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Communication from a NGO (Coalition for an Independent and Transparent Judiciary) (07/03/2017) and reply from Georgia (22/03/2017) in the Gharibashvili group of cases against Georgia (Application No. 11830/03)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1288e réunion (juin 2017) (DH)

Communication d'une ONG (Coalition for an Independent and Transparent Judiciary) (07/03/2017) et réponse de la Géorgie (22/03/2017) dans le groupe d'affaires Gharibashvili c. Géorgie (Requête n° 11830/03) ***[anglais uniquement]***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Coalition
for and Independent and
Transparent Judiciary

Committee of Minsters
Department of Execution of Judgments of the European Court of Human Rights

Communication of the Coalition for an Independent And Transparent Judiciary

Gharibashvili Group Cases

Gharibashvili v. Georgia (Application no. 11830103)
Mikiashvili v. Georgia (application no. 18996106)
Dvalishvili v. Georgia (Application no. 19634107)
Khaindrava and Dzamashvili v. Georgia (application no. 18183105)
Tsintsabadze v. Georgia (application no. 35403106)
Enukidze and Girgvliani v. Georgia (Application no. 25091107)

Made under Rule 9(2) of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments

Coalition Members:

Article 42 of the Constitution
Multinational Georgia
Georgia Small and Medium Enterprise Association
Civil Integration Foundation
Georgian Lawyers for Independent Profession Liberal
Center for Protection of Constitutional Rights
International Society for Fair Elections and Democracy
The Union "21 Century"
Georgian Young Lawyer's Association
Human Right Center
Transparency International
Union of Meskhetian Democrats
Liberty Institute
Civil Development Agency
United Nations Association of Georgia
The European Law Students' Association
Civil Society Institute
Open Society Georgia Foundation
Institute of Democracy
American Chamber of Commerce
Europe Foundation
Institute of Development of Freedom of Information
Human Rights Priority
Tbilisi Media Club
Human Rights Education and Monitoring Centre
Foundation for the Support of Legal Education
Institute of Civil Engagement
Association of law firms of Georgia
Association of Young Economists of Georgia
European Choice of Georgia
Liberal Academy Georgia
Partnership for Human Rights
Georgian Human Rights Network
Georgian Democratic Initiative
Sapari Union

Contents

I. Introduction

The Coalition for independent and transparent judiciary represents a unity of 36 non-governmental organizations in Georgia. The goal of the Coalition is to consolidate the efforts of legal professional associations, NGOs, business associations, and media into a joint advocacy for an independent, transparent and accountable justice system. The Coalition activities include research and monitoring, development of recommendations, advocacy for judicial reforms, and promotion of public discussions on the problems critical to the justice system.

The Coalition is honored to submit a communication to the Committee of Ministers in relation to the complete and effective execution of judgments in six cases against Georgia.[1] The communication builds upon the submission made by the Public Defender of Georgia and is focused on the systematic violations which renders need for the creation of independent investigative mechanism. The aim of the submission is to present in front of the Committee of Ministers the model of independent investigative mechanism, unanimously shared by the representatives of the civil society and the Public Defender as the only viable solution against the culture of impunity and the systematic failure of the state to effectively investigate crimes allegedly committed by the Law Enforcement.

The communication is made pursuant to Rule 9(2) of Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the terms of Friendly Settlements.

II. Summary of the Major Findings of the Court

All of the cases referred to within the communication relate to the alleged crimes committed by the law enforcement agencies and subsequent failure of the state to conduct effective investigation.

Over the period of five years starting from 2008 through 2012 the European Court of Human Rights (hereinafter ECtHR) issued judgments in six cases. Three of the mentioned cases relate to the procedural violations of Article 2 of the Convention and group of remaining cases establish the substantive and procedural violations of Article 3 of the Convention.

Even though the factual circumstances of the cases differ, the substantive findings elaborated by the Court all relate to the ineffectiveness of the investigation conducted by the responsible authorities. In particular, the court

[1] Gharibashvili v. Georgia, App No. 11830/03; Mikiashvili v. Georgia, App No. 18996/06; Dvalishvili v. Georgia19634/07; Khaindrava and Dzamashvili v. Georgia App No. 18183/05; Tsintsabadze v. Georgia, App No. 35403/06; Enukidze and Girgvliani v. Georgia, App No. 25091/07

established that the investigations conducted lacked one or several of the elements of:

- Independence and impartiality[2]
- Thoroughness[3]
- Promptness[4]
- Victim participation in public oversight[5]

Therefore, in the group of cases the court has established failure of one or several elements of an effective investigation, leading to violation of the rights guaranteed under the convention and creating a clear need for the cases to be re-opened, investigations carried out promptly and comprehensively.

The execution of these judgments are still pending in front of the Committee of Ministers, that has called upon the authorities to intensify "their efforts to remedy the deficiencies in domestic legislation regarding the requirements of impartiality of investigative bodies, in investigations to which Articles 2 and 3 of the Convention apply."[6]

Additionally, the Committee is currently supervising execution of eleven cases: *Kiziria, Bagashvili, Surmanidze and others, Molashvili, Mzekalishvili, Kopadze, Lanchava, Studio Maestro ltd and others, Chantladze, Bekauri and others and Gegenava and others.* In all of the cases the Government of Georgia acknowledged allegations of failure to investigate violations of right to life and ill-treatment and has undertaken obligation to provide effective investigation.

The coalition on independent and transparent judiciary would like to underline that not only is the state failing to undertake any substantial steps for the amendment of the deficient legislation but the culture of impunity and lack of hierarchical and procedural independence is still pertinent within law enforcement agencies rendering the need for an immediate response.

III. Failures of the Georgian Investigative System

Over the years lack of transparent and effective investigation into the allegations of crimes committed by the law enforcement agencies has been identified as one of the most serious problems within Georgian legal system. Impunity cultivated by failure to investigate and punish perpetrators of ill-treatment contributed to establishment of systematic practice of abuse of power and authority which continues to be present today. Absence of an institutional

[2] Enukidze and Girgvliani v. Georgia, App No. 25091/07; Gharibashvili v. Georgia, App No. 11830/03
[3] Dvalishvili v. Georgia19634/07; Khaindrava and Dzamashvili v. Georgia App No. 18183/05
[4] Gharibashvili v. Georgia, App No. 11830/03
[5] Enukidze and Girgvliani v. Georgia, App No. 25091/07
[6] CM Decision 1222nd meeting - (11-12 March 2015), para 5.

and practical independence of the investigative bodies creates mistrust towards the justice system and threatens the rule of law and democracy as a whole.

