsequently in July 2018, the Government presented the updated action plan³ on individual and general measures of the *Tsintsabadze* group.
3. Moreover, at the 1324th meeting in September 2018,⁴ the Ministers’ Deputies noted with interest the information provided by the authorities regarding the ongoing efforts in the framework of the reopened investigations and encouraged the pursuit of these efforts. Furthermore, the Ministers’ Deputies noted with satisfaction in one of these cases of the present group - *Surmanidze and Others*, that the reopening has permitted the identification of the perpetrators who were brought to justice and thus, adopted the Final Resolution (CM/ResDH(2018)351) for this friendly settlement.
4. As of today, the *Tsintsabadze* Group is composed of 8 judgments and 11 decisions⁵ (friendly settlements with undertakings) relating to violations of articles 2 and 3 of the European Convention. For the purpose of rectification of all the deficiencies found by the European Court of Human Rights in the *Tsintsabadze* group of cases, the Government of Georgia carried out the individual measures in respect of all cases in accordance with the principles enshrined by the European Convention of Human Rights.
5. As illustrated below, by the outcomes of the investigations conducted in respect of the execution of the judgments/decisions of the Court, **the facts of death and torture or other inhuman or degrading treatment, are subject to an effective investigation** conducted by the competent law enforcement authorities and **unprecedented successful results have been achieved in 2017-2018 in that regard**. It should be underscored that Prosecutor’s Office of Georgia prioritizes to continue an investigation into every criminal case, on the basis of judgments/decisions of the European Court.
6. As to the general statistics regarding the results of the investigations conducted on the basis of the judgments/decisions of the European Court **as a result of an effective investigation, conducted particularly in 2017-2018, criminal prosecution was commenced against 13 persons on 5 different criminal cases (including cases of *Mikiashvili*, *Dvalishvili* and *Gegenava* from the present group). Notably, out of the criminal prosecution against 13 persons, judgments of conviction were delivered against 10 persons while cases against 3 persons are pending.**⁶
7. The Government hereby furnishes the Committee with the updated information in regards to the individual/general measures carried out in the course of execution of the cases of the present group.

¹ Available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)879E](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)879E)

² Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168074c273

³ Available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)767E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)767E)

⁴ Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1324/H46-6E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1324/H46-6E)

⁵ **8 judgments:** *Mikiashvili*; *Dvalishvili*; *Tsintsabadze*; *Enukidze and Girgvliani*; *Mindadze and Nemsitsveridze*; *Gablishvili and Others*; *Gogvadze*; *Kekelidze*. **11 decision:** *Baghashvili*; *Kiziria*; *Mzekalishvili*; *Molashvili*; *Kopadze*; *Studio Maestro LTD and Others*; *Chantladze*; *Lanchava*; *Bekauri and Others*; *Gegenava and Others*; *Manukian*.

⁶ The above statistical data does not necessarily concern solely the present group of cases rather it concerns all cases rendered by the European Court in respect of Georgia.

II. INDIVIDUAL MEASURES

Completed Cases

8. The subgroup of “Completed Cases” concerns judgments/decisions in which the tangible progress has been achieved and concrete persons have been identified/found guilty by the domestic courts. In some cases all the individual measures which could be enforced by the Government are already implemented, and no other attainable activities could be carried out, hence it follows that, they should be deemed completed.

➤ ***ENUKIDZE and GIRGVLIANI v. GEORGIA (No. 25091/07, final on 27.07.2011)***

Case Summary

9. In case of *Enukidze and Girgvliani v. Georgia* the European Court found a violation of article 2 of the Convention as a result of the Georgian authorities’ failure to carry out an effective investigation into Sandro Girgvliani’s death. Moreover, the Court concluded that the authorities had not complied with their obligations to furnish all necessary facilities to the Court, in violation of article 38.

New investigation

10. The Government already provided the comprehensive information in their previous communications in the present case, stating that as a result of the renewed, effective investigation the former Minister of Internal Affairs and some other high officials were convicted of abuse of official powers, forgery by an official, exceeding official powers, unlawful deprivation of liberty, carrying out false investigations or for affording the persons convicted in the initial proceedings privileged conditions of detention.
11. Consequently, the new investigation already resulted in several cases of convictions. As the Committee is already well aware 8 persons have already been convicted - Ivane Merabishvili (for abuse of official powers; forgery by an official); Oleg Melnikov (for an unlawful imprisonment); D.K. (for an unlawful imprisonment); T.T. (for abuse of official powers); M.G. (for abuse of official powers); Bachana Akhalaia (for abuse of official powers); D.Ch. (for exceeding official powers); Mikheil Saakashvili (for abuse of official powers).
12. In addition to the above information, the Government submits updated information concerning the case of Davit Akhalaia. The Tbilisi City Court by its judgment dated 29 October 2018 found the former Head of the Constitutional Security Department – David Akhalaia guilty under various articles of Criminal Code (for abuse of official authority, organizing illegal deprivation of liberty, illegal deprivation of liberty, degrading or inhuman treatment and official fraud) and sentenced him to seven years and six months imprisonment with deprivation of the right to hold an office for one year and six months.
13. The evidence submitted to the Court confirmed that on 27 January 2006, Sandro Girgvliani had a verbal altercation with T.M., sitting at the table with T.M. and Davit Akhalaia, in Tbilisi, on Shardeni Street. For this reason, while obeying Davit Akhalaia’s instruction, the Constitutional Security officials used force against Sandro Girgvliani and his friend to put them into the car, illegally deprived their liberty and kidnapped them in the countryside.⁷
14. As the Committee is well informed, D.Ch. and David Akhalaia have fled the country which hampers the process to bring them to justice and to effectively execute the case of *Enukidze and Girgvliani v. Georgia* for the reasons presented exhaustively by the Government in documents of August 2017 (see updated action plan and addendum to updated action plan concerning individual and general measures in respect of the execution of cases of *Gharibashvili* Group) which has been also reflected in the decision of the Committee adopted at their 1294th meeting of 19-21 September 2017.⁸

⁷ Available at: <http://pog.gov.ge/en/news/sandro-girgvlianis-saqmeze-da-Zaladobrivi-danashaulebis-faqtebze-daviT-axalaia-7-wliT-da-6-TviT-Tav>

⁸ Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1294/H46-10E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1294/H46-10E)

15. The Government has already provided that the Tbilisi City Court by its judgment dated **5 January 2018** found ex-president of Georgia - Mikheil Saakashvili guilty of abuse of official powers in the course of pardoning the individuals convicted for Sandro Girgvliani case.⁹ In particular, the Tbilisi City Court fully relied on the evidence submitted by the prosecution and found him guilty of abuse of power when pardoning people arrested for the case of the murder of Sandro Girgvliani under article 332 §2 of the Criminal Code of Georgia (abuse of official power). It has been established that Mikheil Saakashvili was informed of the crime regarding Sandro Girgvliani and the persons involved in the commission thereof from the very beginning and joint and cooperated criminal actions of different branches of state power, orchestrated by the President of Georgia Mikheil Saakashvili, obstructed administration of justice in relation to Girgvliani case, actual circumstances of the case were falsified and David Akhalaia and others were released from criminal liability. These actions caused substantial violation of the rights of Girgvliani's family and of the legitimate interests of the State.
16. On 18 July 2018 the appeal court upheld the decision of the first instance court rendered in January 2018, by which the former president of Georgia was found guilty of abuse of power.¹⁰ By a decision of 21 May 2019 the Supreme Court of Georgia rejected an appeal on points of law lodged by the ex-president.¹¹
17. It should be underlined again that according to the European Court: *“Indeed, the Court is struck by how the different branches of State power – **the Ministry of the Interior, as regards the initial shortcomings of the investigation, the Public Prosecutor’s Office, as regards the remaining omissions of the investigation, the Prisons Department, as regards the unlawful placement of the convicts in the same cell, the domestic courts, as regards the deficient trial and the convicts’ early release, the President of Georgia, as regards the unreasonable leniency towards the convicts, and so on – all acted in concert in preventing justice from being done in this gruesome homicide case.**”*¹² Therefore, conviction of ex-president of Georgia directly eradicates the concern of the European Court indicated in the aforementioned paragraph and represents an effective execution measure.
18. The Government will update the Committee in respect of any developments concerning the execution of the case at issue.

➤ ***MIKIASHVILI v. GEORGIA (No. 18996/06, final on 09.01.2013)***

Case Summary

19. The case concerns the applicant's ill-treatment by the police on 29 October 2005 as well as inadequacy of related investigation (substantive and procedural violations of article 3) and lack of an effective investigation into the applicant's allegation of ill-treatment by prison officers on 14-15 August 2006 (procedural violation of article 3).

Status of investigation (ill-treatment of the applicant on 29 October 2005)

20. In light of the decision of the Committee of Ministers of December 2016 (DH),¹³ the investigation was renewed into the alleged ill-treatment of the applicant of 29 October 2005.
21. In its decision of September 2017, the Committee noted with interest the further investigative activities conducted in response to the concerns expressed by the Committee in its previous decision in the cases of

⁹ Available at: <http://pog.gov.ge/en/news/sasamarTlom-saqarTvelos-yofili-prezidenti-mixeil-saakashvili-damnashaved-scno>

¹⁰ Available at: <http://pog.gov.ge/en/news/saapelacio-sasamarTlom-mixeil-saakashvilis-mimarT-gamotanili-gamamtyunebeli-ganacheni-Zalashi-datova>

¹¹ Available at: http://pog.gov.ge/en/news/uzenaesma-sasamarTlom-girgvlianis-saqmeze-mixeil-saakashvilis-da-misi-advokatis-sakasacio-sachivari_1a2fda6b5

¹² Judgment of *Enukidze and Girgvliani v. Georgia*, application No. 25091/07, § 276, 26 April 2011.

¹³ Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2016\)1273/H46-10](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1273/H46-10)

Mikiashvili and Dvalishvili and urged the authorities to continue the investigations with impartiality and celerity.¹⁴

22. As the Committee is well-informed, it has been established by the Chief Prosecutor's Office that on 29th October 2005, the Officers of Patrol Police Department of the Ministry of Internal Affairs ("MIA"), N.J. and G.A. stopped the applicant and his friends for the purpose of check. In the process of inspection, altercation turned into physical confrontation and patrol inspectors exceeded their official power and physically abused the applicant. The latter was thrown to the ground as well as punched and kicked in the area of the face and body. These actions did not serve the purpose of detention of the victim, but were clearly beyond the scope of the proportional force used throughout detention. Subsequently, additional patrol crew was called on the spot, they detained two persons - the applicant and D.B. and took them to Tbilisi No. 2 Temporary Detention Isolator (hereafter TDI), where the investigator of the Patrol Police Department A.Ts. and other employees of the MIA physically abused the aforesaid individuals. Due to beatings during the arrest and later in the TDI, the applicant and D.B. received various health injuries.
23. **Consequently, the Prosecutor's Office of Georgia, as a result of the effective investigation, on 3 April 2018 has charged 3 former employees of the MIA – N.J., G.A. and A.Ts. for the abuse of power.**¹⁵ As of today, the case is pending before the Tbilisi City Court at its final stage.

Status of investigation (Alleged ill-treatment of the applicant on 14-15 August 2006)

24. In light of the judgment of the European Court, the investigation has been renewed on 31 January 2013 by the Prosecutor's Office of Georgia - an independent body institutionally and in practice from those implicated in the incident, namely, the prison personnel.
25. The Government underlines that within the renewed investigation all relevant witnesses including the applicant, the applicant's sister, inmates, employees of the Prison Hospital and some other administration members have been interrogated.
26. It is noteworthy that in the context of the renewed investigation, Giorgi Mikiashvili has been interrogated several times and the investigative experiment has been conducted with a view to restoration of the facts indicated in the case. In addition, numerous identification parades have been conducted and the sister of the applicant – N.M. has been interrogated as well.
27. Having regard to the information received by the interrogation of the above mentioned persons (including repetitive examination of several key witnesses) and other eyewitnesses, there is no sufficient evidence to prove that Giorgi Mikiashvili was beaten by the staff of the Penitentiary Establishment No. 18. In some cases, the witnesses interviewed during the renewed investigation reiterate the facts that have already been provided by them, which does not furnish any new and important information to the investigation. The above-mentioned, demonstrates anew the picture that has already been revealed in the context of previous investigation.
28. Therefore, the possibility of receiving any new and/or additional information on the part of the witnesses regarding the factual circumstances of the case has already been completely exhausted.
29. Thus, the Government asserts that since the facts of this case took place back in 2006 almost 13 years have passed. Given the time elapsed after the alleged facts of ill-treatment it is not possible for the authorities to undertake a number of further investigative activities and it is objectively impossible to rectify all the shortcomings of the original investigation. In particular, it is not possible to change the fact that the inmate A.A. (who claimed that he had kicked the applicant only once, whereas the prison officers asserted, without providing any details, that there had been a fight between the applicant and A.A. and that they had had to intervene in order to stop it), was not given a medical examination at the material time to establish the

¹⁴ Available at: [http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2017\)1294/H46-10E](http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2017)1294/H46-10E)

¹⁵ Available at: <http://pog.gov.ge/en/news/saqarTvelos-prokuraturam-adamianis-uflebaTa-evropuli-sasamarTlos-gadawyvetilebebis-shesabamisad-efeq>

nature of his injuries. In addition, among others, it would have been impossible currently to obtain any evidence through implementation of forensic expertise in respect of the applicant.

30. Subsequently, according to the investigative authorities the investigation of the second episode shall be terminated on the grounds of lack of criminal act. In particular, the commission of ill-treatment against the applicant in the prison was not confirmed by the investigation. In addition it is noteworthy that the European Court found solely a procedural violation in respect of the said episode and not the substantial one, thus taking into account the exhaustion of all investigative measures (interrogation of all possible witnesses to secure evidence, including: the applicant, alleged assaulters, the employees of the Institution, the employees of the Prison Hospital, inmates R.M. and I.M. who presumably eye witnessed the incident, the convict A.A., the applicant's sister, the doctors of the "Empathy Rehabilitation Centre", etc.) conducted in relation to this incident and considering the lack of signs of commission of the criminal act, the investigation shall be terminated. Furthermore, the applicant was involved in the investigation process and periodically informed regarding both episodes of the case.
31. **In light of all the aforementioned - taking into account the concrete results achieved in first episode and exhaustive investigative activities carried out in respect of second episode, the Government kindly asks the Committee to close the examination of Mikiashvili case.**

➤ *DVALISHVILI v. GEORGIA (No. 19634/07, final on 13.03.2013)*

Case Summary

32. The case concerns violation of article 3 under its substantive and procedural limbs due to the applicant's ill-treatment with the aim of extracting a confession and the authorities' failure to conduct an effective investigation into his complaints.

Investigation

33. The Committee has already been informed that investigation has been renewed by the Investigation Unit of the Chief Prosecutor's Office of Georgia which is institutionally independent body from those implicated in the alleged events, namely, the personnel of Tskaltubo Division of the Ministry of the Internal Affairs of Georgia.
34. As the Government has provided, throughout the renewed investigation all relevant witnesses have been questioned. In addition, the investigation authorities inspected the alleged scene of the incident in light of the police officers' and the applicant's testimonies, in particular, the investigation authorities conducted the investigative experiment, etc. On 8 November 2017, the scene of the applicant's arrest has been examined which further elucidated new circumstances.
35. Consequently, as the Committee is well aware the Prosecutor's Office of Georgia established that, on 27 December 2006, on the territory of 9 April Street, employees of Tskaltubo MIA District Division, detained the applicant as a suspect, who was transferred to the administrative building of Tskaltubo MIA. Instead of conducting investigative and procedural actions under the law, head of the Criminal Investigation Department of Tskaltubo Police Division, B.Gh. and deputy head of the same Division M.M. physically assaulted him. In particular, they were beating the applicant and physically abused him in the area of head, face, hands and feet. As a result, he received less severe damage to health. As a consequence of the violence, the victim had to conduct various rehabilitation treatments.
36. Accordingly, the Prosecutor's Office of Georgia, as a result of the effective investigation, has charged 2 former employees of the MIA – M.M. and B.Gh.¹⁶ The Government updates the Committee that on 22

¹⁶ Available at: <http://pog.gov.ge/en/news/saqarTvelos-prokuraturam-adamianis-uflebaTa-evropuli-sasamarTlos-gadawyvetilebebis-shesabamisad-efeq>

February 2019 they were found guilty by Tbilisi City Court for the crime envisaged by article 333 (3)(b) (exceeding official powers) of the Criminal Code.

