

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
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Meeting: 1273 meeting (6-8 December) (DH)

Item reference: Action plans (28/10/2016)

Communications concerning the Gharibashvili group of cases against Georgia (Application No. 11830/03)

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Communications concernant le groupe d'affaires Gharibashvili contre Géorgie (Requête n° 11830/03)  
**(anglais uniquement)**

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**The Government of Georgia**

**CONSOLIDATED ACTION PLAN CONCERNING INDIVIDUAL AND GENERAL  
MEASURES IN RESPECT OF THE EXECUTION OF THE FOLLOWING CASES**

Giorgi Bekauri and Others, 312/10 final on 08.10.2015

Studio Maestro LTD and Others, 22318/10 final on 23.07.2015

Chantladze, 60864/10 final on 23.07.2015

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

**Ministry of Justice of Georgia**

**28 October 2016**

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## I. INTRODUCTION

1. The Government of Georgia submits consolidated action plan on the measures undertaken in the course of the execution of the decisions in the cases of *Giorgi Bekauri and Others v. Georgia*, *Studio Maestro LTD and Others v. Georgia* as well as *Chantladze v. Georgia*.
2. The present document is a report on the measures undertaken in the course of the execution of the above decisions. It does account for individual and general measures undertaken up to date by the authorities to remedy the violations acknowledged by the Government.

## II. CASE SUMMARIES

### **Bekauri and Others v. Georgia**

3. 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);
  - several breaches of the right to fair trial, due to the fact that the applicants' summary 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 lawyer (violations of Article 6 §§ 1 and 3 acknowledged by the Government in their unilateral declaration);
  - 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).
4. 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 and to pay them 20 500 EUR (see details below).

### **Studio Maestro LTD and Others v. Georgia**

5. The case concerns the lack of effective investigation into the three individual applicant's 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 Article 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 and to pay them 7,500 EUR (see details below).

### **Chantladze v. Georgia**

6. 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 and to pay him 6,000 EUR (see details below).

### **III.DETAILS OF JUST SATISFACTION**

<b>Name of the case / application No.</b>	<b>Applicant's name</b>	<b>Just satisfaction awarded</b>	<b>Total / Date of payment</b>
Bekaure and Others v Georgia No. 312/1	Mr Giorgi BEKAURI	3 500 EUR	20 500 EUR  30.11.2015
	Mr Merab TCHIKASHVILI	1 500 EUR	
	Mr Mikheil MESKHI	4 500 EUR	
	Mr Giorgi SABANADZE	1 000 EUR	
	Mr Giorgi CHITARISHVILI	4 500 EUR	
	Mr Vakhtang MAISURADZE	3 500 EUR	
	Mr Zurab KADAGIDZE	1 000 EUR	
	Mrs Natia KOBALIA	1 000 EUR	
Studio Maestro Ltd and Others v Georgia No. 22318/10	Studio Maestro LTD	No JS	7 500 EUR  12.10.2015
	Ms Teona LALIASHVILI	1 500 EUR	
	Mr Shota KAPANADZE	1 500 EUR	
	Ms Nestan INASARIDZE	4 500 EUR	
Chantladze v.Georgia No. 60864/10	MrDavit CHANTLADZE	6 000 EUR	29.09.2015

#### **IV. INFORMATION ON NEW INVESTIGATIONS**

##### **As Regards independence and impartiality of the investigation**

7. The Government underline from the outset that the alleged incidents of ill-treatment were committed by the employees of the Ministry of Internal Affairs (MoIA) whereas the investigation is conducted by the Chief Prosecutor's Office which is entirely autonomous from the MoIA and does not have any institutional or hierarchal linkage to the events in question. Persons responsible for the execution of the investigation as well as the investigative body – are independent in law and in practice.
8. It should be underscored that Article 34 of the Criminal Procedure Code provides an exhaustive list of the bodies (investigators) authorised to pursue criminal investigations. According to this Article, criminal cases shall be investigated by the investigators of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Corrections of Georgia, the Ministry of Finance of Georgia and the investigative divisions of the State Security Service of Georgia.
9. According to Articles 35-36 of the same Code, an investigative jurisdiction and the territorial investigative jurisdiction shall be determined by the Minister of Justice of Georgia on the recommendation of the Chief Prosecutor of Georgia.
10. Agency and territorial subordination of investigation is regulated by the Order 34 of the Minister of Justice of Georgia issued on 7 July 2013 concerning determination of territorial and investigative jurisdiction of criminal cases. Article 2 of the Order sets the list of cases which should be investigated by the investigator of the Prosecutor's Office of Georgia, among others, the crimes committed by the police officers. Furthermore, pursuant to Article 3 of the Order the crimes committed under several Articles of the Criminal Code of Georgia, among others, under Articles 332-335 should be investigated by the investigators of the Prosecutor's Office of Georgia.
11. In case of competition concerning the investigative subordination between the Prosecutor's Office and some other investigative organs envisaged by this Order, the investigation should be carried out by the Prosecutor's Office of Georgia (Article 10 of the Order).
12. In addition, despite the norms regarding investigative subordination set out in Order 34 of the Minister of Justice of Georgia, Georgian legislation – subparagraph "a" of paragraph 6 of Article 33 of the Criminal Procedure Code – allows the Chief Prosecutor or other person authorized by the Chief Prosecutor to take away a case from one investigation body and to assign it to the Prosecutor's Office for the investigation regardless of normally applicable jurisdictional rules.
13. As to the implementation of institutional independence in practice, according to the annual report of the Public Defender of Georgia of 2013:
14. "During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information

about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules [...].<sup>1</sup>

15. According to the annual report of the Public Defender of Georgia of 2015: “According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor’s Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor’s Office investigates such cases [...].”
16. Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor’s Office handles the above-mentioned criminal cases [...].”<sup>2</sup>

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

17. 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 Chief Prosecutor’s Office of Georgia.

*Circumstances of the case established as a result of the effective investigation*

18. Throughout the criminal proceedings about 30 witnesses have been questioned. The information below regarding the investigative activities is based on the evidences obtained in the context of the investigation renewed on 26 June 2015.
19. In particular on 15 April 2015, G. Chitarishvili (the 5<sup>th</sup> applicant in the case of “Bekauri and others”) was questioned as a witness, who noted that on 15 June 2009 he participated in the peaceful demonstration, which took place in front of the Tbilisi police headquarters. The demonstration was dispersed by the law enforcement officers through the use of physical coercion and truncheons. G. Chitarishvili confirmed that during the course of the dispersal the part of the law enforcers wore masks. He stated that the law enforcers have beaten him and other demonstrators while employing physical violence and truncheons. G. Chitarishvili named the former law enforcement officer – L.Ts. and stated that he noticed the said person through the television broadcast and identified him as the abuser who ill-treated him on 15 June 2009. G. Chitarishvili explained that during the dispersal, L.Ts. have beaten him by using truncheon and inflicted physical injuries on the various parts of his body.

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<sup>1</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2013, p.12, available at <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

<sup>2</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2015, p.188, available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>

20. On 14 April 2015, with the purpose of attachment to the criminal case G. Chitarishvili presented CD and DVD disks including video footage and photos illustrating the dispersal of the demonstration.
21. On 16 April 2015 D.Ph. was questioned as a witness. He stated that on 12 June 2009 he was in the vicinity of the building of the Parliament of Georgia with the members of an NGO and was holding a protest action. At that moment they were attacked by 10-15 persons dressed into civilian clothes. The same evening the employees of the Ministry of the Internal Affairs (MoIA) administratively detained D.Ph. and other members of the NGO. Subsequently, they were administratively sanctioned in the form of imprisonment by the national court. According to D.Ph. the above-mentioned fact became the reason for the subsequent protest actions on 15 June 2009 calling for their immediate release in front of the Tbilisi police headquarters. He stated that during the protest actions he was placed in the Temporary Detention Isolator in the building of the police headquarters and that he heard the noise but could not see anything.
22. On 16 April 2015 G. Chitarishvili was additionally questioned. He confirmed his previous testimony and added that on 15 June 2009 at 14:30 the members of the protest action were using the loudspeakers, naming their supporters. At that moment, without any prior warning, the law enforcers rushed towards them. Part of them wore civilian clothes and others wore the masks. Almost all of them were holding truncheons. Subsequent to the notice of the law enforcers the demonstrators tried to escape. They could not escape as they were besieged and were unable to avoid the aggression of the law enforcers. G. Chitarishvili presented a CD which, according to his description, included the video footage and photo materials illustrating the dispersal of the demonstration, where it is visible how a police officer is beating him together with other persons.
23. On 17 April 2015 L.Ts. was questioned. He explained that on 15 June 2009, together with other employees, he received order from then head of the Old Tbilisi Directorate of the Ministry of Internal Affairs – Z.K. to secure public order in front of the Tbilisi police headquarters and during the fulfillment he maintained that the demonstrators were obstructing the functioning of the headquarters and blocked the road. The demonstrators verbally insulted them and subsequently the incident developed into the confrontation. L.Ts. maintained that before the dispersal they warned verbally the demonstrators, however, he could not recall who made the warning. According to him, the demonstrators wanted to enter the building and the aforesaid circumstance became the reason of confrontation. Despite the warning that the proportional force would be employed, the demonstrators did not leave the road. L.Ts. declined the fact of holding the truncheon during the dispersal of the demonstration.
24. On 18 April 2015 G.O. the former employee of the MoIA has been summoned, however he refused to give a statement on the ground of his current standing as a lawyer of L.Ts. in respect of the case in question. He stated that he recalled the factual circumstances of events occurred on 15 June 2009 subsequent to the consultation with L.Ts.
25. On 18 April 2015 the investigation retrieved the information from the Tbilisi police headquarters regarding the position of L.Ts. at the material time and whether he received cash bonus from 1 June 2009 to 1 August 2009.
26. According to the official answer received from the MoIA, on 22 June 2009 L.Ts. received cash bonus of 135 GEL (approximately 58 EUR) and on 26 June 2009 he received cash bonus equal to his own monthly salary.