As yearly as in 2005 the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak stated that inability to tackle investigation effectively served creation of impunity in Georgia.[7] The report emphasizes that: "in initiating an investigation into torture by the police, the procuracy, as an arm of the executive, is faced with an inherent conflict of interest in that it must also work with the police in combating crime."[8] Hence, the Special Rapporteur recommended all allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to the agencies investigating or prosecuting the case against the alleged victim.[9]

In 2010, the expert report commissioned by the Council of Europe indicated the problem of the accountability of law enforcement officials was systematic in nature.[10] Following his visit to Georgia in 2011 Commissioner for Human Rights of the Council of Europe noted that the close interaction between the prosecutors and police during investigations hampers the effective conduct of investigations and shields the offenders from being held accountable, thus recommended creation of an independent investigative mechanism.[11]

Tomas Hammarberg repeatedly asserted the importance and necessity for creation of an independent investigative mechanism in his capacity as the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia. The report specifically underlines the importance of minimizing the pernicious consequences of "colleagues investigating colleagues." The Special Adviser considers that the only viable solution "to build trust between the population and law enforcement" would be through adoption of independent investigative mechanism.[12]

Subsequent to its visit in Georgia in 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*hereinafter CPT*) concluded that the law enforcement bodies and prosecuting authorities did not demonstrate sufficient commitment to investigate allegations of ill-treatment and called upon the government to take effective

[7] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Civil and Political Rights Including: The Questions of Torture and Detention, September 23, 2005, E/CN.4/2006/6/Add.3., para 33
[8] Id at para.36
[9] Id at para 60 (c.)
[10] Country Report on Georgia, Combating ill-treatment and Impunity and Effective Investigation of ill-treatment by
Jim Murdoch, 2010.
[11] Report by T. Hammarberg, Commissioner for Human Rights of the Council of Europe, CommDH(2011)22, para. 90
[12] T. Hammarberg, "Georgia in transition, Report on the Human Rights dimention: background, steps taken and remaining challenges"2013, p.23

steps to ensure that possible cases of ill-treatment of persons deprived of their liberty are investigated promptly and in accordance with the criteria set out by the ECtHR.[13]

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment identified that the Government faces the challenges of ensuring that not only old, but present and future cases of violations of torture and ill-treatment committed by law enforcement officers and prison staff are properly dealt with through prompt, effective and transparent investigation, prosecution and punishment. In this regard the Special Rapporteur expressed his unequivocal support to the creation of an independent investigative mechanism with broad authority to investigate and prosecute cases of torture.[14]

Ineffective investigation of torture, inhuman and degrading treatment of detainees has been constantly addressed in the reports of Public Defender of Georgia, which also serves as the National Preventive Mechanism. Proceeding from the increased number of the appeals submitted to the Public Defender's Office and the lack of investigation into the allegations the office found expedient to prepare a special report on: "The Practice of Investigation of Alleged crimes Committed by Law Enforcement Officials."[15] In its special report the Public Defender reviewed forty complaints which referred to inhumane and degrading treatment of citizens during and/or after detention from the part of law enforcers. The results of the study showed the practice of failure to observe institutional independence of investigations, as well as inability to conduct investigations thoroughly and promptly.[16] The findings led the Ombudsman to conclude that there is an immediate necessity to create " an independent body, which will be the only authorized institution to conduct investigation on the crimes related to death, inhumane and degrading treatment allegedly committed by the law enforcers (the staff of the Ministry of Justice of Georgia the Ministry of Penitentiary and Corrections of Georgia and crimes committed on the territory of the penitentiary institutions, the Ministry of Internal Affairs of Georgia (not only policeman), and of the Prosecutor's Office);"[17]

Systematic and continuous nature of the impunity and inability to conduct effective investigations is also evidenced by the reports of the local non-

[13] Report of the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Strasbourg , 15 Dec, 2015, paras. 15-21
[14] Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, A/HRC/31/57/Add.3, 1 December, 2015, paras. 65 and 109
[15] Public Defender of Georgia Special Report "The Practice of Investigation of Alleged crimes Committed by Law Enforcement Officials, regulations and International Standards on Effective Investigation", 2014
[16] ID at pp. 28-31; 38-40
[17] ID at p.46

governmental organizations. In its latest report the Georgian Young Lawyers Association analyzed state's response to the crimes allegedly committed by the law enforcement, based on the cases litigated by the organization during 2013-2016.[18]The report documents cases of violence and other facts of exceeding official powers by the representatives of law enforcement bodies in the course of detention, as well as the incidents of physical and psychological pressure on witnesses/defendants. The analysis of the cases presented in the report clarifies that on the allegation of excessive use of force by the law enforcement officials investigations are usually initiated however, they are either significantly delayed or display clear signs of ineffectiveness.[19] Furthermore, the oversight and public scrutiny of the investigation process is hindered by refusal of the prosecutor's office to grant victim status to the individuals subjected to violence, therefore denying them the possibility to access information about the course of investigation.[20] It is well-established practice that individuals claiming ill-treatment from the law enforcement officials are charged with committing an administrative offence (resistance/disobedience) and in some cases criminal prosecution has been initiated.[21]

Deriving from the abovementioned overwhelming evidence, it is clear that the international and regional human rights organizations alike have during years identified failures and deficiencies indicative of structural and systematic failure to address crimes allegedly committed by the law enforcement. Considering the length and the scale of these violations the coalition would like to submit that the creation of an independent investigative mechanism is the only viable solution.

IV. Standards on Effectiveness of Investigation

Even though the investigative powers stems from State's wider police functions and hence subject to domestic legal regulations, Georgia is bound by international human rights obligations and standards which also set for specific requirements for an effective investigation.