37. **In view of the aforementioned, the Government implemented the relevant measures addressing the findings of the Court and the decisions of the Committee resulting in convictions and hereby kindly ask the Committee to close the examination of Dvalishvili case.**

➤ ***BAGHASHVILI v. GEORGIA (No. 5168/06, final on 10.04.2014)***

38. This case concerns the lack of effective investigation into allegation of violations of the right to life of the applicant's son who had been killed by police officer on 11 December 1999, during the attempt to apprehend him for having committed a breach of public order. It concerns a friendly settlement with undertaking to ensure the effectiveness of the investigation into the alleged violation of article 2 of the Convention (procedural violation of article 2).
39. On 31 January 2015, the decree of 17 May 2004 on termination of investigation was annulled and the case was transferred to Tbilisi Prosecutor's Office. The information regarding investigation was accessible to the applicant who got acquainted with the case materials - on 9 February 2018.
40. Throughout the new investigation several investigative measures were conducted with the active involvement of the representative of the applicant. In particular, on 20 July 2019 D.N. was questioned. Furthermore, - T.B. - defense lawyer, eye witnesses of the incident - T. T., and N.T and police officer - Z.D. were questioned on 25 July 2019. The above witnesses (except the defense lawyer) had been already interviewed within the investigation. They found it difficult to recall the detailed factual circumstances due to long time passed since 1999 and they could not provide any valuable information for the investigation.
41. Despite the investigative steps carried out, the investigation faced significant challenges in the present case, since some witnesses (I.M., R.A., G.F., M.A.) including 1 eyewitness are deceased. Also, as 20 years have elapsed since the incident the witnesses could not invoke the facts of the case in detail, their testimonies do not demonstrate anything new and tangible to the investigation. Furthermore, there is no material evidence enclosed to the criminal case which could be examined/subjected to the expertise. Thus, possibility of receiving additional information from the witnesses/expertise has been objectively exhausted.
42. In view of the investigative activities already carried out and the obstacles faced by the investigation, it could not be concluded that N.A. committed manslaughter by exceeding the measures required for seizing the offender. Therefore, the relevant decision regarding termination of investigation should be adopted shortly. It should be also emphasized that in the present case the Government has acknowledged solely the violation of procedural limb of article 2 and declared their readiness to conduct effective investigation with respect to the allegation of excessive use of force against Mr Zviad Baghashvili.
43. Consequently, the Government wish to reiterate over again that it is reasonable to terminate the investigation. In the context of the renewed investigation appropriate and necessary investigative and procedural actions were taken by the investigation authorities. Taking into account that considerable time elapsed after the fact (the alleged fact took place on 11 December 1999) the new investigation was as comprehensive as possible and consisted of all sensible steps needed to obtain the relevant evidence. The information and evidence obtained during the investigation were fully and objectively evaluated.
44. Subsequent to the legal analysis of the evidence obtained in the case the final conclusion on termination of the case shall be adopted.
45. **Taking into account the comprehensive and exhaustive investigative activities carried out in respect of the Baghashvili case, the Government kindly asks the Committee to close the examination by the final resolution.**

➤ ***TSINTSABADZE v. GEORGIA (No. 35403/06, final on 18/03/2011)***

Case Summary

46. In the present case the Court found that the investigation into the death of Ms Tsintsabadze's son had not been independent, objective or effective. Nor did the State provide a satisfactory and convincing explanation as regards the death, which had occurred in suspicious circumstances in prison. Therefore, the violation of article 2 of the Convention has been found.

Investigation

47. With the purpose of carrying out a thorough, prompt, independent and effective investigation into Mr Tsintsabadze's death, on 5 March 2011 the decision of District Prosecutor's Office of Western Georgia concerning the termination of investigation on the case had been annulled. The investigation has been renewed by the Investigation Unit of the Chief Prosecutor's Office of Georgia that is institutionally independent body from those implicated. The investigation team took all appropriate and feasible measures to establish factual circumstances of the case.
48. The steps undertaken by the investigative authorities up to date are thoroughly summarized in updated action plans dated 11 August 2017 and 13 July 2018 (the mother of Mr Zurab Tsintsabadze – S.T. has been recognized as a successor of the victim; interrogations of numerous (approximately 70) witnesses and inspection of the former No. 9 Khoni prison have been carried out; additional samples of Zurab Tsintsabadze's handwriting were obtained; identification and interrogation of "Nino" - the addressee of a letter allegedly written by the deceased; the graphical expertise of handwriting was appointed in order to compare the farewell letter allegedly written by Zurab Tsintsabadze to "Nino" with the samples of the deceased's handwriting etc.). Furthermore, in October 2017 employees of former No. 9 Khoni prison were interrogated and in February 2018 information has been collected from the MIA regarding border crossing of former prisoners of No. 9 Khoni prison.
49. As to the obstacles of the investigation, as the Committee is aware with a view to carry out physical-technical commission expertise on the case, the investigative authorities requested crucial evidential piece - "the rope" from the Ministry of Corrections by which, according to the criminal case materials, the applicant hanged himself. However, the aforesaid evidential piece could not be found. Therefore, the expertise cannot be carried out due to the aforementioned objective obstacle. Apart from that, the investigative authorities are not able to interrogate former inmates of No. 9 Khoni prison, since some of them have crossed the border of Georgia and the whereabouts of others are not known to the investigative authorities, also some witnesses have passed away.
50. In addition the re-examination of the handwriting of the alleged letter of the deceased confirmed that the text as well as signatures in the obtained files and in the letter of the deceased addressed to "Nino" were performed by the same person. Therefore, the investigative authorities have concluded that the final letter addressed to "Nino" was written by Zurab Tsintsabadze.
51. Since submission of the action plan of July 2018, the investigator who back in 2005 year was in charge of the case of death of Z. Tsintsabadze was questioned, although no information has been obtained in respect of the circumstances regarding the loss of crucial evidential piece - the so called "rope".
52. The monk – SH.B. was questioned as well. He was serving his sentence at No. 9 Khoni prison and at the material time was serving as a church servant in the Temple of Khoni prison. He provided important information, in particular the witness noted that he knew Z. Tsintsabadze well and characterized him as a calm and "conflict free man". On September 30 (2005), at around 6 p.m. Z. Tsintsabadze approached him, he was disturbed and explained that he could not call his wife by mobile phone. Z. Tsintsabadze asked him "if he would pray again for him once he no longer exists". At about 9 p.m. SH. B. read the evening prayer in the Temple, and when he left it, the witness heard commotion of crowd from the direction of storeroom which was placed next to the prisoners' barracks. He headed in the direction of the storeroom and as he approached, he learnt that Z. Tsintsabadze had hung himself.

53. Furthermore, I.G. was questioned as a witness. He was serving his sentence at No. 9 Khoni prison at the material time and explained that he was in charge of the so called “hairstylist’s room” which was located in the prisoners' barracks. He noted that on the day of demise of Z. Tsintsabadze he spent all day in the “hairstylist room” and was there until the evening. Later, once he left his room he saw group of prisoners from whom he heard that Z. Tsintsabadze had hung himself in the storeroom, since his wife left him and that he was troubled because of that fact.
54. Subsequent to the familiarization with case materials in July 2018, the representative of the applicant made a motion in respect of the implementation of several investigative measures. The motion was endorsed by the investigative authorities.
55. The applicant’s representative stated in the motion that there was contradiction between the conclusions of the forensic medical examination of the late Z. Tsintsabadze, in particular in respect of the strangulation mark. Therefore, on the basis of the motion the respective expert - K.E. has been questioned over again. K.E. explained particular details around the case and denied any inconsistency between the conclusions. In addition, on the basis of the motion number of witnesses including inmates at the material time at Khoni prison (V.M. and G.G.) and then investigator (M.S.) in charge of the case were questioned as well. The main purpose of the representative was further elaboration on the issue of the loss of the so called “rope” and the clarification of the inconsistencies between the testimonies of the prisoners.
56. To sum up the results of the investigation, the objective evidence was not obtained in respect of suspicion of murder of Zurab Tsintsabadze. It is established by the competent authorities that the farewell letter in the case was composed by Zurab himself and no objective evidence was found that he had been incited by someone to commit a suicide.
57. It is also noteworthy that since the facts of this case took place back in 2005 almost 14 years have elapsed. Given the time passed after the alleged facts of death of the applicant’s son it is not possible for the authorities to undertake a number of investigative activities and it is objectively impossible to rectify all the shortcomings of the original investigation including the identification and examination of the so called “rope”.
58. It should be restated over again that in the context of the renewed investigation all appropriate and necessary investigative and procedural actions were taken by the investigation authorities. The new investigation was as comprehensive as possible and consisted of all reasonable steps needed to obtain relevant evidence, taking into account that considerable time elapsed after the fact. The investigation made sufficient effort and demonstrated diligence to establish the facts of the case. The information and evidence obtained during the investigation were fully and objectively evaluated.
59. Hereafter, the investigation of the case did not lead to the identification of objective evidence that would confirm the commission of crime by concrete person according to the relevant standards. Subsequent to the legal analysis of the evidence obtained in the case, the final conclusion shall be adopted regarding termination of investigation on the grounds of lack of criminal act.
60. The Government has a strict policy to combat ill-treatment and to suspend any law enforcement/prison officer allegedly involved in any violation of human rights. As of today, any case of a suicide in penitentiary establishments is followed by an immediate response/investigation. The recent illustration of the latter is that the inspector of the Electronic Surveillance Unit was charged for the crime provided for in paragraph 1 of article 342¹ (violation of the internal regulations by an employee of the Special Penitentiary Service or an equivalent person) of the Criminal Code, and the Director of Kutaisi Penitentiary Establishment N2 was dismissed (See paras. 287-289 below).

➤ ***KIZIRIA v. GEORGIA (No. 4728/08, final on 03.04.2014)***

Case summary

61. This case concerns the lack of effective investigation into the alleged violation of the right to life of the applicant's son who had been killed by police officers on 23 February 2006.

Investigation

62. Following the decision of the European Court, the investigation into the death of the applicant's son was reopened on 31 January 2015 by the Tbilisi Prosecutor's office. On 2 April 2015 the legal qualification of the present case has changed under article 333, paragraph 3(b) of the Criminal Code of Georgia envisaging exceeding official powers by an official or a person equal thereto, using violence or a weapon.
63. In the context of renewed investigation, extensive investigative actions have been carried out which has been presented in the action plans of August 2017 and July 2018. In particular, interrogation of relevant witnesses, including the taxi driver who took the applicant's son and his friends, residents of the Village Baghdati district who lived adjacent territories to the scene, one of the deceased person's (V.B.) relative, police officers, etc; analysing the relevant documental evidence and data, such as information regarding the phone calls made on 23-24 February 2006; collecting the initial criminal case files; conducting relevant expertise and investigative experiment, etc.
64. Despite the numerous objective obstacles noted in the previous submissions, the following investigative steps have been carried out since submission of the previous action plan:
65. In July 2018 then Inspector of Imereti Regional Main Division was interrogated. The witness stated that he participated in the *Vartsikhe* operation, however, due to the fact that long time has passed after the incident he finds it difficult to recall the detailed factual circumstances.
66. The former chief of the Criminal Police Department of Imereti Regional Main Division - G.D. was questioned as well. He confirmed that on 23 February 2006, "the criminals" opened fire at the police and exchange of fire took place. After shooting, he witnessed the firearms next to the dead bodies. According to witness, he does not possess any other relevant information regarding the case.
67. The former Deputy Chief of the Imereti Regional Main Division - J. Kh. was questioned who stated that, he didn't attend the planning of the special operation and when he arrived at the village Vartsikhe, the scene of crime was being inspected and he witnessed the firearms near the dead bodies. He doesn't remember other details in relation to the case.
68. The chief of Imereti Regional Main Division at the material time - L.K. was interrogated on 4 July 2018. He stated that, on 26 October 2006 he fell into the elevator shaft and sustained a severe traumatic injury, including serious memory impairment (which was confirmed by his medical file), accordingly, he finds it difficult to recall the factual circumstances of the Special Operation and he only knows that "the criminals" had resisted the police and they were killed during the exchange of fire.
69. The service record of the investigator of Imereti Regional Department -A.K. (he is currently abroad) who was proceeding the criminal case N 8806022 was requested from the Human Resources Department of the MIA in July 2018. It was established that by the time the investigation was terminated, he had been working in another structural unit and therefore, he would not have any link to the evidence of the criminal case.
70. Furthermore, the investigation has requested the list of broadcasters operating in Georgia at the material time. Upon acquiring the abovementioned data, respective materials illustrating the special operation were collected from TV broadcasts. The analysis of the obtained footages revealed that it was an operative material of the MIA. Afterwards, the full video recording and the names of the members of the crew who attended the special operation were requested from the MIA. According to the response, the requested information is not preserved.

71. In the context of renewed investigation, the applicant was acquainted with the information regarding investigation step by step on regular basis.
72. The Government wish to draw the Committee's attention to the objective obstacles noted in the previous action plans of August 2017 and July 2018, which hinders the effectiveness of the reopened investigation, among others:
73. Since gunpowder residue has not been taken out from the corpses at the material time, it is impractical to establish whether the deceased persons were shooting towards the police officers. This factual circumstance is impossible to be rectified within the reopened investigation as the investigation authorities cannot collect cartridge cases seized from the scene of the shooting in particular from the location of special forces. Hence it is unfeasible to identify who carried out the shootings towards the applicant's son. Taking into account that the bullets have not been taken out from the corps the investigation authorities are not able to identify the police officers who inflicted fatal injuries to them.
74. There are no more witnesses in respect of this case except police officers who personally participated in the police operation or visited the scene of the shooting and who are allegedly tended to give incomplete testimonies.
75. Participants of the special operation and persons who were at the scene (except for the taxi driver G.Ch.) and witnessed the incident, could not invoke the facts of the case in detail and their testimonies do not demonstrate any tangible information to the investigation. The police officers, interviewed during the renewed investigation could not provide the detailed factual circumstances of the case, that is to say they could not name those who came first to the corpses before the investigators arrived and inspected the scene. Police officers, while questioned during the renewed investigation firmly deny to provide details of firefight in Vartsikhe (the name of the village and the location of the alleged shootings), including their location and the location of alleged perpetrators during the shootings. In view of the above, the investigative experiment to reveal the credibility of the information provided and disclose the contradiction of their testimonies is devoid of its vital relevance.
76. In the view of the abovementioned, the investigation could not collect the objective evidence which would confirm the culpability of concrete persons. Thus, the investigation should be terminated.

➤ ***GEGENAVA and OTHERS v. GEORGIA (No. 65128/10, final on 12.11.2015)***

77. The Government submits the measures taken in the course of the execution of the decision in the case of *Gegenava and Others v. Georgia*, a friendly settlement with undertaking to ensure the effectiveness and prompt finalisation of the ongoing investigations of criminal cases related to the ill-treatment of three applicants.
78. Regarding another separated criminal case related to third applicant, the Government also undertook to conduct a new effective investigation into allegations of ill-treatment on 6 March 2010 in Rustavi No. 2 Prison (procedural violations of article 3 acknowledged by the Government). In their declaration, the Government also acknowledged substantive violation of article 3 on account of the material conditions of the applicants' detention in Rustavi No. 2, Rustavi No. 6 and Kutaisi No. 2 prisons as well as in the prison hospital and the lack of adequate medical treatment with respect to the second and third applicants.
79. Considering the fact that all four criminal cases (referred to in the Government's Unilateral declaration) were related to the alleged crimes against the applicants (prisoners) placed in the same penitentiary establishment and the persons who possibly hold the information regarding the mentioned facts represent the employees or the inmates of the same penitentiary establishment, the above-cited criminal cases were merged and investigation continued pursuant to article 333 (1) (Exceeding official powers), article 333 (3) (b) and article 144³ (2) (a)(e)(g) (Humiliating or inhuman treatment) of the Criminal Code.