27. On 20 April 2015 G. Chitarishvili was additionally questioned. He presented the video footage of 17 April 2015 of “Imedi” TV station TV show “re-action” where L.Ts. participated as a guest. The TV show was dedicated to the dispersal of the demonstration on 15 June 2009.
28. The investigation examined the CD presented by G. Chitarishvili. During his interrogation which concerned the media report broadcasted via TV show “re-action” on 17 April 2015.
29. The investigation questioned A.G. as a witness. He explained that on the day of the incident, together with his colleagues (among them M.P.) he had been performing his professional duties and at that moment duty officer called them and informed that on the ground of the order of leadership (he is not aware who issued the order) they had to approach the building of the Tbilisi police headquarters. Subsequent to their gathering allegedly the former head of the Department of Old Tbilisi of the MoIA – I.K. ordered his subordinates to gather in the yard of the Tbilisi Court of Appeal. Soon after their gathering, the demonstration started and they realized why they were gathered in the yard. In his statement the witness confirmed that the employees of MoIA besieged the demonstrators and were beating them. The witness also recalled an episode of the dispersal and stated that during the confrontation several employees of the MoIA were beating G. Chitarishvili. According to him, one of the employees who have beaten G. Chitarishvili with truncheons, is L.Ts. The witness explained that he managed to keep away G. Chitarishvili from the confrontation area for a while and did not participate actively in the dispersal. A.G. clarified that during the dispersal he was accompanied by the employees of the MoIA – M.P. and L. Kh. According to him the latter was the head of the Tabakhmela Police Department at the material time. The witness explained that G. Chitarishvili was not verbally insulting or physically resisting to the employees of the MoIA.
30. The witness M.P. was questioned on 20 April 2015. He stated that on 15 June 2009 he was present on the dispersal of the demonstrators with other employees of MoIA. M.P. also clarified that the employees of MoIA besieged the demonstrators and were beating them by truncheons. The investigation authorities showed him the photos presented by G. Chitarishvili in respect of which M.P. explained that the illustrated person in civilian clothes holding truncheon is the employee of the MoIA- L.Ts who have beaten. G. Chitarishvili.
31. The witness L.Kh. was questioned on 20 April 2015. He confirmed his participation in the dispersal of the demonstration and stated that several law enforcers were abusing the demonstrators physically by truncheons and physical violence. L.Kh. stated that he did not apply any kind of coercion against demonstrators.
32. On 24 April 2015, in order to clarify the prescription, gravity and quality of the injuries according to the medical files concerning G. Chitarishvili, the forensic expertise has been conducted by the National Forensic Bureau. The expertise revealed that injuries sustained by G. Chitarishvili are developed by the influence of firm and blunt subject, which separately and together are attributed to the light injuries without impairment of health.
33. On 27 April 2015 I.K. (one of the demonstrators) was questioned as a witness. He stated that on 15 June 2009 he participated in the peaceful demonstration held in front of Tbilisi police headquarters. The witness confirmed that the demonstrators were besieged by law enforcers and were abused by them physically via truncheons and physical violence. The witness presented flash memory card with photos and video footage containing the materials about dispersal of demonstration on 15 June 2009 where it is visible how the persons in the police uniform were physically abusing the demonstrators. On 27 April 2015 the investigation authorities examined the materials kept on the memory card.

34. On 8 May 2015, the applicant in the case of *Tsaguria v. Georgia* (no. [65969/09](#), decision (unilateral declaration) final on 15/09/2015), questioned as a witness, clarified that on 15 June 2009, the law enforcers have verbally insulted and beaten him and the other demonstrators nearby the Tbilisi police headquarters. Among the employees of MoIA who have beaten the demonstrators, the witness recalled one of the employees of MoIA – M.. In addition, he stated that in the premises of the Tbilisi police headquarters G. K. (he could identify this person on face) has insulted him verbally and beaten.
35. On 20 January 2016 Z.A. who was the secretary-general of the political party “Our Georgia – Free Democrats” was questioned. He stated that on 15 June 2009 he participated in the peaceful demonstration in front of the Tbilisi police headquarters. According to the witness the police officers started to disperse the demonstration without any prior warning. He also stated that the demonstrators were besieged and that among others, he was verbally insulted and beaten by the police officers who used truncheons and were intentionally hitting him in various areas of the body and the face. As a result, he lost his consciousness. According to the conclusion of forensic expertise, the injuries sustained by Z.A belonged to the damage of less serious gravity with long-lasting impairment of health.
36. In February 2016 the investigation authorities questioned various representatives of Georgian media, including the individual applicants in the case of *Studio Maestro Ltd and Others*, who were present during the dispersal of the demonstration in order to secure the media coverage of the events at the material time.
37. Most of them (stated that the police officers besieged the demonstrators and that during dispersal of the peaceful demonstration by means of truncheons and physical violence they were beaten and insulted and that the employees of MoIA seized their equipment and returned back only after removal of the video footage and photo materials illustrating the dispersal of the demonstration.
38. Considering the context of the relevant testimonies and the video footage and photo materials obtained in the course of investigation, it has been established that the demonstrators did not hinder the movement of vehicles and that there was no signs of provocation noticeable in their actions. Despite the aforesaid facts the employees of the various law-enforcement bodies part of whom wore mask have beaten the demonstrators by means of rubber truncheons. On the basis of the said facts, on 8 February 2016 the decree was issued regarding the alteration of the criminal classification on the case. The investigation continued in accordance with Article 333 (3) (b) of the Criminal Code (Exceeding of Official Powers by an Employee of MoIA by Using Violence).
39. On 28 June 2016 D.Ts. was additionally interrogated. He was introduced with photo materials illustrating the dispersal of demonstration on 15 June 2009. He identified several demonstrators who were physically abused by law enforcers.
40. On 29 June Z.M. was questioned as a witness. He could not recall whether he participated in the dispersal of the demonstration at issue.
41. On 29 June 2016 Sh.M. was questioned as a witness. He confirmed that he participated in the dispersal of the demonstration and that together with other employees of MoIA has beaten the demonstrators by means of rubber truncheons.
42. In July, August and October 2016, the 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> applicants were questioned. They were introduced with photo materials illustrating the dispersal of demonstration. They identified several other demonstrators and police officers and stated that together with other demonstrators they were beaten by the police officers during the dispersal.

43. On 12 and 13 October 2016 the investigation authorities interrogated two other participants of the demonstration. According to them, despite the fact that the demonstrators were not aggressive and they did not hinder the movement of vehicles, the police officers most of whom had rubber truncheons, unexpectedly besieged them and among others were beating them by truncheons. Subsequently, they were placed in the administrative detention and were sanctioned in the form of fine (400 GEL - approx. 150 euros) by the domestic court. They had injuries as a result of which they suffered from concussion of the brain and consequently underwent a home treatment.
44. On 19 October 2016 the investigation authorities interrogated N. Inasaridze (the applicant in the case of “*Studio Maesto LTD and Others*”). She stated that the employees of the various law enforcement bodies besieged the demonstrators without prior warning and have beaten her. The police officers stripped off her photo camera and broke her eyeglasses.
45. On 20 October 2016 the investigation authorities interrogated G. Sabanadze (another applicant in the case of “*Bekauri and others.*”). He explained that he was also beaten by the police officers and was administratively sanctioned in the form of imprisonment (30 days) by the domestic court.
46. The planned investigative steps (among others, interrogation of up to 100 witnesses) will be actively carried out by the investigative authorities during the last months of 2016 as well as in 2017.

#### **New investigation in respect of the case Chantladze v.Georgia**

##### *As regards the initial investigation*

47. On 7 May 2009 the investigation was commenced against the demonstrators by the MoIA under Article 226 of the Criminal Code of Georgia (organizing group action disrupting public order or active participation therein) into the aforementioned incidents. On 9 June 2009 another criminal case was initiated under Article 333 of Criminal Code (exceeding official powers), which concerned alleged ill-treatment of one of the protesters B.B. on the basis of his complaint.
48. On 25 July 2013 the aforementioned criminal cases were merged by Tbilisi Prosecutor’s Office under Article 333 of Criminal Code which concerned alleged ill-treatment of demonstrators. Regarding the aforesaid merged criminal case the applicant was questioned on 12 July 2013 and subsequently, on 25 July 2013 a victim status was granted to him.

##### *As regards the renewed investigation*

49. On 15 April 2016 investigation into the merged criminal case was assigned to the Chief Prosecutor’s Office of Georgia.
50. Throughout the criminal proceedings a number of investigative activities have been carried out – witnesses have been questioned, all relevant information has been collected and forensic medical expertise has been assigned. The following information regarding the investigation is based on the evidence obtained in the context of renewed investigation.

##### *Circumstances of the case established as a result of the effective investigation*

51. Throughout the renewed investigation, dozens of demonstrators have been identified who underwent a medical treatment for their bodily injuries sustained at the demonstration and whose identities were not known until now. At this stage the investigative bodies are in the process of their final identification and interrogation.
52. Consequently, numerous demonstrators have been questioned as witnesses. They confirmed their participation in a peaceful demonstration held on 6 May 2009 in front of the main police station of Tbilisi, protesting unlawful detention of three persons and demanding their prompt release from the detention.
53. Furthermore, medical files of all injured demonstrators were requested from relevant medical institutions. On 12 August 2016, after acquiring the medical files, investigative authorities assigned a forensic medical expertise in order to assess the severity and degree of the injuries sustained to the demonstrators, among others, to the applicant. At this stage, the investigative authorities have not received conclusions of the expertise with respect to the applicant.
54. On 14 July 2016 the investigation authorities requested information from the MoIA regarding identification of its employees who participated in the dispersal of the demonstration and the detailed information of police officers to whom riot guns were assigned.
55. After receiving the aforesaid information, further investigative steps will be planned which will be duly communicated to the Committee.
56. The applicant has been summoned several times to participate in investigative activities but to no avail. Last telephone conversation took place on 28 September 2016 whilst he had firmly denied to be involved in investigation and refused to cooperate with the investigative bodies.
57. The investigation will be actively carried out until the exhaustion of all investigative activities for the identification of those responsible.

### **Outcome of the investigations**

58. As demonstrated above, the investigative measures undertaken by the relevant authorities in terms of execution of these cases encompass a number of significant initiatives.
59. New investigations have been implemented in compliance with the European Court's case-law, and Committee of Ministers practice. Independence and impartiality of the investigators/prosecutors are ensured to the fullest extent. The investigations are 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.
60. The decision regarding future course of action will be adopted after carrying out all necessary investigative measures within the time-limits set above. The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigations.

## **V. GENERAL MEASURES**

61. As for the general measures carried out by the Government of Georgia regarding eradication of ill-treatment and the investigative proceedings, please see [DH-DD\(2015\)113](#), [DH-DD\(2015\)625](#), [DH-DD\(2016\)701](#), *Gharibashvili Group* of cases (11830/03).

