



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/ IG/sf 111-2012

Mr Bidzina IVANISHVILI
Prime Minister of the Republic of Georgia

Strasbourg, 31 October 2012

Dear Prime Minister,

I am writing to congratulate you on your recent appointment as Prime Minister following the elections in Georgia. I wish you every success in your new role and look forward to pursuing a constructive dialogue with you on matters of human rights importance.

At the same time, I would like to take this opportunity to express my grave concern following the information which surfaced last month about the brutal treatment of prisoners in Georgia, and which shows in a stark manner that constant vigilance is necessary to ensure the effectiveness of the absolute prohibition against torture.

It is positive that several swift measures were taken in response to the prison abuse scandal. In particular, I have noted the Georgian authorities' strong public condemnation of the abuses which were revealed and their pledge that such human rights violations would no longer be tolerated.

Concerns about ill-treatment and other serious misconduct by public officials, as well as the related problem of impunity, are not new in Georgia. They have been raised on several occasions, both by local and international actors. However, it would appear that the earlier signals have not been taken sufficiently seriously, as some senior officials in Georgia have themselves acknowledged.

Even prior to the institution's designation in 2009 as the National Preventive Mechanism under the Optional Protocol to the UN Convention Against Torture, the Georgian Public Defender (Ombudsman) called attention to cases of torture, ill-treatment and inadequate health care in prisons. The 2011 report of the Public Defender refers to ill-treatment as one of the "main challenges" of the Georgian prison system, with a "syndrome of impunity" prevailing among prison staff. The Public Defender finds that the root causes of the phenomenon are linked to entrenched attitudes within the prison administration towards inmates, with prison officials in some facilities actually encouraging "illegal measures of pressure and punishment". The report highlights frequent cases of ill-treatment in Prison n°8 in Tbilisi (Gldani), the Medical establishment for prisoners in Tbilisi (Gldani), and Prison n°2 in Kutaisi, as well as individual cases in other prisons. The Public Defender also concludes that ill-treatment remains a problem both in prisons and in police stations.

In the course of its 2010 visit to Georgia, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) received allegations of ill-treatment relating to Prison n°8 in Tbilisi (Gldani), Penitentiary establishment n°7 in Ksani and Penitentiary establishment n° 8 in Geguti. The allegations concerned beatings by staff on admission and/or in disciplinary cells ("kartzers"). Furthermore, an "uncommon silence" was said to reign in the prisoner accommodation blocks at Gldani.

According to the 2011 report of the Public Defender, his requests to the Office of the Chief Prosecutor of Georgia to initiate an investigation into a number of cases of ill-treatment have in most cases resulted in either protracted or terminated investigations; only one case of ill-treatment had led to a conviction in the previous two years. Among the nefarious effects of the malfunctioning system of accountability is the "loss of trust towards the investigation among the victims that in no way contributes to the disclosure and eradication of the practice of ill-treatment."

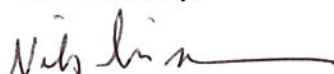
The issue of serious human rights violations by public officials and the related problem of impunity have also been a recurrent theme of the dialogue between the institution of the Commissioner for Human Rights and the Georgian authorities. The main problems identified concern independence, promptness, expeditiousness, thoroughness and comprehensiveness of investigations, as well as the limited participation of victims during the investigation and trial processes. These are all essential requirements for an effective investigation under the case-law of the European Court of Human Rights relating to Articles 2 and 3 of the European Convention on Human Rights. Specific recommendations to the Georgian authorities on the foregoing issues can be found in the Commissioner's 2010 report on the monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict, as well as in the 2011 report on the administration of justice and the protection of human rights in the justice system.

Effective investigations, capable of leading to the identification and punishment of those responsible for ill-treatment of prisoners or any other persons deprived of their liberty, are essential to give practical meaning to the prohibition of torture. Besides the direct perpetrators of these abuses, those officials who ordered or were informed of the abuse should be held accountable. Suitable penalties, commensurate to the gravity of the offences, should follow. At the same time, the investigation and judicial processes pertaining to such cases should be compliant with human rights standards so as to preserve the integrity and credibility of and public trust towards the institutions responsible for upholding the law. Justice must not be selective. It is also crucial to ensure that victims, witnesses and their families are protected, including against retaliation from those officials who were implicated in the cases concerned. Victims of ill-treatment should receive access to adequate remedies as well as medical and psycho-social assistance.

The phenomenon of ill-treatment in prisons should not be viewed in isolation from the penitentiary system and criminal justice policy in general. At present, Georgia has the highest rate of imprisonment in Europe. The stringent policy of "zero tolerance" of petty crime, which is still in force in Georgia, has led to the imposition of disproportionately lengthy sentences. According to the CPT, the increase in the prison population has hampered efforts made to create a more humane penitentiary system. Therefore, I would like to reiterate the importance of adopting a more humane and human rights oriented criminal justice policy and reducing resort to detention on remand and imprisonment.

I am closely following the situation and it is my intention to discuss these issues when I visit Georgia as part of my on-going dialogue on human rights. In the meantime, I would be grateful for any information and feedback on the policy and actions envisaged by the new government in relation to the points I raised above, as well as the impact of measures being taken up to date. I strongly encourage the Georgian authorities to pursue their efforts in addressing these extremely serious matters and I stand ready to assist them in doing so.

Yours sincerely,



Nils Muižnieks