Placement of the applicants in a punishment cell of Rustavi No. 6 Prison in September 2006

80. As the Committee is already well-aware, within the context of renewed investigation, the investigative authorities collected all relevant information from Rustavi No. 6 Prison for the period of September 2006 and carried out extensive investigative activities.
81. Consequently, 19 former prisoners, including the applicants, of the No. 6 facility have been recognised as victims.
82. As a result of successful investigation of the present episode, on 20 November 2017 in the course of the execution of the decision - three former employees of the Department of Legal Regime of the Penitentiary Facility No. 6 - D.A., T.M., and B.D. - have been prosecuted.¹⁷ They were charged according to subparagraphs “a”, “b”, “d”, “e” and “g” of article 144³ (2) (Humiliating or inhuman treatment) of the Criminal Code.¹⁸ On 25 May 2018 the abovementioned former employees were found guilty by the domestic court and sentenced to four years and eight months imprisonment (reduced by Act of Amnesty and sentenced to one year and six months imprisonment).
83. On 17 September 2018 the Tbilisi City Court while deliberating on the merits of the said case (subparagraphs “a”, “b”, “d”, “e” and “g” of article 144³ (2) - Humiliating or inhuman treatment) convicted the former director - S.Kh., former deputy director – L.B. and former head of the Legal Regime Division – R.J. of Rustavi No. 6 Facility and found these persons guilty. They were sentenced to four years and eight months imprisonment (reduced by Act of Amnesty and sentenced to one year and six months imprisonment).
84. The investigation established that during the period up to 2012, the inhuman treatment against the prisoners had systematic nature in the Penitentiary Facility No. 6. Specifically, in the period of the August-September 2006, the director of the facility, his deputy and the head of the Legal Regime Division, with complete ignorance of the provisions of the Prison Regime, developed their own rules of treatment with the convicts of punishment for the aim of intimidation and uncomplaining obedience. As a result of their actions, the prisoners were deprived of the personal hygiene items granted by the law, the bed linen and were forced to stay nude. They remained in a punishment cell in unbearable conditions despite low temperatures for many days. This type of inhuman treatment had the systemic character.
85. In order to get hold of information in respect of the alleged ill-treatment of the second applicant (Imeda Butkhuzi) upon his transfer to Rustavi No. 6 Prison see action plan of 13 July 2018.
86. Taking into account the relevant measures taken by the investigation authorities, the Government wish to stress that it is reasonable to terminate the investigation (6 persons were already prosecuted and judgments of conviction were delivered against all of them). Furthermore, the investigation into another crime episodes of the same case did not lead to the identification of objective evidence that would confirm the guilt of concrete persons and would give the investigation a legal basis to initiate criminal proceedings against other employees of the penitentiary institution in compliance with the relevant standards.
87. **Taking all the aforesaid into consideration, the Government kindly asks the Committee to close the examination upon a final resolution on the *Gegenava* case due to the full implementation of all the relevant investigative measures.**

¹⁷ Available at: <http://pog.gov.ge/en/news/saqarTvelos-prokuraturam-adamianis-uflebaTa-evropuli-sasamarTlos-gadawyvetilebis-shesabamisad-efeqti>

¹⁸ Article 144³ of Criminal Code of Georgia, available at:

<https://www.matsne.gov.ge/ka/document/view/16426?impose=parallelEn&fullscreen=1&publication=50> (consolidated version of 25/07/2006 - 10/11/2006)

➤ ***MZEKALISHVILI v. GEORGIA (No. 8177/12, final on 05.03.2015)***

Case Summary

88. This case concerns the lack of adequate criminal investigation into the applicant's alleged ill-treatment by the officers on 6 April 2010, when he had been arrested on robbery charges. The Government acknowledged the procedural violation of article 3 and undertook to conduct an effective investigation into the applicant's ill-treatment allegations.

New investigation

89. The Committee is well-aware that within the renewed investigation, the investigative authorities carried out interrogation of respective witnesses, including the applicant, several inmates, an independent forensic expert, inspectors of Kakheti Regional TDI, police officers etc.

90. In particular, on 21-22 November 2017 the representatives of the Public Defender, who prepared a record on the applicant's injuries and who participated in the preparation of the above-mentioned record were interviewed by the investigative bodies.

91. Furthermore, on 4 December 2017 and 23 January 2018 witnesses L.Y. and T.Y. who were arrested together with the applicant on 6 April 2010 were questioned. They denied the fact of the applicant's beating or committing any illegal act against him and indicated that the applicant had no trace of any injuries on his body.

92. Within the renewed investigation M.G., whose shop was allegedly robbed by the applicant, was interviewed on 1 August 2017. M.G. indicated, that she had not noticed any trace of injuries on the face or on any other visible parts of the applicant's body when she came for examination and the police officers were questioning Mzekalishvili. Also she pointed out that during her presence, no one had assaulted him verbally or physically.

93. In March 2018 doctor and some other employees of the Penitentiary Institution No. 5 (I.K., N.M., G.Ch., S.A.) have been interrogated. According to them in April 2010 they externally examined the applicant's body and drew up the protocol which indicated that Malkhaz Mzekhalishvili had injuries on his body. They stated, that all persons attending the examination, including the applicant, signed the record. They pointed out that he had no other injuries on his body, except for the injuries mentioned in the record.

94. Furthermore, as the Government had previously indicated, information regarding phone calls of the police officers, in connection with this case, was requested. But as a result of the analysis of relevant data, essential circumstances of the case have not been established.

95. Moreover, the investigative authorities requested the information regarding the cellmates of the applicant. By the letters of 5 and 11 May 2018 the Ministry of Corrections notified the investigative body, that the information regarding cellmates was not preserved.

96. To sum up, the Government stresses that within the renewed investigation, the interrogated police officers firmly denied doing any harm to Malkhaz Mzekalishvili during his arrest. Moreover, other two persons arrested and placed in the temporary detention isolator together with the applicant refused any fact of ill-treatment as well and stated that they had not noticed any injuries on the applicant's body.

97. The investigation established that the renewed investigation had been conducted as comprehensively as possible and consisted of all reasonable measures necessary to obtain the evidence. The latter had been carried out with due diligence which was necessary to promptly ascertain the circumstances of the case. In the course of the investigation all persons who could have any connection with the present criminal case were additionally questioned. Moreover, other individuals were also identified and questioned. However, the objective evidence which upon the relevant standard would confirm the culpability of the particular individuals and create a legal basis for initiating criminal proceedings against the persons named by the

applicant has not been collected by the investigation. Therefore, the investigative authorities consider that the investigation of the present case shall be terminated.

➤ ***KOPADZE v. GEORGIA (No. 58228/09, final on 02.04.2015)***

Case Summary

98. This case concerns the lack of adequate investigation into the applicant's alleged ill-treatment in detention, by the prison guards, on 3 March 2009. The Government acknowledged the procedural violation of article 3 and undertook to conduct an effective investigation into the applicant's allegations.

New investigation

99. The new investigation has been commenced on 21 May 2015 by the Chief Prosecutor's Office.
100. The investigative activities carried out within the renewed investigation have been presented in the updated action plan of August 2017 and July 2018, including interrogation of the applicant, the former inmates and prison officers; collection of all relevant documentations etc.
101. As the Government has already stressed out one of the main challenges in the present case represents the fact that the information on inmates of the applicant is not preserved. In particular, the investigative authorities addressed the Ministry of Corrections in order to acquire the information regarding the identities of other cellmates of the applicant. The Ministry notified that the information on cellmates (i.e. the persons placed with the applicant in the same barrack) is unknown since No. 7 Prison was barracks-type prison and the registration was not conducted regarding the cells, which is a huge obstacle in the context of identification of the eyewitnesses. Solely one neutral eyewitness (G.J.) has been identified by the investigation, however he is deceased.
102. Furthermore, the investigative authorities requested the general information from the Ministry of Corrections on the identities and demographic data of the prisoners who served their sentences in No. 7 Prison during the period of February-March 2009. Based on the information received, several prisoners were interviewed. However, due to the fact that long time has passed after the incident the witnesses find it difficult to recall the detailed factual circumstances and they could not provide any valuable information for the investigation. The Government already provided that within the previous investigation, four neutral prisoners were interrogated. The investigators attempted to interview the aforesaid prisoners anew. Though pursuant to the notice received they have crossed the state border and do not reside at the territory of Georgia.
103. In light of the aforementioned, the Government emphasizes that several dozens of witnesses have been questioned, however, it should be taken into consideration that the employees of the prison clearly refused any fact of violence towards the prisoners and stated that they had been the victims of the attacks of the prisoners themselves and that the force they used was necessary and proportional in that situation.
104. To sum up, pursuant to the investigative authorities, the renewed investigation had been comprehensive and consisted all reasonable measures necessary to obtain the evidence. Moreover, the persons who had not been questioned during the previous investigation has now been identified and interrogated. However, any objective evidence which upon a respective standard would have established commission of a crime by a specific person, has not been confirmed by a comprehensive investigation. Thus, the investigative authorities consider that the investigation of the present case shall be terminated.

Termination of the investigation of particular cases and the possibility of appeal

105. In light of the comprehensive investigative and procedural measures carried out by the investigative authorities which will lead to the termination of investigation of the particular cases emphasized above, the Government refers to article 106 (decision to terminate an investigation and/or a criminal prosecution)¹⁹ of

¹⁹ Available at: <https://matsne.gov.ge/ka/document/view/90034?impose=parallelEn&fullscreen=1&publication=109>

the Criminal Procedure Code which determines the rule of termination of investigation by a prosecutor upon a decree and envisages the possibility to appeal the latter. In particular, pursuant to paragraph 1¹ of article 106, a victim may appeal a decree of the prosecutor to terminate an investigation and/or a criminal prosecution to a superior prosecutor. A decision of the superior prosecutor shall be final and may not be appealed, except when a particularly serious crime, or a crime which, according to the law, is under jurisdiction of the State Inspector's Office, has been committed. In this case, if a superior prosecutor does not grant the appeal, the victim may appeal the decision of the prosecutor to a district (city) court, according to the place of investigation. A court shall deliver a judgment within 15 days, with or without an oral hearing. A decision made by the court may not be appealed.

106. As for the crimes on which the investigative jurisdiction of the State Inspector's Service applies are the crimes provided by the following articles of the Criminal Code: 144¹ - torture; 144² - threat of torture; 144³ - humiliation or inhuman treatment; 332(3) (b) and (c) - abuse of official powers, 333 (3) (b) and (c) - exceeding official powers, article 335 - providing explanation, evidence or opinion under duress; and/or article 378 (2) - interference with or disorganization of the activities of a penitentiary institution if they are committed by the representatives of law enforcement body, officers or persons equal to them. In addition, investigative jurisdiction shall also apply to other crimes committed by the representatives of law enforcement body, officers or persons equal to them which caused the death of a person and when committing it, this person was in the temporary detention isolator or in penitentiary institution or in any other place, where he/she was forbidden to leave the place against his/her will by a representative of a law enforcement body, an officer or a person equal to him/her, and/or this person was otherwise under the effective control of the state.²⁰
107. Taking the aforesaid into consideration, as already indicated above in the *Baghashvili* case, the Government further stresses that the deceased person's representative has been granted a victim status. As the investigation concerns the category of particularly serious crimes (intentional killing), in case the criminal investigation is terminated the victim has the opportunity to challenge it before the superior prosecutor and in the event of rejection - to bring a complaint before the district (city) court. The court's decision is not subject to any appeal.
108. As to *Tsintsabadze*, *kiziria* and *Gegenava* cases, the applicant/deceased persons' representatives have been granted the victim statuses. Pursuant to the law in force, the aforesaid rule of appeal before the courts applies to the cases under the jurisdiction of the State Inspector. Into the mentioned three cases investigation is carried out pursuant to articles 333 (exceeding official powers) and 342 (neglect of official duty) of the Criminal Code and the State Inspector's jurisdiction applies to all of them. The aforesaid rule will be applied to the similar crimes which take place after 1 November 2019 (the date when the investigative authority of the State Inspector enters into force). However, the issue whether the national court applies mentioned rule to the old facts (notwithstanding they represent crimes under the jurisdiction of the State Inspector, investigation was conducted and will be terminated by the Prosecutor's office, as they took place before 1 November 2019) remains a matter of practice to be established by the domestic courts. Hence, in any event, the applicants hold the right to appeal the decision/decreed on termination of the investigation and/or prosecution before the superior prosecutor and in the event of rejection they may have the right to bring complaint before the district (city) court. As to the practice of the domestic courts in this regard, the Committee will be updated correspondingly.
109. As for *Mikiashvili*, *Mzekalishvili* and *Kopadze* cases, the applicants have not been granted the victim statuses. In this regard, it should be underlined, that pursuant to the amendments to the Criminal Procedure Code dated 21 July 2018, prosecutor's decree recognizing a person as a victim or as a legal successor of the victim, a decision to annul the mentioned decree, prosecutor's decree to terminate an investigation and/or a criminal prosecution, prosecutor's decree refusing to initiate a criminal prosecution may be

²⁰ Article 19 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

appealed by the person in question/victim to a superior prosecutor. The decision of a superior prosecutor may be appealed to a district (city) Court, according to the place of investigation, when a crime is under the jurisdiction of the State Inspector's Service.²¹

110. The Government hereby informs the Committee that in regards to the issue of granting a person victim status, significant changes have been made. In particular, superior prosecutor's decree on refusal to recognize a person as a victim of committing a less serious or serious crime, as well as the decision of the prosecutor annulling the decree on the recognition of a person as a victim of the same category, could not be challenged before the court. By virtue of the recent judgement of 14 December 2018, the Constitutional Court of Georgia ruled that granting a victim status to a person is a prerequisite for access to the significant rights ensured by the criminal legislation. Accordingly, a person has an increased interest to challenge the decision of the prosecutor regarding the victim's status before the court. In light of the aforesaid judgment, refusal of the prosecution authorities to grant a victim status, as well as decision to annul a decree on recognition of a person as a victim, which can be appealed in domestic courts under the aforesaid article, is now applied for all victims of any category of the crime in question.²²
111. In light of the judgement of 14 December 2018 of the Constitutional Court, the applicants in the cases of *Mikiashvili*, *Mzekalishvili* and *Kopadze* had an opportunity to refer to the prosecutor authorities with the request to grant them victim statuses and in case of refusal, they could challenge it before the national courts regardless of the category of the crime in question. In case their request would be satisfied, they would have an ample opportunity to challenge the forthcoming decisions on the termination of investigation before the superior prosecutor and national court under aforementioned article 106 (1¹) concerning investigative jurisdiction of the State Inspector (See paras. 105-109 above).
112. **The Government emphasizes that the prosecution authorities will discuss the issue of termination of the investigation of the above cases with the applicants and in case they do not have any further position the respective decisions to terminate investigation will be adopted.**
113. **Taking all the aforesaid into consideration, the Government kindly asks the Committee to close the examination upon a final resolution on the *Baghashvili* case, as well as *Mikiashvili* and *Dvalishvili* cases due to the full implementation of all the relevant investigative measures.**

Pending Cases

- ***MINDADZE and NEMSITSVERIDZE v. GEORGIA (No. 21571/05, final on 01.09.2017)***

Case Summary

114. In 2004 the applicants, David Mindadze and Valerian Nemsitsveridze, were arrested and charged in connection with an attack on a member of the Georgian Parliament. The Tbilisi regional Court found both men guilty of attempted murder with aggravating circumstances, finding that Mr Nemsitsveridze had ordered the murder of the parliamentarian, and that Mr Mindadze had attempted to carry it out with the use of a firearm. The two applicants made a number of complaints arising from the criminal proceedings against them, including claims of police ill-treatment, unlawful deprivation of liberty and an unfair trial. Mr Mindadze complained that police officers had subjected him to electrical shock and severe beating in order to extract a confession from him and both applicants alleged that the authorities had failed to conduct an effective investigation into their complaints. Relying on various provisions under article 5, they claimed that parts of their pre-trial detention had been unlawful.

²¹ Articles 56 (Recognising a person as a victim), 106 (Decision to terminate an investigation and/or a criminal prosecution), 168 (Discretionary prosecution) of the Criminal Code of Georgia, English version available at: <https://matsne.gov.ge/ka/document/view/90034?impose=translateEn&publication=106>.

²² The Judgement of the Constitutional Court of Georgia, dated 14 December 2018, operative part; available at: <https://matsne.gov.ge/ka/document/view/4415479?publication=0>

115. The Court held that there had been a violation of article 3 under its substantive and procedural limbs, article 5§1; 5§3 and article 6§1 of the Convention. In its decision of September 2018,²³ the committee noted that no further general measures are necessary as regards the violations of article 5 and 38 found in two of these cases, given the measures previously adopted in respect of article 5 (see Final Resolution [CM/ResDH\(2011\)105](#)).
116. The Court further noted that given the Court's findings regarding the unfairness of the domestic proceedings which resulted in the applicants' conviction for attempted murder, and having regard to the circumstances of this case, the Court considered that a retrial, which Georgian law duly envisages as a possibility, could represent, if requested, an appropriate way of redressing the violation under article 6 § 1 of the Convention.
117. The Court awarded EUR 28,000 to Mr Mindadze and EUR 16,000 to Mr Nemsitsveridze for non-pecuniary damage and EUR 4,800 to the applicants jointly for costs and expenses.