**a) National policy for the protection of freedom of assembly and freedom of expression**

62. The Government of Georgia have implemented general measures in order to ensure and promote full realization of the right of freedom of expression and freedom of assembly which will serve in future prevention of violations acknowledged by the Government in the aforementioned cases.
63. In particular, on 30 April 2014 the Parliament of Georgia adopted Georgia's first National Human Rights Strategy setting priorities for Georgia in 2014-2020 through an inclusive participation of all State agencies, international and non-governmental organizations.
64. The main goal of the Human Rights Strategy is to consolidate institutional democracy, i.e. the system of functional institutions and thus to ensure that human rights obligations are implemented in everyday life through a multi-sector, unified, and consistent government policies. According to the Strategy, human rights based approach will be gradually integrated into the government policies and programming. It envisages legislative and institutional changes, as well as changes in practice for the State to meet their obligations to respect, protect, fulfill and promote human rights.
65. The Strategy foresees as one of the objectives to ensure a high level of protection of the internationally recognized and constitutionally guaranteed rights of freedom of expression and freedom of peaceful assembly. The Strategy aims to meet its objectives, inter alia, by preventing the violations, ensuring appropriate legal responses and carrying out regular trainings for the aim of the enhancement of the professional qualifications of law enforcement agents in that regard.
66. In order to meet the objectives elaborated in the Strategy, on 9 July 2014 the Government of Georgia approved Human Rights Action Plan (2014-2015). It should be emphasized that in order to monitor the implementation process of the National Human Rights Action Plans, according to Article 4 (d) of the resolution No. 445 of 9 July 2014 of the Government of Georgia, the action plan coordination interagency council is responsible for drawing up progress report on the implementation of the Human Rights Action Plan not later than March 15 of each year, which shall be submitted to the Government of Georgia and afterwards to the Parliament of Georgia not later than March 31.
67. In the light of the aforesaid, on 13 June 2016 the Government of Georgia approved report on the implementation of the Action Plan of the Government of Georgia on the Protection of Human Right (2014-2015) which mirrors the implementation of 2014-2015 Action Plan in practice. According to the report, during 2014-2015 the Government has taken steps, among others, for the enhancement of professional qualifications of the law enforcement personnel regarding prevention of violations of the freedom of assembly and manifestations.
68. Notably, on 21 July 2016 the Government of Georgia approved new Human Rights Action Plan (2016-2017). The Action Plan foresees further developing the legislative base in accordance with international standards with regard to freedom of expression and freedom of assembly, effective and prompt investigation into the cases of violations of the rights, preventing violations through better preparation of relevant organs in dealing with mass demonstrations/crowd control, assessment of the European/International standards concerning manifestations and inclusion of the above subject matters into the various training programs of

the Ministry of Internal Affairs (MoIA) Academy (regarding time-table for implementation reports, see para 66 above).<sup>3</sup>

**b) Legislative amendments to the Law on Assembly and Manifestations of Georgia**

69. Right to freedom of assembly and manifestations is guaranteed by Article 25 of the constitution of Georgia. The procedure for applying the aforementioned provision is regulated by the Law on Assembly and Manifestations of Georgia. Furthermore, the Code of Administrative Offences of Georgia and Law of Georgia on Police also envisage certain regulations.
70. In 2009 legislative amendments were carried out to the legislation of Georgia regulating the assembly/manifestations, which substantially hindered the implementation of the right of peaceful assembly. Subsequently, the Government of Georgia has been actively cooperating with the Venice Commission to eradicate the existing gaps.
71. Also, in April 2011 the Constitutional Court of Georgia rendered a judgment according to which some provisions of the Law on Assembly and Manifestations of Georgia and the Code of Administrative Offences of Georgia were declared unconstitutional.<sup>4</sup> In particular, the Court annulled the blanket prohibition to demonstrate within 20 meters around several public buildings and the norm, which provided for the immediate termination of a protest if it blocks a public thoroughfare or violates other requirements of the law (see action plan of 18/07/2014 in *Kakabadze and Others*).
72. Thus, in order to eradicate the aforementioned gaps in the legislation as well as to comply with the judgment of the Constitutional Court, the Parliament of Georgia adopted legislative amendments to the law on Assembly and Manifestations on 1 July 2011, which entered into force on 14 July 2011. Overall legislative amendments were positively assessed by the Venice Commission<sup>5</sup> and by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.<sup>6</sup>
73. In particular, the Venice Commission underscored that: “[...] *the amendments to the Law on Assembly and Demonstrations adopted in July 2011 represent a significant improvement of the possibility of exercising the freedom of assembly in Georgia. The Venice Commission expresses its satisfaction about the fact that several significant recommendations contained in its previous opinion have been followed by the Georgian authorities. It welcomes in particular the*

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<sup>3</sup> Article 4 (d) of the resolution No. 445 of 9 July 2014 of the Government of Georgia

<sup>4</sup> Judgment of the Constitutional Court of Georgia issued on 18 April, 2011 on the case of “political unity of citizens – “Movement for United Georgia”, political unity of citizens “Conservative Party of Georgia”, citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, Young Lawyers Association of Georgia, citizens – Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia against the Parliament of Georgia”, available at: <http://constcourt.ge/ge/legal-acts/judgments/moqalaqeta-politikuri-gaertianeba-modzraoba-ertiani-saqartvelostvis-moqalaqeta-politikuri-gaertianeba-saqartvelos-konservatiuli-partia-saqartvelos-moqalaqeebi-zviad-dzidziguri-da-kaxa-kukava-saqartvelos-axalgazrda-iuristta-asociac-640.page>

<sup>5</sup> Final Opinion On the Amendments to the Law on Assembly and Manifestations of Georgia – Adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) Opinion no.547/2009, CDL-AD(2011) 092-Strasbourg, 17 October, 2011, available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282011%29029-e>

<sup>6</sup> Report of the Special Rapporteur on the Rights to the Freedom of Peaceful Assembly and of Association, Maina Kiai, UN General Assembly, June 8, 2012, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27-Add2_en.pdf)

*introduction of an explicit reference to the principles of legality, proportionality and necessity in a democratic society and the introduction of the presumption in favour of holding assemblies [...] “.*<sup>7</sup>

74. In addition, for the purpose of the effectiveness of national machineries in practice, on 30 December 2015 the Minister of Internal Affairs approved order No. 1002 on “Instructions regulating the conduct of police officers during assemblies and manifestations”, following a thorough analysis of international regulations/practice and recommendations of international organizations as well as the ECHR standards. In particular, the Order provides for duties and responsibilities of police officers during demonstrations while emphasizing the significance of the protection of human rights. The Order introduces the specific mechanisms of policing demonstrations and crowd control, such as, drawing security action plans of demonstrations by the police officers, carrying out negotiations with the participants to prevent the forthcoming violence, regulating counter-demonstrations and recourse to special measures by the police officers.
75. The aforementioned legislative measures implying the relevant international standards shall prevent the similar violations in the future. In addition, as noted above the Human Rights Action Plan (2016-2017) envisages as one of the goals to further harmonize legal framework on assembly and manifestation with the international standards.

**c) Legislative amendments to the Code of Administrative Offences of Georgia**

76. As noted above, the Government of Georgia acknowledged the violation of Article 6 §§ 1 and 3 of the Convention with respect to the judicial determination of the administrative offences imputed to several applicants in the case of *Giorgi BEKAURI and others against Georgia* (App no. 312/10).
77. Initially, it should be noted that respective Articles of the Code of Administrative Offences of Georgia provide sufficient guarantees of fair trial within judicial determination of the administrative offences. In particular, according to Article 252 of the Code, person liable for an administrative offence has a right to get acquainted with the case material, give statements, tender evidence, file petitions, enjoy the legal services of a defence counsel during the hearing, speak in a native language and, if he/she does not speak the language of the proceedings, enjoy the services of an interpreter and appeal an order issued in the case. Article 263 regarding the procedure for hearing the administrative cases, states that the persons participating in the hearing shall be heard, the evidence shall be examined and the petitions shall be ruled upon. Under Article 264 of the Code, during the hearing of administrative offence case, the official body should ascertain, inter alia, whether or not an administrative offence was committed, whether or not the person is guilty, whether or not the person is subject to an administrative

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<sup>7</sup> Final Opinion On the Amendments to the Law on Assembly and Manifestations of Georgia – Adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) Opinion no.547/2009, CDL-AD(2011) 092-Strasbourg, 17 October, 2011, para. 47, available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282011%29029-e>



liability, whether or not there are any circumstances reducing or increasing the liability, also ascertain any other circumstances relevant for resolving the case.

78. As to the Action Plan of Georgia on the Protection of Human Rights (2014-2015), it envisaged systematic review of the Code of Administrative Offences of Georgia, among others, by bringing the norms related to administrative detention in compliance with the right to a fair trial.
79. Pursuant to the progress report on the implementation of the Human Rights Action Plan (2014-2015), paragraph 1<sup>1</sup> has been added to Article 262 of the Code of Administrative Offences, according to which the cases of administrative offences defined in Articles 45, 166 and 173 shall be heard within three days. The district (city) court hearing an administrative case shall begin an oral hearing immediately upon receipt of the administrative offence report and other materials of the administrative proceedings in the cases when an administrative arrest has been applied against the person and the period of administrative arrest has not expired. According to the progress report, the aforesaid amendment promotes protection of the rights guaranteed under the Constitution of Georgia as well as increases efficiency of the activities of law enforcement bodies.
80. Another step carried out within the framework of implementation of 2014-2015 Human Rights Action Plan was the amendment to Article 245 of the Code of Administrative Offences. In particular, in the case of an administrative arrest, the arresting officer shall inform the arrestee upon placing him/her under arrest, in a form that he/she understands: a) of administrative offence committed by him/her and the basis of the arrest; b) of his/her right to a defence counsel; c) of his/her right, if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her, also to the administration at his/her place of work or study. In addition, pursuant to the amendments “statements made by the arrestee before receiving the information provided in paragraph 1 of this article shall be declared as an inadmissible evidence”.<sup>8</sup> The amendments requiring the rights of the arrested person to be explained to him/her immediately upon arrest were positively assessed by the Public Defender of Georgia.<sup>9</sup>
81. Apart from the aforementioned amendments, it should be also underlined that according to the Code of Administrative offences of Georgia the penalties for administrative offenses ranged from a fine to detention for up to 90 days. In 2014 some steps were carried out to improve the Code of Administrative Offences in that regard. Particularly, the amendments of 2014 reduced the upper threshold (90 days) of the administrative imprisonment to 15 days<sup>10</sup> since it contradicted the principle of proportionality of the sanctions which should be deemed as an important step forward (see action plan of 18/07/2014 in *Kakabadze and Others*).

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<sup>8</sup> Paragraph 3 of Article 32 of the Code of Administrative Offences of Georgia.

<sup>9</sup> The special report of the Public Defender of Georgia, 15 April 2016 - “Report on Implementation of the Recommendations presented in 2012 Report of Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association”, p. 23, available at: <http://www.ombudsman.ge/uploads/other/3/3570.pdf>

<sup>10</sup> Article 32 of the Code of Administrative Offences of Georgia.



82. Reduction of administrative imprisonment was one of the recommendations of the Public Defender for many years and was reflected in the Parliamentary Report of 2013 as well.<sup>11</sup>
83. As for general tendency of imposing administrative sanctions, it is notable that during the recent years imposing the most severe penalty - administrative detention is reduced which is a positive trend. In general, the domestic courts impose more lenient administrative sanctions such as fines. Consequently, the sanctions imposed by the courts are adequate and proportional.
84. Finally, the Government of Georgia draws the committee's attention to its commitment stated in New Human Rights Action Plan (2016-2017) which introduces as one of the objectives further harmonisation of the Code of Administrative Offences of Georgia with the international standards by Initiation of the Code of Administrative Offences of Georgia, in particular by revoking the administrative detention and setting up a unified system of monetary fees.

