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Communication from NGOs (Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (20/10/2020) concerning the case of TSINTSABADZE GROUP v. Georgia (Application No. 35403/06).

Information made available under Rule 9.2 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 : 1390e réunion (décembre 2020) (DH)

Communication d'ONG ((Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (20/10/2020) concernant le groupe d'affaires TSINTSABADZE c. Géorgie (Requête no 35403/06) ***[anglais uniquement]***

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

Committee of Ministers DGI-Directorate
General of Human Rights and Rule of Law
Department for the Execution of Judgments of the European Court of Human Rights

F-67075 Strasbourg Cedex France
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20 October 2020 *By mail*

Rule 9 (1) and (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of Tsintsabadze group of cases

Dear Sir/Madam,

The Georgian Young Lawyers' Association (GYLA) and the European Human Rights Advocacy Centre (EHRAC) would like to present this communication pursuant to Rule 9.1 and Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgments to draw attention to the inadequacies in the execution of the European Court of Human Rights' judgments and decisions in the *Tsintsabadze group* of cases.

The present communication aims to provide to the Committee of Ministers the information on the individual and general measures undertaken by the Georgian Government and brings the key concerns and challenges to the attention of the Committee of Ministers with regard to the execution of this group of cases.

Should you require additional information about the provided information, please do not hesitate to contact us.

Annex 1: Rule 9.1 and 9.2 Communication of the GYLA and EHRAC to the Committee of Ministers of the Council of Europe in respect of the implementation of *Tsintsabadze group of cases*.

Yours sincerely,

Nino Jomarjidze

Tamar Oniani

Lawyers at the Georgian Young Lawyers' Association

Rule 9 (1) and (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of the

Tsintsabadze Group of Cases (№ 35403/06)

Georgian Young Lawyers' Association (GYLA)

European Human Rights Advocacy Centre (EHRAC)

20 October, 2020

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EXECUTIVE SUMMARY

The Georgian Young Lawyers' Association and the European Human Rights Advocacy Centre present this communication pursuant to Rule 9.1 and 9.2 of the Rules of Committee of Ministers to draw attention to the inadequacies in the execution of the European Court of Human Rights' judgments and decisions delivered in the *Tsintsabadze Group of Cases*. This submission is communicated for the supervision of the execution of judgments for consideration at the 1390th CM-DH meeting (December 2020).

The present communication addresses the matters arising in relation to the individual measures in 3 cases (*Goguadze v. Georgia, LTD Studio Maestro and Others v. Georgia* and *Bekauri and Others v. Georgia*) of the *Tsintsabadze Group*. In this regard, GYLA and EHRAC bring to the attention of the Committee of Ministers a number of manifest shortcomings revealed in the work of the investigative authorities while carrying out the investigation on these 3 cases. Further, with regard to individual measures, we provide the relevant recommendations that we consider, should be undertaken by the Georgian authorities in order to ensure the conduct of effective investigation.

In addition, in this communication, GYLA and EHRAC comment on the execution of general measures undertaken by the Georgian Government. While we welcome a number of the general measures which have been taken to date by the state, a number of shortcomings in the execution of the *Tsintsabadze Group of cases* still remain.

In this communication we present information on four key problems characterized to the State Inspector's Service, which call into question the effectiveness of this independent investigative mechanism. In particular, 1) a lack of authority to exercise jurisdiction over high-ranking state officials; 2) problems related to the investigative jurisdiction; 3) the full control exercised over the investigative process by the Prosecutor's Office and its exclusive authority to prosecute; and 4) a lack of authority to conduct investigations into certain categories of crimes. Therefore, problems related to the mandate of the State Inspector's service are still evident.

The conduct of an investigation into the facts of ill-treatment committed by the law enforcement officers with incorrect classifications still remains highly problematic. The practice reveals that the lenient practice is applied by the investigative authorities as a result of which, very often, law enforcement officials are charged with abuse of official powers (Article 333 of the Criminal Code) rather than the more serious charge of torture or other forms of ill-treatment. In addition, various legal provisions prescribed by the legislation of Georgia are problematic, which hinders the conduct of an effective, institutionally and practically impartial investigation into the facts of ill-treatment.

Although the role of the judge has increased through the legislative amendments made in the Criminal Code of Procedure, practical application of this new legislation remains problematic. Moreover, given that the treatment by police of persons arrested in administrative proceedings has worsened in the recent years, it is of vital importance to amend the Code of Administrative Offences Code of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, a judge applies to the competent investigative authorities.

Unfortunately, current practice shows that in many cases victims are not effectively involved in the proceedings and current regulations fail to ensure adequate protection of their interests. Identified deficiencies and shortcomings relate to granting of victim status, to appealing the decision on termination of the investigation / prosecution and refusal to initiate criminal prosecution in cases of less grave and grave crimes, as well as to the lack of sufficient time and facilities to examine criminal case materials.

Implementation of other important safeguards from ill-treatment still remains a challenge. In this respect, it should be noted that audio-video recording of the communication between the police and the citizen, including the interview process is still not conducted; all territorial units are not equipped with internal and

external surveillance cameras; the maintenance and production of custody records which is important safeguards from ill-treatment is not introduced.

The strengthening of the criminal subculture in the penitentiary establishments, as well as the impact and scale of informal governance is also a matter of concern as it creates unhealthy environment for the prisoners and puts the prisoners' life and health under serious risk.

Finally, in this communication, we provide recommendations and a number of steps that we consider, the Georgian authorities should undertake for the full and effective execution of the *Tsintsabadze Group* of cases.

INTRODUCTION

1. The Georgian Young Lawyers' Association *(hereinafter "GYLA")* and the European Human Rights Advocacy Centre *(hereinafter "EHRAC")* would like to present this communication pursuant to Rule 9.1 and 9.2 of the Rules of Committee of Ministers to draw attention to the inadequacies in the execution of the European Court of Human Rights' judgments and decisions delivered in the *Tsintsabadze Group of Cases*. This submission is communicated for the supervision of the execution of judgments for consideration at the 1390th CM-DH meeting (December 2020).

2. The present communication addresses the matters arising in relation to the individual measures in 3 cases of the *Tsintsabadze Group*. In addition, in this communication, GYLA and EHRAC also comment on the execution of general measures undertaken by the Georgian Government aimed at the eradication of ill-treatment in prisons and police stations or other situations of detention, the institutional independence of the investigative bodies and the rights of victims within the investigation. We further provide recommendations and a number of steps that we consider, are required to ensure the full and effective execution of these judgments and decisions.

I. INFORMATION ON EXECUTION OF INDIVIDUAL CASES

3. The *Tsintsabadze* group of cases unites 22 cases, which concern the lack of effective investigations into allegations of violations of the right to life and of ill-treatment imputable to State agents (under the procedural limbs of Articles 2 and 3 of the European Convention on Human Rights). The judgments and decisions include the case *Goguadze v. Georgia*, in which GYLA represented the applicant before the ECtHR and the cases of *LTD Studio Maestro and Others v. Georgia*, *Bekauri and Others v. Georgia*, in which GYLA together with EHRAC represented the applicants.

1.1. Case summaries on Goguadze v. Georgia, LTD Studio Maestro and Others v. Georgia and Bekauri and Others v. Georgia

Goguadze v. Georgia (№ 40009/12)

4. The case[1] concerned the ill-treatment of the applicant, Mr. Nikoloz Goguadze by law enforcement officials during his arrest on 26 May 2011, as well as after his transfer first to Kareli police station and then to the Tbilisi Main Police Headquarters.

5. In its judgment of June 27, 2019, the Court noted that on May 26-27, 2011 the applicant had suffered multiple injuries to his face and body while being in the hands of the police, which injuries he did not have before his arrest. Although the investigation into the applicant's ill-treatment had started back in June 2011, it had continued with no tangible results. Thus, the Court found a violation of the substantive and procedural limbs of Article 3 (prohibition of torture) of the Convention.