Just satisfaction

118. The Government of Georgia paid to the first applicant, David Mindadze, EUR 28,000 for non-pecuniary damages on 31 October 2017.
119. As to the second applicant, Mr Valerian Nemsitsveridze - according to the letter of 27 November 2017 (registration N01/19825) of the applicants' representative - he was not present on the territory of Georgia and he was not able to present respective bank details and other necessary documents in order to effect the payment of just satisfaction. The second applicant submitted the necessary documents with a delay, in particular on 20 December 2018.
120. Thus, the remaining sums of just satisfaction (EUR 16,000 to the second applicant in respect of non-pecuniary damage and EUR 4,800 to the applicants jointly in this case (to their lawyer) in respect of costs and expenses were fully paid on 26 February 2019.

New investigation

121. The Committee has already been informed that the initial investigation in the present case has never been officially terminated. However, with a view of carrying out a thorough, prompt, independent and effective investigation into alleged ill-treatment on 17 October 2017 (subsequent to the judgment of the European Court) the case was transferred to the Investigation Unit of the Chief Prosecutor's Office of Georgia, entirely autonomous body which does not have any institutional or hierarchal linkages to the events in question.
122. Throughout the criminal proceedings the investigative authorities interrogated number of witnesses, including the applicant - David Mindadze (on 29 January 2018); his wife K. M. (on 30 January 2018); and his lawyer G.B. (on 7 February 2018).
123. Furthermore, the following witnesses were identified and interviewed in March 2018: M. J. - the head of Rehabilitation Centre for Victims of Torture "Empathy"; G. Ch. - the traumatologist of the same center; T. N. - Neurologist – Psychiatrist; Kh. Ch. - Psychiatrist. They confirmed the authenticity of the medical conclusion drawn up on 29 September 2004 and noted, that they had met the applicant in the penitentiary establishment whilst he had declared, that he had been tortured by the police in order to obtain a confession.
124. Moreover, as the Committee is already aware, on 10 April 2018 criminal case against Mr Mindadze was obtained from the general courts' achieve. Based on the analysis of the criminal case, the persons, indicated in the record of the personal search of the applicant, were interrogated in May 2018. The witnesses indicated that they had signed the record of the personal search without reading it, also pointed out, that they had never seen the gun, which according to the personal search record was seized from Mr Mindadze.

²³ Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1324/H46-6E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1324/H46-6E)

125. The Government points out that it was not possible to question Mr Mindadze's public defender lawyer (E.D.) because of his age (over 80) and health condition.
126. In addition, Mr Nemsitsveridze's brother - M.N. was questioned, who stated that due to the passage of long period of time, he cannot remember the case details and if he remembers anything, he will notify the investigation authorities. As for Mr Nemsitsveridze, M.N. stated that subsequent to the exemption from punishment he changed his surname and went abroad. He did not have any information regarding his brother.
127. The Government further updates the Committee that on 11 April 2019 investigator P.B. was questioned who confirmed that he had carried out investigative measures in Mr Mindadze's case in full compliance with the legislation in force. He did not provide any other substantive information for investigation.
128. On 18 April 2019 the former police officer K.Ch. who took part in arresting of Davit Mindadze, was questioned. He stated that no violation by police officers took place with respect to Mr Mindadze.
129. On 24 April 2019 former police officer D.E. was questioned who could not remember the case details due to the passage of long time from the facts in question.
130. Additionally the applicants Mr Mindadze (on 3 April 2019) and Mr Nemsitsveridze (on 3 May 2019) were questioned who stated that due to the fact that 15 years have passed from the incidents they cannot remember the case details and are not interested and do not wish to cooperate with the investigation. Furthermore, they confirmed that they are not going to apply to national courts in order to reopen their criminal cases.
131. As of today, investigation is significantly hindered by the fact that the alleged victims refuse to share the details with the investigation at this stage as well as in future which objectively will render reopening process impossible. The applicants' cooperation would have contributed to obtain additional pieces of evidence as well as to identify the persons who have allegedly committed the crime. Nevertheless, the investigation will be continued and the Committee will be updated in due course.

➤ ***MOLASHVILI v. GEORGIA (No. 39726/04, final on 23.10.2014)***

Case Summary

132. In the present case the Government presented declaration on 11 March 2014 according to which they acknowledged the violation of articles 3, 5 §§ 1 (c), 3 and 4, article 6 §§ 1, 2, 3 (b), (c) and (d) and article 14 of the Convention and undertook to conduct an effective investigation into the applicant's ill-treatment allegations in compliance with the principles established by the Court as well as the Government declared its readiness to pay the applicant 20.000 EUR as the just satisfaction. The applicant informed the Court that he accepted the Government's friendly settlement proposals as made in the Government's declaration.
133. On 30 September 2014 the Court rendered its decision and decided to strike the application out of its list of cases in accordance with article 39 of the Convention.

New investigation

134. The Committee has been informed that throughout the criminal proceedings numerous key witnesses have been questioned, in particular, the former employees of the Tbilisi temporary detention facility, physician of surgical unit of the Penitentiary Department, inmates placed in No. 7 Penitentiary Institution at the material time among them those who were in the same cell with the applicant, former employees of the Main Division of the MIA, inspector of the Medical Institution of Central Republican Hospital for Convicts and Pre-trial Inmates, experts of Levan Samkharauli National Forensics Bureau, investigator and prosecutor of the criminal case initiated against the applicant, the former deputy head of the Penitentiary Department, the former Head of the Therapy Division of the Medical Institution of the Prison, former Head Physician

of the Penitentiary Institution No. 7, etc. Most of them maintained that during their presence there were no facts of ill-treatment committed against the applicant.

135. In addition, in January 2018 N.K. (leader of "Former Political Prisoners for Human rights"), D.M. (former Minister of Energy, who was in prison with the applicant) and E.T. (former chairperson of the Human Rights Parliamentary Committee) were interviewed in capacity of witnesses since they publicly stated that they had information regarding the applicant's ill-treatment.
136. Furthermore, the information was retrieved from the web page "youtube.com" regarding the interview of Molashvili with "TV-9" journalist. Within the investigation the personal history files of the applicant were extracted from the Penitentiary Department. The information regarding the verdict on the case of Molashvili was retrieved from the Appellate Court of Tbilisi.
137. As the Government had previously indicated, it was established that during the applicant's detention his brother, T. M., was there (at the premises of the main police headquarters of Tbilisi and temporary detention isolator) for a long time. Thus, he has been summoned several times to participate in the investigative activities. After refusing to be interrogated (number of telephone interview protocols were drawn up in this regard, in particular, telephone conversations took place in May 2018), in August 2018 T.M. was questioned. He stated that ill-treatment towards his brother took place on the day of his arrest, in the administrative building of the police. T.M. named two persons who were with him on that day - V.P. and P.Zh.
138. Subsequently, in February 2019 V.P. and P.Zh were additionally questioned as witnesses who stated that the applicant was not ill-treated on the day of his arrest. They consider that Mr Molashvili was ill-treated in Prison No. 1 by his cellmates following the order of then high officials.
139. In February 2019 the former head of the Temporary Detention Isolator - P.B. was questioned, who excluded the fact of any ill-treatment of Mr Molashvili on the day of his arrest. Pursuant to P.B.'s statement, he personally met the applicant when he was brought to the isolator. Mr Molashvili did not complain regarding ill-treatment and P.B. did not notice any visual signs. In addition, pursuant to P.B.'s statement, that night he was on duty till 10 a.m. and during that period the applicant was not removed from the isolator. P.B. noted that similarly to all other officials, Mr Molashvili should have been placed in the cell alone or allocated in the officials' building, thus, his placement in Prison No. 1 and No. 7 in poor conditions with other prisoners presented a way to physiologically affect him.
140. The Government wishes to reiterate the obstacles which hinders the effectiveness of the reopened investigation. The most important impediment for the renewed investigation is the impossibility of getting detailed information from the applicant. As the Committee is already aware on 29 June 2016 the applicant passed away in the hospital in France. Thus, the investigation has actually lost the most important "witness", which seriously hindered the process of collecting the evidence, the situation also adversely affected the future of the investigation concerning the implementation of the investigative or other procedural actions.
141. Nevertheless, the investigative authorities carried out all possible activities. The investigation tried to search for the required information and questioned the respective witnesses.
142. In the present case, the results of forensic expertise do not allow the investigation to establish the remoteness of injuries and are based only on the assumptions in respect of the prescription. Therefore, it is impossible to develop any reasonable deliberation on the basis of these results.
143. Furthermore, almost 15 years elapsed after the events at issue, which seriously complicates the possibility of obtaining tangible information/evidence. Obviously, in 2004, the timely, effective and impartial investigation of the fact of ill-treatment would have significantly facilitated the process of detection of offenders.
144. Due to the aforementioned reasons, the identity of the offenders who committed the violent acts against Mr Molashvili remains unfeasible to be determined.

145. Regardless of the aforesaid circumstances, the investigation of the present case is ongoing and the Committee will be updated regarding further investigative measures/outcomes.

➤ ***LANCHAVA v. GEORGIA (No. 28103/11, final on 16.07.2015)***

Case Summary

146. The Government submits the measures undertaken in the course of the execution of the decision in the case of *Lanchava v. Georgia*, a friendly settlement with undertaking to ensure the effectiveness of the investigation into the applicant's allegations of being subjected to ill-treatment on 6 July 2009 in Kutaisi No. 2 prison (procedural violation of article 3 acknowledged by the Government) and to pay 4,500 EUR. At the same time, the Government accepted that in the particular circumstances of the present case there was a violation of article 6 §§ 1 and 3 (c) of the Convention on account of the applicant's unjustified expulsion from the court proceedings, although the above shortcoming did not render the proceedings unfair as a whole.

New investigation

147. The previous action plans presented the information regarding interrogation of the applicant's father; the former inmate B.T.; the employees of Kutaisi No. 2 Prison; G.Kh. - former controller of Kutaisi No. 2 who explained that on July 6, 2009, a juvenile convict Lasha Lanchava organized a riot involving other juveniles. As a result of the above-mentioned, Special Force unit of the Ministry of Corrections entered the territory and besieged the residence of juvenile convicts. According to the witness he did not take part in this process and nobody had been physically or verbally insulted by him. The similar information was provided by other former employees of the prison (N.Kh.; D.K.; G.Ts.; A.Z.). They all pointed out that the riot was suppressed by the members of the Special Forces Unit. Furthermore, the investigative authorities requested the information from the Ministry of Corrections in respect of all the members of the Special Forces Unit serving at the material time which was followed by their interrogation of the members.
148. The Government already provided that number of key witnesses have been questioned. One of the eyewitness of the incident, G.T is serving his sentence in Germany. On 27 September 2017 a motion was sent by the investigative authorities to the official bodies of the Republic of Germany with the legal request to interrogate G.T. According to the official response received on 28 June 2018, G.T. refused to be questioned and to provide any kind of information.
149. As the Committee is aware, the information has been requested from MIA about the border crossing of the several witnesses, former inmates, who participated in the incident. According to the official data, the state border of Georgia is crossed by 8 witnesses. The investigative authorities endeavoured to find out their whereabouts via their family members though to no avail.
150. The Government of Georgia provided in the previous action plan of July 2018 that in 2017 the Public Defender of Georgia has been requested permission of interrogation of four employees of the Public Defender's Office (in accordance with the organic law on the Public Defender of Georgia), however negative response was received on 13 February 2018. It represents new obstacle for the investigation, since interrogation of neutral witnesses would have facilitated the investigation process.
151. Since submission of the most recent updated action plan of July 2018, the Former Director of Kutaisi No. 2 prison, Z.R. was questioned in the capacity of witness on 14 August 2018, who denied any fact of ill-treatment of the prisoners by the staff of Kutaisi No. 2 prison.
152. It should be noted, that there are other objective obstacles which hinder the present investigation. In particular, since long time has passed after the alleged crime, the witnesses find it difficult to recall the detailed factual circumstances. Some of the witnesses to be examined do not reside in Georgia and most of the family members do not have information about their location abroad. The majority of witnesses are criminal authorities, members of a criminal underworld (some of them still serving their sentence) and they

refuse to collaborate with the investigation. Some of them indicated that they will not provide any information until the applicant appears to the investigative bodies whilst others indicated that they do not possess any tangible information. As mentioned in the recent action plan, the applicant himself, member of a criminal underworld, who is currently serving a sentence in Zhytomyr Correctional Colony No. 4 in Ukraine, also refuses to be questioned and to provide any kind of information for unidentified reasons.

153. The investigation will be continued.

➤ ***BEKAURI and OTHERS v. GEORGIA (No. 312/10, final on 08.10.2015)***

Case Summary

154. The case concerns a lack of effective investigation into the applicants' allegations of ill-treatment by the police during the dispersal of the demonstration on 15 June 2009, as well as inside of the Tbilisi police headquarters (procedural violation of article 3 acknowledged by the Government in their unilateral declaration).
155. Several breaches of the right to fair trial, due to the fact that the applicants' trials had been a pure formality, that they were not explained any of their procedural rights and did not have sufficient time and facilities to prepare for their defence or to appoint a lawyer (violations of article 6 §§ 1 and 3 acknowledged by the Government in their unilateral declaration).
156. A breach of the applicants' rights to freedom of association due to the violent disruption of their demonstration by the police on 15 June 2009 (violation of article 11 acknowledged by the Government in their unilateral declaration).
157. Regarding the part of the application that the European Court decided to strike out of its list of cases in accordance with article 39 of the Convention, the Government undertook to conduct effective investigation of the relevant five applicants' (Mr Bekauri, Mr Meskhi, Mr Chitarishvili, Mr Maisuradze and Mr Tsuladze) allegations of ill-treatment (see details below) and to pay them 20 500 EUR.

➤ ***STUDIO MAESTRO LTD and OTHERS v. GEORGIA (No. 22318/10, final on 23.07.2015)***

Case Summary

158. The case concerns the lack of effective investigation into the three individual applicants' allegations of being subjected to ill-treatment and obstructed in the exercise of their journalistic activities during the demonstration of 15 June 2009 (violations of articles 3 (procedural limb) and 10 acknowledged by the Government in their unilateral declaration). The Government undertook to conduct an effective investigation into the applicants' allegations (see details below) and to pay them 7,500 EUR.