#### **d) Trainings**

85. The Government has taken steps for the enhancement of professional qualifications of the judges and other court officials in respect of the Code of Administrative Offences of Georgia. Particularly, High School of Justice, which is educational institution in charge of training of the judicial candidates, judges, judicial assistants and other court staff, organizes periodic training sessions on the problematic issues related to the hearing of cases on administrative offences for the court officials. For instance, in 2015 two training courses regarding the problematic issues related to the hearing of cases on administrative offences were held for judges, which covered, *inter alia*, types of administrative offences, administrative liability, case law on the problematic issues of determination administrative offences etc.
86. Also the Government of Georgia draws huge attention towards raising awareness on human rights protection among police officers. In this regard, the Government has taken steps for the enhancement of professional qualifications of the law enforcement personnel in protecting freedom of assembly and manifestations.
87. For more details regarding trainings see the action plan submitted by the Government in the case of *Identoba and others v. Georgia* on 26/04/2016.

### **VI. Summary of the reports**

- ***The Human Rights Committee, 19 August 2014 "Concluding observations on the fourth periodic report of Georgia"***

88. The Human Rights Committee in its fourth periodic report of Georgia welcomes aforementioned legislative and institutional steps taken by the State party.

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<sup>11</sup> Parliamentary Report of 2013 by the Public Defender of Georgia, p. 281, available at: <http://www.ombudsman.ge/uploads/other/1/1563.pdf>

The relevant excerpt from the periodic report reads as follows:

*“The Committee welcomes the following legislative and institutional steps taken by the State party:*

- (a) Adoption of the National Human Rights Strategy for 2014–2020 and of the National Human Rights Action Plan for 2014-2015, in April and June 2014, respectively;*
- (d) The amendments and addition to the Law on Assembly and Demonstrations, in July 2011; [...]*<sup>12</sup>
- ***The Annual Report of the Public Defender of Georgia, THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA, 2014***

The Public Defender of Georgia in his Annual Report noted with satisfaction that the administrative detention term has decreased from 90 days to 15 days.

The relevant excerpt from the periodic report reads as follows:

*“We note with satisfaction that the administrative detention term has decreased from 90 days to 15 days. In particular, the changes made in the legislation on 1 August 2014 took into account the Public Defender’s recommendation about reducing the term of administrative detention. It goes without saying that we are glad to this change.”*<sup>13</sup>

- ***The Annual Report of the Public Defender of Georgia, THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA, 2015***

The Public Defender of Georgia in his Annual Report emphasized a positive trend in selecting administrative sanctions by the judicial authorities.

The relevant excerpt from the periodic report reads as follows:

*„The 2015 reporting period saw a positive trend in selecting administrative sanctions in Tbilisi, Kutaisi and Batumi city courts. Judges, virtually, do not impose administrative imprisonment in relation to Articles 45, 166 and 173 of the Administrative Offences Code. It is worth noting that Tbilisi City Court actively applies Article 22 of the Administrative Offences Code which envisages the release of an offender from administrative liability with only a verbal warning in case of a petty administrative offence. Verbal warning is frequently applied by the Batumi City Court too.”*<sup>14</sup>

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<sup>12</sup> “Concluding observations on the fourth periodic report of Georgia” Adopted by the Human Rights Committee at its 111th session (7–25 July 2014), (CCPR/C/GEO/4), Distr.: General, 19 August 2014, para. 3, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGEO%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGEO%2fCO%2f4&Lang=en)

<sup>13</sup> The Annual Report of the Public Defender of Georgia, THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA, 2014, p. 247, available at: <http://www.ombudsman.ge/uploads/other/3/3510.pdf>

<sup>14</sup> The Annual Report of the Public Defender of Georgia, THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA, 2015, p. 381, available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>

- ***The special report of the Public Defender of Georgia, 15 April 2016 - “Report on Implementation of the Recommendations presented in 2012 Report of Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association”***

89. The Government stress that since Parliamentary elections of 1 October 2012 in contrast to recent years, the manifestations have been held peacefully - without any disturbances and interferences which was positively assessed by the Public Defender of Georgia in its reports.

The relevant excerpt from the special report reads as follows:

*“Within the recent years, the police has been using unproportionate force to disperse protects and demonstrations in Georgia (inter alia, protests and demonstrations in November, 2007, in spring of 2009, on 26 May, 2011). [...] On 1 October, 2012, following the Parliamentary elections, large scale protests were held and some of them were conducted without violating anybody’s rights. Unlike the previous years, in 2012-2015 the Office of the Public Defender of Georgia has not received any information about dispersing of the protests through violation of the legal requirements or/and use of unproportionate force from the part of the law enforcements. This fact deserves positive assessment [...]”*

## **VII. CONCLUSION**

90. The Government hold the view that the aforementioned general measures implemented on domestic level will contribute to further prevention of violations similar to those acknowledged by the Government and will remedy the consequences of the violations.
91. The Government of Georgia reserve the right to provide the Committee of additional information on individual/general measures to be adopted by the Government in order to fully comply with their obligations under Article 46 (1) of the European Convention.

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**The Government of Georgia**

**ACTION PLAN**

***CASE OF GEGENAVA AND OTHERS v. GEORGIA***

**No. 65128/10, final on 12.11.2015**

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**Department of State Representation to the International Courts  
Ministry of Justice of Georgia  
28 October 2016**

## I. INTRODUCTION

The Government of Georgia submit action plan on the measures adopted in the course of the execution of the decision in the case of *Gegenava and Others v. Georgia*, friendly settlement with undertaking to ensure the effectiveness and prompt finalisation of the ongoing investigations of criminal cases related to the three applicants.

Regarding another separated criminal case related to the 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 Articles 3 acknowledged by the Government in their unilateral declaration).

In their unilateral declaration, the Government also acknowledged substantive violation of Articles 3 on account of the material conditions of the applicants' detention in Rustavi no. 2 and Rustavi no. 6 and Kutaisi no. 2 Prisons and the prison hospital and the lack of adequate medical treatment with respect to the second and third applicants.

The Government undertook to pay 8 500 euros to the applicants (see details below).

## II. INDIVIDUAL MEASURES

### a) *Details of just satisfaction*

Name of the case / application No.	Applicant's name	Just satisfaction awarded	Total / Date of payment
Gegenava and Others v Georgia No. 65128/10	Mr Vazha GEGENAVA	2 000 EUR	8 500 EUR  26.01.2016
	Mr Imeda BUTKHUZI	3 000 EUR	
	Mr Rudik OVAKIMYAN	3 500 EUR	

### b) *Investigation*

#### As regards the initial investigation

Before presenting the activities carried out within the context of renewed investigation in this case, it should be noted that the criminal case no.74068404 initiated by the Prosecutor's Office of Georgia concerned the applicants' placement in a punishment cell of Rustavi no. 6 Prison without any clothes in September 2006, following their ill-treatment, threats and intimidation.

In September 2007, a new complaint by the second applicant, concerning another alleged ill-treatment – this time in Rustavi no. 2 Prison – was added to the investigative file. The criminal case no. 074098003 commenced by the Prosecutor's Office, concerned the second applicant's ill-treatment on 25 November 2008 upon his transfer to Rustavi no. 6 Prison.

The criminal case no. 073100125 concerned the second and the third applicants' ill-treatment on 6 March 2010 by the director - G.K. and the staff of Rustavi no. 2 prison while they were transferred there from Rustavi no. 1 Prison. This case was initiated by the Ministry of Corrections and was terminated on 18 June 2010.

The criminal case no. 010118093 was initiated by Tbilisi Prosecutor's Office in respect of the third applicant's transfer from Rustavi no. 17 Prison to Prison hospital no. 18 on 14 April 2011, where he was verbally insulted by the prison hospital staff. Also, this case concerned the third applicant's state of health and medical negligence on the part of the prison hospital. On 14 May 2015, this case was merged with another criminal case (no. 010118092), which also concerned alleged ill-treatment of the prisoners. Subsequent to the decision of the ECtHR, on 11 January 2016, from the aforesaid merged criminal case no. 010118093, the case no. 010110116801 was still separated concerning unlawful actions carried out in regard to the third applicant in 2011 by the employees of Prison Hospital no. 18 and Tuberculosis Treatment and Rehabilitation Centre for Convicts no. 19, under Articles 333 and 1443 of Criminal Code (exceeding official powers and inhuman or degrading treatment).

#### As regards the renewed investigation

Initially, it should be noted that two applicants - Mr Imeda Butkhuzi and Mr Rudik Ovakimyan have been released from prison on 29 February 2012 and 2 April 2015, respectively. As to Mr Vazha Gegenava he was released on 10 February 2013, however since he committed crime anew, he had been arrested on 21 October 2014 and had been imprisoned for 6 years. Currently, he is placed at Prison no. 17.

Throughout the criminal proceedings number of investigative activities has been carried out – numerous witnesses have been questioned and forensic medical examination has been appointed.

#### Independence and impartiality of the investigation

The alleged incidents of ill-treatment were committed by the prison staff whereas the investigation is conducted by the Chief Prosecutor's Office of Georgia which is entirely autonomous from the penitentiary system and does not have any institutional or hierarchal linkage to the events in question. Persons responsible for the execution of the investigation as well as investigative body – are independent in law and in practice.

It should be underscored that Article 34 of the Criminal Procedure Code provides an exhaustive list of the bodies (investigators) authorised to pursue criminal investigations. According to this Article, criminal cases shall be investigated by the investigators of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Corrections of Georgia, the Ministry of Finance of Georgia and the investigative divisions of the State Security Service of Georgia.

According to Articles 35-36 of the same Code, an investigative jurisdiction and the territorial investigative jurisdiction shall be determined by the Minister of Justice of Georgia on the recommendation of the Chief Prosecutor of Georgia.

Agency and territorial subordination of investigation is regulated by the Order 34 of the Minister of Justice of Georgia issued on 7 July 2013 concerning determination of territorial and investigative jurisdiction of criminal cases. Article 2 of the Order sets the list of cases which should be investigated by the investigator of the Prosecutor's Office of Georgia, among others, the crimes committed by the police officers. Furthermore, pursuant to Article 3 of the Order the crimes committed under several Articles of the Criminal Code of Georgia, among others, under Articles 332-335 should be investigated by the investigators of the Prosecutor's Office of Georgia.

In case of competition concerning the investigative subordination between the Prosecutor's Office and some other investigative organs envisaged by this Order, the investigation should be carried out by the Prosecutor's Office of Georgia (Article 10 of the Order).

In addition, despite the norms regarding investigative subordination set out in Order 34 of the Minister of Justice of Georgia, Georgian legislation – subparagraph “a” of paragraph 6 of Article 33 of the Criminal Procedure Code – allows the Chief Prosecutor or other person authorized by the Chief Prosecutor to take away a case from one investigation body and to assign it to the Prosecutor's Office for the investigation regardless of normally applicable jurisdictional rules.

As to the implementation of institutional independence in practice, according to the annual report of the Public Defender of Georgia of 2013:

“During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules [...]”<sup>1</sup>

According to the annual report of the Public Defender of Georgia of 2015:

“According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor's Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor's Office investigates such cases [...]”.

Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor's Office handles the above-mentioned criminal cases [...]”<sup>2</sup>

### *I. Placement of the applicants in a punishment cell of Rustavi no. 6 Prison in September 2006*

In September 2006 the representatives of Public Defender of Georgia were inspecting Rustavi no. 6 Prison when they reported about the applicants and other prisoners being kept in inhuman and degrading

<sup>1</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2013, p.12, available at <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

<sup>2</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2015, p.188, available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>

conditions in the punishment cells. Within the context of renewed investigation, the investigative authorities collected all relevant information from Rustavi no. 6 Prison for the period of September 2006 (reports of disciplinary sanctions imposed on prisoners placed in punishment cells, reports of their visual examination before placing in such cells, transfer of the convicts, etc.). It has been established, that during the period of 2 - 30 September 2006, 54 prisoners have been placed in punishment cells of Rustavi no. 6 Prison for different time periods. Out of the aforesaid 54 prisoners, four convicts have passed away and nine have departed from the country.

Until now, the investigative authorities have interrogated 11 convicts. One of them Z.G., explained that due to violation of the internal rules of the prison, he had been placed at punishment cell. Prior to his placement, the prison officer on duty, in the presence of another prison officer, ordered him to take off his clothes for the aim of examination, which was not returned to him. Therefore, Z.G. had been placed in a punishment cell without any clothes (including underwear). It was too cold in a punishment cell during the night hours. He had been asking for his clothes to be returned but to no avail. Z.G. added that the prison officers had returned his clothes only after his release from the punishment cell. He is not aware of the identities of the prison officers. The same testimonies were given by six other witnesses (former convicts). They stated that during the whole period of their placement in punishment cells, they had been without any clothes (including underwear).

Four other witnesses explained that they were ordered to take off their clothes due to examination before placing in punishment cells, which were returned upon the end of examination and consequently, they were placed with their clothes. Also, they pointed out that while being in punishment cells, no one has assaulted them verbally/physically, therefore they do not have any claims.

At the outset of the investigation, eight other convicts have denied to cooperate with the investigative authorities and to be interviewed. As a result of active communication with the witnesses, recently 5 witnesses (B.Q., B.D., N.B., G.B., Z.Kh.) have confirmed to be interviewed which is planned to be carried out in November 2016. As to the other three witnesses (M.Ph., B.K., D.Ts.), at this stage they have rejected to cooperate with the investigative organs. In case, they maintain their rejection to be interrogated in an ultimate manner, they will be interrogated before the magistrate judge until 30 November 2016 in accordance with paragraph 8 of Article 113 of the Criminal Procedure Code of Georgia.

## *II. Alleged ill-treatment of the second applicant upon his transfer to Rustavi no. 6 Prison*

Initially, it should be underscored that the second applicant served his sentence in various prisons during 2005-2012 years. According to the second applicant, on 25 November 2008, after his transfer to Rustavi no. 6 Prison (without any explanations), he was taken to an isolated room where he was verbally and physically assaulted by several prison officers, including the one identified by him as L.K. then his hair was shaved off against his will. Also, the applicant protested that he was not able at the prison to take the medicine – “Optimal” which was sent to him by the members of his family.

In respect of this episode, the Government refer to the evidence obtained during the initial investigation. In particular, according to the documentations requested from Rustavi no. 6 Prison and the evidence given by the witnesses, the main reason of the second applicant’s transfer was the breach of the prison rules which endangered the security of the prison. The transfer order had been presented to the applicant



and he refused to get acquainted with its content and to sign it. As to shaving off his hair, it did not aim to punish the applicant, but it solely served hygienic aims in accordance with the regulations set by the Prison Code of Georgia. As to receiving the medicine - “Optimal”, since this particular medicine required medical prescriptions, according to prison medical journals, it had been sent by the applicant’s family members on 26 November 2008 but it had been passed to the applicant only on 8 December 2008 when the neuropathologist prescribed “Optimal” to him.

Due to the aforesaid conclusions, within the context of renewed investigation, the investigative authorities focused solely on the second applicant’s complaint of his alleged physical/verbal assault upon his transfer from Rustavi no. 2 Prison to Rustavi no. 6 prison on 25 November 2008. In that regard, the investigative authorities have already interrogated two witnesses – V.P. and I.B. who had been transferred with the second applicant on the same date to Rustavi no. 6 prison. They denied any fact of verbal/physical assault of the prisoners on that day on behalf of Rustavi no. 6 prison staff. Currently, the investigative authorities are identifying the whereabouts of some other prisoners who were transferred with the second applicant for their interrogation in capacity of witnesses.

The second applicant also referred to his alleged ill-treatment on 31 March 2006 upon his transfer from Prison no. 5 to Rustavi no. 6 Prison. He alleged that the officers of special forces, wearing masks, beat him with truncheons and with their feet, consequently, he received fractures of chest bone and three costal bones. On 17 October 2016, the investigative authorities appointed forensic medical examination in this regard.

### *III. Alleged ill-treatment of the second and the third applicants on 6 March 2010*

The decree on termination of investigation into the criminal case no. 073100125, concerning physical and verbal assault of the second and third applicants while transferring them from Rustavi Prison no. 1 to Rustavi Prison no. 2, was quashed on 12 January 2016 and the investigation was reopened by the Chief Prosecutor’s Office. Some convicts were questioned who were transferred with the applicants to the same Penitentiary Institution. They did not confirm the facts of ill-treatment.

The investigative bodies are planning to carry out further investigative activities in that regard and to interrogate other witnesses who were transferred with the applicants on 6 March 2010.

### *IV. Alleged ill-treatment of the third applicant on 15 April 2011*

Initially, it should be noted that in the context of initial investigation, the evidence provided by the third applicant regarding his alleged ill-treatment on 15 April 2011 at the Prison hospital no. 18 are contradictory. In particular, on 26 July 2011, in the presence of his lawyer, the third applicant stated that on 15 April 2011, while transferred to Prison Hospital no. 18 with the purpose of ambulatory examination, he was subjected to blood test and X-ray. At that time the prison officers, including the physicians, insulted him verbally. On 28 January 2013, he was interrogated anew regarding the same incident whilst he pointed out that on 15 April 2011 at the Prison hospital he was not subjected to any medical examinations. Furthermore, he stated that in X-ray cabinet, in the presence of several persons, he was beaten by head of the Security Department of the Prison hospital - G.A. and the head of Legal Regime Department - A.T..

The following witnesses have been interrogated in the context of the above mentioned incident: The former deputy director of Prison Hospital no. 18, the former head of the Security Department, the former head of the Legal Regime Department, the former head of the Social Department, the former and current inspector-controllers of Prison hospital, former convict who was transferred with the third applicant on 15 April 2011 from Prison no. 17 to Prison hospital no. 18 and operating officer of Prison no. 17, who carried out the applicant's personal search on 15 April 2011, before his transfer to the Prison Hospital and subsequent to his return.

Furthermore, according to the medical documentations collected from Prison no. 17, on 15 April 2011 at Prison hospital the third applicant was subjected to complete blood count, blood tests for HIV infection/AIDS and chest roentgenography. Also, he was consulted by the recipient duty physician D. B. and phthisiologist E. L.

According to the testimonies of the aforesaid witnesses as well as the evidence collected throughout the renewed investigation at this stage the alleged incidents of physical or verbal assault towards the third applicant on 15 April 2011 at Prison hospital no. 18 were not confirmed.

*V. Alleged ill-treatment of the third applicant between the period of 4-31 August 2011*

On 4-31 August 2011, the third applicant was transferred from Prison no. 17 to Prison Hospital no. 18 on the grounds of the doubts of Tuberculosis. At Prison Hospital no. 18 he was assigned to an anti-tuberculosis treatment under the DOTS programme. According to his testimony, former head of the Security Department of Prison Hospital G.A. and former head of the Legal Regime department L.T. were beating him systematically. In the late August he was taken to the cabinet of the director of the prison – V.Ts. where he was beaten by the prison officials – G.A., L.T. and V.Ts.

Regarding the aforesaid allegations, all prison officers named by the applicant have been questioned. They firmly denied the impugned facts. Former physician T.J. has been also questioned. She declared that the third applicant had never expressed any complaint in respect of physical abuse from the prison staff and that she had never noticed any kind of injuries on him.

Apart from the officials of Prison hospital, the investigative bodies interrogated the fellow inmates of the third applicant. They explained that they had not observed any instances of beating of the third applicant from the prison staff and that nobody had insulted them personally and they had never heard regarding any such incidents.

*VI. Alleged ill-treatment of the third applicant between the period of 1 September-10 November 2011*

On 1 September 2011 the third applicant was transferred from Prison Hospital no. 18 to Tuberculosis Treatment and Rehabilitation Centre for Convicts no. 19 at his request, where according to his testimony, psychiatrist I.K. altered his psychotropic drugs - "OPTIMAL" and "ZOLOMAKS" with "SINOREX". While the third applicant expressed his dissatisfaction regarding the aforesaid alteration, the former Director of the facility V.R., the head of Security Department M.S. and other employees of no. 19 facility started beating him in the presence of Chief Physician and psychiatrist.

While interrogated regarding the aforementioned incident, V.R., M.S., psychiatrist - I.K. and Chief Physician O.T. firmly rejected the applicant's allegations. The investigators also interrogated former convict U. Sh., who noted that he once heard some noise of shouting and swearing coming out from the cabinet of medical unit. Afterwards, he met the third applicant, who was returning from the medical unit and who told him that due to his request to prescribe a medicine, he was beaten by the director and the head of Legal Regime Department.

The aforesaid indirect evidence testified by former convict U.Sh. has not been confirmed by another witness, the convict G.M. who explained that he had never witnessed any fact of beating at prisons nos. 18 and 19 and never heard regarding such facts. Other convicts could not be questioned due to various objective reasons for instance witness P.K. could not be interrogated due to his demise. As to the witness V.S. his current whereabouts could not be identified.

The investigative bodies are planning to identify other witnesses and to interrogate them in regard to this episode.

#### *VII. Medical treatment with respect to the second and the third applicants*

In order to determine the third applicant's health condition during his imprisonment, whether he was consumptive with tuberculosis and the adequacy of diagnosis/his medical treatment at the penitentiary departments nos. 17, 18 and 19, a forensic medical examination was appointed by the investigative authorities on 13 June 2016.

According to the report of forensic medical examination dated 9 August 2016:

- a) the third applicant was accurately diagnosed with pulmonary tuberculosis;
- b) his anti-tuberculosis chemotherapy, prescribed according to the regular TB treatment scheme, was carried out adequately;
- c) The experts concluded that, he was treated accurately; diagnostics and treatment of pulmonary tuberculosis was carried out in accordance with the recommendations of National Guidelines on TB control which encompasses principles set by the World Health Organization in that regard.

It was also intended to carry out forensic examination of the second applicant in order to determine his health condition during his imprisonment. However according to the letters of the penitentiary department, they do not possess medical documentations of 2006-2009 with respect to the second applicant. These matters fall within the scope of further interest of the investigative bodies.