Studio Maestro LTD and Others v. Georgia (№ 22318/10)

6. This case concerns the authorities' obstruction of the applicant journalists' activities while dispersing a peaceful rally near the Main Police Headquarters in Tbilisi on June 15, 2009, and the ill-treatment of the applicant, Ms. Inasaridze, by law enforcement officials, as well as the failure of the investigative authorities to conduct an effective investigation with respect to their complaints. According to the terms of the Unilateral Declaration submitted to the Court on 10 March 2015, along with the payment of compensation, the Government (among other points):

   - acknowledged a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the physical injuries inflicted on Ms. N. Inasaridze;

[1] *Goguadze v. Georgia*, № 40009/12, 27.06.2019, available at: http://hudoc.echr.coe.int/eng?i=001-193997

- undertook to launch an effective investigation, as required by the procedural obligation under the Convention, into the allegations made by Ms. Laliashvili, Mr. Kapanadze and Ms. Inasaridze relating to the demonstration on 15 June 2009.

7. On 30 June 2015, the European Court struck the case out of its list pursuant to Article 39 of the Convention in light of the applicants' agreement to the terms of the declaration made by the Government.[2]

Bekauri and Others v. Georgia (№312/10)

8. This case concerns the forceful dispersal of a peaceful demonstration held in front of the Main Police Headquarters in Tbilisi on 15 June 2009 (the same event which was the subject of the *Studio Maestro* case), and the ill-treatment of the applicants by law enforcement officials, as well as the failure of the investigative authorities to conduct an effective investigation into their complaints. According to the terms of the Unilateral Declaration submitted to the Court on 27 May 2015, the Government (among other points):

   - acknowledged a violation of Article 3 of the Convention on account of the lack of an effective investigation into the alleged ill-treatment by the police of the five applicants during the dispersal of the street protest or inside the Tbilisi police headquarters;

   - undertook to conduct an effective investigation into the five applicants' (Mr. Bekauri, Mr. Meskhi, Mr. Chitarishvili, Mr. Maisuradze and Mr. Tsuladze) allegations of ill-treatment.

9. On 15 September 2015, the Court struck the case out of its list pursuant to Article 39 of the Convention with respect to applicants nos. 1-6, 9 and 10 in light of their agreements to the terms of the declaration made by the Government. Furthermore, the Court reminded the applicants that the supervision of the execution of the friendly settlement terms was the prerogative of the Committee of Ministers (Article 39 § 4 of the Convention). The Court also struck out of its list the cases brought by applicants nos. 7 and 8 in accordance with Article 37 § 1 (c) of the Convention.[3]

1.2. Information on individual measures undertaken by the Georgian Government

Goguadze v. Georgia

10. According to the 2019 Action Plan,[4] the 2020 Action Plan,[5] presented by the Georgian Government to the Committee of Ministers, as well as the 2019 report submitted before the Parliament of Georgia,[6] the investigation has been continued by the General Prosecutor's Office of Georgia (the GPO) since 2016 on the basis of a crime prescribed under Article 333 (3) (b) of the Criminal Code of Georgia (CCG). The report states that as part of the investigation, the prosecutor's office has carried out several investigative actions, including interviewing witnesses and requesting information from various agencies, the processing of which is still ongoing. On April 24, 2019 the prosecution also received a forensic examination report on the bodily injury, which confirmed the existence of the bodily injury of the applicant. According to the 2020 Action Plan and 2019 Report, for more than a year, the Prosecutor's Office had been reviewing, processing and comparing information concerning the demographic data of members of the Special Forces, detailed transcripts of incoming and outgoing calls, information on the location of telephone towers and telephone connections fixed on telephone towers.

11. The report of the Ministry of Justice also states that "the investigative body continues to communicate with the applicant and his lawyer, who are provided with full information on the progress of the

[2] *Studio Maestro LTD and Others v. Georgia* (no. 22318/10), decision of 30.06.2015, available at: https://rb.gy/uhbwzw
[3] *Bekauri and Others v. Georgia* (no. 312/10), decision of 15.09.2015, available at: http://hudoc.echr.coe.int/eng?i=001-157942
[4] The Georgian Government's Action Plan of 25.10.2019, available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1282E
[5] The Georgian Government's Action Plan of 12.10.2020, available at: https://rb.gy/fp71ut
[6] 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020, available at: https://rb.gy/iujhrc, [01.10.2020].

investigation, its results and planned actions within the scope of the law (last meeting with the lawyer was held on October 3, 2019)."[7]

Studio Maestro LTD and Others v. Georgia (№ 22318/10) and Bekauri and Others v. Georgia (№312/10)

12. According to the 2019 Action Plan[8] and the 2020 Action Plan[9] presented by the Georgian Government to the Committee of Ministers, as well as the 2019 report submitted before the Parliament of Georgia,[10] an investigation is being pursued on the basis of Article 333 (3) (b) of the CCG, on the fact of abuse of official power using violence by MIA employees. In 2015-2018, certain types of investigative actions were carried out. In addition, the 2020 Action plan and the 2019 report also state that the investigative and procedural actions in the case were in fact exhausted, therefore, the legal evidence obtained as a result of the investigation should have been legally evaluated and summary legal decisions should have been made against certain individuals.

1.3. The main concerns with regard to the execution of individual measures

13. Although more than 11 years have passed since the events of 15 June 2009 and more than 9 years since the events of 26 May, 2011, the investigations initiated into the applicants' ill-treatment are still ongoing apparently. No criminal proceedings have been instigated against any police officer involved in the events of 15 June 2009 or in the events of 26 May 2011. In the Action Plan, the Government describes the investigative measures that have been undertaken by the investigative authorities. However, GYLA and EHRAC consider that there are a number of manifest shortcomings, which need to be brought to the attention of the Committee of Ministers.

Goguadze v. Georgia

14. One of the serious shortcomings identified by the Court in this case was the failure by the investigative bodies to act with due expedition, and the same problem still persists even after the judgment. In this respect, it should be noted that although some investigative measures are apparently being carried out by the GPO into the applicant's ill-treatment, the authorities are clearly failing, once again, to act with sufficient expedition. In its September 2019 decision, referring to the Goguadze case, the Committee of Ministers stressed the importance of promptness from the side of investigative authorities and the swift conduct of the investigation in order to avoid, to the extent possible, prescription or the loss of evidence through the passage of time. Nevertheless, the Georgian prosecuting authorities are still failing to act sufficiently quickly. Although 9 years have already passed since the initiation of the investigation into the applicant's ill-treatment, to date, no responsible persons have been identified and prosecuted.

15. Furthermore, the remit of the investigation remains unduly prescribed. While the circumstances of this case indicate that the acts committed against the applicant in view of its gravity, quality and intensity amount to torture, the investigation is being carried out pursuant to Article 333 (3) (b) (abuse of power) instead of Article 144[1] (torture) of the CCG. The correct classification of the action is of course vitally important for the proper protection of the interests of the victim within the course of the criminal proceedings. Unlike the crime of torture, for which the domestic legislative framework imposes a strict regime, there is a more lenient approach in place for the abuse of official power and similar crimes. More precisely, the statute of limitation[11] is applicable to abuse of power, whereas torture is not subject to statutory limitation. The classification of the crime under exceeding of official power also indicates

[7] *Ibid.*
[8] The Georgian Government's Action Plan of 25.10.2019.
[9] The Georgian Government's Action Plan of 12.10.2020.
[10] 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020.
[11] The term set forth by the Criminal Code in respect of each crime, after expiration of which the person is exempted from criminal liability. The issues related to the statute of limitation in respect of each crime, are regulated under Article 71 of the Criminal Code.

the failure of the investigative authorities to recognize and adequately classify the nature of the offence. Although the applicant requested reclassification of the investigation back in 2018 and 2019, the prosecuting authorities failed to respond to these requests.