New investigation in respect of the cases *Bekauri and Others v Georgia, Studio Maestro Ltd and Others v Georgia*

159. With a view of carrying out a thorough, prompt, independent and effective investigation into alleged ill-treatment against of the applicants, the investigation was renewed on 26 June 2015 and was being conducted by the Tbilisi Prosecutor's Office. On 12 January 2016 the cases have been transferred to the Department to Investigate Offenses Committed in the Course of Legal Proceedings of the Chief Prosecutor's Office of Georgia.
160. During March-April 2018, 34 participants (including most of the applicants of the present cases) of the rally were granted the status of victim.
161. **Since submission of the aforementioned documents, the investigative authorities have carried out the following extensive activities:**

162. On 5 September 2018, M. B. - the investigator of Tbilisi Main Division of MIA by 15 June 2009 was questioned. He described the circumstances surrounding the preparation of record of arrest.
163. On 5 September 2018 the Head of Human Resources and Organizational Support Division of Tbilisi Main Division at the material time, L.G. was questioned, he was shown the photo and video footage depicting the events, however he was unable to identify the police officers.
164. Furthermore, on 6 September 2018 I. S. – the Investigator of Vake-Saburtalo Division of Tbilisi Main Division by 15 June 2009 was questioned. He explained that he received order from then leaderships to arrest the demonstrators who wished to enter the building of the Tbilisi police headquarter. I.S. indicated that nobody had been physically or verbally insulted by the arrested person.
165. Moreover, on 7 September 2018 the investigator of Tbilisi Main Division was questioned. He stated that he had not himself been a witness to the offense committed by the arrested applicant – Mikheil Meskhi, however he received order from the authorities and acted in accordance with their instructions.
166. On 21 September 2018, the investigative authorities inspected the official website of the MIA for the purpose of questioning of the Head of Tbilisi Main Division (at the material time - June 15, 2009) - D.Ch.. As a result it was determined that he is not currently in Georgia.
167. The same information was provided by the Head of Didube-Chugureti Division of MIA at the material time – M.A., who was questioned on 24 September 2018. According to the witness, he had been performing his professional duties and he was informed that on the ground of the order of leadership together with his subordinates he had to approach the administrative building of the Tbilisi police headquarter. He pointed out that neither he nor other employees of the Didube-Chugureti Police Department had assaulted the protesters physically.
168. On 24 September 2018, J.M. – the Head of Gldani-Nadzaladevi Division at the material time was interviewed as a witness. According to him, he gave his employees instruction not to use force against the demonstrators and he pointed out that during his presence, nobody had been physically insulted by him or any of his employees.
169. Due to the interests of the investigation, orders on appointment/dismissal of the former officers of the MIA - G. S., G.O., G.Sh., G.G. were requested.
170. Furthermore, on 26 September 2018 E.L. who was the Prosecutor of Tbilisi Prosecutor's Office at the material time was questioned as a witness who described the event in question.
171. On 27 September 2018 - Z.G. who was a Senior Inspector-Investigator of the Old Tbilisi Division of the MIA was interrogated. He clarified that the police officers were assaulting the demonstrators. He was introduced with photo and video materials illustrating the dispersal of demonstration, he identified several employees of MIA.
172. Furthermore, in order to conduct thorough, prompt, independent and effective investigation, on 1 October 2018, forensic expertise was appointed for the determination of remoteness and quality of the injuries sustained by the applicant Luka Tsuladze during dispersal of the rally. The respective documents were sent to the expertise bureau.
173. On 12 October 2018 former Deputy Chief of Tbilisi Main Division, Sh. R. was questioned as a witness. He stated that he was in the yard of the division at the beginning of the dispersal and was observing developments. He saw that several demonstrators were physically assaulted, however due to the chaotic situation, he is unable to name who had ill-treated the demonstrators. He indicated, that during the dispersal of the demonstration the part of the law enforcers were holding the truncheons.
174. It should be noted that the investigation is comprehensive as possible, consisting of all reasonable steps that could have been taken for securing evidence related to the allegations in question bearing in mind the time elapsed from date when the events complained of allegedly took place.

175. The decision regarding future course of action will be adopted after carrying out all necessary investigative measures. The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigations.
176. It should be stressed out that on 23 January, 2018, the Georgian Young Lawyer's Association (GYLA) in cooperation with the European Human Rights Advocacy Centre (EHRAC), requested the European Court, among others, to restore present complaints to the list of cases, due to the fact that the Government did not fulfil its obligations. In response to the GYLA's complaint, on April 20, 2018, the Ministry of Justice submitted to the ECHR grounded objections, which included the complex investigative procedures with respect to the indicated cases, as well as information on fulfilment of the judgments of the ECHR and the implemented reforms aimed at protection of human rights.
177. Consequently, on November 13, 2018, the ECHR dismissed the applicants' requests for restoration of complaints in respect of all cases, confirming that there are no grounds, which could oblige the Court to examine the Georgian Government's alleged failure to fulfil its obligations.²⁴

➤ ***CHANTLADZE v. GEORGIA (No. 60864/10, final on 23.07.2015)***

Case Summary

178. The case concerns the applicant's allegations of ill-treatment during the dispersal of the demonstration of 6 May 2009 (the applicant lost his right eye). The Government undertook to conduct an effective investigation into the applicant's allegations (see details below) and to pay him 6,000 EUR.
179. The Government underlines from the outset that the alleged incidents of ill-treatment were committed by the employees of the MIA whereas the investigations are conducted by the Chief Prosecutor's Office which is entirely autonomous from the MIA and does not have any institutional or hierarchal linkage to the events in question. Persons responsible for the execution of the investigation are independent in law and in practice.

New investigation

180. Throughout the renewed investigation, dozens of demonstrators have been identified who underwent a medical treatment for their bodily injuries sustained at the demonstration. Consequently, numerous demonstrators have been questioned, who confirmed their participation in a peaceful demonstration held on 6 May 2009 in front of the Tbilisi police headquarters, protesting an unlawful detention of three persons and demanding their prompt release from the detention.
181. The Government wishes to draw the Committee's attention to the objective obstacles which hinders the effectiveness of the renewed investigation. In particular, persons, who used non-lethal weapons, were in the backyard of the Tbilisi Main Division and the participants of the demonstration cannot identify them. Furthermore, there are no photo or video footages of the shooters. In addition the employees of the Main Division of Special Tasks of MIA and of the Tbilisi Division, as well as the staff of the sniper subdivision, who had proper equipment have been interrogated. However, they deny participation in the dispersal of the rally. Moreover, the applicant – Mr Chantladze has been summoned several times to participate in the investigative activities but to no avail. It should be noted that within the investigation of present demonstration two persons, among whom is the applicant, are recognised as victims. Nevertheless, D. Chantladze refuses to cooperate with the investigation. He has given a testimony only once, however, in order to verify the testimony and other circumstances, D. Chantladze was summoned to the Investigative Office anew, which was refuted by him.
182. The Government update the Committee that the investigation authorities obtained the logbook of Main Division of Special Tasks of MIA where the information on the issuance and receipt of weapons and

²⁴ Available at: <http://www.justice.gov.ge/News/Detail?newsId=7823>

equipment is recorded. The information obtained revealed to whom was given special equipment such as special rifles as well as gas and rubber bullets.

183. Afterwards, the aforementioned employees (at the material time – May 2009) were identified and summoned to the investigation authority. Five employees (A.B.; B.TS.; G.M.; Z.J. and I.M.) of Main Division of Special Tasks were questioned in September 2019. As a result of questioning, the said persons denied any involvement in the confrontation between the demonstrators and police officers at the MIA Tbilisi Main Division on 6 May 2009. In particular, A.B. and G.M. stated that they were in the rear yard of the Tbilisi Police Department building during the said rally and no incident took place there. B.TS. noted that on 6 May 2009, he was at work at the base. Z.J. stated that he did not remember exactly where he was on 6 May 2009, but remembers that he was not at the scene of the incident and did not take part in the confrontation between demonstrators and police officers. On his part, I. M. explained that on 6 May 2009 he was on duty in the building of Parliament.
184. The investigation will be actively carried out until the exhaustion of all investigative activities for the identification of those responsible.

➤ ***KEKELIDZE v. GEORGIA (No. 2316/09, final on 17.01.2019)***

Case Summary

185. The applicant complained under article 3 of the Convention of ill-treatment by the police during his detention on suspicion of possession of illegal drugs and that there had been no effective investigation into the matter. He also complained under article 5 on the basis of his alleged unlawful pre-trial detention and under article 6 concerning the outcome of the criminal proceedings.
186. The European Court have declared only those claims under article 3 to be admissible.
187. The Court found in the case that there had been a violation of article 3 in its substantive and procedural limbs and had found that the applicant had sustained injuries that amounted to inappropriate treatment and that the investigation into the case had not been comprehensive, adequate and effective. The applicant did not seek fair satisfaction.

New investigation

188. On 1 April 2019 within the renewed investigation, the case was transferred to the Investigation Unit of the Office of the Prosecutor General of Georgia which is institutionally independent body from those implicated in the alleged events.
189. As to the investigation into alleged exceeding of official powers, after the case was transferred to the Investigation Unit of Office of the Prosecutor General several witnesses were interviewed, including the applicant and his mother - N.L. as well as various types of information were retrieved.
190. On 4 April 2019 the Prosecutor's Office of the Autonomous Republic of Adjara was requested to submit the supervisory criminal case materials of Gocha Kekelidze concerning the purchase and storage of drugs.
191. On the same date, information in respect of drug tests of Gocha Kekelidze and Z.B. were requested from MIA Expert-Forensic Main Division.
192. On 5 April 2019 information regarding duly certified copies of the administrative materials and the court final decision concerning Gocha Kekelidze and Z.B were requested from MIA Analytical Department.
193. Z. B. who was repeatedly questioned on 3 May 2019 noted that G.SH. punched him in the nose. Subsequently, Gocha Kekelidze had been beaten by 3-4 employees of the MIA of Adjara “SOD” during about 2 minutes. As he remembers, among them there were the employees of Adjara “SOD” including - G.SH. and Z.Z.

194. Gocha Kekelidze., who was additionally interviewed on 16 May 2019, clarified that he was driving his car in Batumi, when he was stopped by Adjara “SOD”²⁵ officers who conducted their personal search. Officers of the MIA physically assaulted both him and his accompanied person - Z. B.. As a result of the beating the applicant received various injuries. On the same day he was taken to the Batumi No. 1 Hospital. According to Gocha Kekelidze, he was physically assaulted by the head of the “SOD” division - G. K. and officers of the same division G.SH and Z. Z..
195. The mother of Gocha Kekelidze – N.L. who was interviewed on 16 May 2019 in relation to the case maintained that he met his son in prison, during which the applicant informed her that he had been beaten by the head of “SOD” division of the MIA of Adjara - G. K. and officers of the same division - G.SH and Z. Z..
196. The lawyer N.A. while interviewed on 21 May 2019 as a witness noted that as he knew from Gocha Kekelidze he had been beaten by Z. Z., G. SH., and G.K.
197. Furthermore, during the interview of 3 June 2019, G.GH stated that after the arrest of Gocha Kekelidze, his family members approached and asked him to provide appropriate legal assistance to the detainee, subsequently he and his colleague, also lawyer N. A. got involved in the process and on September 2, 2008 they visited Gocha Kekelidze in the Batumi temporary detention isolator, where he saw that the latter had injuries and according to him, the injuries were sustained during his arrest.
198. It should be underscored that according to the forensic medical expertise report of 2008 Gocha Kekelidze had a lateral fracture of the humerus inside wall on the right side, multiple body incisions and bruises developed through the impact of any solid, blunt surface. Prescription of injuries does not contradict with the date stated in the decree and is collectively attributable to a less grave degree of injury with long-term deterioration of health.
199. Various types of information were requested from the Penitentiary Establishment regarding Gocha Kekelidze.
200. On 4 October 2019 the information in respect of the cell phone numbers of the persons involved in the case was requested from Human Resources Management Department of the MIA. Subsequently, the ruling of Tbilisi City Court was obtained for the receipt of the information regarding incoming and outgoing calls and service towers on the given telephone numbers to identify the contact and whereabouts of the persons at issue.
201. On October 10, 2019, G.K., interviewed as a witness, revealed that he saw Gocha Kekelidze at the Batumi Hospital on September 2, 2008. The latter was barely moving and had multiple injuries.
202. On October 16, 2019, the Special Penitentiary Service of the Ministry of Justice of Georgia and the Department of Temporary Detention of the MIA of Georgia were requested to provide information about persons visiting the applicant in custody and during temporary detention.
203. The investigation is being conducted according to the investigation plan in the context of which investigation authorities actively communicate with the applicant.

➤ ***MANUKIAN v. GEORGIA (No. 2146/10, final on 21.02.2019)***

Case Summary

204. The present case relates to the alleged ill-treatment of the applicant at the penitentiary establishment in 2008. The Government of Georgia submitted a declaration and admitted a violation of the procedural limb of article 3 of the Convention in respect of the lack of effective investigation into the applicant's alleged ill-treatment of 18 January 2008. The Government also acknowledged a violation of article 13 of the Convention in respect of the complaints under article 3 of the Convention for the lack of effective domestic

²⁵ Special Operations Unit (sub-agency of MIA)

remedy. The Government undertook to conduct effective investigation into the alleged ill-treatment of 18 January 2008 and to examine all witnesses, as well as pay the applicant EUR 3 500 as a compensation. The applicant accepted the conditions offered by the Government and waived himself off other complaints. Accordingly, the European Court stroke the case from the list of cases.

Payment of just satisfaction

205. The compensation awarded by the Court to the applicant has been paid (on 2 May 2019) in due time (until 21 May 2019).

Investigation

206. On 9 July 2019 the case of ill-treatment of prisoners (qualification of crime under paragraph 1 of article 144(3) and 333 (1) (exceeding official powers) was transferred to the General Prosecutors which is independent investigation authority of those allegedly implicated (employees of the Ministry of Corrections).
207. As for the investigation into alleged ill-treatment, the applicant was interviewed as a witness on 10 July 2019. He explained that he was serving his sentence in various penitentiary establishments throughout 1992-2018. On January 18, 2008, he was discharged from prison No. 6 for medical examination at prison No. 18, where he was met in the corridor by a former physician, D.T. towards whom he made a remark in respect of his inadequate treatment in October 2007. Subsequently, employees of the penitentiary establishment: A.P., N. KH., Z.K., and D.N. forcibly took him into the so called X-ray room, where A.P. had physically assaulted him while others held him against his will. About half an hour since he complained regarding the fact of ill-treatment before the prison director A.M., he was taken again in the X-ray room and the director A.M., deputy director G.B., as well as A.P., N. KH., Z.K., D.N. and other staff members committed physical violence against him. The injuries on his body were not reported after returning to prison No. 6. While interviewing applicant as a witness, he provided written consent to the investigation for obtaining of his medical documents of detention period and personal file concerning imprisonment.
208. The applicant appealed to the Prosecutor General's Office of the violence, but the investigation service of the Ministry of Corrections brought against him fabricated accusations, that he attacked and did not obey the prison employees orders, ultimately the court found him guilty and sentenced to 10 years of imprisonment.
209. Furthermore, the record regarding the terms and institutions from 1992 to 2018 where the applicant served his sentence as well as copies of the court's verdicts against him were obtained on 12 July 2019 from Special Penitentiary Service In addition copies of the applicant's medical records of 2007-2008 were requested on the same date and obtained from the Special Penitentiary Service.
210. On 14 July 2019 the information from the Analytical Department of the MIA of Georgia was requested and received regarding the certificate of conviction of the applicant.
211. In September 2019, the investigation referred to the archives of the general court for criminal case original files of the applicant, as a result of which he was convicted for the actions committed on 18 January 2008. The respective original files from the archive were obtained on 24 September 2019.
212. On September 27, 2019 the examination conducted on the criminal case materials of the applicant obtained from the archives revealed that the materials consisted of three volumes. Respective copies of the aforementioned criminal case materials were made, which was attached to the ongoing investigation case files.
213. On October 8, 2019, the investigative authorities referred to the Analytical Department of the MIA for obtaining the information in respect of the crossing of the border by witnesses and a response was received.

214. The letter was sent to the LEPL Public Service Development Agency for witness identification purposes and a response was received.
215. The materials linked to the identification of one of the former convicts were requested and obtained from the Special Penitentiary Service.
216. The Special Penitentiary Service was requested information in respect of the identification of the person who had been transferred for medical examination from prison No.6 together with the applicant convicted on January 18, 2008 to Prison No.18. Pursuant to the received information, 6 persons transferred with the applicant were identified.
217. Planned investigative measures are underway.

➤ ***GABLISHVILI and OTHERS v. GEORGIA (No. 7088/11, final on 21.05.2019)***

Case Summary

218. The case concerned the alleged ill-treatment of prisoners Giorgi Gablishvili, Romik Kasyanovi, Zurab Gachechiladze, and Giorgi Mtchedlidze in 2009 and the national authorities' failure to conduct an effective investigation in that regard.
219. The Court concluded that there has been a violation of article 3 of the Convention in its substantive limb in respect of Mr Gablishvili and Mr Mtchedlidze. The Court also found that the authorities failed to conduct an independent, thorough and effective investigation into the circumstances surrounding the incident of 30 March 2009 (ill-treatment during the arrest following the applicants' attempt to escape from prison). Accordingly, the court found a violation of article 3 of the Convention under its procedural limb with respect to all the applicants.
220. The Court awarded 6,000 EUR to Mr Giorgi Gablishvili and Mr Giorgi Mtchedlidze each, in respect of non-pecuniary damage and 3,000 EUR to Mr Romik Kasyanovi and Mr Zurab Gachechiladze each, in respect of non-pecuniary damage.