#### *Victim Involvement*

The applicants have not been involved within the renewed investigation since the investigative authorities were not able to get in touch with them. Despite notifications of the applicants' family members and representatives, the applicants have not yet appeared before the prosecution authorities. The involvement of the applicants will be ensured in the nearest future.

### **III. GENERAL MEASURES**

As for the general measures carried out by the Government of Georgia regarding eradication of ill-treatment and the investigative proceedings, please see [DH-DD\(2015\)113](#), [DH-DD\(2015\)625](#), [DH-DD\(2016\)701](#), *Gharibashvili Group* of cases (11830/03).

Important reforms concerning conditions of detention and health care system at the penitentiary establishments have been realised in the context of the execution of the group of cases *Ghavidze v. Georgia*, closed by the Committee of Ministers on 12 November 2014 (1211th meeting) (Resolution CM/ResDH(2014)209).

Concerning conditions of detention, please see also the recent Action Plan submitted by the Government of Georgia on 18 July 2016 in the case of *Aliev v. Georgia* (522/04) (DH-DD(2016)898).

#### IV. CONCLUSION

As demonstrated above, new investigations have been implemented in compliance with the European Court's case-law, and Committee of Ministers practice. Independence and impartiality of the investigators /prosecutors are ensured to the fullest extent. The investigations are 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.

The planned investigative steps will be actively carried out by the investigative authorities during last months of 2016 as well as during the first half of 2017 taken into consideration that the renewed criminal case consists of combined four independent criminal cases regarding allegations of three applicants which require comprehensive investigative activities to be carried out. Also, the main challenge for the investigation constitutes identification of the whereabouts of former convicts in order to be interviewed since most of them do not reside at their registration addresses. The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigations.

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**The Government of Georgia**

**ACTION PLAN**

***CASE OF LANCHAVA v. GEORGIA***

**No. 28103/11, decision final on 16/07/2015**

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

**Ministry of Justice of Georgia**

**28 October 2016**

## I. INTRODUCTION

The Government of Georgia submit Action Plan on 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 Articles 3 acknowledged by the Government in their unilateral declaration) 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.

## II. PAYMENT

Name and application number	Pecuniary damage, Non-pecuniary damage, Costs and expenses	Total
<i>Lasha Lanchava v. Georgia</i> n°28103/11	4 500 EUR	4 500 EUR Paid on: 08.09.2015

## III. INVESTIGATION

### *a) as regards the initial investigation*

On 7 July 2009 the Prisons Department issued a statement, according to which a violent incident had taken place in Kutaisi no. 2 Prison the previous night; notably, the juvenile inmates (including the applicant) had allegedly damaged prison property by wrecking one of the prison cells. On the same day, the investigation was commenced by the Investigation Department of the Ministry of Corrections of Georgia under Article 378 of Criminal Code of Georgia (interference with or disorganisation of the activities of a penitentiary facility or liberty restriction facility). On 15 February 2010, the *Kutaisi* City Court found guilty the applicant for damage or destruction of object (Article 187 of the Criminal Code) and for interference with or disorganisation of the activities of a penitentiary facility or liberty restriction facility (Article 378 of the Criminal Code).

According to the case-file, after the violent incident, several representatives of the Public Defender's Office visited *Kutaisi* no. 2 Prison in order to verify the official version of the incident and to meet the inmates involved. It appeared that altogether 19 juveniles, including the applicant, had participated in the alleged violent incident and that seven of them, including the applicant, had been transferred to another prison in *Tbilisi* early in the morning. The inmates claimed that in the evening of 6 July 2009, one of the prison officers had noted that an iron lattice on a window as well as the window glass in cell no. 102 had been damaged. The inmates were ordered to empty the cell. Nevertheless, the inmates, including the applicant, were beaten by prison officers while outside the cell. On 4 August 2009, another criminal case was separated

under Article 333§1 of the Criminal Code (exceeding official powers) against the employees of *Kutaisi* no. 2 Prison. Nevertheless, this criminal case did not lead to any outcome and it was terminated by the investigative authorities.

***b) as regards the renewed investigation***

***- Independence and impartiality of the investigation***

Subsequent to the decision of the European Court in the present case, with a view of carrying out a thorough, prompt, independent and effective investigation into alleged ill-treatment of the applicant on 6 July 2009 at Kutaisi no. 2 Prison, the decree on termination of the investigation was quashed on 15 April 2016 and the investigation was reopened by the Chief Prosecutor's Office of Georgia. The alleged ill-treatment was committed by the prison employees whereas the investigation is conducted by the Chief Prosecutor's Office which is entirely autonomous from the penitentiary system and does not have any institutional or hierarchal linkage to the events in question. Persons responsible for the execution of the investigation as well as the investigative body – are independent in law and in practice.

It should be underscored that Article 34 of the Criminal Procedure Code provides an exhaustive list of the bodies (investigators) authorised to pursue criminal investigations. According to this Article, criminal cases shall be investigated by the investigators of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Corrections of Georgia, the Ministry of Finance of Georgia and the investigative divisions of the State Security Service of Georgia.

According to Articles 35-36 of the same Code, an investigative jurisdiction and the territorial investigative jurisdiction shall be determined by the Minister of Justice of Georgia on the recommendation of the Chief Prosecutor of Georgia.

Agency and territorial subordination of investigation is regulated by the Order 34 of the Minister of Justice of Georgia issued on 7 July 2013 concerning determination of territorial and investigative jurisdiction of criminal cases. Article 2 of the Order sets the list of cases which should be investigated by the investigator of the Prosecutor's Office of Georgia, among others, the crimes committed by the police officers. Furthermore, pursuant to Article 3 of the Order the crimes committed under several Articles of the Criminal Code of Georgia, among others, under Articles 332-335 should be investigated by the investigators of the Prosecutor's Office of Georgia.

In case of competition concerning the investigative subordination between the Prosecutor's Office and some other investigative organs envisaged by this Order, the investigation should be carried out by the Prosecutor's Office of Georgia (Article 10 of the Order).

In addition, despite the norms regarding investigative subordination set out in Order 34 of the Minister of Justice of Georgia, Georgian legislation – subparagraph "a" of paragraph 6 of Article 33 of the Criminal Procedure Code – allows the Chief Prosecutor or other person authorized by the Chief Prosecutor to take away a case from one investigation body and to assign it to the Prosecutor's Office for the investigation regardless of normally applicable jurisdictional rules.

As to the implementation of institutional independence in practice, according to the annual report of the Public Defender of Georgia of 2013:

“During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules. [...]”<sup>1</sup>

According to the annual report of the Public Defender of Georgia of 2015:

“According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor’s Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor’s Office investigates such cases [...].

Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor’s Office handles the above-mentioned criminal cases [...]”<sup>2</sup>

- Circumstances of the case established as a result of renewed investigation

Throughout the renewed criminal proceedings, the investigative authorities collected all relevant criminal case files such as the report of the Public Defender of Georgia regarding the alleged incident, conclusion of forensic medical expertise carried out in respect of the applicant and some other evidences which were included into the renewed criminal case.

The investigative authorities addressed the penitentiary department with the request to collect the following information: identities of the prison employees who participated in transferring of prisoners after the incident, whether the prisoners were subjected to body external examination subsequent to their transfer and the detailed information regarding dispatching of penitentiary brigade in response to the incident of 6 July 2009. According to the penitentiary department, they do not possess the requested information.

As to the questioning of witnesses, the investigative authorities could not interrogate the applicant since he was released from prison on 24 July 2013 and as reported by the Ministry of Internal Affairs of Georgia (MoIA), the applicant crossed the State border on 19 February 2015 to the direction of Minsk (Belarus).

In order to ascertain the applicant’s whereabouts, the investigators interviewed his lawyer who did not possess any information. According to the applicant’s father, his son is serving his sentence abroad, nevertheless he is not aware of his location or his contact details.

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<sup>1</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2013, p.12, available at <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

<sup>2</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2015, p.188, available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>



As to the other inmates who participated in the aforementioned incident (B.G and N.S), two of them rejected to be questioned before the applicant appears to the investigative bodies.

While contacting the witness - N.S. by phone he maintained that he did not wish to be interviewed voluntarily. According to paragraph 8 of Article 113 (Procedure for interview) of Code of Criminal procedure in such circumstances “if an interview is conducted by the prosecution, in the case of the refusal of an interviewee to be interviewed, the prosecution may inform the interviewee that he/she may be summoned before the magistrate judge to give testimony, and that the giving of testimony is obligatory and that the failure to perform this obligation will result in the criminal liability of the interviewee. This information shall be entered into the record of the interview”.

Since the interviewees live in the Western part of Georgia the investigators of Investigation Unit of the Regional Prosecutor’s Office of the Western Georgia were given respective tasks namely to draw up relevant records.

On 25 October 2016 the investigative authorities interviewed N.S. and the relevant record was drawn up as well. He reiterated that he refuses to be interviewed and that he will give an interview only after the applicant’s return to Georgia. Thus, in this case the petition for questioning - N.S. could be sent to the magistrate judge.

There was analogous situation in case of the witness – B.G.. In particular while having conversation with investigative bodies on the telephone the witness stated that he did not want to be interviewed. On 24 October 2016 at 13:45 the investigator called the witness and informed him that on 25 October 2016 he should have been appeared at the Regional Prosecutor’s Office of Sachkhere in order to be interviewed. He expressed consent on the request, however B.G. did not appear and turned off his mobile phone. He was not present at home as well.

The investigative bodies plan to visit him anew and to draw up relevant records envisaged by paragraph 8 of Article 113 of Code of Criminal procedure in order to petition for the questioning of the said person in the court before the magistrate judge.

Two other witnesses (G.T. and D.B.) are not in Georgia. Pursuant to the information of the MoIA, G.T. has crossed the State border of Georgia on 18 September 2014 and D.B. on 19 November 2014. After serving their sentences, they are expected to return to Georgia in December 2016.

The witness Ch. G., has been to *Turkey* since 30 April 2016 and upon his arrival, he will be summoned for questioning.

On 27 September 2016 the applicant’s father was interviewed additionally. According to him, the applicant is serving his sentence in *Ukraine*. Therefore, an official motion was sent by the investigative authorities to the Ukrainian official bodies with the legal request to interrogate the applicant regarding his alleged ill-treatment.

The investigative authorities further interrogated the employees of Kutaisi no. 2 Prison. On 10 October 2016 inspector of regime stated, that the applicant had hit an employee of prison by his hand and then organized a prison riot. In order to suppress that riot, special forces were called. From the moment of their arrival, the situation had de-escalated. The applicant was not beaten by the employees of the prison, he was probably injured whilst resisting the members of the special forces.