It is noteworthy that the Joint Programme between the Council of Europe and the European Union - Reinforcing the Fight against Ill-treatment and Impunity produced a publication on the Effective Investigation of Ill-treatment: Guidelines on European Standards, which bring together the most significant criteria defining the effectiveness of investigation based on the practice of the

[18] Georgian Young Lawyers Association, "Crimes Allegedly Committed by the Law Enforcement Officers and State's Response to them", Tbilisi, 2016
[19] Id at p.7
[20] ID at p. 11
[21] Id at p. 13

European Court of Human Rights and reports of the Council of Europe Committee against Torture.[22]

According to the guidelines the effectiveness of the investigation is measured through: independence and impartiality, thoroughness, promptness, adequacy if competence, victim involvement and public scrutiny.[23] However independence and impartiality are identified not only as one of the most crucial elements of investigation but also relevant for maintaining confidence of the alleged victims and the general public towards the state institutions.[24]

In this regard, the guidelines require states to create investigative bodies capable of satisfying criteria for structural independence.[25] Nevertheless, it is well established practice of the European Court on Human Rights to evaluate the independence in practical terms as well. The latter is directly addressed in case of *Gharibashvili v. Georgia*, whereby the court found: "it conflicting with the relevant principles of an effective investigation that the TCPO [Tbilisi City Prosecutor's Office] relied heavily on the information provided by the RDPO [Rustavi District Prosecutor's Office] and Rustavi police officers directly or indirectly implicated in the impugned events."[26]

Another crucial element for an effective investigation is thoroughness, whereby state has to indicate that it has taken all reasonable steps and made genuine efforts to bring those responsible to justice. The lack of thorough investigation was central feature in case of *Enukidze and Girgvliani v. Georgia*, whereby the court has concluded that the drawbacks during the investigation impeded the identification of facts or criminals and hence, the appropriate level of efficiency was not ensured.[27]

The guidelines acknowledge that the evidence may lose its value or become impossible to recover after a period of time, therefore the timely investigation of the ill-treatment is even more crucial, since traces of injuries disappear over time and the obtaining of evidence becomes impossible.[28] The importance of timely investigation of such cases was underlined by the European Court of

[22] Erik Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Directorate General of Human Rights and Legal Affairs Council of Europe, 2009(Hereinafter Guidelines on European Standards)
[23] Id at p. 50 ; 4th General Report on the CPT's activities, CPT/Inf (2004) 28, para. 32; Office of the United Nations High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Geneva, 2004, para.74
[24] Id at p. 51,
[25] Rehbock v. Slovenia, judgment of 28 November 2000, application no. 29462/95, para. 74. See also Mikheev v. Russia, judgment of 26 January 2006, application no. 77617/01, para. 115.
[26] Gharibashvili v. Georgia, judgment of 29 July 2008, application no. 11830/03, para. 73
[27] Enukidze and Girgvliani v. Georgia, No 25091/07, para.242.
[28] Guidelines on European Standards, p. 64

Human Rights in connection with *Mikiashvili v. Georgia case*, whereby the state failed to conduct adequate investigative activities promptly.[29]

The relevant international standards emphasize the need for victim involvement, particularly from the standpoint of the public scrutiny requirement. According to the CPT standards that has been endorsed by the ECtHR: "the degree of scrutiny required may well vary from case to case. In particularly serious cases, a public inquiry might be appropriate. In all cases, the victim (or, as the case may be, the victim's next-of-kin) must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests."[30]

Deriving from the findings of the above chapters, it is evident that the investigative activities of Georgian state institutions falls short of requirements set forth by the international standards. Thus, in order to execute the series of judgments of the court and to prevent further violations fundamental and substantive review of the system is necessary.

V. Model of the Independent Investigative Mechanism

Against the backdrop of systematic failure to conduct effective investigation into the allegations of ill treatment by the law enforcement, 20 non-governmental organizations under the joint project of the Open Society Georgia Foundation and the Office of the Un High Commissioner for Human Rights in Georgia(OHCHR) elaborated the draft law on Independent Investigative Mechanism.[31] The purpose of the law is to establish an independent and impartial mechanism, enjoying high level of public trust –for the efficient investigation and prosecution of certain crimes committed by the representatives of the law enforcement agencies. Three models can be identified in relation to the investigation and prosecution of the crimes committed by the law enforcement authorities: a completely independent investigative mechanism, an institution hierarchically placed under the executive government, but enjoying independence guaranteed by the law and an executive government agency with the increased oversight powers of the Ombudsman. Following the study of these models and their analysis in light of the Georgian context, it was concluded that only Independent Investigative Mechanism meets the international standards, while being fully compatible with the Georgian constitutional framework.

The coalition would like to outline the major aspects of the proposed mechanism in order to demonstrate to the Committee of Ministers that the model is fully based on European Guidelines, judgments of the European Court

[29] Mikiashvili v. Georgia, No18996/06, para.78
[30] 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para. 36.
[31] http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=4077

of Human Rights and best practices of various countries such as Belgium, Northern Ireland, Jamaica and Guatemala. Additionally the draft law is fully supported by the Public Defender's Office of Georgia.

1) Jurisdiction

The independent Investigative Mechanism provided under the draft law enjoys exclusive and discretionary jurisdiction. The exclusive competence is exercised of the crimes envisaged 126^1 (domestic violence) 144^1(torture,) 144^2 (threat of torture) 144^3 (degrading or inhuman treatment) and/or 335(Coercion to Extract Evidence/information) and/or paragraph 2 of article 378(coercion of person in penitentiary to change testimony) of the Criminal Code of Georgia. Additionally, unlawful and offensive act that resulted in manslaughter, grave, less grave or minor damage to health, beating, violence, degrading treatment, violation of sexual freedom and security of the persons under effective state control falls under the scope of exclusive jurisdiction of the mechanism.[32] Furthermore exclusive jurisdiction over the mentioned crimes exists notwithstanding the fact whether law enforcement official was performing his/her official duties.

In order to observe high level of impartiality Independent Investigative Mechanism has discretionary jurisdiction over any crime provided that there is a reasonable assumption that a conflict of interest might arise during the process of investigation and/or prosecution.[33]

The jurisdiction is not exercised over the actions of the law enforcement agencies that result solely in administrative or disciplinary responsibility. However if Commissioner of the Mechanism decides that the incident occurred was a crime he/she is authorized to initiate criminal prosecution, even if proceedings are requested to impose administrative/disciplinary responsibility.[34]

The wide scope of competence of the mechanism will ensure that the established culture of law enforcement impunity is disentangled and at the same time existence of the independent agency will serve as preventive tool against future violations.

2) Structure and Staffing of the Independent Investigative Mechanism

The Independent Investigative Mechanism is led by a Commissioner. The Commissioner can be a citizen of Georgia, who has at least five years of experience in the fields of human rights and rule of law and enjoys high level

[32] Annex I Draft law on Independent Investigative Mechanism, Art. 3 (1) (a) (b).
[33] Annex I Art. 3 (3)
[34] Annex I Art 3(8)

of public trust and good moral reputation.[35]. He/she is selected with the involvement of all three branches of the Georgian Government and the civil society. In particular, commission for the selection of the Commissioner for Independent Investigative Mechanism is appointed, comprised of representatives of different branches of government, the public defender and civil society and at least 3 and maximum 5 candidates are identified, after which final selection is made by three-fifth majority vote in Parliament.[36] The independence from political partiality is safeguarded through Article 8(2) which prohibits political party members' appointment as Commissioner.

The Commissioner of the Independent Investigative Mechanism enjoys inviolability and can only be dismissed following a conclusion of the temporary commission of the Parliament by the majority vote of the MPs, in case deficiencies of the functioning of the mechanism if established.[37]

Furthermore, a prosecutor and an investigator of the Independent Investigative Mechanism can only be a person who satisfies the legal requirements foreseen for the prosecutors. Prosecutors and investigators of the Independent Investigative Mechanism are selected with high public involvement.

Abovementioned, procedures strive to ensure comprehensive institutional independence of the Investigative Mechanism and its staff. Transparent appointment procedures, inviolability, and safeguards against unreasonable dismissals provides sufficient grounds to conclude that the system satisfies requirements of institutional independence as envisaged by European Guidelines and the best practice.

3) Power to Investigate and Prosecute

The Independent Investigative mechanism unilaterally decides upon the initiation or refusal to initiate investigation or prosecution. In case investigation is initiated with the aim of gathering evidence and conducting investigation comprehensively, the Independent Investigative Mechanism can demand to cease administrative or disciplinary proceedings in relation to the specific fact and to receive any material related to the case. The prosecutor and investigator of the mechanism are authorized to freely enter penitentiary institutions, institutions of Ministry of Internal Affairs, private institutions and demand from public officials of the law enforcement agencies any information, document or other material necessary for investigation. [38]The mechanism is authorized to refer to secret investigative measures and carry out any forensic expertise pertinent for the criminal investigation.[39]

[35] Annex I Art. 8(1)
[36] Annex I Art.8 (4-7)
[37] Annex I Art.9
[38] Annex I Art. 11
[39] Annex I Art. 12, 15

Failure to implement the lawful order of the Mechanism shall result in administrative sanction; while influencing or interfering with the activities of the Mechanism is punished under the criminal legislation.[40]

Abovementioned powers and guarantees shall ensure legal and practical independence of the Mechanism against the law enforcement authorities and the executive government, which consequently will lead to comprehensive, objective and unbiased investigation and prosecution.

4) Accountability and Transparency

The Independent Investigative Mechanism is solely accountable in front of the Parliament of Georgia, where the Commissioner has an obligation to present reports about the activities carried out twice a year.[41]

Wider public scrutiny is observed through proactive information disclosures, which shall be conducted quarterly, without hindering the investigative process.[42] Furthermore, victim participation is secured through mandatory information disclosures, with the reasonable frequency.[43]

Deriving from the abovementioned, it is evident that the proposed model incorporates rules which guarantee creation of an independent, impartial, thorough and accountable agencies capable of satisfying the best European Standards and in full compliance with the judgments of the European Court of Human Rights against Georgia.

It is noteworthy that soon after the draft of the mechanism was elaborated the Council of Europe's Office in Georgia submitted document to its legal expert- Dr. Manfred Nowak for his review and assessment. According to the expert opinion: "the draft law contains man provisions which ensure that the Commissioner of the Independent Investigative Mechanism, the investigator, the prosecutor and other staff are independent from the executive power. The draft law also provides for far-reaching powers of the mechanism, similar to those of the prosecutors and the police in charge of investigating ordinary crimes. Compared to other countries, the current draft law of Georgia is one of the most sophisticated and far-reaching laws aimed at establishing a so-called office of police-police".[44] The expert opinion also referred to specific recommendations as to the mandate of the mechanism and selection process of the Commissioner, all of which were considered and adopted while drafting the final version of the law.

[40] Annex I , Art. 16
[41] Annex I Article 17
[42] Annex I Article 18
[43] Annex I Article 19
[44] Annex II: Council of Europe's Expert Opinion on the Model of an Independent Torture Investigative Mechanism, by Prof. Dr. Manfred Nowak, January 2015 p.10

VI. Steps undertaken by Georgian Government

The Committee of Ministers has repeatedly called on Georgian government to present the plan addressing all the deficiencies identified by the Court in its judgments.[45] However, the Government has only explored the possibility of establishing independent mechanism by reflecting recommendation in its 2016-2017 Human Rights Action Plan, as a concept, however, thus far legislative actions have not been initiated.

The institutional reform of the law enforcement agencies was first announced following Georgia's Association Agreement with the European Union. The 2014 progress report on the fulfilment of the commitments undertaken by Georgia as a part of European Neighborhood policy concluded "that state should establish an independent and effective complaints mechanism and address complaints on property rights, torture and ill-treatment and misuse of plea-bargaining system."[46] As a response the Minister of Justice claimed that the reforms would be carried out swiftly and without further ado. Nevertheless the only action undertaken by the Georgian government was elaboration of amendments to the law on the Prosecutor's office through Criminal Justice Reform Inter-Agency Council adopted in September, 2015.

The law proposes new procedure for the appointment of the Chief Prosecutor and rules for the appointment/dismissal, promotion and discipline of city, regional and other prosecutors. However, the proposed amendments still does not ensure sufficient protection of a Chief Prosecutor's selection and appointment procedure against politicization. According to the new law candidature is nominated by the Ministry of Justice and subsequently discussed/approved by the government, which keeps matter political in nature. The coalition believes that the staffing of the Prosecutorial Council which is charged with important disciplinary and monitoring functions also fails to adequately correspond to the principles of independence and impartiality.[47]

The similar concerns were raised by the joint opinion of the European Commission for Democracy through Law (hereinafter Venice Commission), Consultative Council of European Prosecutors and OSCE office for Democratic Institutions and Human Rights (hereinafter ODIHR). The primary shortcomings were identified within the appointment procedure of the chief prosecutor. In particular, the commission considers that the Government and the parliamentary majority play overly active role at all stages of the process

[45] CM Decisions of March 2015 and June 2016
[46] Implementation of the European Neighborhood Policy in Georgia Progress in 2014 and recommendations for actions, available at: http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf
[47] Statement of Coalition for Independent and Transparent Judiciary, available at: http://www.transparency.ge/sites/default/files/post_attachments/views_of_the_coalition_about_the_reform_of_the_prosecutors_office.pdf

of appointing the Chief Prosecutor and the latter process is incompatible with the aim to de-politicize office.[48] Moreover, prosecutorial council does not meet the criteria of independence since it is defined as being an integral part of the executive. Additionally, the council is mainly composed of prosecutors which is not sufficiently balanced with appropriate safeguards, making political neutrality of the council questionable.[49] Therefore, he report concludes that the proposed reform does not achieve the stated goal of depoliticizing the office of the Chief Prosecutor. [50] The Group of States against Corruption (hereinafter GRECO) fourth evaluation report on Georgia also recommended to "reduce the influence of the government/parliamentary majority on the appointment procedure of the Chief Prosecutor and on the activity of the Prosecutorial Council."[51]

Additionally, pursuant to its decree of 30 January 2015 the Government created new structural unit- **Department to Investigate Offenses Committed in the Course of Legal Proceedings**- within Prosecutor's office of Georgia. Its key tasks are to investigate crimes which may have been committed throughout the judicial process, and to pursue criminal prosecution. Priority is given to the cases of: torture, inhuman degrading treatment, forced alienation of property and other facts of duress. The by-laws stipulate that the Department fully investigates and pursues criminal prosecution **"of cases as determined by the Chief Prosecutor of Georgia"**. The meaning of this wording in the by-laws, and limitations that it sets for the Department, are vague. It is unclear also if the Department investigates and pursues criminal prosecution on all cases within the scope of the by-laws, or if only certain cases will be selected. Even if selected, the criteria that the Prosecutor's Office of Georgia will be guided by are unknown.

Hence, the reforms conducted by Georgia fails to adequately address the primary concerns of independence, impartiality and politicization of the Prosecutor's office. Moreover, the reform did not touch upon the establishment of an independent investigative mechanism and the creation of Prosecutorial Council by no means can be considered as an alternative to proposed mechanism.

In response to the proposed amendments which has been supported by NGO's and international actors alike, the Minister of Justice, stated that the

[48] Joint Opinion of the European Commission for Democracy through Law, Consultive Council of European Prosecutors and OSCE office for Democratic Institutions and Human Rights (hereinafter ODIHR), On the Draft Amendments to the Law on Prosecutor's Office of Georgia, CDL-AD(2015)039, November 4, 2015, para 22 available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)039-e
[49] Id at para: 36
[50] ID at para: 10
[51] GRECO Fourth Report on Georgia 74th Plenary Meeting (Strasbourg, 28 November - 2 December 2016), p.42 para 150, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc116

investigative mechanism can only be created and empowered to investigate and not to prosecute crimes allegedly committed by law enforcement.[52]

It should be hereby emphasized that according to the Georgian legislation the prosecutor's office has direct mandate to conduct criminal prosecution.[53] At the same time according to article 105 of the Criminal Procedure Code of Georgia, the prosecutor has discretionary power to terminate or refrain from initiating criminal prosecution. Moreover, the procedural oversight of all the criminal cases conducted by all the investigative bodies is carried out by the Prosecutor's Office of Georgia. As envisaged by Article 27 of the Law of Georgia on the Prosecutor's Office, the Prosecutor is entitled to, in the cases defined by Law, to give written instructions to investigation bodies. Fulfilment of the Prosecutor's instructions on the issues of investigations is compulsory.

Therefore, adoption of the investigative mechanism without having power to prosecute responsible individuals would imply that the identified problems of impunity, independence and effectiveness will remain in the system. There will be a high risk that alleged perpetrator of the violation will not be brought in front of the tribunal and culture of impunity will remain. Furthermore, it has been evidenced by the Public Defender, NGOs and the ECtHR that the work of the prosecutor's office also frequently fails to meet criteria set for the effective investigation.

VII. Conclusion

The Coalition for an Independent and Transparent Judiciary considers that the adoption of the proposed model of the Independent Investigative mechanism in its entirety is the only viable solution against the backdrop of continuous human rights violations and the well-established culture of impunity of the law enforcement officials. At the same time the creation of an Independent Investigative Mechanism with prosecutorial and investigative powers will serve as the proper tool to execute the general measures envisaged under the judgments of the European Court of Human Rights and adequately respond to the recommendations issued by human rights monitoring bodies.

[52] Tea Tsulukiani Statement: http://www.ipress.ge/new/54642-tea-tsulukiani-vimedovneb-gaisad-damoukidebeli-sagamodziebo-meqanizmi-sheiqmneba
[53] Article 3(1) (a) of the Law on Prosecutor's Office

Ministry of Justice of Georgia

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Ms Corinne AMAT
Head of Division
Department for the Execution of Judgments
of the European Court of Human Rights

Tbilisi, 22 March 2017

Subject: Group of cases Gharibashvili v. Georgia (Application no. 11830/03) – Judgment of 29/07/2008, final on 29/10/2008

Dear Madam,

With reference to your letter dated 8 March 2017 (reference: DGI/CA/FD/MLO), the Government of Georgia present hereby their comments on the communication received from the *Coalition for an Independent and Transparent Judiciary* relating to the above-mentioned group of cases, in accordance with the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

From the very beginning the Government wish to underline that torture, ill-treatment and epidemic were systemic problems in Georgian prisons until 2012. Since the new government came into power in 2012, the multifaceted measures have been taken aiming at combating torture and ill-treatment. As the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mr. Juan Mendez observed in his recent report, the situation has been drastically changed since the parliamentary election in October 2012. He referred to the clear signals by the Government to give high priority to the combating torture and ill-treatment. As rightly observed by Mr. Mendez and affirmed by the Public Defender of Georgia, torture is no longer a systemic issue.

As to the group of cases of Gharibashvili v. Georgia, the violations found by the European Court of Human Rights in these six judgments[1] as well as eleven decisions[2] rendered on the grounds of friendly settlements or unilateral declarations, concern, among others, the procedural violation of Articles 2 and 3 of the European Convention due to the alleged facts taking place before October 2012. The Government underline from the outset that the renewed investigations in all abovementioned cases have been implemented in compliance with the standards enshrined in the

[1] Gharibashvili v. Georgia, 11830/03; Mikiashvili v. Georgia, 18996/06; Dvalishvili v.Georgia, 19634/07; Khaindrava and Dzamashvili v. Georgia, 18183/05; Tsintsabadze v. Georgia, 35403/06; Enukidze and Girgvliani v. Georgia, 25091/07.
[2] Kiziria v. Georgia, 4728/08; Baghashvili v. Georgia, 5168/06; Surmanidze and others v. Georgia, 11323/08; Molashvili v. Georgia, 39726/04; Mzekalishvili v. Georgia, 8177/12; Kopadze v. Georgia, 58228/09; Lanchava v. Georgia, 28103/11; Studio Maestro Ltd and Others v. Georgia, 22318/10; Chantladze v. Georgia, 60864/10; Bekauri and Others v. Georgia, 312/10 and Gegenava and Others v. Georgia, 65128/10.

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Convention and further developed by the Court in its case-law, as well as with the requirements set out in the recommendations of the Committee of Ministers. In particular, the investigative bodies in charge of the present criminal cases meet all the requirements established in the European Court's case-law regarding the independence and impartiality. The persons responsible for the investigation are hierarchically and institutionally independent from those involved in the events at issue. Notably, during the supervision of execution of Gharibashvili group of cases, the Committee of Ministers has not indicated in any of its decisions/resolutions any lack of independence within the framework of renewed investigations. Furthermore, neither the European Court, nor the Committee of Ministers have ever referred in their judgments/resolutions[3] to the need of creating specifically an independent investigative mechanism as an effective measure for execution of the Gharibashvili Group.

Therefore, from the outset, the Government wish to delineate the measures which should be adopted for the effective execution of the Gharibashvili group from the pledges by the Government of Georgia to show their goodwill. The creation of an independent investigative mechanism is not an international obligation of Georgia as it is widely misinterpreted. It is a commitment that has been assumed by the Government itself. As such it has been included in the Association Agenda between Georgia and the European Union, as well as Georgia's first National Human Rights Strategy and Human Rights Action Plans (inter alia, 2015-2016 National Action Plan on Combating Torture and Other Forms of Ill-treatment). As underscored above it is not directly linked with effective execution of the Gharibashvili group. The Government retains the right to choose such a model of independent investigative mechanism which would be most appropriate in the Georgian context.

As to the reports of international/regional human rights organizations referred by the authors, the Government stress that the main attention should be drawn to the bodies of the Council of Europe commenting on the issue of independent investigative mechanism. In particular, according to the Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, the CPT called upon the Georgian authorities to take effective steps to ensure that possible cases of ill-treatment of persons deprived of their liberty are investigated in an independent, efficient, and transparent manner.[4] Thus, the CPT has not recommended in a peremptory manner to create specifically an independent investigative mechanism in order to ensure independence of the investigations.

All the aforementioned clearly illustrates that none of the organs of the Council of Europe (European Court of Human Rights, Committee of Ministers, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) have indicated to the Government in an unequivocal manner to create an independent investigative mechanism for ensuring independence of the investigations.

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[3] The most recent resolution of December 2016 (1273rd meeting (DH)) adopted by the Committee of Ministers with regard to Gharibashvili group states the following: "6. Noted with interest the information provided by the authorities on the reform of the Prosecutor's Office of Georgia, the involvement of victims in the investigation, including access to case-files, implementation of the new rules on witness interrogation and of the 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment"; 7.invited the authorities to provide further information on how the institutional independence of investigating bodies, in particular the Prosecutor's Office, is henceforth guaranteed in law and in practice". Available at: http://hudoc.exec.coe.int/eng?i=004-5812

[4] Adopted on 3 July 2015, p. 6.

The Government note that the Georgian legal framework ensures independent and effective investigation of the facts of torture and ill-treatment. All facts of alleged torture or other inhuman or degrading treatment are subject to immediate and thorough investigation conducted by the competent law enforcement authorities.[5] However, there are still a number of challenges in this process which should be handled among others by strengthening the prosecution service.

The first important step towards depoliticisation of the prosecution service was taken in May 2013 when the Minister of Justice, a high-level political official in the Government, relinquished her prosecutorial powers. In order to further strengthen institutional independence of the Prosecution Service, enhance democratic oversight and accountability and lay legal foundation for prosecutors to carry out their professional duties impartially and objectively, the Government of Georgia initiated the following changes:

In late December 2014, the Prime Minister of Georgia instructed the Ministry of Justice (hereinafter - MoJ) to start working on the institutional reform of the Prosecution Service in the framework of the Criminal Justice Reform Council (hereinafter – CJRC). The CJRC Secretariat prepared a comprehensive report with the comparative study of general prosecutor's offices of 20 European states (Austria, Germany, France, Poland, Spain, Switzerland, UK, Estonia, etc.) and the United States. Based on this research, the MoJ prepared an institutional model of the Prosecution Service. Based on the proposed model and the comments from legal community, the MoJ prepared the legislative amendments to the Law on Prosecution Service. The amendments were approved by the Government of Georgia and sent to the Parliament for adoption. At the same time, the draft amendments were also sent to the Venice Commission, to the OSCE/ODIHR and to the COE Directorate General for Human Rights and Rule of Law for expertise.

In their preliminary joint opinion of July 7, 2015 (CDL-PI(2015)014), the Venice Commission and other institutions gave positive evaluation of the Georgian Government's efforts in reforming the prosecution service stating that "the Draft Law… is a very welcome step towards depoliticisation of the Prosecutor's Office." They also gave a number of recommendations how to improve the proposed model. The MoJ accepted the overwhelming majority of recommendations and made respective changes to the draft law.

The draft amendments to the law on Prosecution Service were adopted by the Parliament on September 18 and entered into force on September 29, 2015.

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[5] As to the implementation of institutional independence in practice, according to the annual report of the Public Defender of Georgia of 2015, p. 188: "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 […]"

- Appointment of the Chief Prosecutor

According to the amended law, the Chief Prosecutor's Office is headed by the Chief Prosecutor whose term of office shall be six years. No person may be elected as Chief Prosecutor for the second consecutive term. According to the amendments, to be eligible for appointment as a Chief Prosecutor, a person must have no criminal record, must have a higher legal education and at least 5 years of working experience as a judge, a prosecutor, or a criminal defence attorney. The Chief Prosecutor may also be chosen from recognized academic circles of criminal law experts or civil society organizations, who has at least 10 years of working experience as a legal professional. The candidate should have high moral and professional qualities.

As to the appointment procedure, it should be carried out in several stages:

I stage: At least six months before the expiration of the term of office for the Chief Prosecutor or immediately after early termination of the term of office for the Chief Prosecutor the Minister of Justice should initiate consultations with representatives of academic, civil society and law experts in order to select candidates. Based on the consultations the Minister of Justice should propose at least three candidates to the Prosecutorial Council. At least one of the three candidates must be a representative of the different gender. The decision of the Minister of Justice on selecting candidates must be a reasoned one.

The authors of the communication state that according to the new law candidates are nominated by the Ministry of Justice and subsequently discussed/approved by the government, which keeps matter political in nature. In response to the following statement the Government wish to underline that the candidates of the Chief Prosecutor are selected as a result of long, thorough and comprehensive consultations with academic, civil society and law experts. The Minister of Justice does not render decision individually, but as a result of consultations, insofar as the new provision of the law explicitly establishes that "based on the consultations the Minister of Justice should propose at least three candidates to the Prosecutorial Council…" (Law of Georgia on Prosecutor's Office, Article 9^1, paragraph 1).

One of the core aims of participation of academic and civil society members is to ensure the transparency and independence of the process and to exclude any possibility of political influences or arbitrary decision. Besides, according to Article 9^1, the decision regarding the candidates must be well-grounded, which, independently and in connection with other new regulations, is additional prerequisite for ensuring the transparent process. Therefore, the allegations made by the coalition regarding the politicization of the process are groundless, considering the regulations of the selection process both in law and practice.

II stage: The Prosecutorial council should hold separate voting for the three candidates. A successful candidate must receive the most of the votes (but not less than 2/3 of the members). If all the candidates fail to receive the required number of votes, the two candidates receiving the majority of the votes are to be nominated for the second round. If none of the candidates receive required votes in the second round then within one week the Minister of Justice shall nominate different candidates in the same manner.

Thus, based on the consultations, the Minister of Justice proposes at least three candidates to the Prosecutorial Council, which appoints one of them as the candidate for Chief Prosecutor's position. The coalition notes in the communication that the staffing of the Prosecutorial Council which is charged with important disciplinary and monitoring functions also fails to adequately correspond to the principles of independence and impartiality. The government wish to draw the Committee's attention to the following legislative and factual circumstances in that regard:

The new institutional model for the reformed Prosecutor's Service envisaged the establishment of a Prosecutorial Council with the MOJ consisting of fifteen members, including the Minister of Justice as a chairperson of the council, eight prosecutors to be elected by the conference of all prosecutors (of which at least ¼ shall be of different sex), two members of the Parliament of Georgia (one from the parliamentary majority and the other from the minority), two judges of general courts to be elected by the High Council of justice, and two members to be elected by the Parliament of Georgia from the candidates nominated by the higher educational institutions and civil society organizations.

Hence, the new mechanism introduces the solid guarantees for participation of all branches of government in the appointing process of the Chief Prosecutor (including the parliamentary majority and minority). Furthermore, eight prosecutors are elected as members of the Prosecutorial Council by the Conference of all prosecutors, which absolutely excludes any kind of political or other mean of influence on the prosecutor members of the Council as far as they are selected independently by other fellow prosecutors. For the interests of independence and transparency, it is highly important that the representatives of judiciary (two judges) and civil society are presented in the Council as well. That kind of diversity of members of the Council, expels any kind of political influences. Subsequently, the Government disagrees with the coalition and reiterates, that the impartiality and independence of the Council is guaranteed to the fullest extent.

III stage: The Minister of Justice should present the candidate approved by the Prosecutorial Council to the Government of Georgia to obtain the Government's consent. If the Government of Georgia does not grant its consent the Minister of Justice should present to the Government another candidate approved by the Prosecutorial Council in accordance with the abovementioned procedures. If the Government of Georgia consents to the presented candidate s/he should be presented to the Parliament of Georgia for election.

As to the Government's consent in the process, it should be underlined that the Government of Georgia is considering the exclusion of the Government from the process of selection of the Chief Prosecutor.

IV stage: The Parliament of Georgia should elect the Chief Prosecutor of Georgia by a secret ballot and by majority of all of its members. If the Parliament of Georgia does not support the candidate presented by the Government of Georgia, the above-described procedures should be repeated.

To summarize the process of the appointment of the Chief Prosecutor, such multistage procedure involving all branches of Government – legislative, executive and judiciary as well as civil society members, represents a guarantee of establishing an independent, impartial and objective mechanism excluding any chances of political influences.

- Special (ad hoc) Prosecutor

Furthermore, if there is a sufficient ground to believe that the Chief Prosecutor has committed a crime, the Prosecutorial Council, at the initiative of one or more Council members is empowered to discuss the issue of appointing a special (ad hoc) prosecutor. The Prosecutorial Council may also discuss the appropriateness of the appointment of a special (ad hoc) prosecutor upon the petition of at least one-third of the full composition of the Parliament of Georgia.

A person selected as a special (ad hoc) prosecutor must be a person with no criminal record, a former judge, former prosecutor, or criminal defence attorney with higher legal education and with at least 5 years of relevant working experience. A candidate for the special (ad hoc) prosecutor may also be selected from the recognized criminal law experts and/or civil society organizations having at least 10 years of working experience as a legal professional. The candidate should have strong reputation due to his/her moral and professional qualities. A special (ad hoc) prosecutor's term of office shall be terminated upon the completion of his/her mission by a decision of the Prosecutorial Council.

- Procedures for removal from office of the Chief Prosecutor

Following the appointment of the special (ad hoc) prosecutor, s/he shall prepare a report whether or not there is a reasonable suspicion that the Chief Prosecutor has committed a crime and submit to the Prosecutorial Council within the time-frame determined by law. If the special (ad hoc) prosecutor finds that there is a reasonable suspicion that the Chief Prosecutor has committed a crime, the Prosecutorial Council, by two-thirds of its members shall approve the report of the special (ad hoc) prosecutor, following which it shall apply to the Parliament of Georgia to remove the Chief Prosecutor from his/her office. If the Prosecutorial Council, by two-thirds majority, refuses to approve the report, the matter shall be deemed to be removed from the Council's agenda; but if the report of the special (ad hoc) prosecutor does not confirm the reasonable suspicion that the Chief Prosecutor committed a crime, the Prosecutorial Council shall be authorized, by two-thirds majority, to turn down the report. In such a case it will be assumed that the reasonable suspicion that the Chief Prosecutor has committed a crime exists and the Prosecutorial Council shall apply to the Parliament of Georgia to remove the Chief Prosecutor from his/her office.

The Parliament of Georgia should discuss and vote for or against the removal of the Chief Prosecutor of Georgia. The decision shall be deemed to be adopted if it is supported by majority of all members of the Parliament. If the Parliament fails to adopt the decision on the removal of the Chief Prosecutor, the matter shall be removed from the Parliament's agenda.

It is worth mentioning that the Chief Prosecutor should be suspended from discharging his/her responsibilities immediately upon the appointment of the special (ad hoc) prosecutor and suspension shall be effective until the Prosecutorial Council and/or Parliament makes a decision.

Furthermore, the Chief Prosecutor may also be dismissed from the office if the Prosecutorial Council, after the examination, decides that s/he committed a disciplinary offence.

In addition, the amendments also foresee other grounds for removal from the office of the Chief Prosecutor, such as his/her resignation, or incapability of discharging duties for health reasons, or taking over any other public office, or any other case of conflict of interest, etc.

It should be underscored that the new regulations regarding the removal of the Chief Prosecutor from the office are thorough enough to ensure the independence of the Chief Prosecutor. The regulations undoubtedly demonstrate that neither one person nor any political group have the power to remove the Chief Prosecutor from the office, but it may be only the result of objective and transparent process.

- **Department to Investigate Offenses Committed in the Course of Legal Proceedings**

The communication of the coalition also refers to the issue of creation of new structural unit - Department to Investigate Offenses Committed in the Course of Legal Proceedings - within Prosecutor's office of Georgia. The Government wish to outline the purposes of establishing the aforesaid new department.

On February 13, 2015 the new Department for the Crimes Committed in the Course of Legal Proceedings was created within the Office of the Chief Prosecutor of Georgia.

The entire idea of establishing the said Department was to more effectively target the law-enforcement abuses or the cases where the legal process not necessarily criminal one, is flagrantly abused. The regulations concerning the Department explicitly stipulate that the department is set to investigate and prosecute the abuses of legal process that lead to serious human rights violations, *inter alia,* freedom from torture, inhumane or degrading treatment or punishment and arbitrary deprivation of possessions.

The Department is subordinated only to the Chief Prosecutor of Georgia in order to achieve higher safeguard for its independence. The staff of the Department is composed of 6 investigators, 8 prosecutors and 4 coordinators of witness and victim, who had been carefully selected from the employees of the Prosecution Service on the basis of their reputation, skills and competence.

To illustrate the effectiveness of the activities of the Department in practice, the Government underscore that the department has received 6310 applications/complaints by February 2017. Since its creation, the investigation has been finalized on 55 cases and 35 public servants have been identified. Furthermore, 95 persons were recognized as victims in the cases of extrajudicial seizure and the relevant property was returned to them.

In addition, the department has addressed the Appellate Courts on reviewing the judgments in respect of 20 persons, under new provision of Article 310, subparagraph g^1, of the Criminal Procedure Code of Georgia.[6] Consequently, the judgments in respect of 5 persons were reopened and the persons were acquitted by the Appellate Courts.

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[6] Article 310 of the Criminal Procedure Code of Georgia: "Judgement shall be reviewed due to newly found circumstances if: g^1) a decree of a prosecutor has been provided concerning substantial violation of the rights of the convicted person while processing the criminal case, that was unknown when a judgement subject to review was rendered, and that, separately and/or along with any other established circumstance, confirms the innocence of the convicted person, or the commission of a crime that is less serious than the crime for the commission of which he/she has been convicted."

To conclude, creating an independent investigative mechanism is not an obligation that stems from the ECHR judgments or the Committee of Ministers resolutions. The idea that the lack of such mechanism should inevitably bring a fact-finder to the procedural violations of Articles 2 and 3 of the European Convention due to the lack of independence and impartiality of the investigation would impose on any member of the Council of Europe an obligation to create an independent investigative mechanism which is unreasonable from both legal and practical perspectives. The Government stress that the independent investigative mechanism does not represent a common European approach and is not a sole model for ensuring independence of the investigation. In particular, such a mechanism does not exist approximately in 90% of the member states of the Council of Europe.

Lastly, the Government wish to reiterate that establishment of an independent investigative mechanism should not be considered a prerequisite for the execution of the Gharibashvili group.

The Government of Georgia will continue to submit to the Committee of Ministers 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 in Gharibashvili group of cases.

Sincerely,

Beka DZAMASHVILI
Government Agent of Georgia
to the European Court of Human Rights

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the criminal case, that was unknown when a judgement subject to review was rendered, and that, separately and/or along with any other established circumstance, confirms the innocence of the convicted person, or the commission of a crime that is less serious than the crime for the commission of which he/she has been convicted."