Payment of just satisfaction

221. The compensations awarded by the Court to the applicants have been paid in due time, on respective dates.

Investigation

222. On 19 May 2017 General Prosecutor's Office²⁶ launched an investigation on the fact of ill-treatment of the applicants by several officials. During investigation, number of investigative measures have been carried out. Namely, Giorgi Mtchedlidze, and his mother K.M., were questioned. Moreover, the criminal case file of Giorgi Mchedlidze's conviction was requested and examined. Pursuant to the case file, Giorgi Mtchedlidze and other convicts had slight injuries with short health effects.
223. On 29 December 2009 the Rustavi City Court convicted all the applicants of attempted escape from prison (an offence prescribed by article 379 of the Criminal Code).
224. Within the new investigation, number of witnesses have been questioned, including one of the applicants - Giorgi Gablishvili (22.12.2017), who stated that he did not witness the arrest and the fact of beating of Giorgi Mtchedlidze, but he had noticed certain injuries on him. As for Ramik Kasianov and Rostom Gelenidze, who were questioned on 28 November 2017, they refused to give testimonies.
225. Furthermore, then head of Prison No. 1 - D.C. and the employee V.M. were questioned on 16 August 2018 who refused the fact of the ill-treatment of the prisoners. Relying on the information lately heard from other

²⁶ Following the constitutional amendments (entered into force on 16 December 2018) the name "Chief Prosecutor" is changed to the "General Prosecutor". Article 65 of the Constitution of Georgia, available at: <https://matsne.gov.ge/en/document/view/30346?publication=35>

employees, then operative duty of Prison No. 1 – G. E., who was interviewed on 17 August 2018, indirectly confirmed the fact of beating which he did not witness. Furthermore, he cannot name the persons from who he has heard mentioned information.

226. The Government would like to inform the Committee that on 1 April 2019 Giorgi Mtchedlidze was released on parole.

227. The investigation is pending.

➤ ***GOGUADZE v. GEORGIA (No. 40009/12, final on 27.06.2019)***

Case Summary

228. The case concerned the ill-treatment to which the applicant - Mr Nikoloz Gogvadze had been subjected on the day of his arrest (26 May 2011) and failure of the authorities to provide effective investigation. The Court found a violation of article 3 of the Convention under its procedural and substantive limbs and awarded 10,000 EUR to the applicant in respect of non-pecuniary damage.

Payment of just satisfaction

229. The compensation awarded by the Court has been paid in due time, on 29 July 2019.

Investigation

230. Initially, it should be indicated that on 4 June 2011 investigation was commenced by the Investigation Unit of the Shida Kartli and Mtskheta-mtianeti District, on the fact of physical abuse of the applicant by the employees of the MIA. On 3 May 2016 the case was transferred to the General Prosecutor's Office. On the grounds of the pieces of evidence obtained and collected within the renewed investigation, on 19 July 2017 the crime was qualified as envisaged by article 333 (3)(b) of the Criminal Code and the investigation has been continued pursuant to the latter.

231. Subsequent to transferring the case to the General Prosecutor's Office, number of procedural and investigative measures have been carried out. Namely, during April-May 2018 several witnesses have been questioned/re-questioned, among others, additionally were questioned the applicant – N. Gogvadze and persons arrested on 26 May 2011 with him (M.Ts., D.Sh., R.Gh., D.G., M.S., B.Ch., V.Ch., B.G., K.T., D.Ch., Z.Ch., G.Ts., M.M., D.T., Z.G. and others). During August-September 2018 former and active employees of Tbilisi temporary detention Isolator, Penitentiary Department, as well as the medical personnel and other heads of the medical service were questioned (Z.Sh., G.Dz., D.K., O.Ch., M.Sh., V.Ts., V.K. and others). During September-December 2018 employees of Ministry of Defence, Constitutional Security Department and Shida kartli Main Division of MIA were questioned (R.Z., Sh.M., K.S., L.N., G.G., K.K., K.B., V.M., V.J., L.D., R.T., I.S., R.Sh., S.S., G.M. and others).

232. Furthermore, on 7 September 2018 and 3 May 2019 relevant information regarding the medical check was obtained from all the establishments where the arrested persons were allocated.

233. Within the investigation the detailed information was requested during 2018-2019 from the mobile operators regarding the mobile records of certain individuals (M.K., I.S., I.M., V.J., G.M. and others) – relevant information was received on 12 June 2018 and 27 February 2019; as well as in respect of the cell towers allocated within the territory of Shida Kartli region (30 towers) - information was received on 27 February and 3 March 2019; and the fixed telephone connections on telephone towers in the mentioned region (18 towers) – information was received on 3 and 18 March 2019.

234. The obtained data was analysed in details and compared to each other. Respective protocols were drafted.

235. Furthermore, on 2 February 2019 the information was obtained and analysed regarding the demographic data, indicating the mobile phones in use, of the members of the Special Tasks Department and the Special Forces of the Department of Constitutional Security of the MIA.

236. Moreover the forensic medical expertise of the applicant N. Gogvadze (on 19 October 2018) and other arrested persons (On 28 May 2019) was appointed for the aim to establish the severity of the injuries. Conclusion of the expertise in respect of the applicant was received on 24 April 2019, according to which the injuries have been caused by blows with a hard blunt object(s) and that the injuries separately and collectively were of minor severity and had not caused the effect on his health.
237. Within the renewed investigation, in order to verify the information obtained by the investigation, at this stage the following persons were additionally questioned persons arrested on the day of the demonstration: K. T. (23.10.2019), G. B. (24.10.2019). Additional questioning of other persons is planned as well.
238. The part of the information reflecting the fixed telephone connections on the telephone service masts within the territory of Shida Kartli was decrypted (5 out of 18 at this stage).
239. Along with decryption of the cell tower data, the comparison of the said data with the date of the mobile phones of the respective employees of the MIA is being conducted. As a result the identification of the relevant persons participating on 26 May 2011 in the detention of Mr N. Gogvadze and other individuals could be attained (this presents very time-consuming and lengthy process).
240. It should be underlined, that Mr Gogvadze and his lawyer are being provided with full information in the course of the ongoing investigation (last meeting was held on 3 October 2019). In light of the aforesaid, the respective investigative measures are being actively carried out and the Committee will be updated accordingly.

III. SUMMARY OF INDIVIDUAL MEASURES

241. The Government of Georgia highlights that due to the close supervision and involvement on the part of the Committee of Ministers, for the first time within the *Gharibashvili Group* on 21 September 2017 by the **final resolution the supervision of the individual measures** in three cases - *Gharibashvili v. Georgia*, *Khaindrava and Dzamashvili v. Georgia* and *Surmanidze and others v. Georgia* **was closed**.²⁷
242. To sum up, the Government underline that as demonstrated above the individual measures undertaken by the state authorities in terms of execution of *Tsintsabadze Group* encompassed a number of significant initiatives:
- **As regards the results of the effective investigation conducted on the basis of the judgments/decisions of the European Court, particularly in 2017-2018, criminal prosecution was commenced against 13 persons on 5 different criminal cases.** The Prosecutor's Office of Georgia continues to investigate all the criminal cases as priority on the basis of judgments/decisions of the European Court.
 - In particular, since the last examination of that group **tangible results were reached** in the investigations carried out with respect to number of key cases of *Tsintsabadze Group* (cases of *Enukidze and Girgvliani*, *Mikiashvili*, *Dvalishvili*, *Gegenava and Others*). **In addition, the Prosecutor's Office ensured conducting an effective investigation with respect to the other cases**

²⁷ Resolution CM/ResDH(2017)287, Execution of the judgments of the European Court of Human Rights Two cases against Georgia, adopted by the Committee of Ministers on 21 September 2017 at the 1294th meeting of the Ministers' Deputies, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168074c273

(judgments/decisions) rendered against Georgia (*inter alia*, cases of *Chkotua and Arkania*,²⁸ *Chichua*²⁹).

- In the *Baghashvili* case, the deceased person's representative has been granted a victim status. In case the criminal investigation is terminated, they have the opportunity to challenge it before the superior prosecutor and in the event of rejection - to bring a complaint before the district (city) court.
- The applicant/deceased persons' representatives in cases of *Tsintsabadze*, *kiziria* and *Gegenava* have been granted the victim statuses. Pursuant to the law in force, the aforesaid rule of appeal before the courts applies to the cases under the jurisdiction of the State Inspector. Into the mentioned three cases investigation is carried out pursuant to articles 333 (exceeding official powers) and 342 (neglect of official duty) of the Criminal Code and the State Inspector's jurisdiction applies to all of them. The aforesaid rule will be applied to the similar crimes which take place after 1 November 2019 (the date when the investigative authority of the State Inspector enters into force). However, the issue whether the national court applies mentioned rule to the old facts (notwithstanding they represent crimes under the jurisdiction of the State Inspector, investigation was conducted and will be terminated by the Prosecutor's office, as they took place before 1 November 2019) remains a matter of practice to be established by the domestic courts. Hence, in any event, the applicants hold the right to appeal the decision/decreed on termination of the investigation and/or prosecution before the superior prosecutor and in the event of rejection they may have the right to bring complaint before the district (city) court. As to the practice of the domestic courts in this regard, the Committee will be updated correspondingly.
- As for *Mikiashvili*, *Mzekalishvili* and *Kopadze* cases, the applicants have not been granted the victim statuses, however, in light of the judgement of 14 December 2018 of the Constitutional Court, they had an opportunity to refer to the prosecutor authorities with the request to grant them victim statuses and in case of refusal, they could challenge it and forthcoming decisions on termination before the national courts regardless of the category of the crime in question.
- In the light of the aforementioned, the Government kindly invites the Committee **to close the examination** of the following cases, which have been pending before the Committee for several years and which exhausted all feasible investigative activities - *Mikiashvili v. Georgia*, *Dvalishvili v. Georgia*, *Baghashvili v. Georgia*, *Gegenava and others v. Georgia*.
- Furthermore, the Government expresses their readiness to update the Committee with the information pertaining to pending investigations.

IV. GENERAL MEASURES

243. For the purpose of effective execution of *Tsintsabadze* group of cases, the Government of Georgia carried out wide range of general measures which has already been comprehensively presented in the context of previous action plans. The Government's submissions were noted with interest by the Committee in their decision of September 2018.³⁰

²⁸ In the case of *Chkotua and Arkania* (dec.), Application no. 60909/08 - friendly settlement - the Government acknowledged a violation of article 2 of the Convention on account of the lack of medical treatment provided for Mr Tengiz Chkotua during his imprisonment and the ineffectiveness of the investigation into his death. As a result of an investigation conducted by the Chief Prosecutor's Office, the former director of the Ksani No. 7 Facility of the Department of Corrections - R.A. **was found guilty** by the judgment of Tbilisi City Court dated **14 March 2018**.

²⁹ In the case of *Chichua* (dec.), Application no. 65150/14 - unilateral declaration - the Government admitted a violation of article 3 of the Convention under its procedural limb, as well as of article 13 and undertook to ensure an effective investigation into the applicant's allegations [of ill treatment]. As a result of the effective investigation, the former employee D. Kh. of the No. 8 Facility was found guilty by the Tbilisi City Court on 12 March 2018 for degrading or inhuman treatment (article 144³ of the Criminal Code of Georgia).

³⁰ Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1324/H46-6E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1324/H46-6E)

244. In particular, in September 2018, the Committee welcomed the constitutional changes adopted to strengthen the independence of the Prosecutor's Office; noted with interest the authorities' aim to establish a new State Inspector's Service (SIS) as an independent investigative mechanism and invited the authorities to submit detailed information in that regard; noted also with interest the creation of a Victim and Witness Coordinator Service within the Prosecutor's Office, and the training and other measures undertaken as well as those aimed at strengthening the efficiency of the intervention by the courts by means of a new principle of automatic distribution of cases; and invited additionally the authorities to submit information on the general measures taken or envisaged in response to the violation of article 6 found in *Mindadze and Nemsitsveridze* case.
245. In addition to already submitted information in respect of the general measures, the Government would like to provide further information in accordance with the decision of the Committee of September 2018.

The State Inspector's Service - Independent Investigative Mechanism

246. The Committee in its Decisions dated 20 September 2018 regarding *Tsintsabadze* group of cases invited the authorities to submit detailed information on the adopted law on State Inspector's Service (SIS) and the final set-up of the SIS including its jurisdictional competences.³¹ The information below describes new mechanism of SIS while responding to the issues expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its [2019 report](#).
247. At the outset, the Government would like to underline that SIS is an independent state authority that, as a legal successor of the Office of the Personal Data Protection Inspector,³² operates in Georgia since 10 May 2019.³³
248. The obligation to create an independent investigative mechanism has been taken within the framework of the EU-Georgia Association Agenda to investigate torture, ill-treatment and other similar crimes by law-enforcement officers. The creation of this mechanism was also foreseen in the Human Rights Action Plan.
249. The package of the reform, before it was examined and adopted by the Government and then the Parliament, has been initially approved within the framework of the Criminal Justice Reform Inter-agency Council. In the course of preparation of the draft law, in order to ensure development of efficient investigative mechanism, consultations were held with the Personal Data Protection Inspector, the Prosecutor's Office of Georgia, experts of Internal Affairs and Penitentiary and Probation system. Recommendations of various international organizations, including the CPT have been also taken into account. Consequently, a completely new law has been introduced - the Law on the State Inspector Service.³⁴
250. The key functions of the SIS are: monitoring lawfulness of personal data processing; control the secret investigative actions and activities implemented in the central bank of electronic communication identification data; impartial and effective investigation of serious crimes committed by a representative of law-enforcement authorities, by an official or a person equal to an official against human rights and freedoms, investigation of malfeasance crimes committed with the use of violence or insulting personal dignity of a victim.³⁵
251. The State Inspector shall manage the SIS. The Parliament of Georgia shall elect the State Inspector for a 6 year term. The State Inspector shall be independent in exercising his/her powers and shall not be

³¹ *Ibid.*

³² State Inspector's is a legal successor of Personal Data Protection Inspector's Office that monitored lawfulness of data processing since 2013 and conducted oversight of covert investigative actions since 2015.

³³ Available at: <https://personaldata.ge/en/about-us>.

³⁴ Available at: <http://www.justice.gov.ge/News/Detail?newsId=7764>.

³⁵ The Law on the State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>

subordinated to any official or body.³⁶ Moreover, State Inspector is inviolable. Any type of influence on the State Inspector or illegal interference with his/her activities, shall be prohibited and is punishable by law. In particular, pursuant to the amendments to the article 352¹ (Influencing the State Inspector or an officer of the Office of the State Inspector) of the Criminal Code of Georgia, influencing the State Inspector or an officer of the Office of the State Inspector in any form in order to prevent him/her from conducting his/her official activities, shall be punished.³⁷ On 3 July 2019, State Inspector was elected by the Parliament of Georgia.³⁸

252. The State Inspector is only accountable to the Parliament.³⁹ He/she shall submit annual reports to the Parliament, among others, on the state of the investigation of criminal cases under the State Inspector Service. Unless otherwise provided for by law, no one may request the State Inspector to submit a report on the investigation of a particular criminal case, or information, the disclosure of which may impede the investigation process.⁴⁰
253. As to the scope of the new legislation, it is quite broad. Investigative jurisdiction of the SIS is strictly defined under article 19 of the law on State Inspector Service, which indicates to the specific articles of the Criminal Code. In particular, Investigative jurisdiction of the State Inspector's Service shall apply to the crimes provided for by articles 144¹ (Torture); 144² – (threat of torture); 144³ (humiliation or inhuman treatment); article 332 (3) (b) and (c) (abuse of official powers); article 333 (3) (b) and (c) (exceeding official powers); article 335 (providing explanation, evidence or opinion under duress) and/or article 378 (2) (interference with or disorganisation of the activities of a penitentiary institution) of the Criminal Code if they are committed by the representatives of law enforcement body, officers or persons equal to them. In addition, investigative jurisdiction shall also apply to other crimes committed by the representatives of law enforcement body, officers or persons equal to them which caused the death of a person and when committing it, this person was in the temporary detention isolator or in penitentiary institution or in any other place, where he/she was forbidden to leave the place against his/her will by a representative of a law enforcement body, an officer or a person equal to him/her, and/or this person was otherwise under the effective control of the state.⁴¹
254. The Chief Prosecutor's Office of Georgia carries out a prosecutorial supervision on the cases investigated by the State Inspector Service. Such supervision is conducted by the structural unit of the Chief Prosecutor's Office, which is directly responsible to the Chief Prosecutor of Georgia. As for the crimes investigated by the SIS that is committed by the employee of the Prosecutor's Office itself, the prosecutorial supervision shall be exercised by the General Inspection of the Chief Prosecutor's Office.⁴²
255. The relations between the State Inspector and Prosecutor's Office is regulated by the law. According to the Law on the State Inspector's Service the deputy State Inspector responsible for the investigative unit shall refer to the supervising prosecutor in writing with a substantiated proposals on the cases belonging to the investigative jurisdiction of the State Inspector's Service on the following matters:⁴³
 - a) the expediency of the initiation and of the termination of criminal prosecution and/or investigation;

³⁶ Articles 6, 11 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

³⁷ Criminal Code of Georgia, English version available at: <https://matsne.gov.ge/ka/document/view/16426?impose=translateEn&publication=209>.

³⁸ Available at: <https://personaldata.ge/en/about-us>.

³⁹ Available at: <http://www.justice.gov.ge/News/Detail?newsId=7764>.

⁴⁰ Article 12 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

⁴¹ Article 19 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

⁴² Article 22 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

⁴³ Article 19 of the law on State Inspector Service, English version available at: <https://matsne.gov.ge/ka/document/view/4276790?impose=translateEn&publication=4>.

- b) the expediency of such investigative action or procedural action to be conducted on the basis of judge ruling that restricts the inviolability of private property, ownership, or the right to privacy;
- c) the inclusion of a specific evidence in the list of evidence to be submitted to the Court.

256. No other investigative authorities have such powers.
257. It should be underlined, that pursuant to the amendments to the Criminal Procedure Code dated 21 July 2018, prosecutor's decree recognizing a person as a victim or as a legal successor of the victim, a decision to annul the mentioned decree, prosecutor's decree to terminate an investigation and/or a criminal prosecution, prosecutor's decree refusing to initiate a criminal prosecution may be appealed by the person in question/victim to a superior prosecutor. The decision of a superior prosecutor may be appealed to a district (city) Court, according to the place of investigation, when a crime is under the jurisdiction of the SIS.⁴⁴
258. In light of the aforementioned, the Government refers to the significant changes made in regards to the issue of granting a person victim status. As already indicated above (see para. 110), the superior prosecutor's decree on refusal to recognize a person as a victim of committing a less serious or serious crime, as well as the decision of the prosecutor annulling the decree on the recognition of a person as a victim of the same category, could not be challenged before the court. By virtue of the recent judgement of 14 December 2018, the Constitutional Court of Georgia ruled that granting a victim status to a person is a prerequisite for access to the significant rights ensured by the criminal legislation. Accordingly, a person has an increased interest to challenge the decision of the prosecutor regarding the victim's status before the court. In light of the aforesaid judgment, refusal of the prosecution authorities to grant a victim status, as well as decision to annul a decree on recognition of a person as a victim, which can be appealed in domestic courts under the aforesaid article, is now applied for all victims of any category of the crime in question.⁴⁵
259. It should be underlined, that the Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomed the various achievements made during the reporting period (from 1 June 2017 to 31 May 2018), such as, among others, the progress on the draft law on the State inspector. OHCHR considered the text of the draft law to be a step forward. OHCHR provided comments on the bill, most of which were reflected in the version submitted to parliament.⁴⁶
260. CPT noted with interest the adoption – in July 2018 – of the new Act on the State Inspector's Office (independent investigation mechanism).⁴⁷ As rightly indicated by the CPT in its report, it remains to be seen in practice how effective the investigative powers of the State Inspector's Service will be.⁴⁸ Respective legislative changes will be also adopted, in case of need.
261. The Public Defender of Georgia also welcomed the adoption of Law on State Inspector and noted that the latter was a step forward for investigating the cases of ill-treatment.⁴⁹
262. For the purpose of selection of investigators the State Inspector establishes a selection committee and determines its rules of procedure. Candidates willing to become investigators at the State Inspector's

⁴⁴ Articles 56 (Recognising a person as a victim), 106 (Decision to terminate an investigation and/or a criminal prosecution), 168 (Discretionary prosecution) of the Criminal Code of Georgia, English version available at: <https://matsne.gov.ge/ka/document/view/90034?impose=translateEn&publication=106>.

⁴⁵ The Judgement of the Constitutional Court of Georgia, dated 14 December 2018, operative part; available at: <https://matsne.gov.ge/ka/document/view/4415479?publication=0>

⁴⁶ 2018 Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia (A/HRC/39/44), paras. 21, 91, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/44

⁴⁷ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, para. 14, available at: <https://rm.coe.int/1680945eca>

⁴⁸ *Ibid.*

⁴⁹ Special Report of the Public Defender of Georgia, Effectiveness of Investigation on Criminal Law Cases of Ill-treatment, 2019, p. 4, available at: <http://www.ombudsman.ge/res/docs/2019062010290641301.pdf>.

Service shall possess the number of professional and personal qualities. The respective selection processes are still underway.

263. The investigative function becomes operational from 1 November 2019. Hence, the relevant statistical information will be elaborated in due course and provided to the Committee.
264. Moreover, subsequent to the changes related to the State Inspector's Service, the Prosecutor's Office is planning to set up a department which will supervise the investigation conducted by the State Inspectorate's Service. The respective employees of the new department will be thoroughly trained for the skills and qualification required for the designated tasks.

Qualification of crimes

265. In respect of qualification of crimes, it should be underlined, that the Division of Human Rights Protection of the Prosecutor's Office of Georgia, has prepared a recommendation on appropriate qualification of the facts of ill-treatment committed by an official or a person holding an equivalent position. The document reviews the problematic issues related to differentiation of articles 333, 144¹, 144², 144³ of the Criminal Code of Georgia, shortcomings in practice with respect to qualification of ill-treatment, and major standards established by the European Court.
266. The recommendation aims to proper qualification when launching an investigation into ill-treatment cases and planning effective strategy for subsequent investigation. The recommendation, positively evaluated by an expert from the Council of Europe whose remarks and recommendations were also circulated among prosecutors with the aim to use in practice.
267. Monitoring of the implementation of the above recommendation was carried out in 2018. The reporting period covered 10 months of 2017 and 11 months of 2018. As a result of the monitoring, prosecutors more actively use guidelines in practice, the rate of correct legal qualification and prosecution of ill-treatment cases has been increased significantly than in previous years. Moreover, Investigation Unit of the Office of Prosecutor immediately launches investigation upon receiving a report of ill-treatment. Every possible investigative action - such as interviewing the witnesses, identity parades, search and seizure, request of documentation, scheduling and carrying out forensic examinations, seizing video recordings, etc. - are carried out within tight deadlines.⁵⁰
268. In addition, pursuant to the Special Report of the Public Defender of Georgia regarding effectiveness of investigation on criminal cases of ill-treatment, recently (2017-2018), the cases of qualification by specific provisions has enhanced.⁵¹

Prohibition of Torture - Suspension of law enforcement/prison officers

269. The Government would like to emphasize that in order to enhance the fight against torture and ill-treatment the Inter-agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment elaborated the action plan of 2019-2020. The latter, was approved in May 2019. The action plan aims at strengthening legal, procedural and institutional mechanisms for combating ill-treatment; effective detection of ill-treatment and prompt, impartial and effective investigation of all complaints/allegations; protection, rehabilitation and compensation of victims of ill-treatment; dissemination of information concerning ill-treatment and raising public awareness. Notably, the Ministry of Justice is designated as institution responsible for coordination of the implementation process of the action plans of the mentioned Inter-Agency Council.⁵²

⁵⁰ Available at: <http://pog.gov.ge/en/news/moxelis-an-masTan-gaTanabrebuli-piris-mier-chadenili-arasaTanado-mopyrobis-faqtebis-kvalifikaciis-sh>

⁵¹ Special Report of the Public Defender of Georgia, Effectiveness of Investigation on Criminal Law Cases of Ill-treatment, 2019, p. 12, available at: <http://ombudsman.ge/res/docs/2019062010290641301.pdf>

⁵² Available at: <http://www.justice.gov.ge/Ministry/Index/310>

270. Furthermore, the statistics provided by the Prosecutor's office of 9 months of 2019 on ill-treatment cases are presented below.
271. As for the **ill-treatment facts in penitentiary facilities**, in 2019 investigation was commenced into 13 cases in total (article 144³ (humiliation or inhuman treatment) – 2, article 333 (3(c)) (exceeding official powers) – 11).
272. As to the **ill-treatment facts in police** – in 2019 investigation was commenced into 222 cases in total (article 144¹ (torture) – 1, article 144³ (humiliation or inhuman treatment) – 9, article 333 (3(c)) (exceeding official powers) – 212); Criminal prosecution was launched in 4 cases (article 144³ (humiliation or inhuman treatment) – 1, article 333 (3(c)) (exceeding official powers) – 3).
273. In 2018, criminal prosecution was launched with respect to 15 persons. In particular, criminal prosecution has launched against 12 police officers (article 333 of the Criminal Code) and 3 prison officers (article 144³ of the Criminal Code). The abovementioned information is provided in the Report of the General Prosecutor's Office of Georgia 2018. In 2013-2017 criminal prosecution was launched against 144 persons.⁵³
274. It is noteworthy, that according to the Special Report of the Public Defender of Georgia regarding effectiveness of investigation on criminal law cases of ill-treatment, starting from 2016, there is a tendency for the alleged ill-treatment facts to be investigated by the Prosecutor's Office, instead of the bodies towards which the allegations of the ill-treatment are made. Following the receipt of the information about alleged ill-treatment, the Prosecutor's office reacts swiftly and commences investigation in a timely manner. It is a positive development that in none of the cases where there was an allegation about the crime committed by the police employee, the expertise was not carried out in the MIA. The increase of archiving of the video recordings made in the penitentiary system to up to 120 hours has facilitated obtaining of the video recordings on alleged ill-treatment occurred in the penitentiary system.⁵⁴
275. Moreover, as to the safeguards against ill-treatment, on the positive side, the CPT observed that information on injuries was systematically reported to competent prosecutors, irrespective of whether the person concerned alleged any ill-treatment. Further, a 2017 Order by the Chief Prosecutor required regional prosecutors to immediately transmit information on injuries to the Chief Prosecutor's Office whenever the injured person made any allegations of ill-treatment.⁵⁵
276. As to the temporary detention isolators, MIA introduced temporary detention isolators development plan on 16 February 2018.⁵⁶ On 7 February 2019, MIA has delivered the annual report on temporary detention isolators. Notably, a number of significant changes were implemented - the video-surveillance system has been upgraded and the condition of detainees and medical services have been improved. Additionally, the qualification and skills of employees have been improved.
277. Pursuant to the aforesaid report, in 2018, based on the recommendations of the Public Defender of Georgia, medical points were opened in eight isolators (Mtskheta, Sagarejo, Kvareli, Poti, Zestafoni, Khashuri, Chkhorotsku and Akhaltsikhe); Special training courses were delivered to the practicing as well as the new doctors of isolators. Furthermore, last year, all employees of the temporary detention isolators were retrained.

⁵³ Available at: http://www.parliament.ge/ge/ajax/downloadFile/117914/1-9440_%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%90%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%90,p.20

⁵⁴ Special Report of the Public Defender of Georgia, Effectiveness of Investigation on Criminal Law Cases of Ill-treatment, 2019, p. 12, available at: <http://ombudsman.ge/res/docs/2019062010290641301.pdf>.

⁵⁵ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, para. 25, available at: <https://rm.coe.int/1680945eca>

⁵⁶ Available at: <https://police.ge/en/shinagan-saqmeta-saministrom-droebiti-motavsebis-izolatorebis-ganvitarebis-gegma-tsarmoadgina/11455>

278. In addition, the video surveillance system was upgraded in six different isolators. By the end of 2019, video cameras will be upgraded in the remaining 23 isolators as well. As of today, the video recording is ensured in each isolator.⁵⁷
279. The MIA has implemented most of the recommendations issued by the Public Defender Georgia in 2018. In accordance with the Public Defender's recommendations, at the Police Academy thousands of police officers were trained, among other, regarding the issues of torture and ill-treatment.⁵⁸
280. According to the CPT, the delegation received a very positive impression of the sustained efforts of the MIA aimed at combating police ill-treatment. These efforts included further development of training curricula at the Police Academy, introduction of compulsory body cameras for patrol police officers (and ongoing installation of cameras in patrol cars) with extended period of footage preservation, and the setting up of a new Human Rights Department at the MIA meant to reinforce internal monitoring mechanisms.⁵⁹
281. As to the penitentiary establishments, pursuant to the Order N19 of 20 March 2017 of the Minister of Corrections⁶⁰ the timeframe for storing the surveillance video recordings was significantly extended in penitentiary establishments. Namely, the limit of at least 24 hours was changed to - at least 120 hours.
282. As the Committee is aware, the Ministry of Justice and the Ministry of Corrections have been merged in July 2018. As a result of the mentioned process, a special penitentiary service was established as a sub-agency of the Ministry of Justice, which as of today is undergoing specific reforms.
283. In light of further extension of the timeframe for storing the video surveillance recordings the Minister of Justice adopted the Decree №403, dated 13 May 2019.⁶¹ Pursuant to the mentioned decree, the five-day time-limit for retention of surveillance videos has been prolonged to 30 days in all prison establishments, to be phased in between 1 July 2019 and 1 January 2021, which was also welcomed by the Committee's decision of June 2019 adopted at the 1348th meeting.⁶²
284. The afore-cited amendments were welcomed by the Public defender of Georgia.⁶³ Storing of the video surveillance recordings will reveal any facts of violation of rights of the prisoners and any persons involved in such facts.
285. On 22 February 2019, the Strategy and 2019-2020 Action Plan on the Development of the Penitentiary and Crime Prevention Systems (hereinafter – the strategy and action plan) were adopted by the Order N385 of the Justice Minister of Georgia. It is worth noting that the Strategy and AP already reflect the CPT recommendations, as well as concerns of the Public Defender of Georgia, which once again outlines that the approach of the Ministry of Justice in terms of penitentiary development is fully in line with the CPT standards and recommendations received. The strategy and action plan were elaborated with the involvement of all relevant actors and international experts and the process was effectively supported by the EU funded “Penitentiary and Probation Support Project”.
286. The goals of the mentioned strategy are, among others, to respect and ensure the human rights of defendants, convicts, visitors, with particular attention to vulnerable groups and staff; create a safe and

⁵⁷ Available at: <https://police.ge/en/shinagan-saqmeta-saministrom-droebiti-motavsebis-izolatorebis-2018-tslis-angarishi-tsaradgina/12439>.

⁵⁸ Available at: <https://police.ge/ge/shinagan-saqmeta-saministrom-sakhalkho-damtsvelis-2018-tsels-gatsemuli-rekomendatsiebis-umetesi-natsili-sheasrula/12610>

⁵⁹ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, para. 21, available at: <https://rm.coe.int/1680945eca>.

⁶⁰ Order N19 of Minister of Corrections of Georgia, 20 March 2017, available at: <https://matsne.gov.ge/ka/document/view/3584944>.

⁶¹ Available at: <https://matsne.gov.ge/ka/document/view/4561590?publication=0>

⁶² Available at: [https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22CM/Del/Dec\(2019\)1348/H46-8E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22CM/Del/Dec(2019)1348/H46-8E%22%5D%7D)

⁶³ The Report of the National Preventive Mechanism of 2018, Public Defender of Georgia, 2019, p. 18, available at: <http://www.ombudsman.ge/res/docs/2019062515392774726.pdf>

secure environment in penitentiaries and probation bureaus for defendants, convicts, staff and visitors; design and build new small-scale prisons and improve existing prisons to meet international standards for security, human rights and rehabilitation; etc.

287. The fact that the Government is firm in its position against any facts of violation of rights in the penitentiary establishments is, among others, illustrated by the recent fact. On 1 October 2019 the Investigation Department of the Ministry of Justice launched the investigation of a suicide case occurred in Kutaisi Penitentiary Establishment under the following articles of the Criminal Code - 115 (1) (incitement to suicide or attempted suicide by threatening or ill-treating the victim or by humiliating his/her honor or dignity) and 342¹ (2) (violation of the internal regulations by an employee of the Special Penitentiary Service or an equivalent person that has resulted in death or other grave consequences).
288. The investigation revealed that in the absence of obstructive circumstances, the inspector of the Electronic Surveillance Unit did not properly observed the surveillance monitors, so she overlooked the fact that the defendant hung himself on the grating and notified the staff responsible for providing assistance 40 minutes later. The action of the inspector resulted in the death of the accused G.TS.
289. As a result of investigative and procedural actions, on 8 October 2019 the inspector was criminally charged for the crime provided for in paragraph 1 of article 342¹ (violation of the internal regulations by an employee of the Special Penitentiary Service or an equivalent person) of the Criminal Code. Furthermore, due to this fact, the Director of Kutaisi Penitentiary Establishment N2 was dismissed.
290. All the aforementioned information clearly illustrate the Government's strict policy to combat ill-treatment and to suspend any law enforcement/prison officer allegedly involved in any violation of human rights.

Trainings/Awareness-raising activities

291. In addition to the abovementioned important measures taken by the Government, in order to promote information regarding fight against torture and ill-treatment and to raise qualification/awareness of the employees of the Prosecutor's Office, the MIA and other relevant agencies, the relevant activities/trainings are regularly carried out, among others, within the framework of the Council of Europe Action Plan for Georgia 2016-2019.
292. For illustration, among others, the Prosecutor's Office of Georgia is actively carrying out training and awareness-raising courses on human rights and European standards. In particular, during 2018 and 9 months of 2019, up to 100 different trainings were held for the representatives of all territorial bodies and relevant structural units of the Prosecutor's Office, as well as for the intern prosecutors on the human rights issues, including the prohibition of torture and ill-treatment, effective investigation, admissibility of evidence obtained as a result of ill-treatment, the Court's case-law regarding the procedural and substantive notions of article 3 of the Convention, etc. Thus, the issues which concerned violations found in the *Mindadze* and *Nemsistveridze* case are permanently covered by the trainings delivered at the Prosecutor's Office.
293. Furthermore, following the establishment of the supervisory department over the investigation conducted by the State Inspectorate's Service within the Prosecutor's Office of Georgia (see para. 264), respective trainings and qualification-raising activities are planned to be carried out for the prosecutors' of the mentioned department regarding torture and ill-treatment, which will facilitate effective investigation and criminal prosecution.
294. Moreover, trainings on case law of European Court, Constitutional and Supreme Courts of Georgia are held annually at the High School of Justice within the framework of the training program for judges and

court servants, which *inter alia* includes the issues of prohibition of torture, inhuman, cruel or degrading treatment.⁶⁴

295. Special Penitentiary Service pays particular attention to the qualification of its staff. For that reason, Special Penitentiary Service, in collaboration with LEPL Training Center of Justice is introducing the needs-based training programs for the staff and will develop the knowledge management system in the Special Penitentiary Service. This approach will promote the continuous learning process of the staff in order to equip them with relevant and necessary knowledge and skills.
296. All basic training programs for the penitentiary staff include trainings on the prohibition of torture, inhumane or degrading treatment, as well as the case-law of the Court regarding article 3 of the Convention. Trainings on mentioned issues have been carried out in recent years for the staff of the Special Penitentiary Service, as well as for the heads and deputy heads of the penitentiary establishments.

Article 6 violation in Mindadze and Nemsitsveridze

297. The Government would like to further outline the consequences found by the Court which resulted in violation of a right to a fair trial in the case of *Mindadze and Nemsitsveridze*. In particular, the violation of article 6 §1 stemmed from the use of torture to extract incriminating statements against the applicant – Mr Mindadze; as well as the applicants’ inability to benefit from the assistance of lawyers of their own choice at the early stages of the proceedings. Subsequently, the Court concluded that it was hardly appropriate for the domestic courts simply to accept those clearly tainted statements for conviction (§145).
298. From the outset it should be outlined that article 72 of the Criminal Procedure Code of Georgia provides the notion of inadmissible evidence. Namely, pursuant to the mentioned article, evidence obtained as a result of the substantial violation of this Code and any other evidence lawfully obtained based on such evidence, if it worsens the legal status of the accused, shall be considered inadmissible and shall have no legal effect. Furthermore, an evidence shall also be considered inadmissible if it has been obtained in accordance with the procedure established under this Code, but a reasonable doubt has not been refuted that it has been replaced, or that its properties have been substantially changed or that the traces remaining on it have substantially disappeared.
299. It should be also underscored that subsequent to the significant amendments of 21 July 2018 to the Criminal Procedure Code,⁶⁵ the power of a judge in case of subjecting an accused/a convict to torture, to degrading and/or inhuman treatment was determined. In particular, pursuant to article 191¹ of the mentioned code, if, at any stage of a criminal proceeding, a judge suspects that an accused/a convict has been subjected to torture, to degrading and/or inhuman treatment, or if the accused/the convict himself/herself has stated it before court, the judge shall apply to an appropriate investigative body for response.
300. In addition, if a judge suspects that an accused/a convict has been or may be subjected to torture, to degrading and/or inhuman treatment, the judge shall be authorised to charge, by a ruling, the General Director of the Special Penitentiary Service with the duty to take extreme measures necessary for providing security to such an accused/a convict. Mentioned legislative amendments entered into force in July 2019.
301. In order to illustrate the conformity of the decisions of the national courts with the European standards in respect of the issue of the admissibility of evidence, the Government would like to present one of the rulings of the Tbilisi Court of Appeals.⁶⁶ Namely, according to the mentioned court, while considering the motions of the parties concerning the admissibility of evidence, the judge of the pre-trial hearing is not limited and further - based on the principle of fair trial - is obliged to fully examine all the evidence

⁶⁴ Available at: http://hcoj.gov.ge/files/axali/untitled%20folder/2017-2018%20Progress%20Report_ENG%20FINAL.pdf p. 43

⁶⁵ Available at: <https://matsne.gov.ge/ka/document/view/4276661?publication=2#DOCUMENT:1;>

⁶⁶ Decision of 22 April 2016 of the Tbilisi Court of Appeals, №13/730-16, page 3, available at: <http://library.court.ge/judgements/68312016-10-27.pdf>.

submitted by the parties and then render a decision whether the evidence is admissible, despite the other party challenges the admissibility of any evidence or not. This case, among others, clearly emphasizes that the national courts' argumentation is in line with the European standards.

302. Moreover, under the joint Programme between the European Union and the Council of Europe research was conducted on the "Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia". In total, 3 000 judgments rendered by the common courts of Georgia in 2013-2016 in respect of criminal, administrative and civil cases have been examined. The aforementioned research clearly demonstrated that the application of the standards of ECHR, as well as, reasoning of judgements with the relevant case-law of the Court is significantly improved.⁶⁷
303. According to the aforementioned research, the practice of the European Court on prohibition of torture is correctly applied by the national courts and reflected in their judgements. Common courts provide citations from the judgments of the European Court correctly, and apply its interpretation to the facts of the cases, under their consideration.⁶⁸
304. In light of adversarial proceedings, which was also included by the above-mentioned research, Georgian courts consider the adversarial principle as an important aspect of the right to a fair trial. In its reasoning, in one of the judgments,⁶⁹ the Tbilisi City Court mentioned that "*it is a fundamental aspect of the right to a fair trial that criminal proceedings... should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused.*"⁷⁰ Thus the court's approach serves to prevent the lack of adversarial public proceedings and to maintain the principle of equality of arms.
305. The practice also reveals that national courts do not give a priority to the testimonies of the police officer solely, as a proof of the sentence. Contrary, in case of the testimony given by police, courts examine the course of investigation and question whether the investigation is superficial or biased. For instance, the Tbilisi City Court underlined in its reasoning that the prosecution was trying to prove culpability of the accused only on the basis of statements of police officers, to whom allegedly he showed resistance. The national court stated, that although it was not discrediting importance of the witnesses' statement as evidence, it explained, that in cases of given category the witness statements shall be considered as credible only in such cases, if it is corroborated by other objective proof, or a statement of another objective witness.⁷¹
306. As to the guaranties regarding lawyers' participation in interrogations, according to the legislation in force, the accused may choose a defence lawyer and use his/her services, also may replace the defence lawyer any time, or if he/she is indigent, a defence lawyer may assigned to him/her at the expense of the

⁶⁷ Nana Mchedlidze, Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia, Joint Programme between the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in line with European Standards in Georgia", Tbilisi, January 2017, p. 8, available at: <https://rm.coe.int/168070a54b>.

⁶⁸ *Ibid.* p. 42.

⁶⁹ Judgment of the Tbilisi City Court dated 5 June 2015, case no. 1/1373-15.

⁷⁰ Nana Mchedlidze, Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia, Joint Programme between the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in line with European Standards in Georgia", Tbilisi, January 2017, pp. 107-108, available at: <https://rm.coe.int/168070a54b>

⁷¹ *Ibid.* p. 37.

State.⁷² Moreover, article 45 of the Criminal Procedure Code defines the circumstances, when it shall be mandatory for the accused to have a defence lawyer.⁷³

307. In that regard, it is noteworthy, lawyers' participation in interrogations is ensured in practice by the state organization, Legal Aid Service, which provides free legal assistance for socially vulnerable citizens who would not be able to pay for attorney's services otherwise. The Legal Aid Service, as of today, covers almost the whole country through legal aid bureaus and consultation centers.⁷⁴
308. One of the most important functions of the Legal Aid Service is the protection of the defendant in criminal proceedings. Legal aid service shall provide free legal aid in criminal cases if an insolvent defendant is asking for the appointment of the defence counsel or there are prerequisites for the appointment of mandatory defense and the defendant has not contracted a counsel of his choice. Legal Aid Service provides legal defense to defendant/covict at any stage of the legal proceedings. In the course of the legal defense provided to the defendant, the public lawyer of legal aid service, generally conducts following activities: meets with the client, explains case-files, analyses the defense and prosecution evidence and provides relevant consultations; drafts legal documents related to the case – statements, complaints, applications, motions, etc.; in cases envisaged by law, participates in procedural actions, conducts investigative actions; prepares case for the court session, etc.⁷⁵
309. As for the identification parades, the respective procedure is defined by article 131 of the Criminal Procedure Code. In particular, during an investigation, presenting a person (or object) for identification shall take place with the consent of the identifying person. Before identification, the identifying person shall be interviewed/questioned with respect to individual and generic characteristics of the object to be identified, and to the circumstances under which he/she came into contact with the object to be identified. During the identification, the identifying person shall indicate the characteristics by means of which he/she identified the object. A person to be identified shall be presented to the identifying person together with at least two persons of the same sex who do not differ significantly, in appearance and clothes, from each other and from the person to be identified. Identification shall not be conducted, and if conducted, it shall be considered as inadmissible evidence, if the identifying person indicates characteristics that are not sufficient for the identification of an object subject to identification, or if the identifying person was given a hint as to that object.⁷⁶
310. As for the statistics, it should be underscored that in recent years the number of acquittals has significantly increased and this tendency is progressing. In particular, in the cases of the first instance courts examined in 2017, 235 persons were acquitted, in 2018 - 477. Such tendency is also presented with respect to persons who are partly acquitted. Namely, in 2017 126 persons were partly acquitted, in 2018 – 192.⁷⁷ Such tendency is even more demonstrated as compared to the previous years' statistics. For instance, in 2010-2011, the first instance courts only acquitted 64 persons, and partially acquitted 81 persons.⁷⁸
311. Furthermore, the survey conducted by the consortium IPSOS France, Amicus Curiae, Prof. Jan van Dijk, and GORBI⁷⁹ (in the framework of which 2013 respondents were interviewed in Georgia nationwide between 10 September – 25 October 2018) revealed that 51% of the population in Georgia assesses the

⁷² Article 38 of the Criminal Procedure Code of Georgia, English version available at: <https://matsne.gov.ge/ka/document/view/90034?impose=translateEn&publication=106>

⁷³ *Ibid*, article 45.

⁷⁴ Available at: <http://www.legalaid.ge/en/p/34/about-us>

⁷⁵ Available at: <http://www.legalaid.ge/en/services/178/legal-aid-in-criminal-proceedings>.

⁷⁶ Article 131 of the Criminal Procedure Code of Georgia, English version available at: <https://matsne.gov.ge/ka/document/view/90034?impose=translateEn&publication=106>

⁷⁷ Available at: <http://www.supremecourt.ge/files/upload-file/pdf/2018w-statistic-3.pdf>.

⁷⁸ Available at: <http://www.supremecourt.ge/files/upload-file/pdf/3-sisxli11.pdf>.

⁷⁹ Georgian Opinion Research Business International is a full-service public opinion and marketing agency based in Tbilisi, republic of Georgia.

justice system in terms of independence, either very or largely good. This figure is close to the EU average, which represents 52%. The quality of trust in the judiciary is higher, and equals to 55%.⁸⁰

V. SUMMARY OF GENERAL MEASURES

312. As for the general measures undertaken for the execution of *Tsintsabadze* group of cases, the Government draws the Committee's attention to the following significant achievements:

- On 3 July 2019, **State Inspector** was elected by the Parliament of Georgia, who is accountable only before the Parliament and who conducts, among others, impartial and effective investigation of grave crimes committed by a representative of law-enforcement authorities, by an official or a person equal to an official against human rights and freedoms.
- **Investigative jurisdiction** of the SIS is strictly defined under article 19 of the law on State Inspector Service which is quite broad. The relations between the State Inspector and Prosecutor's Office is regulated by the law and no other investigative authorities have such powers as the State Inspector;
- The decision of a superior prosecutor may be **appealed** to a district (city) Court, when a crime is under the jurisdiction of the SIS regarding recognition of person a victim, termination an investigation and/or a criminal prosecution, refusing to initiate a criminal prosecution.
- Victims' rights have been enhanced by virtue of the judgment of 14 December 2018 of the **Constitutional Court** of Georgia which ruled that refusal of the prosecution authorities to **grant a victim status**, as well as decision to annul a decree on recognition of a person as a victim, which can be **appealed in domestic** courts under the aforesaid article, is now applied for all victims of any category of the crime in question.
- In respect of qualification of crimes, the Prosecutor's Office of Georgia has prepared a **recommendation** on appropriate **qualification** of the facts of ill-treatment committed by an official or a person holding an equivalent position. As a result of the monitoring, prosecutors more actively **use** guidelines in practice, the rate of correct legal qualification and prosecution of ill-treatment cases has been increased significantly than in previous years.
- Pursuant to the Special Report of the Public Defender of Georgia regarding effectiveness of investigation on criminal cases of ill-treatment, recently (2017-2018), the cases of qualification by specific provisions has **enhanced**.
- In light of further extension of the timeframe for storing the **video surveillance recordings** the Minister of Justice adopted the Decree №403, dated 13 May 2019.⁸¹ Pursuant to the mentioned decree, the five-day time-limit for retention of surveillance videos has been prolonged to **30 days** in all prison establishments, to be phased in between 1 July 2019 and 1 January 2021.
- In order to promote information regarding fight against torture and ill-treatment and to raise qualification/awareness of the employees of the Prosecutor's Office, the MIA and other relevant agencies, the relevant **activities/trainings** are regularly carried out, among others, within the framework of the **Council of Europe Action Plan for Georgia 2016-2019**.
- The **respective research** on the "Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia" reveals the significant progress in regards to the reasoning of judgements in line with the European standards by the domestic courts.
- The survey conducted in 2018 by the consortium IPSOS France, Amicus Curiae, Prof. Jan van Dijk, and GORBI revealed that 51% of the population in Georgia assesses the justice system in terms of

⁸⁰ Available at: <http://www.justice.gov.ge/News/Detail?newsId=7860>.

⁸¹ Available at: <https://matsne.gov.ge/ka/document/view/4561590?publication=0>

independence, either very or largely good. This figure is close to the EU average, which represents 52%. The quality of trust in the judiciary is higher, and equals to 55%.

- The law in force guarantees the **lawyers' participation** in interrogations. This is further ensured in practice by the state organization, Legal Aid Service, which provides free legal assistance for socially vulnerable citizens who would not be able to pay for attorney's services otherwise.
- Furthermore, national legislation thoroughly regulates issues of **admissibility of evidence** as well as issues regarding **identification parades** which is effectively implemented in practice.
- It should be highlighted that the above-mentioned achievements and the effectiveness of the measures taken by the authorities for the purpose to ensure the right to a fair trial, as well as the prohibition of torture is further confirmed with the fact that **none of the judgments** which established the **violation of article 6 (as well as of article 3)** concerned the facts that took place subsequent to October 2012.

313. In the light of the aforesaid, the Government holds the view that the individual and general measures implemented at domestic level will contribute to further prevention of the violations similar to those established by the Court in the above-mentioned group of cases and will remedy the consequences of the violations.
314. The Government hereby expresses their readiness to continue complying with their obligations under article 46 of the Convention and to update the Committee regarding execution of the present group in respective time-frame.