On 11 October 2016 the former employee of Kutaisi no. 2 Prison Sh. K was interrogated. He firmly denied the fact that he had beaten the applicant and stated that on 6 July 2009, the head of Security Department - R. K. told him that juveniles had damaged lattice and had smashed the glass pane in one of the prison cells. He had been ordered by R. K., together with the inspectors of the regime, to take juveniles out of the cell, to transfer them at the duty unit and afterwards, to repair lattice and replace a glass pane with the help of the prisoners. Afterwards, he had to take back the juveniles to the cell. Sh. K. together with the regime inspectors led juveniles (including the applicant) out of the cell, in the yard and headed to the duty unit. Whilst walking in the yard, Sh. K. repeatedly requested the applicant to obey the requirements of the regime and to put his hands behind his back, however, he did not obey. After the final warning, the applicant attacked him, hit his hand in the arm and consequently, Sh.k. fell down and injured his knee and hand. Subsequently, the applicant organized a prison riot. In order to suppress the riot special forces were called. From the moment of their arrival the situation had de-escalated. The applicant was not beaten by the employees of the prison, he was possibly injured while resisting the members of special forces.

On 13 October 2016, the head of Security Department of the Kutaisi no. 2 Prison (at the material time) – R. K. was questioned in capacity of witness. He stated that, the applicant and the other juvenile inmates were not beaten or verbally insulted by the Prison employees. Juveniles were possibly injured by the members of special forces as a result of beating.

### *c) Planed investigative steps*

The investigative authorities are planning to carry out all the measures in order to interrogate the applicant and his fellow inmates at the material time. In case of refusal of the witnesses to be interviewed voluntarily, they would be summoned before the magistrate judge to give testimony under Article 113§8 of the Criminal Procedure Code<sup>3</sup> (see also the action plan submitted in *Gharibashvili group* on 01/06/2016 ([DH-DD\(2016\)701](#))).

The planned investigative steps will be actively carried out by the investigative authorities until the end of 2016. The Government will submit to the Committee the updated information regarding the present case in due course.

As for the general measures carried out by the Government of Georgia regarding eradication of ill-treatment and the investigative proceedings, please see [DH-DD\(2015\)113](#), [DH-DD\(2015\)625](#), [DH-DD\(2016\)701](#), *Gharibashvili Group* of cases (11830/03).

## **IV. CONCLUSION**

As demonstrated above, the investigative measures undertaken by the relevant authorities in terms of execution of this case encompass a number of significant initiatives.

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<sup>3</sup> “If an interview is conducted by the prosecution, in the case of the refusal of an interviewee to be interviewed, the prosecution may inform the interviewee that he/she may summoned before the magistrate judge to give testimony, and that the giving of testimony is obligatory and that the failure to perform this obligation will result in the criminal liability of the interviewee. This information shall be entered into the record of the interview.”

New investigation has been implemented in compliance with the European Court's case-law, and Committee of Ministers practice. Independence and impartiality of the investigators/prosecutors are ensured to the fullest extent. 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.

The decision regarding future course of action will be adopted after carrying out all necessary investigative measures within the time-limits set above. The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigation.

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**The Government of Georgia**

**ACTION PLAN**

**KIZIRIA GROUP OF CASES v. GEORGIA**

Kiziria, 4728/08, final on 03.04.2014

Baghashvili, 5168/06, final on 10.04.2014

Mzekalishvili, 8177/12, final on 05.03.2015

Kopadze, 58228/09, final on 02.04.2015

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## **I. INTRODUCTION**

The present action plan concerns the measures adopted by the Georgian authorities in the course of the execution of four cases of *Kiziria* Group. This group concerns five friendly settlements in which the Government acknowledged a lack of effective investigations into allegations of violations of the right to life and of ill-treatment (procedural violations of Articles 2 and 3 of the Convention) and undertook to conduct effective investigations into the impugned facts as well as to pay just satisfaction to the applicants (see details below).

The Government wish to inform the Committee of Ministers that the action plan in the case of *Surmanidze and Others v. Georgia* will be submitted in November.

### **As regards the independence**

The Government underline from the outset that the investigative bodies in charge of the criminal cases meet all the requirements established in the European Court's case-law regarding the independence and impartiality. In particular, the persons responsible for the investigation are hierarchically and institutionally independent from those involved in the events at issue.

All cases of *Kiziria* group are assigned to the impartial and independent investigators of the Public Prosecutor's Office of Georgia whilst the alleged crimes have been committed by the employees of the Ministry of Internal Affairs or the Penitentiary Institutions.

It should be underscored that Article 34 of the Criminal Procedure Code provides an exhaustive list of the bodies (investigators) authorised to pursue criminal investigations. According to this Article, criminal cases shall be investigated by the investigators of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Corrections of Georgia, the Ministry of Finance of Georgia and the investigative divisions of the State Security Service of Georgia.

According to Articles 35-36 of the same Code, an investigative jurisdiction and the territorial investigative jurisdiction shall be determined by the Minister of Justice of Georgia on the recommendation of the Chief Prosecutor of Georgia.

Agency and territorial subordination of investigation is regulated by the Order 34 of the Minister of Justice of Georgia issued on 7 July 2013 concerning determination of territorial and investigative jurisdiction of criminal cases. Article 2 of the Order sets the list of cases which should be investigated by the investigator of the Prosecutor's Office of Georgia, among others, the crimes committed by the police officers. Furthermore, pursuant to Article 3 of the Order the crimes committed under several Articles of the Criminal Code of Georgia, among others, under Articles 332-335 should be investigated by the investigators of the Prosecutor's Office of Georgia.

In case of competition concerning the investigative subordination between the Prosecutor's Office and some other investigative organs envisaged by this Order, the investigation should be carried out by the Prosecutor's Office of Georgia (Article 10 of the Order).

In addition, despite the norms regarding investigative subordination set out in Order 34 of the Minister of Justice of Georgia, Georgian legislation – subparagraph "a" of paragraph 6 of Article 33 of the Criminal Procedure Code – allows the Chief Prosecutor or other person authorized by

the Chief Prosecutor to take away a case from one investigation body and to assign it to the Prosecutor's Office for the investigation regardless of normally applicable jurisdictional rules.

As to the implementation of institutional independence in practice, according to the annual report of the Public Defender of Georgia of 2013:

“During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules. [...]”<sup>1</sup>

According to the annual report of the Public Defender of Georgia of 2015:

“According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor's Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor's Office investigates such cases [...]”

Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor's Office handles the above-mentioned criminal cases [...]”<sup>2</sup>

### **As regards victim involvement**

It is also to be noted that, in order to ensure the effective victim participation in the re-opened investigations, all the applicants were invited to get acquainted with the criminal case materials (for more details see DH-DD(2015)113 and DH-DD(2015)625 and Notes in *Gharibashvili*, 1259<sup>th</sup> meeting, June 2016).

## **II. Details of just satisfaction**

<b>Name of the case / application No.</b>	<b>Applicant's name</b>	<b>Just satisfaction awarded</b>	<b>Date of payment</b>
Kiziria v. Georgia No. 4728/08	Mr Ramin Kiziria	10 000 EUR	14.05.2014
Baghashvili v. Georgia	Mr Vazha Baghashvili	10 000 EUR	30.05.2015

<sup>1</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2013, p.12, available at <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

<sup>2</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2015, p.188, available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>

No. 5168/06			
Mzekalishvili v Georgia No. 8177/12	Mr Malkhaz Mzekalishvili	4 500 EUR	08.06.2015
Kopadze v. Georgia No. 58228/09	Mr Emzar Kopadze	3 500 EUR	21.05.2015

### **III. Information on new investigations**

#### **Kiziria v. Georgia.**

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.

#### **- New investigation**

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, subparagraph "b" of the Criminal Code of Georgia envisaging exceeding official powers by an official or a person equal thereto, with the use of violence or arms.

On 1 April 2015, the taxi driver who took the applicant's son and his friends was questioned. He pointed that on 23 February 2006, brought three passengers to the village of *Vartsikhe, Baghdati* Region, approximately at 22:30. They paid the agreed amount of money and continued the way on the right side of the river. The driver headed towards the bridge when he was stopped by the police officers, who insisted him to get out of the car. He saw how the police officers opened fire towards other side of the river where he left the passengers. Later he found out that the passengers he had taken were the ones who had been shot dead. He had not observed any arms or anything dubious to the passengers. He stated that the fire was opened only by the police officers and there was no shooting from other side.

The investigation collected the information regarding the detailed phone calls made on 23-24 February 2006, in order to identify all the police officers who had been dispatched at the scene of the shooting and all the circumstances around the case.

Within the renewed investigation, on 15 May 2015 the initial criminal case files have been collected from the MoIA, including the prosecutor's protocol dated 30 January 2007 on the termination of the investigation regarding criminal case that had been initiated against the deceased persons (on the grounds of their death) for the violation of Articles 236 (Illegal purchase, storage, carrying, manufacturing, transportation, forwarding or sale of firearms (other than hunting smooth-bore firearms (shotguns)), ammunition, explosives or explosive devices) and 353 (Resistance, threat or violence against a protector of public order or other representative of the authorities) of the Criminal Code of Georgia. According to that protocol, three firearms, cartridges and cartridge-cases, found adjacent to the deceased persons, had to be transferred to the MoIA for their preservation. Thus, in the protocol the investigator only mentioned cartridge-cases found adjacent to the deceased persons, but did not indicate any



further information regarding cartridge-cases found adjacent to the police vehicle (see below subparagraph – “*shortcomings in the initial investigation*”). As to the material evidence attached to the criminal case-file, within renewed investigation, on 6 June 2016, the investigative authorities have collected nine cartridges, two magazines, one sawn-off gun and two firearms from regional Police Departments. Nevertheless, they were not able to obtain any cartridge-cases (neither those found adjacent to the police vehicle nor those found adjacent to the deceased persons), since they were not preserved at the police departments.

As to the identification and interrogation of all the police officers involved in the operation at issue, the investigation have requested from the MoIA the list of persons employed at the *Imereti* Regional Police Department at the material time.

Three police officers who participated in the operation testified that the exchange of fire took place and that adjacent to them, none of the persons or objects were injured/damaged by the gunshots coming from the opposite side. Within 5-10 minutes after shooting, they approached to the dead bodies when they witnessed firearms next to their hands, without had noticed any cartridge-cases at the scene of the shooting.

- *Shortcomings in the initial investigation*

Within the context of renewed investigation, the investigative authorities identified the following shortcomings:

- The physico-technical and trasological examinations carried out on their clothing could not detect gunpowder residues. Thus, the experts were unable to detect the signs of metallization on the clothes and therefore, the usage of firearms by the deceased persons could not be established;
- After the examination of the police vehicle, only after 12 days from the incident, three perforating bullet holes have been detected. It contradicts the testimony of the taxi driver who stated that the vehicle was not damaged;
- According to testimonies of the Deputy Head of the Imereti Regional Police Department, on 23 February 2006, at 21:30, he got an operative information according to which three armed persons (the applicant's son and his two friends), driving a car “GAZ-21”, were planning an armed robbery of a family. This information contradicts the declaration of the taxi driver, who stated that the applicant's son and his two friends took his taxi after 22:00. Hence, at the time of receiving an operative information (21:30), it was impossible for the police officers to be aware of the car type which took the applicant's son and his friends;
- According to the family members, the applicant's son was suffering from heart diseases and he could not even hold a glass in his left hand. Contrary to this fact, the video footage illustrates that he held firearm in his left hand;
- Subsequent to the examination of the scene of shooting, the cartridge-cases of gunshots of the Police officers were found adjacent to the police vehicle and to the location from where the police officers were firing, which were sealed in a parcel. However, the investigative authorities did not indicate the number and type of the cartridge-cases in the protocol of the examination of the scene of shooting. Also, they did not conduct the examination on the cartridge-cases;

- All three corpses were placed at the National Forensic Bureau. However, it is noted in the protocols drawn up by the investigative authorities that the relatives of the deceased persons rejected the autopsy and denied to sign them. The aforesaid circumstances around the autopsy raise further doubts. In particular, within few days, the corpse of the applicant's son was dissected as requested by his family. In July 2006, an exhumation and forensic examination were conducted;
- The investigation could not identify the family against which the deceased persons were allegedly going to commit an armed robbery. According to the case-file, they were going to visit one of the deceased person's brother-in-law who confirmed this fact in his testimony.