16. It should be also noted that the effective involvement of the applicant within the investigation is not ensured. In particular, despite his numerous requests, the applicant has still not been granted victim status, thus he is not effectively involved in the investigation. Given that the applicant's request on granting victim status remained unanswered, the applicant is deprived of the possibility to enjoy the right enshrined in the domestic legislation which allows the victim to appeal against the refusal of the prosecuting authorities to grant victim status before the first instance court, as the formal written response is necessary from the investigative authorities in order to use this two-tier system of appealing. It should be also highlighted that without victim status, the applicant is deprived of the possibility to obtain access to the criminal case materials and to properly assess the effectiveness of the investigation and any investigative measures carried out. Although the applicant and his lawyer had the possibility to meet the investigator in charge of the case in 2019, during which the investigator shared some information on the progress of the investigation, one such meeting is not sufficient for the victim to assess the adequacy of the investigative actions carried out. Therefore meeting on an ad hoc basis with the investigative authorities is not the same as having victim status and is not sufficient to fully enjoy the rights granted to the victim by law.

Studio Maestro LTD and Others v. Georgia and Bekauri and others v. Georgia

17. It is noteworthy that the 2020 Action Plan[12] sent to the CM and the 2019 report[13] submitted to the Parliament by the Government reflect the investigative actions carried out in 2015-2018. The report does not provide information on the investigative actions carried out in 2019 and 2020, raising doubts that the prosecuting authorities remained passive during the whole years. Furthermore, as mentioned in the 2020 Action Plan and 2019 Report, almost all investigative actions have been carried out and the investigative bodies were in the process of making a final decision, however, it remains unclear why the available evidence has not been evaluated and a relevant decision has not been made during 2019 or 2020, or what were the further reasons for the delay in completing the investigation.

18. Once again, the classification of the ongoing investigation is also manifestly inadequate. In particular, while the circumstances of this case indicate that the acts committed against the applicants, in view of their gravity, quality and intensity, are equal to torture or inhuman and degrading treatment, the investigation is being carried out pursuant to Article 333 (3) (b) (abuse of power) instead of Article 144^1 and 144^3 – torture and/or inhuman or degrading treatment. The correct classification of the case is of course vitally important for the proper protection of the interests of the victims within the course of the criminal proceedings. Unlike the crime of torture or inhuman and degrading treatment, for which the domestic legislative framework imposes a strict regime, as mentioned above (see paragraph 15), there is a more lenient approach in place for the abuse of official power and similar crimes. The applicants' requests to reclassify the criminal case remained unanswered by the prosecuting authorities.

19. It can be acknowledged that the investigative authorities have carried out some investigative measures aimed at bringing the responsible persons to justice, however, it is vitally important that these measures are capable of establishing the responsibility of high-ranking officials who may be implicated in these offences. Based on the measures which have been undertaken to date, an objective observer would conclude that the aim of such measures was not to establish the liability of high-ranking officials who planned the dispersal of the demonstration, entailing the ill-treatment and detention of the rally participants, but rather the punishment of ordinary police officers who executed the order. While we agree that bringing charges against those police officers who executed the relevant orders is important

[12] The Georgian Government's Action Plan of 12.10.2020.
[13] 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020.

in proving the commission of a crime, in parallel, the responsibility of the high-ranking officials issuing the unlawful orders should be established. Despite the applicants' numerous request in this respect, the actions of the investigative bodies as well as the evaluation of the available evidence have not been aimed at determining the responsibility of high-ranking officials.

20. Moreover, although the applicants have victim status within the investigation, they have not in fact been informed about the progress of the investigation as the prosecuting authorities failed to response to their letters of August 24, 2018, June 17, 2019 and November 20, 2019. This further indicates that the victims, contrary to the standards set by the Court, are not effectively involved in the ongoing investigation.

III. INFORMATION ON GENERAL MEASURES UNDERTAKEN BY GEORGIA

21. The Committee of Ministers last examined the *Tsintsabadze Group* cases on December 3-5, 2019.[14] In its decision, the Committee emphasized that the mandate of the State Inspector's Service is narrow and precludes the extension of jurisdiction over representatives of high-ranking (political) state officials. Also, as acknowledged by the Committee, the prosecutor's office retains full control over the investigation conducted by the State Inspector's Service. Consequently, in order to eliminate the existing challenges and to further enhance the independence and effectiveness of the SIS, the Committee called on Georgia to adopt the relevant legislative and/or other measures. The Committee also noted that there were shortcomings in the practice regarding the wrong classification of investigations into ill-treatment and called on the authorities to eliminate this practice. In addition, the Committee called on the authorities to make clear, public messages at the highest political level, emphasizing the importance of investigating and adequately prosecuting allegations of ill-treatment by state officials. [15]

22. Georgia has undertaken a number of important steps with the aim of combating torture, inhuman and degrading treatment and to prevent similar violations in future. In the recent action plans[16] presented to the Committee of Ministers in 2018, 2019 and 2020 on the *Tsintsabadze group of cases*, and in the 2019 report[17] submitted to the Parliament of Georgia on March 31, 2020, the state highlighted the steps taken within the framework of the execution of the general measures on this case. In particular, the state focuses on the measures, including the scope and authority of the State Inspector's Service and the activities of the investigative bodies and investigation of the facts of ill-treatment.

IV. THE MAIN CONCERNS WITH REGARD TO THE UNDERTAKEN GENERAL MEASURES

23. GYLA and EHRAC welcome a number of the general measures which have been taken to date by the state, however, we believe that a number of shortcomings in the execution of the *Tsintsabadze Group of cases* still remain and therefore some further measures need to be adopted to eradicate the current shortcomings relating to investigations initiated into the crimes allegedly committed by the law enforcement officials and to proper protection of the victims' rights. These points are expanded upon below and, at the same time, various recommendations that the state should undertake for the effective and comprehensive execution of the *Tsintsabadze Group* of cases are proposed.

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[14] CM/Notes/1362/H46-8, 1362nd meeting, 3-5 December 2019 (DH), H46-8 *Tsintsabadze Group v. Georgia* (application No. 35403/06), Supervision of the execution of the European Court's judgments, 05.12.2019, available: http://hudoc.exec.coe.int/eng?i=CM/Notes/1362/H46-8E, [01.09.2020].
[15] *Ibid*, § 10.
[16] The Georgian Government's Action plan, 13.07.2018, available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2018)767E, [01.09.2020]; The Government's Action Plan of 25.10.2019; the Georgian Government's Action Plan of 12.10.2020.
[17] 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020, pg. 29-40.

4.1. Problems related to the mandate of the State Inspector's Service

24. The establishment of the State Inspector's Service (SIS) and the enactment of its investigative jurisdiction is indeed a positive step forward, especially given that GYLA, along with other NGOs, has demanded the establishment of an independent investigative mechanism to investigate alleged crimes committed by the law enforcement officials for years.

25. At paragraph 9 of its decision, the Committee of Ministers invited the Georgian authorities to keep it informed about any legislative or other measures that may prove necessary to further enhance the effectiveness of the SIS. In this respect, we would like to present information on four key problems that is characterized to this newly created mechanism and call into question its effectiveness. In particular, 1) a lack of authority to exercise jurisdiction over high-ranking state officials; 2) problems related to the investigative jurisdiction; 3) the full control exercised over the investigative process by the Prosecutor's Office and its exclusive authority to prosecute; and 4) a lack of authority to conduct investigations into certain categories of crimes.

26. ***Lack of authority to exercise jurisdiction over high-ranking state officials*** - under the current regulation, the State Inspector lacks the capacity to investigate crimes committed by (i) the General Prosecutor of Georgia; (ii) the Prosecutor of the structural unit for procedural Guidance over investigation in the Investigation Unit of the SIS at the GPO, (iii) the Minister of Internal Affairs and (iv) the head of the State Security Service.[18] In those circumstances when in many cases the actions or decisions of high-ranking officials determine and define the legitimacy of the actions of their subordinates, it is important to independently and objectively investigate the actions of high ranking officials. Taking this into account, it is unreasonable and illogical to exclude these persons from the mandate of the SIS. The PDO,[19] non-governmental organizations[20] and international organizations[21] have actively raised their concerns with regard to the narrow powers of the SIS. As mentioned above, this issue has also been criticized by the Committee of Ministers during the session held on 3-5 December 2019. However, the regulations have not been changed.

27. ***The problems related to investigative jurisdiction*** - Article 33 of the Criminal Code of Procedure grants the General Prosecutor (or a person authorized by them) the authority to withdraw a case from one investigative body and transfer it to another investigative body, regardless of the investigative jurisdiction. This rule also applies to crimes under the investigative jurisdiction of the SIS. Accordingly, the investigation of a specific crime may fall within the investigative jurisdiction of the SIS, however, under this rule, the investigation could be conducted by the agency whose staff allegedly committed the crime. This regulation is problematic and raises questions about the effectiveness of the SIS.

28. ***The full control of the Prosecutor's Office over the investigation process and exclusive authority to prosecute*** - The GPO provides procedural guidance and supervision over investigation conducted by the SIS. The GPO also maintains exclusive authority[22] to prosecute. Thus, the SIS investigators do not have authority to conduct certain investigative actions independently and they have to reach agreement on investigative actions with the prosecutor. Consequently, the GPO has considerable powers over the investigation conducted by the SIS, which also hinders the effective operation of an independent investigative mechanism.

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[18] The Law of Georgia on the State Inspector Service, Article 3 (1) (h), *available at:* https://rb.gy/9lhoui, [03.09.2020].
[19] Special Report of the Public Defender of Georgia on Effectiveness of investigation into criminal cases of ill-treatment, 2019, available at: http://ombudsman.ge/res/docs/2019062010290641301.pdf, [03.09.2020].
[20] Comments from the Coalition for an Independent and Transparent Judiciary on the draft law on the State Inspector's Service, available at: http://coalition.ge/index.php?article_id=185&clang=0, [03.09.2020]; GYLA's report on Prevention of ill-treatment and response to incidents of ill-treatment, 2019, available at: https://gyla.ge/files/news/2006/Report.%20eng.pdf, [03.09.2020].
[21] CPT/Inf (2019) 16, Strasbourg, 10.05.2019; Report of the UN High Commissioner for Human Rights on cooperation with Georgia, (A/HRC/39/44), 15.08.2018, available at: https://rb.gy/dfcdyb, [03.09.2020];
[22] Special Report of the Public Defender of Georgia on Effectiveness of investigation into criminal cases of ill-treatment, 2019, 4-5; Prevention of ill-treatment and response to the facts, Georgian Young Lawyers Association, 2019.

29. ***Lack of authority to investigate certain categories of crimes*** - as laid down by the Law on the State Inspector's Service and the Order of the General Prosecutor on investigative jurisdiction, the SIS cannot initiate an investigation into all crimes committed by law enforcers, but only those crimes prescribed under Articles 144[1]-144[3], 332 (3) (b) (c), 333 (3) (b) and (c), 335, 387 (2) of the CCG, or if a crime committed by a representative of a law enforcement agency, as well as an official or a person equal to them, resulted in deprivation of life. Consequently, a certain categories of crimes remain outside the jurisdiction of the independent investigative mechanism, which itself is problematic and raises doubts how this mechanism can achieve its purpose in this context.

30. In view of these issues, in order to further strengthen this newly established mechanism and enhance its effectiveness so as to be able to respond to current challenges and develop as a truly independent investigative body, the problems outlined above should be eliminated.

4.2. The deficiencies related to correct classification of cases

31. Timely and effective investigations into cases of torture and ill-treatment committed by the law enforcement officials are vitally important, however, the inadequate investigation of such cases remains a systemic problem in Georgia. The Public Defender in her annual or special reports,[23] local civil society[24] and international organizations have continually referred to this problem for years.[25] The statistics provided to GYLA by the General Prosecutor's Office of Georgia (data for 9 months of 2019) further confirms the shortcomings in the process of investigation. In particular, according to these statistics, in 241 cases initiated under Article 333 of the Criminal Code, only 3 persons were prosecuted, which is only 1.6% of the cases. Such a low rate of prosecution against the background of a large scale of investigations need to be critically assessed.[26]

32. In 2019, as in previous years, the conduct of an investigation into the facts of ill-treatment committed by the law enforcement officers with incorrect classifications remained highly problematic. In particular, the practice shows that in these cases the investigative body launches an investigation under a general article, such as abuse of official power, and not under the particular articles relating to inhuman and degrading treatment or torture.[27]

33. This lenient practice has been highlighted by the PDO in its 2018 and 2019 reports emphasizing that the correct classification of the acts of torture and ill-treatment committed by the law enforcement officers, remained a serious failing.[28] Challenges in terms of classifications are also confirmed by the information provided to GYLA by the GPO, according to which the investigation into the facts of ill-treatment in most cases is launched under Article 333 of the CCG, which covers abuse of official power. In particular, according to the statistics, a large number of investigations, namely in 241 cases, were launched under Article 333 (3) (b) of the CCG in 2019. Investigations under Article 144[1] (torture) of the CCG were initiated in three cases. This year, no investigations have been launched under Article 144[2] (threat of torture), and just 21 criminal investigations have been initiated under Article 144[3] (inhuman and degrading treatment). The problem of correct classification is also evident in the cases

[23] Annual Report of the Public Defender of Georgia - The Situation in Human Rights and Freedoms in Georgia, 2019, 86-94, *available at:* http://ombudsman.ge/res/docs/2020070407523954521.pdf, [02.09.2020].
[24] GYLA, Prevention of ill-treatment and response to the facts, 2019; Prevention of Ill-Treatment in Police Activities, Human Rights and Monitoring Center, 2019; Deficiencies in the investigation of cases of ill-treatment by law enforcement officials and the legal situation of victims in Georgia, Georgian Democratic Initiative, 2018; Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020, available at: https://rb.gy/jydtni, [02.09.2020].
[25] CPT/Inf (2019) 16, §§ 13-5; Human Rights Watch Annual Report on Georgia, 2019, *available at*: http://bit.ly/2Q4VOA7, [02.09.2020]; Amnesty International, Reports on Georgia 2018-18, *available at:* http://bit.ly/2Ind9A0, [02.09.2020].
[26] Prevention and Forms of Torture and Ill-Treatment, GYLA, 2020, 25.
[27] Annual Report of the Public Defender of Georgia - The Situation in Human Rights and Freedoms in Georgia, 2019, 86.
[28] Annual report of the PPD: On the Situation of Protection of Human Rights and Freedoms in Georgia 2019, pg. 94. See also, annual report of the PDO: On the Situation of Protection of Human Rights and Freedoms in Georgia 2018. pg. 71

litigated by GYLA, according to which despite the fact that the cases concerned severe forms of physical and psychological violence, 6 out of 10 of the cases have been investigated under Article 333 of the CCG.[29]

34. In this respect, GYLA and EHRAC further refer to the individual measures undertaken by the Government in the cases of *Bekauri and Others v. Georgia, Studio Maestro LTD and Others v. Georgia* and *Goguadze v. Georgia* and underline that as outlined above, the problem related to correct classification was clearly illustrated in these cases. Despite the continuous requests of the applicants submitted to the investigative authorities to re-classify the case, the investigations are still pending under general articles, such as abuse of power. No substantiated response adequately justifying the refusal to change the classification has been provided to the applicants (see paragraphs above).

35. Below we set out summaries of several cases to illustrate the problem of incorrect classification:

- *Khoperia v. Georgia (application no. 24736/19)*[30] – the case concerns the applicant's ill-treatment by police officers at the police department in Tbilisi as well as the failure of the investigative authorities to conduct an effective investigation into his complaint. The investigative authorities initially launched the investigation under Article 144^1 (2) (a) (torture). However, later the prosecuting authorities re-classified the case and brought charges against three police officers for exceeding official powers, a crime under Article 333 (3) (b) and (c) of the CCG. The prosecuting authorities refused to re-classify the charges despite the applicant's request.

- *The case of A.G. and G.B.*[31] – the case concerns the physical assault of G.B. and A.G. by police officers in the evening of 27 October 2018, after police officers stopped the car driven by G.B. These abuses continued even after G.B. was transported to the police unit. The investigation was launched into the fact of A.G. and G.B.'s ill-treatment by the Samegrelo-Zemo Svaneti Regional Prosecutor's Office only under Article 333 of the CCG. A.G. and G.B. have not been granted the victim status.

- *The case of R.M.*[32] - On 31 March 2019, R.M was arrested by police officers who allegedly punched and kicked him in his head and torso areas when he was detained. As a result of the violence, he had his teeth smashed, he developed a hematoma over his eye and suffered from pain in his head. Afterwards, R.M. was taken to a temporary detention isolator where his injuries were recorded. The Investigative Unit of the Tbilisi Prosecutor's Office merely initiated an investigation under Article 333(3) (b). R.M does not have victim status.

- *The case of B.M (a minor)*[33] - In August 2019, B.M. was transferred by police officers to the MIA Gurjaani District Police Division for questioning. The police officers exerted pressure on B.M to obtain his "confession;" namely, law enforcers were coercing B.M to admit to murdering a certain V.M. Having beaten him and after hanging B.M's head down out the window, the police officers managed to obtain a "confession" of murder. A few days after the "confession", the alleged victim was found alive. The Investigation Unit of Kakheti Regional Prosecutor's Office opened the investigation under Article 333 of the CCG. As of today, B.M does not have victim status.

36. Given the reasons set out above, it should be noted that although the CM with its decision of 5 December 2019 at paragraph 10 urged the Georgian authorities to adopt further measures to enhance the correct classification of offences involving ill-treatment, the statistics as well as the individual cases outlined above clearly confirm that problems with regard to the correct classification still remain and further measures need to be adopted by Georgia to eliminate this issue.

[29] Prevention and Forms of Torture and Ill-Treatment, GYLA, 2020, 21.
[30] *Khoperia v. Georgia*, no. 24736/19, lodged with the Court on 17.04.2019.
[31] Prevention and Forms of Torture and Ill-Treatment, GYLA, 2020, 35.
[32] Ibid 36.
[33] Ibid 38

4.3. The role of judges in the prevention of ill-treatment

37. Pursuant to the decision of December 2019 (paragraph 13), the CM invited the authorities to provide with more detailed information about the practical application of the new legislation by the domestic courts and the results achieved to date regarding the latest amendments of the Criminal Code of Procedure aimed at eradicating ill-treatment and torture-tainted trials. In this respect, GYLA and EHRAC would like to provide the following information: Under Article 191[1] of the CCP, at any stage of criminal proceedings, a judge applies to a competent investigative authority in case of suspicion concerning torture, inhuman or degrading ill-treatment an accused/convicted person could be subjected to or when an accused/convicted person him/herself states about it before the court. This amendment is indeed a positive step forwards. However, there were cases where a judge failed to examine incidents of alleged ill-treatment by police officers and pay attention to their injuries despite the fact that accused persons had visible multiple injuries.[34] Therefore, practical application of this new legislation remains problematic and needs further improvement.

38. Although this latest amendment is the most important one to the CCP in terms of prevention and response to ill-treatment, it remains a problem that such a regulation is only made in the CCP and the same changes were not included in the Code of Administrative Offenses on the basis of which judges consider the cases of individuals charged with administrative offenses. Given that the treatment by police of persons arrested in administrative proceedings has worsened in the recent years,[35] it is of vital importance also to amend the Code of Administrative Offences to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, a judge applies to the competent investigative authorities.

4.4. Problems related to the effective participation of the victim in the legal proceedings

39. The appropriate involvement of the victim is one of the main cornerstones of the effectiveness of an investigation. However, current practice shows that in many cases victims are not effectively involved in the proceedings and current regulations fail to ensure adequate protection of their interests. In 2014, some changes were made to the CCP, which granted the victim a number of rights. However, certain issues remain unresolved to date. In recent years, GYLA has been actively calling for improvement of victim rights issues and their proper regulation in practice, as well as in legislation.[36] Unfortunately, the situation has not changed and victims still face serious challenges.

Deficiencies related to granting of victim status

40. According to the available data, the rate of granting victim status in the course of ongoing investigations into alleged crimes committed by law enforcement officials is still low. According to the report of the PDO, within the framework of the investigation launched on the basis of 107 proposals sent to the Prosecutor's Office in 2012-2019, investigations recognized the person as a victim only in two cases.[37] The problem of granting victim status has also frequently been raised by NGOs during recent years based on their legal practice.[38] For example, out of 10 cases litigated by GYLA which concerns ill-treatment committed by law enforcement officials, only two people have been granted victim status (in this respect see also the individual cases outlined above).[39] In addition, in the case of *Goguadze v.*

[34] Annual report of the PDO: On the Situation of Protection of Human Rights and Freedoms in Georgia 2019, pp. 73-74
[35] Ibid, p. 67; GYLA's report on Prevention of and response to incidents of ill-treatment, 2019, p.11.
[36] See GYLA's an alternative report to the Parliament of Georgia regarding the 2019 report of the Ministry of Justice of Georgia concerning the situation of the enforcement of decisions/judgments delivered by the ECtHR, available at: https://rb.gy/9v3ws5, [03.09.2020]; Communication from a NGO (03/09/2018) in the cases of *Bekauri and Others, Studio Maestro LTD and Others and Tsintsabadze v. Georgia* (No. 312/10, 22318/10, 35403/06), available at: https://rb.gy/d9zy78, [03.09.2020].
[37] Annual Report of the PDO - The Situation in Human Rights and Freedoms in Georgia, 2019, 86; see also Annual Report of the PDO - The Situation in Human Rights and Freedoms in Georgia 2017, 56.
[38] *Ibid.*
[39] Prevention and Forms of Torture and Ill-Treatment, GYLA, 2020, 6-7.

Georgia, in which the European Court found violations of the procedural and substantive limbs of Article 3 of the Convention, the applicant still has not been granted victim status despite his numerous requests. The problem of granting victim status has also been identified in the cases of June 20-21 (Anti-Russian occupation demonstration dispersal), 2019, in which the majority of injured persons, despite the existence of sufficient evidence, have still not been granted victim status.[40]

41. In addition to the challenges in practice, problems also remain in the legislation. In particular, the legislation does not require the prosecutor to substantiate the decision on refusal to grant victim status. In view of that, the victims are not given reasons for the refusal to grant victim status, which, on the one hand, deprives them of the effective opportunity to appeal against such a decision and, on the other hand, increases the risk of arbitrariness from the decision-making prosecutor. This would be balanced if any decision refusing to grant victim status, *de minimis*, included the grounds and reasons for such a decision.

Shortcomings related to appealing the decision on termination of the investigation / prosecution and refusal to initiate criminal prosecution

42. Under the law currently in force, the victim's right to appeal against a prosecutor's decision on termination of an investigation and / or prosecution and on refusal to prosecute is limited both by the person / body adopting the decision and by the category of the crime. In particular, according to the legislation, the victim has the right to appeal the decisions on the mentioned issues to the superior prosecutor. The decision of the superior prosecutor can be appealed in the first instance only in cases when especially grave crime have been committed or where the crime, according to the law, is under the jurisdiction of the SIS.[41]

43. Taking into account the fact that the decision on termination of an investigation/prosecution or refusal to start a prosecution has a direct impact on the protection of the rights and interests of the victim in the criminal proceedings, the victim should have the right to test the validity and legality of these decisions. The Constitutional Court of Georgia has repeatedly emphasized in its judgments the need to provide adequate safeguards for the protection of the interests of the victim and the right to appeal in court,[42] noting that, regardless of the category of the crime, judicial control is the most powerful and effective way to protect the interests of the victim and to force the prosecutor to be impartial in the exercise of discretionary powers.[43]

44. It should be emphasized that according to the existing practice, the issues of termination of the investigation/prosecution and refusal to initiate prosecution are usually agreed in advance with the superior prosecutor.[44] Consequently, in the event of an appeal, the superior prosecutor often does not change the decision made by the subordinate prosecutor. Moreover, the decisions of the superior prosecutor fail to give adequate reasons as in many cases, the superior prosecutor simply indicates that they agree with the decision made by the subordinate prosecutor, without any additional justification.[45] It should be noted that the prosecutor does not have the obligation under the legislation to substantiate the decisions, which is another important shortcoming. Simply having the right to appeal to a superior

[40] GYLA, *The events of June 20-21 are uninvestigated*, 19.06.2020, available at: https://rb.gy/nnjgyr
[41] Criminal Procedure Code of Georgia, Articles 106 (1)[1] and 168 (2).
[42] Judgment of the Constitutional Court of 30 September 2016 in the case *"Citizen of Georgia Khatuna Shubitidze v. the Parliament of Georgia";* Judgment of the Constitutional Court of 14 December 2018 in the case *"Citizens of Georgia – Khvicha Kirmizashvli, Gia Patsuria and Gvantsa Gagniashvili and "LTD NIKANI" v. the Parliament of Georgia"*.
[43] Judgment of the Constitutional Court of 30 September 2016 in the case *"Citizen of Georgia Khatuna Shubitidze v. the Parliament of Georgia"*, para 50.
[44] GYLA, Victims' Rights in Criminal Procedure, Legislation, Practice and International Approaches in Georgia, 2016; available at: https://rb.gy/oercmf, [03.09.2020].
[45] Communication from a NGO (03/09/2018) in the cases of *Bekauri and Others, Studio Maestro LTD and Others and Tsintsabadze v. Georgia* (no. 312/10, 22318/10, 35403/06), § 38, pg.15.

prosecutor is not an effective mechanism for protecting rights, as in many cases this is in practice purely a formality.[46] Therefore, for the effective protection of the victims' interests within the criminal proceedings, it is of the utmost importance to adopt a two-tier system of appeal in the legislation allowing the victims to appeal against the relevant decisions of the prosecutor, first before the superior prosecutor, and subsequently to the first instance court.

45. In this respect, it should be further noted that based on the current legislation, in some cases, the victims of torture or inhuman and degrading treatment are deprived of the possibility to appeal the decision of the prosecuting authorities to the national courts. For instance, if the investigative authorities classify a crime under Article 333 (1) or Article 333(2) of the Criminal Code, such crime falls under less grave crime or grave crime, respectively. As mentioned above, in case of less grave and grave crimes, the victims are not entitled to appeal such decisions before the national court. Neither the possibility referred by the Government in the 2020 Action Plan at paragraph 107 will be available for these victims as these crimes do not fall under jurisdiction of the State Inspector's Service. Moreover, as mentioned in the 2020 Action Plan, on the case of *Gogaladze v. Georgia*, the investigation into the applicant's ill-treatment is pending under Article 333(1) of the Criminal Code. Therefore, if the investigation is terminated on this case, based on the current legislation, the victim will not hold the right to challenge that decision on termination before the national Court as this crime belongs to less grave crime and further it is not subjected to the jurisdiction of the SIS. Therefore, problems in this respect still remain and in order to eradicate the existed problems further amendments should be adopted in the legislation.

Lack of sufficient time and facilities to examine criminal case materials

46. Under the legislation currently in force, victims are entitled to access the criminal case materials if it is not contrary to the interests of the investigation.[47] However, the law does not allow them to make copies of the materials.[48] Given that the provision of information about the criminal case to the victim and access to the material is not contrary to the interests of the investigation, it is unclear what legitimate purpose is served by such a restriction on access to copies of the case file. Such a restriction deprives the victims of the right to adequately protect their interests before other national authorities or international mechanisms.[49]

47. Under the current law, the victim is notified of the first appearance of the accused, pre-trial and trial hearings, as well as the application of a measure of restraint against the accused and the defendant / convict leaving the penitentiary institution, only upon the victim's request and this is not the responsibility of the prosecutor's office.[50] This regulation is problematic as in many cases the victim is not properly informed about their rights, and in these conditions it is not clear to victims that they are required to apply to the prosecutor's office with this request. As a result, the case is often transferred to the court by the prosecutor's office in such a way that the victim has no information about it and is deprived of the opportunity to attend court hearings. Consequently, the current legislation does not ensure the effective participation of the victims and their receipt of full and proper information about the criminal proceedings.[51]

Provision of legal aid to the victims of ill-treatment

48. The 2018-20 Human Rights Action Plan[52] as well as the 2019-20 Action Plan to Combat Torture, Inhuman, Degrading Treatment or Punishment provides for the protection, compensation and

[46] GYLA, Victims' Rights in Criminal Procedure, Legislation, Practice and International Approaches in Georgia, 2016.
[47] Criminal Procedure Code of Georgia, Article 57 (1) (h).
[48] GYLA's alternative report, cited above; see also: GYLA, Victims' Rights in Criminal Procedure, Legislation, Practice and International Approaches in Georgia, 2016.
[49] *Ibid.*
[50] Criminal Procedure Code of Georgia, Article 57 (1) (i), Article 58.
[51] GYLA, Victims' Rights in Criminal Procedure, Legislation, Practice and International Approaches in Georgia, 2016.
[52] Human Rights Action Plans of Georgia, available at: http://myrights.gov.ge/ka/documents/action%20plans%201/, [04.09.2020].

rehabilitation of victims of ill-treatment. It is noteworthy, that the same objectives were set out in the 2016-17 and 2014-15 Human Rights Plans,[53] as well as in the 2017-18 Action Plan on Combating Torture, Inhuman, Degrading Treatment or Punishment.[54] Provision of the effective legal aid is essential for the proper protection of a victim of ill-treatment. Although the protection of the victims' interests is enshrined in the action plans, the legal aid is not in practice being provided to them. As a result, victims of ill-treatment are not provided with effective and adequate legal assistance from the state.[55]

4.5. Legislative gaps related to existing institutional subordination of investigative authorities

49. Order N131 of the Minister of Corrections and Probation (26 October 2016) on the procedure for registering injuries of accused/convicted persons at the penitentiary establishments of the Ministry of Corrections of Georgia as a result of alleged torture and other cruel, inhuman and degrading treatment[56] sets out the rules for recording, documenting and photographing the injuries of accused / convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions.

50. According to this Order, if there is a suspicion of torture and other cruel, inhuman or degrading treatment (including sexual violence), the doctor of the penitentiary institution shall immediately notify the General Inspection of the Ministry, which itself, in case of the existence of signs of a crime, is obliged to initiate an investigation. The General Inspection is a structural unit of the Ministry of Justice, and the Special Penitentiary Service is also a state sub-agency operating under the governance of the Ministry of Justice. Accordingly, in those circumstances, where a prisoner may have been ill-treated by an employee of a penitentiary institution, an investigation is conducted by the General Inspection of the Ministry and, even an initial investigative actions, which cannot be considered as institutionally independent and objectively impartial.

51. This shortcoming has been repeatedly highlighted by the CPT,[57] Public Defender[58] and GYLA,[59] however, the problem has not been remedied to date. It should also be added that according to the relevant changes made in the legislation,[60] in case of suspicion of torture and other cruel, inhuman or degrading treatment, the medical personnel at a temporary detention isolator are obliged immediately to notify the State Inspector's Service about it, and such an obligation arises whether the victim of the ill-treatment reported it or not. According to the current rules, there is no equivalent obligation on medical personnel in the penitentiary institutions to immediately notify the State Inspector's Service in case of suspicion of ill-treatment, rather than the General Inspection of the Ministry of Justice.[61]

4.6. Shortcomings related to audio-video surveillance of the communication between the law enforcement agencies and citizen / detainee

52. The European Committee for the Prevention of Torture considers that one of the most important guarantees for the prevention of torture and ill-treatment and protection against such treatment is the

[53] *Ibid.*
[54] Statement of the Ministry of Justice, available at: https://www.justice.gov.ge/Ministry/Index/310, [04.09.2020].
[55] Law of Georgia on Legal Aid, available at: https://matsne.gov.ge/ka/document/view/21604?publication=23, [04.09.2020].
[56] Order N131 of the Minister of Corrections and Probation on the procedure for registering injuries of accused/convicted persons at the penitentiary establishments of the Ministry of Corrections of Georgia as a result of alleged torture and other cruel, inhuman and degrading treatment, 26 October 2016 available at: https://rb.gy/rqburq, [03.09.2020].
[57] CPT/Inf (2019) 16, § 80.
[58] Annual Report of the Public Defender of Georgia - The Situation in Human Rights and Freedoms in Georgia, 2019, 48-9.
[59] Communication from a NGO (03/09/2018) in the cases *of Bekauri and Others, Studio Maestro LTD and Others and Tsintsabadze v. Georgia* (no. 312/10, 22318/10, 35403/06);
[60] 2019 Report on the execution process of the judgements/decisions of the ECtHR (current cases), Ministry of Justice, 2020, 36.
[61] Ibid

audio-video recording of the communication between the police and the citizen, including the interview process.[62] According to the Committee's recommendation, the electronic (audio and / or video) interview of a detainee in a police station should be conducted continuously. Upon request, the interviewee should be given access to the record.

53. According to the law, only the patrol police has the authority to make video-audio recording. It should be emphasized in this respect that video-audio recording is carried out at the discretion of the patrol police and is not an obligation.[63] In addition to patrol police officers, criminal police officers are also in frequent communication with citizens, for example when they arrest, interview and / or transport detainees. However, unlike the patrol police, the law provides neither a duty nor a power for criminal police officers to be equipped with body cameras during their communication with citizens. According to the Law on Police of Georgia, the police are obliged to be equipped with a video camera only when conducting special police controls.[64]

54. A further significant problem is the lack of video cameras on the inner perimeter of police stations, interview rooms, and in places where alleged ill-treatment is most common.[65] GYLA has raised these problems in previous years.[66] The 2019 report of the PDO[67] states that according to information provided by the Ministry of Internal Affairs, in 2019, except for three police stations,[68] all territorial units were equipped with internal and external surveillance cameras, however, not all places, where a detainee or citizen has to be present, were covered by CCTV system.[69]

55. In the 2019 report, the PDO noted that often, citizens or detainees are held in the offices of the heads and deputy heads of the police divisions, which may increases the likelihood of their ill-treatment, as these rooms are not equipped with CCTV system.[70] For example, in the case of *Khoperia v. Georgia*, represented by GYLA, the victim was subjected to ill-treatment at the office of the head of the police division.[71] Therefore, it is important to provide a special interview room, where the person is interviewed while being filmed on CCTV. If detainees are ever taken into other rooms or offices, it is also necessary to record an audio-video conversation between the police officers and the arrested citizen.

56. Although the proper functioning of audio-video surveillance systems in police stations, as well as video recording depicting the process of detention and the actions implemented by the police in relation to this process, represents an important additional safeguard against ill-treatment, the challenges in this sphere still remain and they require additional steps to be taken by the Georgian State.

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[62] European Committee for the Prevention of Torture to Ireland, 2006, available at: https://rb.gy/hxlglx, [04.09.2020]; Concluding observations on the sixth periodic report of the Russian Federation, CAT/C/RUS/CO/6, 2018, available at: https://undocs.org/en/CAT/C/RUS/CO/6, [04.09.2020]; see also: Report to the Government of Serbia on the visit to Serbia carried out by the CPT, CPT/Inf (2018) 21, 2017, 16,23, available at: https://rm.coe.int/16808b5ee7, [04.09.2020].

[63] Annual Report of the Public Defender of Georgia - The Situation in Human Rights and Freedoms in Georgia, 2019, 9.

[64] The Law of Georgia "On Police," Article 24 (Special Police Control) - 1. Special police control of a person, thing or vehicle is carried out if there are sufficient grounds to suspect that a crime or other offense has been or will be committed. 2. Special police control is an inspection carried out by the police in a pre-selected area and at a specified time, as well as in the relevant area in case of emergency and at the appropriate time, to achieve the purpose provided for in paragraph 1 of this article. See also, Prevention and Forms of Torture and Ill-Treatment, GYLA, 2020, 17.

[65] *Ibid.*

[66] Prevention and Forms of Torture and Ill-Treatment, GYLA, 30-1;

[67] *Ibid*, 26.

[68] CCTV systems are not installed in the following police agencies: Mtskheta-Mtianeti Police Department of the MIA; Akhalgori District Division of Mtskheta-Mtianeti Police Department of the MIA; and Mtskheta-Mtianeti Police Department of the MIA and Zhakhunderi Police Station of Lentekhi District Police Division.

[69] Annual Report of the Public Defender of Georgia - The Situation in Human Rights and Freedoms in Georgia, 2019, 71.

[70] *Ibid.*

[71] See GYLA's press-release: GYLA submitted a written argumentation to the European Court regarding the case of torture of Irakli Khoperia, available at: https://rb.gy/ynvh85, [04.09.2020].

4.7. Deficiencies related to the production of documentation in police stations

57. Deficiencies related to the production of documentation in police stations is another common problem. An important guarantee of protection against ill-treatment in police stations is the production of custody records, which include detailed information about a person's detention, including when they were taken to the police station, what measures were taken, when they were allowed to contact a lawyer / family member, whether they had injuries, when rights were explained to them and other relevant information. Both the detainee and their lawyer should have access to such individualized records. The production of such documentation is also recommended by the CPT.[72] However, as of today, such a standardized document is not maintained in police stations in Georgia. Therefore, it is necessary to introduce the maintenance and production of custody records in the police stations in a timely manner, which will create additional guarantees for the prevention of torture and ill-treatment.

4.8. Existence of criminal subculture in the penitentiary system

58. In the post-soviet states, the criminal subculture was a widespread method of the penitentiary institutions for controlling the prisoners.[73] The criminal subculture was firmly entrenched in Georgian penitentiaries, and as a result, over the years, members of the criminal underworld had been controlling prisons informally. As of today, the influence of the criminal subculture is growing in Georgian penitentiaries, especially in semi-open institutions.[74] The murder of two convicted persons, *Levan Kortava* and *Giga Partenadze*, as a result of a confrontation between the prisoners in the N14 facility in 2013 and 2014 respectively, also confirms the existence of the criminal subculture in the penitentiary institutions. In both cases, the involvement of criminal bosses and "watchers"[75] (მაყურებლები) in the commission of the crime was revealed.[76]

59. As a result of informal governance, alongside the prison administration, the members of the criminal subculture are often involved in protection and maintaining order among prisoners in the penitentiary institutions. The staff of the penitentiary institutions fail to take effective steps to change the current situation. In contrast, the administration actively cooperates with these 'informal authorities' and uses them to "resolve relations" with prisoners. As mentioned in the 2019 special report of the National Preventive Mechanism of the Public Defender's Office of Georgia (the PDO), informal leaders explain to the prisoners that they should approach them should the prisoners have some problems and the leaders say they will try to solve these problems.[77] As a result, prisoners increasingly tend to refuse to lodge formal complaints in cases where they would otherwise wish to file a complaint on certain issues.[78] According to the 2020 report of the National Preventive Mechanism, the number of

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[72] CPT, Police custody, Extract from the 2nd General Report of the CPT, published in 1992, CPT/Inf(92)3-part, *available at:* https://rm.coe.int/16806cea2f, [04.09.2020].

[73] *Ashlarba v. Georgia*, no. 45554/08, 15.07.2014, § 22.

[74] The report of National Preventative Mechanism of 2019, 2020, 55-8, *available at:* http://ombudsman.ge/res/docs/2020033122424787329.pdf, [01.09.2020]; The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, 2019, 6; Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, available at: https://rm.coe.int/1680945eca, [01.09.2020].

[75] One of the representatives of the criminal subculture, in Georgian "მაყურებელი".

[76] Tabula.ge, *"criminal authorities have been charged in the case of Levan Kortava"*, 10.12.2013, available at: https://bit.ly/2ZmkFEH, [01.09.2020]; Newspaper "Batumelebi", *"the family of the killed prisoner is waiting for the conclusion of the examination"*, 19.03.2014, available at: https://batumelebi.netgazeti.ge/news/7413/, [01.09.2020];]; Newspaper "Batumelebi", *"the person convicted of Giga Partenadze's murder tried to commit suicide in prison"*, 10.02.2019, available at: https://batumelebi.netgazeti.ge/news/181909/, [01.09.2020].

[77] The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, 2019, 5-6.

[78] *Ibid*, 17.

applications sent to the Public Defender decreases every year in parallel with the increase of the influence of informal governance in the penitentiary establishments.[79]

60. The results of a very recent study show that if before 2012 there was a violation of the rights of prisoners by the prison administration, after 2013 the criminal subculture took the lead and became stronger.[80] As a result of enhanced informal governance, the violent environment among prisoners has increased.[81] Prisoners are subjected to both physical and psychological violence by other prisoners.[82] The Public Defender notes that due to the fear of repression, prisoners are forced to follow informal rules, otherwise they are excluded from prison society and all relationships with other prisoners are broken. This causes the loss of their dignity, status and respect among the prisoners and aggravates their situation.[83] Insufficient number of staff in prisons further increases the risk of violence and fails to provide security among inmates, as in such circumstances the staff often fail to respond to the cases of violence in a timely manner.[84] Strengthening the criminal subculture in penitentiaries is also facilitated by challenges in terms of staff professional capacity, including the existence of the influence of the criminal subculture on their values.[85]

61. There are frequent cases of extortion of money and various items among prisoners.[86] It should be noted that as was evident in the case of *Tsintsabadze*, there is still a so-called practice of collecting "kitty."[87] For example, with regard to #15 penitentiary establishment, the PDO described in her report that: *"coffee and cigarettes from each cell which is the equivalent amount of the "membership fee" is handed to informal leaders. After this, prisoners buy cigarettes from "watchers" instead of shops. Their relatives deposit sums to bank accounts controlled by the "watchers" or a specially opened betting account. Contribution to the "kitty" involves serious amounts. Some prisoners, depending on their income, limit their contribution to GEL 20 per month; whereas in other cases, the contribution from a cell amounts to GEL 300-400. According to one prisoner, GEL 200 was collected for the "kitty" from his cell each month and, as he did not have the money, other prisoners marginalized him and banished him."*[88]

62. The result of informal governance is that privileged inmates have emerged in the penitentiary institution who enjoy certain privileges and advantages over other inmates. Better living conditions are observed in the cells of these prisoners. In addition, such prisoners have household items in their cells that are not allowed for other prisoners.[89] According to the Public Defender, prisoners also enjoy other privileges, such as being transferred to cells with friends, and receiving timely medical care.[90]

63. As outlined above, in recent years the criminal subculture in Georgia's penitentiaries has been strengthening, thus the impact and scale of informal governance is increasing. In the case of *Tsintsabadze v. Georgia*, the Court drew attention to this illegal practice in Georgian prisons at the time of the death of the applicant's son, which usually aroused fear in prisoners towards members of the criminal underworld or the prison administration.[91] In view of the fact that in the *Tsintsabadze* case the

[79] *Ibid*, 18. See also the report of National Preventive Mechanism of 2019, 2020, 58.
[80] Influence of Criminal Subculture on the Management of a Penitentiary Institution", 10.09.2020, available at: https://osgf.ge/wp-content/uploads/2020/09/Main-findings.pdf, [05.10.2020].
[81] CPT/Inf (2019) 16, §§ 8, 49-51.
[82] *Ibid.*
[83] The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, 2019, 9.
[84] *Ibid*, 15.
[85] *Demetrashvili N., Ivaniadze T.,* "Opportunities and Challenges of Protection and Realization of Minority Rights in the Penitentiary System", Research Report, 2020, 10, available at: https://rb.gy/cmuwcu, [01.09.2020].
[86] *Ibid*, 8-9, 17.
[87] *Ibid*, 17.
[88] *Ibid.*
[89] CPT/Inf (2019) 16, 28, 36.
[90] The report of National Preventative Mechanism of 2019, 2020, 56-7.
[91] *Tsintsabadze v. Georgia*, 35403/06, 15.02.2011, § 89.

Court paid considerable attention to the criminal subculture in prisons and the challenges related to it, for the effective implementation of this judgment, it is critically necessary for the State to take effective steps within the framework of general measures in order to eliminate informal governance in the penitentiary system, which in turn will help to avoid similar cases like *Tsintsabadze's* case in the future.

V. SUGGESTED RECOMMENDATIONS TO ENSURE FULL AND EFFECTIVE EXECUTION OF THE INDIVIDUAL AND GENERAL MEASURES

64. In order that the Court's judgments and decisions in the *Tsintsabadze* case are effectively and adequately implemented, GYLA and EHRAC consider that the following steps should be taken:

With regard to individual measures:

- The authorities shall promptly undertake all necessary investigative measures to remedy the deficiencies outlined above and, where appropriate, to bring charges against those responsible. The Government shall also ensure that sufficient information is provided to the victims of ill-treatment on the progress of the investigation and that they are effectively involved in the pending investigation.

With regard to general measures:

- The mandate of the State Inspector's Service will be expanded to enable it to conduct its investigations independently and take decisions on prosecutions independently, and also to encompass crimes committed by high-ranking officials and other crimes committed by law enforcement officials;
- The Georgian authorities shall undertake further steps and enhance its efforts in order to eliminate the problems relating to incorrect classification of offences involving ill-treatment;
- The Georgian authorities should amend the Code of Administrative Offences Code of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, a judge applies to the competent investigative authorities. Further, the authorities should increase efforts in order to ensure practical application of Article 191^1 of the CPC.
- The Criminal Procedure Code of Georgia should be amended in order to establish a duty on prosecutors to give reasons for any decisions on refusal to grant victim status, as well as decisions on termination of the investigation / prosecution or on refusal to initiate criminal prosecution.
- Legislative amendments should be passed granting all victims the right to appeal against the decision of the prosecutor on termination of the investigation and / or prosecution and on refusal to initiate criminal prosecution, regardless of the type or gravity of the crime. In addition, victims should be given the right to make copies of the criminal case file and to receive information from the prosecutors related to criminal proceedings.
- The Government should ensure the effective provision of legal aid for victims of torture and ill-treatment at state expense and establish a state programme for the rehabilitation of victims of ill-treatment.
- Legislative amendments should be passed to ensure that medical personnel employed in penitentiary institutions notifies the State Inspector Service of Georgia about alleged ill-treatment of prisoners (instead of the General Inspection of the Ministry of Justice).
- Legislative amendments should be passed in order to establish the obligation of patrol police officers and criminal police officers to record with cameras fixed on their uniforms the whole period of their interaction with citizens, starting from the point of arrest through to their admission to a temporary detention isolator.

- The Government shall ensure that the whole process of interviewing citizens are recorded by an audio/video system. Further, the Government shall introduce the production of custody records in police stations, describing all actions taken in respect to the detainee.
- The Government shall take all necessary measures in a timely manner to reduce the level of criminal subculture in penitentiary institutions and tackle 'informal governance'. In this respect, the Government, with the involvement of civil society and other stakeholders, shall develop an appropriate plan and strategy which will specify in detail the measures to be taken by the state. The Government shall also ensure an adequate increase of the number of prison staff in penitentiary institutions and provide them with continuing education for their professional development and knowledge enhancement.

65. Given the strengthened criminal subculture in the penitentiary establishments, as well as the impact and scale of informal governance, we kindly request the Committee of Ministers not to close the examination of the case of *Tsintsabadze v. Georgia* but rather maintain its supervision of this judgment.

66. Furthermore, we would invite the Committee of Ministers to call upon the Georgian Government to undertake the above-mentioned individual and general measures for the full and proper implementation of the judgments and decisions in this group of cases.

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