- Planned investigative steps

The following investigative activities are intended to be carried out in the nearest future:

- As noted above, after collecting relevant information from the MoIA, the investigation envisages identifying other police officers who participated in the operation or visited the place afterwards and who had not been interrogated during the previous investigation.
- Further investigative steps will be taken in order to collect the cartridge-cases seized from the scene of the shooting. If the investigative authorities fail to acquire the cartridge-cases, they will identify the officers being in charge of securing the evidence attached to the criminal case in order to clarify the reasons of failure to preserve them or the reasons of their losing/destruction.
- Also, the investigation will request additional information regarding identification of the employees of the *Imereti* Regional Police Department as regards the type of firearms, their serial number, with the exact time of acquiring and returning etc.

- Possible obstacles in the new investigation

The Government draw the Committee's attention to the objective obstacles which may hinder the effectiveness of reopened investigation due to the aforementioned shortcomings of the previous investigation.

- Since gunpowder residue has not been taken out from the corpses at the material time, it renders now impossible to establish whether the deceased persons were shooting towards police officers. It is impossible to be rectified within the reopened investigation;
- In case the investigative authorities are not able to collect cartridge-cases seized from the scene of the shooting, it would be impossible to identify who has carried out the shootings towards the applicant's son. Thereto, since the bullets have not been taken out from the corps, the investigative authorities are not able to identify the police officers who inflicted fatal injuries to him;
- There are no more witnesses around this case except police officers who personally participated in police operation or visited the scene of the shooting and who are tended to give incomplete testimonies or the taxi driver, who has been interrogated for several times;
- Since more than 10 years have passed after the incident and the witnesses find it difficult to recall the detailed factual circumstances. The time lapse renders also impossible to obtain some other evidences around the case.

Taking into account the aforesaid obstacles of the renewed investigation, the planned investigative steps will be actively carried out by the investigative authorities during the last months of 2016 as well as in 2017.

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### **Baghashvili v. Georgia.**

This case concerns the lack of effective investigations into allegation of violations of the right to life of the applicant's son who had been killed by police officers on 11 December 1999, during their attempt to apprehend him for having committed a breach of public order.

#### **- New investigation**

Initially, the case was investigated by Kakheti Regional Prosecutor's Office. On 31 January 2015, the decree of 17 May 2004, which terminated the investigation on the criminal case, was annulled and the case was transferred to the Tbilisi Prosecutor's Office.

The following circumstances of the case are based on the evidences obtained during the renewed investigation. On 19 May 2015 the former police officer, N.A. who shot the applicant's son has been interrogated. He repeated his testimony already given during the initial investigation. In particular:

- On 11 December 1999, he received operative information that the previous night, the applicant's son and D.N. rushed into the house of N.T., broke her household items and beat her guest;
- Having informed his superior, N.A. learned that the applicant's son and D.N. came at N. T.'s house again. In order to inspect the situation, N. A. headed to the place of incident with his two colleagues, Z. D. and G. Ch., in order to apprehend the applicant's son;
- The applicant's son attempted to escape and N.A. shot and wounded him. The applicant's son has been transported to the hospital, where he passed away.

On 31 August and on 17 October 2015, an eyewitness and Z.D (the former police officer who participated in the operation in question), were questioned. They described the incident similarly as by N.A. (see above).

Several witnesses are deceased. The investigative authorities will further interrogate the witnesses until the end of 2016, though it won't exhaust investigative measures in the present case which will be carried out in 2017 as well.

\* \* \*

**Mzekalishvili v. Georgia.**

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*

The initial investigation in the present case has never been terminated since its commencement on 16 April 2010. The investigation has been renewed in 30 March 2015.

According to the minutes of the Telavi District Court of 9 April 2010 obtained on 6 April 2015, the applicant did not declare anything in respect of the issue in question. Furthermore, the identities and the places of registration of the inmates serving sentence in the same or neighboring cells were established on 2 April 2015.

On 8 August 2015, the applicant's representative testified that her client did not have any signs of injury. In addition, the applicant declared neither before the court nor to his representative that he had been battered or subjected to some other forms of violence from anyone.

On the same day the applicant's mother has been questioned. She clarified that her son suffered from variety of diseases, throughout his childhood. When he was 11 years old, he touched high-voltage wire which caused burns on his body, and due to falling from the tree he suffered from the fractures of bones. He periodically suffered from mental disorder and epileptic seizures. The mother also stated that she did not notice on the body of her son any signs of injury. In addition, she stated that in respect of the battery of her son she had been informed subsequent to the release of the applicant from the prison.

On 26 April 2016 the applicant was questioned anew. He fully reiterated his previous allegations and confirmed that he did not sustain any kind of injuries in the temporary detention facility or in the juvenile detention facility.

Questioned on the same day, the applicant's father declared that he was informed first by the representative about the alleged ill-treatment and then by the applicant himself. He contended that the applicant had no injuries or bruises on his body previous to his arrest and that he personally did not see the injuries.

On 14 September and on 13 October 2016 the investigation questioned two inmates who were placed in the neighboring cell at the material time. They stated that the applicant served his sentence with his friend V.M. in the same cell (N14), that they did not have any contact with the applicant and don't not know whether he was ill-treated during his arrest. On 18 October 2016 the investigation questioned another inmate who was placed in the same cell with the applicant at the material time. He stated that he does not remember the name and surname of the applicant. Subsequently he was introduced with the photo materials of the applicant in order to recall whether he knew him. He reiterated that he does not know the person depicted on the photo material and that he had never seen him before.

On 11 October 2016 the investigation questioned an independent forensic expert who confirmed that on 23 April 2010 he was requested to conduct a forensic examination of injuries sustained by the applicant. He examined the applicant's body and drew up the conclusion in respect of the injuries in question. Regarding the remoteness of injuries, the witness clarified that it was consistent with the date described in the factual circumstances of the case, however the expert underlined that he could not exclude the development of those injuries two days earlier or later of the date at issue. Another forensic expert who conducted the examination of the injuries of the applicant and delivered respective conclusion in 2010 on the basis of the decree of the investigator, has passed away.

- Planned investigative steps.

Relevant police officers will be questioned anew. The investigation has also planned a detailed survey of all other persons who were in any way in connection to the criminal case.

The planned investigative steps will be actively carried out by the investigative authorities until the end of 2016.

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**Kopade v. Georgia.**

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.

The applicant is no longer in the prison.

- New investigation

The new investigation has been commenced on 21 May 2015 by the Chief Prosecutor's Office. The following circumstances of the case are based on the evidences obtained during the investigation, renewed in 2015.

By the judgment of *Mtskheta* District Court dated 22 December 2009, the applicant, K. M., K. S. and M. B were found guilty for impeding activities of detention or penitentiary institutions or disorganization of such activities. The applicant was sentenced to 12 years, 1 month and 19 days of imprisonment. He lodged an appeal. By a plea agreement with the prosecutor of 16 March, 2010, his sentence was reduced to 3 years, 9 months and 29 days of imprisonment and to a suspended sentence of 3 years.

According to K.M (released from prison on 20 February 2013) questioned on 16 June 2015, on 3 March 2009, the prison guards declared to him that they had to conduct his personal search and the search of his cell. During the inspection, they requested his undressing and made him to take off his slipper and then asked to take off another one but he refused to do that. Subsequently the prison guards started an aggressive conversation. First, the applicant was beaten in his cell, then – in the guards' room, and finally – in the administration offices of the prison No. 7 establishment. Three men were involved in the first two beatings whereas around fifteen men were beating him on the third occasion.

The investigative authorities contacted the applicant and the witness M. B. who have expressed their consent to be interrogated. As to the witness – K.S. Initially he refused to be interrogated and clarified that long time has passed since the events in question and that he did not remember the factual circumstances of the incident. Nevertheless, on 25 October 2016 the investigation authorities questioned both witnesses - K.S. and M.B. (prisoners at the material time). According to their testimonies they were serving their sentences in Prison N15 (formerly N7). On 3 March 2009, at about 12:30 pm, the employees of the Institution declared to K.M. that they had to conduct his personal search. Later, there was variance between employees and prisoners namely M. B. - shvili, K. S. - dze and Emzar Kopadze expressed their protest towards the employees, as a result of which they were taken to the administration building together with K.M. According to the testimonies in the administration building the above-mentioned four convicts were subjected to physical abuse from the staff of the Institution. In particular the convicted persons were taken in the room of G. K. - dze - the Deputy Director of the Institution where they were physically abused nearly by 30 employees of the prison.

According to testimonies of nine prison guards, questioned in June-July 2015 on 3 March, 2009, in order to perform personal search of prisoner K. M. in his residential barracks, the prison guards arrived at the site. Subsequently the convicts attacked, have verbally insulted and beaten them. Finally, they took control of the situation and the convicts actively involved in the attack were taken in the building of administration. After the incident, the investigators of Ministry of Corrections conducted a number of investigative actions and the applicant was transferred on the same day to another facility. He was not subjected to any kind of physical or verbal insult in the building of administration.

On 17 October 2016 the applicant was informed by the investigative bodies that he should have been appeared before the relevant bodies in order to be interviewed as a witness. He stated that currently he is in the city of Gori and that on 25 October he will be in Tbilisi to give the testimony however the applicant has not appeared before the investigative bodies to date.

- Planned investigative steps

The investigation authorities plan to question additionally the employees of the Prison N15 (formerly N7) in order to further clarify how the applicant sustained injuries and whether there was disproportionate use of force from the prison guards. They also plan to request the medical case-files and question the medical personnel. The planned investigative steps will be actively carried out by the investigative authorities until the end of 2016.

#### **IV. CONCLUSION**

As demonstrated above, the investigative measures undertaken by the relevant authorities in terms of execution of these cases encompass a number of significant initiatives.

New investigations have been implemented in compliance with the European Court's case-law, and Committee of Ministers practice. Independence and impartiality of the investigators/prosecutors are ensured to the fullest extent. The investigations are 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.

The decision regarding future course of action will be adopted after carrying out all necessary investigative measures within the time-limits indicated above. The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigations.