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Communication from Georgia concerning the case of GHARIBASHVILI v. Georgia (Application No. 11830/03)

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Réunion : 1294e réunion (septembre 2017) (DH)

Référence du point : Plan d'action

Communication de la Géorgie concernant l'affaire GHARIBASHVILI c. Géorgie (Requête n° 11830/03)
(anglais uniquement)

The Government of Georgia

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

Department of State Representation to the International Courts

Ministry of Justice of Georgia

11 August 2017

Contents

INTRODUCTION

In October and November 2016 the Government of Georgia ("the Government") presented detailed action plans on individual and general measures adopted in the cases of *Gharibashvili* Group.[1] Consequently, at 1273rd meeting the Committee adopted its decision (6-8 December 2016).[2]

In accordance with the aforesaid decision, the Government submit updated action plan on this group of cases for the upcoming 1294th meeting (September 2017) (DH) which encompasses short summaries of the measures already adopted and provides updated information on each case.

Gharibashvili Group is composed of six judgments and eleven decisions (friendly settlements with undertakings) regarding violations of Articles 2 and 3 of the European Convention.

For the purpose of rectification of all the deficiencies found by the European Court of Human Rights in the *Gharibashvili* group of cases, the Government of Georgia carried out the individual measures in respect of all 17 cases in accordance with the principles enshrined by the European Convention of Human Rights. In particular, the investigations have been renewed and conducted by the independent body – the Prosecutor's Office of Georgia, whilst the previous investigations had been committed by the Ministry of Interior, Ministry of Corrections etc.

At the outset it should be underlined that the Government (the Ministry of Justice) in March 2017 submitted a comprehensive report to the Parliament of Georgia on execution of the judgments/decisions rendered by the European Court as well by the UN human rights treaty bodies against Georgia. The report covered the cases closed by the final resolutions of the Committee of Ministers in 2016 as well as all pending cases. The Government assure that the aforementioned mechanism will further enhance the effectiveness of execution of the judgments/decisions at the domestic level.

Subsequently, on 1 July 2017 the European Union (EU) and the Council of Europe (CoE) in co-operation with Legal Issues Committee of the Parliament of Georgia organized workshop on "Effective parliamentary oversight on execution of judgments of the European Court of Human Rights (ECtHR) by the government". The workshop brought together the high-level representatives of the Government, the Parliament and Judiciary. At the same time the representative of the Department for the execution of judgements of the ECtHR informed the participants on working methods of the Committee of Ministers for supervision of the execution of the ECtHR judgments and on importance of effective data collection and coordination between state agencies which will further increase the coordination at domestic level in respect of execution of ECtHR judgments.

INDIVIDUAL MEASURES

Completed Cases

The subgroup of "Completed Cases" concerns two categories of judgments/decisions according to the results achieved. The first category includes the judgments in which the investigations have been terminated[3] and the second category includes the cases which resulted in tangible progress.[4]

In view of the fact that all the individual measures which could be enforced by the Government in the cases gathered in the subgroup of "Completed Cases" are already implemented, and no other attainable activities could be carried out, hence it follows that, they should be deemed completed.

[1] Available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1206E and http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1262E
[2] Available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1273/H46-10
[3] GHARIBASHVILI v. GEORGIA (No. 11830/03, final on 29.10.2008), KHAINDRAVA and DZAMASHVILI v. GEORGIA (No. 18183/05, final on 08.09.2010)
[4] SURMANIDZE and OTHERS v. GEORGIA (No. 11323/08, final on 17.07.2014), ENUKIDZE and GIRGVLIANI v. GEORGIA (No. 25091/07, final on 27.07.2011)

§ ***GHARIBASHVILI v. GEORGIA (No. 11830/03, final on 29.10.2008)***

The case concerned the applicant's allegation that, while in custody in May 2001, he was ill-treated by the police in order to obtain a confession about the rape and that the Georgian authorities failed to effectively investigate that allegation.

In view of the meagre medical material available, the Court could not, on the sole basis of the applicant's submissions, establish beyond reasonable doubt that he had been ill-treated in police custody. It therefore held unanimously that there had been no violation of Article 3 under its substantive limb and found only the violation of procedural limb of Article 3.

In order to rectify the shortcomings found by the European Court in the present case regarding Article 3 of the Convention, the investigative authorities renewed the investigation and carried out all necessary investigative measures, among others, conducting relevant handwriting and medical expertise, analysing the relevant documental evidence such as criminal case and medical certifications of the applicant, examining relevant correspondence, interrogation of up to 40 relevant witnesses (*Note:* 6 witnesses are already deceased), etc.

Therefore, according to the various pieces of evidence collected in the present case, it has been established that ill-treatment has not been committed against the applicant. Hence, on 15 September 2015 the decision was made to terminate the investigation (information regarding mechanism to challenge the decisions on termination of investigations, see below).

§ ***KHAINDRAVA and DZAMASHVILI v. GEORGIA (No. 18183/05, final on 08.09.2010)***

In the present case the Court concluded that Georgia had failed in its obligations to carry out an effective investigation in a case concerning an assault on the first applicant's life, and that there had therefore been a violation of Article 2 under its procedural limb.

In order to rectify the shortcomings found by the European Court in the present case, Georgian investigative authorities renewed the investigation and carried out all necessary investigative measures. However, it should be noted that the facts of this case took place in 1997 and almost 19 years had elapsed. It is noteworthy, that at the time of rendering the judgment in 2010, the statutory time limit was already elapsed in the present case. Despite that fact, the investigation was still started in order to establish the exact category of crime allegedly committed. Subsequently, the investigative bodies concluded that the alleged assault on the applicant could not be assessed as attempted murder which bore an intentional character since the assaulters armed with automatic rifles could murder the applicant without any difficulties, if they had had such intention.

Furthermore, the evidence obtained during the examination did not suffice to grant precisely the criminal classification to the alleged incident since no medical expertise was conducted at the material time and as to nowadays, the first applicant has no signs of injuries on his body which excludes any possibility of medical expertise. Furthermore, given the passage of time since the alleged incident of 1997, it was not possible for the authorities to undertake a number of further investigative activities (several key witnesses have already passed away: A.G. - the alleged organiser of the assault deceased on 31 August 2005, the alleged assaulters, namely G.Ch. and T.P. deceased on 7 January 1999 and 3 May 2011 respectively, the assistant to the prosecutor of Martvili District - V. B. deceased on 3 September 2006) and it was objectively impossible to rectify all the shortcomings of the original investigation.

The investigation deduced that even the alleged incident has been classified as the most severe damage sustained to health (Article 110 of the Criminal Code of Georgia as it stood at the material time: *intentional serious damage to health which is life-threatening and is committed through torture*) it would have been impossible to initiate prosecution since according to Article 49 of the Criminal Code as it stood at the material time the statutory time limit of ten years has already passed for the crime envisaged by Article 110 (on 1 March 2007, i.e. before rendering the judgment).

As for the responsibility of the alleged law enforcers who did not take any actions to investigate the case promptly without undue delay (first in September 1998 when they learnt about the incident and further until 22 May 2001 when the applicant officially requested the investigation) the investigative bodies inferred that there is a clear lack of satisfactory evidence in order to bring charges regarding the aforementioned. However, even if such evidence existed the statutory time limit has already been passed since according to Article 49 of the Criminal Code as it stood at the material time the time limit for paragraph 1 of Article 188 (Neglect of Official Duty) and paragraph 2 of Article 186 (Abuse of Official Authority) has already passed in 2001 and in 2003 respectively (i.e. before rendering the judgment).

Consequently, in accordance with the aforementioned reasons the investigation of the present case has been terminated on 20 July 2016 (Information regarding mechanism to challenge the decisions on termination of investigations, see below).

In the light of the aforementioned, the Government kindly invites the Committee to close the examination of the aforementioned two cases of *Gharibashvili v. Georgia* (No. 11830/03, final on 29.10.2008) and *Khaindrava and Dzamashvili v. Georgia* (No. 18183/05, final on 08.09.2010).

Information on decisions to close investigations

In addition, according to the decision of the Committee adopted at its 1273rd meeting (6-8 December 2016) the authorities were invited to indicate if decisions to close investigations can be challenged and, if so, before what authority.

In that regard the Government submit that in the case of *Gharibashvili v. Georgia*, Mr. Gharibashvili was informed on the fact of the termination of the investigation. Furthermore, the authorities proposed Mr. Gharibashvili to visit the Prosecutor's Office of Georgia, in order to personally deliver the decree of the termination of the investigation to him. The proposal was rejected by the applicant. Moreover, Mr. Gharibashvili has not appealed the decree of the termination of the investigation to a superior prosecutor.

As to the case of *Khaindrava and Dzamashvili v. Georgia* the decree of the termination of the investigation was sent to the applicant – Mr. Khaindrava by post. Before the termination of the investigation, the authorities met the applicant and had the conversations with him for several times. The latter did not have any complaints regarding the investigation.

Furthermore, the applicant has not appealed the decree of termination of the investigation to a superior prosecutor.

General Regulations regarding termination of investigation:

Article 106 of the Criminal Procedure Code of Georgia (CCP) envisages the provisions regarding the termination of the investigation. According to the said Article, paragraph 1, the prosecutor, within a week after rendering the decision to terminate the investigation, shall submit a copy of the decree to the victim. Furthermore, paragraph 11 of the aforesaid Article explicitly sets forth the victim's right to appeal. In particular, a victim may appeal a decree of the prosecutor to terminate an investigation and/or a criminal prosecution to a superior prosecutor. A decision of the superior prosecutor shall be final and it may not be appealed, except when a particularly serious offence has been committed. In that case, if a superior prosecutor does not grant the appeal, the victim may appeal the decision of the prosecutor to a district (city) court, according to the place of investigation. A court shall deliver a judgment within 15 days, with or without an oral hearing. A decision made by the court may not be appealed.

Thus, the applicants had the mechanism to appeal a decree of the prosecutor on termination of investigation at the domestic level, nevertheless they have not applied to it.

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

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

The Government already provided the comprehensive information in their previous communications (among others, the separate action plan of 20 January 2015) [5] in the present case, stating that as a result of the renewed, effective investigation the former Minister of Internal Affairs and some other high officials were convicted of abuse of official powers, forgery by an official, exceeding official powers, unlawful deprivation of liberty, carrying out false investigations or for affording the persons convicted in the initial proceedings privileged conditions of detention.

Consequently, the new investigation already resulted in several cases. In particular, 7 persons have been already been convicted (I.M.; O.M.; D.K.; T.T.; M.G.; B.A.; D.Ch.) while other cases remain pending before the first instance court -Tbilisi City Court.

As the Committee is well aware the convict D.Ch. and accused D.A. have fled the country which hampers the process to bring them to justice and to effectively execute the case of *Enukidze and Girgvliani v. Georgia* for the reasons enumerated below.

In particular, as for D.A. on 16 October 2014 the Appellate Court of Greece adopted a decision regarding the refusal to extradite him to Georgia despite of the motion made by the Chief Prosecutor's Office of Georgia calling for his extradition. The above decision has been upheld by the Supreme Court of Greece on 24 April 2015.

Additionally, on March 9, 2016, the General Secretariat of the Interpol informed Tbilisi National Central Bureau that it has already cancelled the Red Notice issued against D.A., based on which the latter had been searched for since 2012 year. As explained by the Interpol, D.A. was granted the protective status by Greece due to which the Interpol considered that search for D.A. would contradict the principle of non-refoulement.

As to D.Ch., on November 8, 2013, the Supreme Court of Greece dismissed the request for extradition submitted by the Office of the Chief Prosecutor of Georgia on the grounds that the crimes subject to extradition were status-barred under the Greek legislation.

On May 31, 2016, the General Secretariat of the Interpol informed Tbilisi National Central Bureau that it had cancelled the Red Notice issued against D.Ch., based on which the latter had been searched for since 2013. According to the Interpol, the existence of Red Notice Application in relation to D.Ch. contradicted Article 3 of the Interpol Constitution.

According to the Prosecutor's Office, in both cases referred to above, prior to the cancelation of the Red Notice Applications, the Interpol did not provide the opportunity for the competent Georgian authorities to submit their opinion concerning the disputed issues related to the notices and the decision was made unilaterally. In their communications with Interpol, competent authorities of Georgia expressed their concerns over the decision-making process, lack of transparency and non-participation of the interested party in it. Subsequently, the Georgian side addressed the Interpol with the request to hold dialogues and discuss the aforementioned issues.

In addition, it should be noted that apart from Interpol, upon the referral of Georgia D.A. (date of referral - 29.01.2013) and D.Ch. (date of referral - 31.07.2013) are declared as wanted within the Commonwealth of Independent States which further reinforces the fact that Georgia is doing its utmost by all available means to bring to justice the aforesaid persons.

In the light of all the aforementioned, the Government kindly refer to the Committee to recall member States of the Council of Europe as well as Interpol and other international bodies to give support to the

[5] Available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2015)113E

Georgian authorities in conducting the legal proceedings effectively[6] in respect of the persons accused/convicted for the facts which led the European Court to the gross violations of the Convention in the case of *Enukidze and Girgvliani* as well as in the case of *Surmanidze and others v. Georgia*.

Bearing in mind the collective responsibility of the State-parties for enforcement of the rights under the ECHR within *ordre public europeen*, including effective execution of the judgments of the European Court lends itself to the conclusion that the execution of a particular judgment does not represent only the legal obligation of the State concerned, but a common concern, all member States should strive for bringing to justice those responsible in order to fully implement the judgments in accordance with Article 46 of the European Convention.

Thus, the Government kindly asks the Committee to take note of the aforesaid request of the Government of Georgia and to reflect it in its relevant decision of the upcoming 1294th meeting (September 2017) (DH).

§ *SURMANIDZE and OTHERS v. GEORGIA (No. 11323/08, final on 17.07.2014)*

In the present case the Government presented declaration on 29 April 2014, according to which they acknowledged a violation of Article 2 of the Convention under its procedural limb and undertook to conduct an effective investigation into the alleged excessive use of force against Mr. Roman Surmanidze and Mr. Marad Artmeladze in compliance with the principles established by the Court.

The Court was informed by the representative of the applicants that her clients were prepared to accept the Government's friendly settlement proposals as made in the Government's formal declaration. On 4 June 2014 the Court rendered its decision and decided to strike the application out of its list of cases in accordance with Article 39 of the Convention.

The Government already submitted in the context of the individual measures the information in respect of the present case by its action plan of December 2016.[7] In addition, the Government of Georgia submits updated information concerning the accused D.A. and G.D.

On December 21, 2016, D.A. was found guilty, by the national court, of murdering three persons jointly, in aggravated circumstances; of falsification of evidence; and of exceeding official powers (under Article 109 "a", "h"; Article 369 (3) and Article 333 (1) of the Criminal Code of Georgia (being in force before 31 May 2006). According to the Law on Amnesty, he was sentenced to 12 years of imprisonment.

As for G.D., on December 21, 2016, the court found him guilty of complicity in murder of three persons jointly in aggravated circumstances; and of exceeding official powers (under Article 25; Article 109 "a", "h"; and Article 333 (1), of the Criminal Code of Georgia (being in force before 31 May 2006). Finally, he was sentenced to 9 years imprisonment.

Herewith, both of them are deprived of the right to occupy a position in public service for two years.

As the Committee is well aware on March 22, 2016, G.D. was extradited to Georgia from the Kingdom of Netherlands. As to the extradition of D.A., please see additional information above, in the case of *Enukidze and Girgvliani v. Georgia*.

[6] The ECtHR found in the Grand Chamber case of *Öcalan v. Turkey* (application n° 46221/99) that "the Convention does not prevent cooperation between states, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice […]" (para 86)
[7] Available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1371E

Pending Cases

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

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

With a view of carrying out a thorough, prompt, independent and effective investigation into Mr. Tsintsabadze's death, on 5 March 2011 the decision of District Prosecutor's Office of Western Georgia concerning the termination of investigation on the case had been annulled. The investigation has been renewed by the Investigation Unit of the Chief Prosecutor's Office of Georgia that is institutionally independent body from those implicated. The investigation team takes all appropriate and feasible measures to establish factual circumstances of the case.

The steps undertaken by the investigative authorities up to date can be summarized as follows:

The mother of Mr. Zurab Tsintsabadze – S.T. has been recognized as a successor of the victim.

The Government underline that within the renewed investigation approximately - 45 witnesses including numerous inmates, administration members, former investigator and experts have been questioned.

As noted in the action plan of November 2016[8] the investigative authorities questioned the former prisoner of Khoni prison – D.Gh.. He maintained that there was "makurebeli" in the prison and the "kitty" (in the form of monthly payment of 5-15 GEL) had been collected in the prison. The witness recalled that the applicant's son took 80 GEL from the "kitty" and since he had not returned the aforesaid sum he was battered by "makurebeli" namely by V.T. and Z.L. – the prisoners who controlled the collection of "kitty". On 30 September 2005 – the day when the applicant's son allegedly passed away – the witness D.Gh. saw how the aforesaid persons took Mr. Tsintsabadze from the window of the first floor of the barrack type residence while he was in a state of unconsciousness and placed him into the store-room and then after a couple of minutes they started to shout that the prisoner had hung himself.

So as to examine the validity of the aforesaid testimony of D.Gh. the investigators inspected the former N9 Khoni prison on 17 November 2016. In particular, the prisoners' residence was inspected and photographed. It has been determined that the windows of the prisoners' residence have iron bars. Consequently, the aforesaid testimony of D.Gh. maintaining that the son of the applicant was taken from the window of the first floor of barrack type residence while he was in a state of unconsciousness is not true, since the windows have iron bars which excludes the storyline described by D.Gh.

In order to conduct re-examination of the handwriting of the letter of the deceased, on 27 July 2017 the investigative authorities applied to the Archive of the Common Courts with the motion to transfer two criminal cases concerning Zurab Tsintsabadze's conviction.

Furthermore, on 27 July 2017 verse written by Mr. Tsintsabadze on the notebook sheet was obtained from his mother - Svetlana Tsintsabadze on the basis of the decision of the court in order to obtain additional samples of Zurab Tsintsabadze's handwriting.

In July 2017 Svetlana Tsintsabadze as well as T. Ts. (the brother of the deceased) were questioned in respect of the case at issue. Their interrogation revealed that N. the addressee of a letter allegedly written by the deceased, is a real person. According to their testimonies, N. knew Mr Tsintsabadze and transferred money to his mobile number for several times while he was serving his sentence in penitentiary establishments. Also, the said persons clarified that N. was accompanying them at the penitentiary establishment throughout their visits to see Zurab. In addition T. Ts. stated that he learned from his brother that Zurab liked N. and when he paid visit to him on January 19, 2005, his brother asked him to take care of her until his release.

[8] Available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1262E

As a result of the enquiry carried out by the investigative authorities, the identity of N. was disclosed who in fact appeared to be M.G. Throughout interrogation, on 28 July 2017, she explained that she knew Svetlana's son Zurab. The witness stated that she indeed accompanied Zurab Tsintsabadze's family members during their visits in Batumi Prison and attended Zurab's trial as well. In addition M.G. explained that Zurab regularly called her from jail. In particular he had been telling her that he loved her and frequently asked her to visit him and to give money to him, but she believed that Zurab was telling those words just to extort money from her. The witness stated that she forbad Zurab to call her again. So, she was not answering his calls any more.

Apart from questioning the witnesses, on 3 August 2017, the graphical expertise of handwriting was appointed in order to compare the farewell letter allegedly written by Zurab Tsintsabadze to N. with the samples of the deceased's handwriting.

Thus, the active investigation process is ongoing in the present case.

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

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

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

In the light of the decision of the Committee of Ministers of December 2016 (DH),[9] the investigation was renewed into the alleged ill-treatment of the applicant of 29 October 2005.

In the context of renewed investigation, the investigative actions have been carried out in respect of the registration books and other documents preserved in the Tbilisi no. 2 Temporary Detention Isolator (TDI). As a result of the examination, there were revealed records concerning first medical assistance served to I.J. (friend of the applicant) together with Giorgi Mikiashvili and D.B.

Subsequently, concerning the abovementioned issue the investigative authorities questioned the doctor who drew up the medical records in the registration book. He confirmed that apparently I.J. was arrested with the applicant. According to the doctor, otherwise these records would not have appeared in the registration book.

The same was corroborated by the other employees of the TDI (Sh.S., G.M., Z.S., V.P.,) who have been interrogated. In addition, the said employees could not recall the fact of battering in the investigation room.

Therefore, the investigative authorities are further working on the validity of the testimony of I.J. and his wife, who gave testimonies against the applicant within the former investigation.

Furthermore, the renewed investigation unveiled obvious procedural violations throughout the analysis of the documents obtained from the TDI since the TDI registration documents are inaccurate as well as the testimonies from the patrol police officers reveal inaccuracies. In particular, the factual circumstances in their testimonies are not fully plausible. In connection with this issue, the aforesaid persons will be questioned anew.

Within the renewed investigation, persons attending the examination of the crime scene have been identified, who had not been interrogated at any stage of the investigation. According to their interviews, they have not participated in the examination of the crime scene.

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

Furthermore the video footage of the applicant's arrest taken by the television was examined. It appeared that there were more patrol police officers and patrol police cars at the crime scene as opposed to the relevant protocols. Accordingly, the questioning of all persons appearing in the video recording has been planned. The investigation will also attempt to establish a street vendor who appeared to be in the video recording and who eye-witnessed the incident.

The data containing the composition of the crews of patrol police vehicles appearing in the video footage has been requested from the MIA in order to determine the real reason of their occurrence at the site of the incident.

In addition, the administration of the MIA has been requested to present the full version of the video footage to ascertain other persons attending the scene.

Furthermore, within renewed investigation Giorgi Mikiashvili's cellmate – D.B. was interrogated who explained that the applicant who had been brutally beaten was placed in the cell and that he did not leave the cell after that. In contrast the registration book of TDI reveals that on the basis of the investigator's request, Giorgi Mikiashvili and D.B. were removed from the cell for drug testing purposes.

In order to elucidate the abovementioned inconsistency, the information was requested on drug test of the applicant and D.B. from National Forensic Bureau to determine specifically at what time and by whom the arrested persons were presented for examination.

Once the information requested from the various bodies will be received, they will be examined and the precise investigative actions will be initiated. The investigative steps will be planned in respect of the police officers, investigators and the friends of the applicant as well as towards the applicant himself.

Finally, on the basis of evidence gathered in the case, lawful decision will be rendered in the light of the ECtHR judgment.

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

In the light of the judgment of the European Court, the investigation has been renewed on 31 January 2013 by the Prosecutor's Office of Georgia - independent body institutionally and in practice from those implicated in the incident, namely, prison personnel.

The Government underline that within the renewed investigation all relevant witnesses including the applicant, the applicant's sister, inmates, employees of the Prison Hospital and some other administration members have been interrogated.

On 24 May 2017 the investigation repeatedly questioned the employees of the Prison Hospital namely – D.G. and Z.K.. D.G. confirmed his previous testimony and explained that there was a quarrel between the applicant and another inmate - A.A. but according to him it did not outgrow into a fight since he and other members of the administration managed to pull them apart. The witness also denied any fact of ill-treatment of the applicant. The witness Z.K. maintained that since 11 years elapsed subsequent to his previous interrogation, he cannot recall the details around the case. He only remembers the prisoner A.A. but could not recall the applicant and the said quarrel as well as any kind of ill-treatment sustained to the applicant.

On 25 and 29 May 2017 the investigation interrogated other employees of the Prison Hospital – L.G. and J.Tch.. They could not recall the incident at issue or any kind of ill-treatment inflicted to the applicant by the members of the administration. In addition, the witness - R.P. who worked at the material time as a duty officer, confirmed his previous testimony and explained that he could not recall any quarrel and physical abuse of the applicant. In addition he stated that Giorgi Mikiashvili was a problematic prisoner who regularly had conflicts with other prisoners and members of administration too. According to him the applicant was often punished for violation of prison rules.

On 29 May 2017 the investigative authorities requested the information from the Ministry of Correction in respect of any violation of the prison rules by the applicant and any disciplinary punishment during his presence at the Prison Hospital.

Conclusion

The Government asserts anew that since the facts of this case took place back in 2006 almost 11 years have elapsed. Given the time passed after the alleged facts of ill-treatment it is not possible for the authorities to undertake a number of investigative activities and it is objectively impossible to rectify all the shortcomings of the original investigation. In particular, it is not possible to change the fact that the inmate A.A. (with whom the applicant allegedly had a quarrel) was not given a medical examination at the material time to establish the nature of his injuries. In addition, among others, it would have been impossible currently to obtain any evidence through the implementation of forensic expertise in respect of the applicant.

The investigation will carry out further investigative steps in order to adopt a final decision in the present case.

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

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

On 5 June 2013 the First Deputy Chief Prosecutor annulled the decree of 24 May 2005 concerning the termination of the investigation in the present case. The investigation has been renewed by the Investigation Unit of the Chief Prosecutor's Office of Georgia which is institutionally independent body from those implicated in the alleged events, namely, the personnel of Tskaltubo Division of the Ministry of the Internal Affairs of Georgia.

Throughout the renewed investigation all relevant witnesses including the applicant, all 5 police officers implicated in the incident, first aid doctor, acquaintances of the applicant and a person attending the applicant's identification parade have been questioned. In addition the investigative authorities inspected the alleged scene of the incident in light of the police officers' and the applicant's testimonies, in particular, the investigative authorities conducted the investigative experiment, etc.

Moreover the investigative authorities obtained and assessed the case file of the criminal proceedings against the applicant. The investigation established that the applicant's conviction was based, amongst others, on the material evidence, in particular, on the conclusion of the criminalistics expertise of micro particles confirming his presence in the taxi. The investigation found that the conclusion together with other evidence collected on the case dismisses the applicant's claim that he took minibus on the arrest day. The investigation could not interrogate the taxi driver, G.S. since he passed away on 6 January 2011 (before the judgment was delivered).

In addition, M.M.- the former deputy head of the Tskaltubo Regional Division of MIA and M.K. - the former chief investigator of the same Regional Division, have been questioned as witnesses on 16 November 2016 and on 29 May 2017, respectively. They have denied the fact of ill-treatment of the applicant.

The victim Revaz Dvalishvili and his father were questioned anew in the capacity of witnesses on 25 July 2017. Revaz Dvalishvili changed his previous testimony and admitted that he actually travelled from Kutaisi to Tskaltubo with other two persons by the dark Mercedes-Benz (which was the taxi of the victim in the applicant's hooliganism case - G.S.) and at that time he and his accompanied friends were very drunk. According to Mr. Dvalishvili, they had a dispute with the taxi driver while they were already in Tskaltubo, since the driver refused to take them to the village as it was dark and there was no lightning on the road. Consequently, the witness stated that they did not pay any money to the driver, but he rejected any kind of physical abuse. Mr. Dvalishvili noted that when the police appeared, they tried to escape, his friend successfully ran away and he himself fell down as he crashed the wire fence. At that moment the

policemen R.K. and Z.A. fell down on him and arrested him by using force. The witness indicated that after the arrest he was taken to the police station where he was physically assaulted by the aforesaid two officers as well as by other two officers of Tskaltubo police station - M.M. and B.Gh.. According to the applicant the police ill-treated him in order to get the name of the person who had accompanied him and who finally managed to escape. As a result of beating Mr. Dvalishvili got brain concussion, his nose and fingers had been broken and got several bruises on his body. Despite that fact, he did not voice the name of the abovementioned person. Afterwards, he admitted that he had committed that crime alone and was released on bail. The witness noted that only the aforesaid police officers were present at the scene when he was beaten. In addition, the applicant stressed that he has no claims against the police officers.

The applicant's father noted that on 27 December 2005 after he learned that his son was arrested, he went to Tskaltubo police station at about 12 a.m. Subsequently, he saw his son, subsequent to the identification parade, when the police officers were taking him to the detention facility. At that moment the witness saw how the deputy head of the police station - M.M. hit his son hard in the face. The witness asserted that he does not possess any other relevant information regarding the present case.

Conclusion

Since the facts of this case took place in 2005 almost 11 years had elapsed. Given the time passed after the alleged facts of ill-treatment it is not possible for the authorities to undertake a number of further investigative activities and at this moment it is objectively impossible to rectify all the shortcomings of the original investigation. In particular, among others it would have been impossible to obtain any exact evidence regarding injuries sustained to the applicant through the implementation of forensic expertise. Also, one of the key witnesses – G.S. (taxi driver) has already passed away.

Furthermore, it was confirmed by the investigation that the applicant had been injured during the arrest, but the investigation could not find the standard of proof that would be sufficient to prove the charges against the policemen on the fact of the applicant's beating and ill-treatment.

Thus there is no basis for the termination of the investigation (based on the absence of a crime) and there is no standard of proof to charge the policemen too.

Nevertheless, the Government will further implement the relevant measures in accordance with the findings of the European Court in the present case and with the decision of 1273rd meeting of the Committee of Ministers (6-8 December 2016).[10]

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

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

Following the decision of the European Court, the investigation into the death of the applicant's son was reopened on 31 January 2015 by the Tbilisi Prosecutor's office. On 2 April 2015 the legal qualification of the present case has changed under Article 333, paragraph 3, subparagraph "b" of the Criminal Code of Georgia envisaging exceeding official powers by an official or a person equal thereto, using violence or a weapon.

On 1 April 2015, the taxi driver who took the applicant's son and his friends was questioned. He pointed that he had not observed any arms or anything dubious to the passengers. He stated that the fire was opened only by the police officers and there was no shooting from the other side.

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

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

Within the renewed investigation, the initial criminal case files have been collected from the MIA including the prosecutor's protocol dated 30 January 2007 on the termination of the investigation regarding criminal case that had been initiated against the deceased persons.

According to the aforesaid protocol, three firearms, cartridges and cartridge-cases, found adjacent to the deceased persons, had to be transferred to the MIA for their preservation. Thus, in the protocol the investigator only mentioned cartridge-cases found adjacent to the deceased persons, but did not indicate any further information regarding cartridge-cases found adjacent to the police vehicle. As to the material evidence attached to the criminal case-file, within renewed investigation, on 6 June 2016, the investigative authorities have collected nine cartridges, two magazines, one sawn-off gun and two firearms from regional Police Departments. Nevertheless, they were not able to obtain any cartridge-cases (neither those found adjacent to the police vehicle nor those found adjacent to the deceased persons), since they were not preserved at the police departments.

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

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

Possible obstacles in the new investigation

The Government wish to draw the Committee's attention to the objective obstacles which hinders the effectiveness of the reopened investigation:

· Since gunpowder residue has not been taken out from the corpses at the material time, it renders it impossible to establish whether the deceased persons were shooting towards the police officers. This factual circumstance is impossible to be rectified within the reopened investigation;

· In case the investigative authorities are not able to collect cartridge-cases seized from the scene of the shooting, it would be impossible to identify who has carried out the shootings towards the applicant's son. Thereto, since the bullets have not been taken out from the corps, the investigative authorities are not able to identify the police officers who inflicted fatal injuries to them;

· There are no more witnesses around this case except police officers who personally participated in the police operation or visited the scene of the shooting and who are allegedly tended to give incomplete testimonies or the taxi driver, who has been already interrogated;

· Since more than 10 years have passed after the incident the witnesses find it difficult to recall the detailed factual circumstances. The time lapsed renders also impossible to obtain some other evidence around the case.

Investigative steps carried out in 2017

Despite the abovementioned obstacles of the investigation, the following steps have been carried out in 2017:

· Material evidence which was collected as a result of previous investigation, also the documents enclosed to a criminal case (among others, statements, applications, written acknowledgements) were requested from the Regional Prosecutor's Office of the Western Georgia;

· The information was requested form the MIA in respect of the allocation of the weapons from the armoury by the police officers of Imereti Regional Police Division on 23 and 24 February 2006;

· The investigative authorities contacted the legal successor of the victim – Mr. Ramin Kiziria. The authorities once again informed Mr. Kiziria, that he had the right and possibility to get acquainted with the case files at any time.

· The information regarding the material evidence enclosed to a criminal case was requested from the Imereti, Racha-Lechkhumi and Kvemo Svaneti Regional Main Division of the Ministry of Internal Affairs of Georgia. In addition, the data in respect of the investigators in charge of the criminal case (with the indication of the time period under consideration and material evidence enclosed to the criminal case) was requested as well.

· Upon receiving of all requested materials, they will be analysed thoroughly and further investigative steps will be planned.

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

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

On 31 January 2015, the decree of 17 May 2004 on termination of investigation was annulled and the case was transferred to Tbilisi Prosecutor's Office.

In the present case there are approximately 10 witnesses. On 19 May 2015 the former police officer, N.A. who shot the applicant's son has been interrogated. He repeated his testimony already given during the initial investigation. Also, the investigative bodies interrogated some other eye-witnesses (police officers) – G.Ch., Z.D., K.Kh..

Despite the investigative steps carried out, the investigation faces significant challenges in the present case, since out of 10 witnesses 4 witnesses (including 1 eyewitness) are deceased and 2 witnesses rejected to be interrogated (the investigative authorities will further continue to interrogate them). Also, as 18 years have been elapsed since the incident the witnesses could not invoke the facts of the case in detail.

Conclusion

The renewed investigation was as comprehensive as possible. Despite the fact that long time has elapsed from the fact (approximately 18 years), the investigative authorities conducted all possible measures in order to collect the evidence. Particularly, 4 witnesses out of six have been questioned. Two other witnesses refused to be interviewed. The investigative authorities are conducting relevant measures in order to ensure their interrogation. Although, it could not be concluded that N. A. committed manslaughter by exceeding the measures required for seizing the offender. The relevant decision regarding termination of investigation will be adopted shortly.[11]

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

Case Summary

In the present case the Government presented declaration on 11 March 2014 according to which they acknowledged the violation of Articles 3, 5 §§ 1 (c), 3 and 4, Article 6 §§ 1, 2, 3 (b), (c) and (d) and Article 14 of the Convention and undertook to conduct an effective investigation into the applicant's ill-treatment allegations in compliance with the principles established by the Court as well as the Government declared its readiness to pay the applicant 20.000 EUR as the just satisfaction. The applicant

[11] This case concerns a friendly settlement with undertaking to ensure the effectiveness of the investigation into the alleged violation of Article 2 of the Convention (procedural violation of Article 2)

informed the Court that he accepted the Government's friendly settlement proposals as made in the Government's declaration.

On 30 September 2014 the Court rendered its decision and decided to strike out the application out of its list of cases in accordance with Article 39 of the Convention.

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

Throughout the criminal proceedings numerous key witnesses have been questioned. In particular, the investigative authorities interrogated the following witnesses: the former employees of the Tbilisi temporary detention facility, physician of surgical unit of the Penitentiary Department, inmates placed in N7 Penitentiary Institution at the material time among them those who were in the same cell with the applicant, former employees of the Main Division of the Ministry of Internal Affairs, inspector of the Medical Institution of Central Republican Hospital for Convicts and Pre-trial Inmates, experts of Levan Samkharauli National Forensics Bureau, investigator and prosecutor of the criminal case initiated against the applicant, the former deputy head of the Penitentiary Department, the former Head of the Therapy Division of the Medical Institution of the Prison, former Head Physician of the Penitentiary Institution N7 and etc. Most of them maintained that during their presence there were no facts of ill-treatment committed against the applicant.

On 21 June 2016 the information was retrieved from the web page "youtube.com" regarding the interview of Molashvili with "TV-9" journalist.

On 30 June 2016 the personal history files of the applicant were extracted from the Penitentiary Department.

On 1 July 2016 the information regarding the verdict on the case of Molashvili was retrieved from the Appellate Court of Tbilisi.

Victim Involvement

On 1 June 2016 the investigation authorities informed the spouse of the applicant about the request to appear before the Prosecutor's Office together with the applicant. She explained that her spouse was out of the country.

On 15 July 2016 the spouse of the applicant and the brother of the applicant T.M. were informed in respect of the relevant facts and developments in the course of investigation. Subsequently, on 11 August 2016 the spouse of the applicant T.B.-dze was additionally informed regarding the developments in respect of the case.

The Government of Georgia wish to inform the Committee of Ministers that on 29 June 2016 the applicant passed away in the hospital in Paris, France.

Outcome of the investigation

It is undeniable that during the investigation of the crimes of a similar category the information is obtained from people who suffered from the violence. The interrogation of the alleged victim may determine not only the perpetrators but also the factual circumstances of the case. In addition, besides the testimonies of the victims, a significant purpose of the investigation is to obtain "neutral" objective evidence that will not only strengthen the version of the investigation but will facilitate the investigation team to verify and re-examine the information already received.

The most important obstacle for the renewed investigation, which in fact renders it unfeasible to restore the full picture of the events at issue, is the impossibility of getting detailed information from the applicant, which would help the investigation not only to obtain additional evidence, but also to

contribute to the process of identifying the perpetrators. As noted, Sulkhan Molashvili left the territory of Georgia shortly after the investigation was commenced on 31 October 2014 and went to France (*Note:* his interrogation in France was not possible due to his health condition) where he passed away on June 29, 2016. Thus, the investigation has actually lost the most important "witness", which seriously hindered the process of collecting the evidence, the situation also adversely affected the future of the investigation concerning the implementation of the investigative or other procedural actions.

Nevertheless, the investigation tried to search for the required information and questioned the detention centre's former employees, including high officials and detained persons who categorically denied any acts of violence as well as the removal of the applicant from his cell.

There is no doubt that the aim of appointment of medical expertise at the time of committing a violent crime is not only the determination of the gravity of damage or the issue of possible origin of damage, but also determination of the prescription of damage, without which it is impracticable to actually connect the injuries with concrete offense. In the present case, the results of forensic expertise do not allow the investigation to establish the remoteness of injuries and are based only on the assumptions in respect of the prescription. Therefore, it is impossible to develop any reasonable deliberation on the basis of these results.

Furthermore, almost 13 years elapsed after the events at issue, which seriously complicates the possibility of obtaining tangible information/evidence. Obviously, in 2004, the timely, effective and impartial investigation of the ill-treatment would have significantly facilitated the process of detection of offenders.

Due to the aforementioned reasons, the identity of the offenders who committed the violent acts against Mr Molashvili at this moment could not be established.

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

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

New investigation

Within the renewed investigation, on 26 April 2016 the applicant was questioned anew. He fully reiterated his previous allegations (that he had sustained injuries in Telavi Police Division) and confirmed that he did not sustain any kind of injuries in the temporary detention facility or in the juvenile detention facility.

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

On 14 September and on 13 October 2016 the investigation questioned several inmates who were placed in the neighbouring cell at the material time. They stated that the applicant served his sentence with his friend V.M. in the same cell (N14). The witnesses stated that they did not have any contact with the applicant and do not know whether he was ill-treated during his arrest.

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

conducted the examination of the injuries of the applicant and delivered respective conclusion in 2010 on the basis of the decree of the investigator, has passed away.

On May 3, 2017, I.G. - the Inspector of Kakheti Regional Temporary Detention Isolator of the MIA was interviewed by the investigative authorities. He stated that approximately in April 2010, the officers of Telavi Police Division handed over detainee - Malkhaz Mzekalishvili. According to the witness, the applicant was visually examined by him and his college Sh.R.. In particular, the witness clarified that they took off his clothes to conduct visual examination and to determine whether the detainee was suffering from any kind of injuries. As a result of examination it turned out that the applicant had some burns on his hand and leg. Malkhaz Mzekalishvili told them that he had sustained the burns few years ago. The witness also maintained that visual observation revealed that detainee had no other injuries on his body.

Similar evidence was provided to the investigation on May 4, 2017, by the Inspector of Kakheti Regional Temporary Detention Isolator Sh.R., who was duty officer together with I.G. during the said period of April 2010, when Malkhaz Mzekalishvili was detained in Kakheti Regional Temporary Detention Isolator.

The investigation also interrogated police officers, who denied the fact of the applicant's beating. Other persons in the isolator have no information about the beating of the applicant as well.

At this stage the investigation does not have a body of evidence that is necessary for the reasoned assumption that the police officers committed the offense.

Due to the length of time, it is impossible to conduct forensic expertise and to determine the existence of injuries, which is of decisive importance in such cases.

Planned investigative steps

As a result of the analysis of the data regarding phone calls, it will be feasible to establish where were the police officers and with whom they were communicating at the time of the applicant's arrest, while taking him to the detention facility, applying the measure of restraint and during his transfer to the prison.

The authorities are actively working in order to establish the whereabouts of the persons arrested together with the applicant on 6 April 2010 in order to disclose whether they know the relevant circumstances of the applicant's alleged beating.

The investigative authorities further plan to interrogate the applicant as well as his cellmates in order to elucidate the exact factual circumstances of the case.

Furthermore, the authorities established the whereabouts of the victim M.G. whose shop was allegedly robbed by the applicant. Therefore, M.G. will be questioned in the upcoming days regarding the circumstances of the case.

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

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

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

Within renewed investigation the prison inmates as well as prison officers have been interrogated.

As to the applicant, after several attempts the investigative authorities managed to interview him on 7 April 2017. He confirmed the incident which occurred in no.7 Penitentiary Institution. According to the applicant, on 3 March 2009, at about 12:30, the employees of the Institution came to the prisoner K.M. in

order to conduct his personal search and insulted him. Subsequently, there occurred a variance between the employees and the prisoners. Mr. Kopadze rejected any kind of violence committed by him or by other prisoners towards the employees. The applicant noted that after the incident he was taken to the administration building together with M.B., K.S. and K.M. and in the office of deputy director they were subjected to physical abuse from 10-12 members of staff of the Institution. Mr. Kopadze stated, that it is unclear for him how the employees got the body injuries. Furthermore, the applicant could not name any neutral witness, who would be able to corroborate the information he provided. He confirms, that after the incident he was taken to no. 6 Penitentiary Institution together with the aforesaid persons and after three days he was examined by the medical expert. The applicant could not understand why the injuries mentioned by him in his testimony are not reflected in the expert conclusion.

The former inmate K.M. was interviewed additionally on 7 April 2017. He confirmed the information provided by the applicant and other inmates - K.S. and M.B.

In spite of the fact that none of the aforementioned witnesses could name any neutral witness, who would be able to corroborate their storyline, the investigative authorities addressed the Ministry of Corrections in order to acquire the information regarding the identities of other cellmates of the applicant. The Ministry notified the investigative authorities that the information on cellmates is unknown since no. 7 Prison was barracks-type and 350 prisoners were serving the sentences at the relevant period.

Within the previous investigation, four neutral prisoners – Z.P., G.B., J.M. and V.Q. were interrogated. According to their interrogation reports, they witnessed how the applicant and other three prisoners were taken to the administrative building but had not seen any injuries on their faces. Considering the fact that the following testimonies were imperfect, herewith in the interests of the thorough investigation the investigators attempted to interview the aforesaid prisoners anew. Though pursuant to the notice received from the informational-analytical department of the MIA they have crossed the state border and do not reside at the territory of Georgia.

Conclusion

All members of the prison staff including the deputy director (up to 15 employees), who were named by the applicant and three other prisoners, have been interviewed. They clearly refuse any fact of violence toward the prisoners. Furthermore, the applicant and his inmates - K.S., M.B. and K.M. could not name any neutral witness. Also, the four neutral witnesses (former inmates) who were interrogated within the previous investigation, have left the country. The investigative authorities could not acquire the medical histories and the information about the cell-mates. Besides, long time has elapsed from the relevant period, which renders it impossible to conduct expertise in order to establish whether or not the injuries truly existed. The evidence collected at the present time, does not satisfy the standard of "probable cause", which is inevitable for prosecuting the person.

Planned investigative steps

To further proceed progress of the investigation, the several investigative steps has been planned. In particular, the investigative authorities addressed to the Ministry of Corrections on 19 July 2017 in order to acquire the information on the identities and demographic information of the prisoners who were placed at the same cell with the applicant and other inmates.

Furthermore, the authorities addressed to Mtskheta District Court on 26 July 2017 in order to acquire the information on the location of the criminal case N073090104 against the applicant and his inmates who were convicted by the aforementioned court on 22 December 2009.

After getting the relevant information from the Ministry of Corrections on the identities and demographic information of the prisoners, it is planned to interview the inmates. In addition, it should be noted that the following prison was barracks-type and the registration was not conducted regarding the cells, which is a huge obstacle in the context of identification of the eyewitnesses.

Besides, it is established that the representatives of the Public Defender of Georgia visited the victims. Therefore, it is planned to interview the representatives of the Public Defender in the nearest future.

§ ***LANCHAVA V. GEORGIA (No. 28103/11, final on 16.07.2015)***

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

Circumstances of the case established as a result of renewed investigation

Throughout the renewed criminal proceedings, the applicant's father was interviewed. According to him, the applicant was serving his sentence in Ukraine. Therefore, an official motion was sent by the investigative authorities to the Ukrainian official bodies with the legal request to interrogate the applicant regarding his alleged ill-treatment (the official response from the Ukrainian authorities was received on July 19, 2017 see below).

As to the questioning of the inmates who participated in the aforementioned incident (N.S.; B.G.; L.M.; L.G.; B.K.; G.Ch.) they rejected to be questioned. Some of them indicated that they will not provide any information until the applicant appears to the investigative bodies whilst others indicated that they do not possess any tangible information.

Moreover, the information has been requested from the MIA about the border crossing of the several witnesses. According to the official data of July 2017 the state border of Georgia is crossed by the following persons: Tch.G., G.T., G.J., N.S., D.B. and K.G. (former inmates).

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

Since submission of the previous action plan of October 2016, extensive investigative activities have been carried out. In particular, on 25 October 2016 the former inmate B.T. was interrogated who noted that in July 2009 he was serving the prison sentence in Kutaisi no. 2 prison, in the building of juvenile next to the applicant's cell (№102). The witness pointed out that on 6 July 2009 the prison officers took the inmates out of the cell of №102 and took them to an unidentified place. When the prisoners were returned, they were beaten.

According to the witness, the applicant had stated that they had been beaten by the prison officers and subsequently, the prisoners expressed their protest and demanded the meeting with the prison director and the representatives of the NGOs. The witness indicated that approximately in 3 hours after the visit of the director, the door of the cell was opened and the members of the Special Forces entered. They started beating and verbally insulting the prisoners.

B.T. noted that all juvenile prisoners were taken and beaten out of the cells. He stressed that he was unable to see exactly who was beating him. According to the witness, afterwards the Special Forces made the corridor where the prisoners were passed and beaten again. Furthermore, the witness highlighted that

neither he nor his cellmates damaged the prison inventory and there had not been any kind of violent act committed by the juvenile prisoners.

On 3 November 2016, during questioning, G.Kh.- former controller of Kutaisi no. 2 prison explained that on July 6, 2009, a juvenile convict Lasha Lanchava organized a riot involving other juveniles. As a result of the abovementioned, Special Force unit of the Ministry of Corrections entered the territory and besieged the residence of juvenile convicts. The members of the Special Force Unit who wore special uniforms entered the building and took out of the cells the said prisoners. According to the witness he did not take part in this process and nobody had been physically or verbally insulted by him. The similar information was provided by other former employees of the prison who were interrogated in November 2016 (N.Kh; D.K;. G.Ts.; A.Z.). They all pointed out that the riot was suppressed by the Members of the Special Forces Unit.

On May 4, 2017 the investigative authorities requested the information from the Ministry of Corrections in respect of all the members of the Special Forces Unit serving at the material time. On May 21, 2017, the relevant response has been received from the Ministry regarding the members of the Units.

On 25 May, 2017 R.B. - a member of the Special Force Unit of the Ministry of Corrections was questioned as a witness who clarified that in July 2009, he and other members of his unit did not participate in the dispersal of the juvenile riot of Kutaisi no. 2 prison.

On July 19, 2017 in response to the motion on legal assistance sent on 11 October 2016, the Chief Prosecutor's Office of Georgia received the relevant materials from the General Prosecutor's Office of Ukraine.

According to the obtained materials Lasha Lanchava is currently serving a sentence in the Zhytomyr Correctional Colony no. 4 in Ukraine. Before the start of the interrogation which was conducted by the investigator of Zhytomyr District, Lasha Lanchava was explained that his interrogation was conducted on the basis of the motion issued by the Chief Prosecutor's Office of Georgia. The applicant pointed out that he was detained on 15 May 2009 and was placed in Kutaisi no. 2 prison. For the period of July 6, 2009 he was still placed at the same establishment, cell N102. Later, Lasha Lanchava refused to be interrogated and to provide any further information for unidentified reasons. Consequently, the interrogation process was terminated. According to the official materials, Lasha Lanchava refuses to be questioned and to provide any kind of information.

On 29 July 2017, Z.L., a cellmate of the applicant was interviewed as a witness. He explained that on July 6, 2009 he was placed in Kutaisi Prison no. 2 in the cell N102 with Lasha Lanchava and some other prisoners. According to the witness, at the material time the prisoners of this cell made a verbal protest and demanded a meeting with the prison director and with the NGOs. The prison director at the material time – Z.R. promised them that the representatives of the Public Defender and NGOs would visit them. After the said promise the prisoners stopped the act of protest. However, subsequently in 3-4 hours, the door of the cell was opened and the Special Forces rushed into the cell who wore masks on the face and were holding the truncheons. In the aftermath Special Force officers beat all prisoners in the cell N102. The beating continued for about 10 minutes. Then the Special Forces took out of the cell all the prisoners and made them to stand in the corridor with the face against the wall and with their hands up. At this moment the prison employees were also present at the site, who also participated in beating. The witness stated that he was personally battered by D.N. - then the head of the regime of Kutaisi Prison no. 2. Afterwards three or four hours later, Special Forces made a corridor and forced the prisoners to pass through while beating them over again. The witness recalled that as a result of beating he was injured in the area of head. On the same day he requested a medical assistance but to no avail. He saw that Lasha Lanchava was being beaten by the employees of the prison as well as by the officers of the Special Forces. Though the witness clarified that he could not recall their identities and cannot recognize them as well.

Planned investigative steps

As to the planned further steps, the investigative authorities will refer to a magistrate judge to issue a subpoena for interrogation of the witnesses (former inmates) who deny to be interviewed voluntarily (see above). It should be noted that this process has already been commenced and the authorities have already referred to the Court in case of some witnesses.

In respect of the witnesses who do not reside in Georgia (see above) further information will be collected from their family members in order to determine their exact whereabouts and subsequently, relevant official motions will be sent with the legal requests.

On the basis of the information received from the Ministry of Corrections on May 21, 2017 regarding the members of the Special Force Units, the investigative authorities will carry out their identification and further interrogation in order to identify the concrete persons who participated in the incident of 6 July 2009.

In addition, the investigative authorities will study the reports/website of the Public Defender of Georgia and in case of visit of the Public Defender's representatives to Kutaisi no. 2 prison subsequent to the incident in question, the representatives will be interrogated.

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

The case concerns a lack of effective investigation into the applicants' allegations of ill-treatment by the police during the dispersal of the demonstration on 15 June 2009, as well as inside of the Tbilisi police headquarters (procedural violation of Article 3 acknowledged by the Government in their unilateral declaration).

Several breaches of the right to fair trial, due to the fact that the applicants' trials had been a pure formality, that they were not explained any of their procedural rights and did not have sufficient time and facilities to prepare for their defence or to appoint a lawyer (violations of Article 6 §§ 1 and 3 acknowledged by the Government in their unilateral declaration).

A breach of the applicants' rights to freedom of association due to the violent disruption of their demonstration by the police on 15 June 2009 (violation of Article 11 acknowledged by the Government in their unilateral declaration).

Regarding the part of the application that the European Court decided to strike out of its list of cases in accordance with Article 39 of the Convention, the Government undertook to conduct effective investigation of the relevant five applicants' (Mr Bekauri, Mr Meskhi, Mr Chitarishvili, Mr Maisuradze and Mr Tsuladze) allegations of ill-treatment (see details below) and to pay them 20 500 EUR.

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

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

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

The case concerns the applicant's allegations of ill-treatment during the dispersal of the demonstration of 6 May 2009 (the applicant lost his right eye). The Government undertook to conduct an effective investigation into the applicant's allegations (see details below) and to pay him 6,000 EUR.

The Government underline from the outset that the alleged incidents of ill-treatment were committed by the employees of the Ministry of Internal Affairs whereas the investigations are conducted by the Chief

Prosecutor's Office which is entirely autonomous from the MIA and does not have any institutional or hierarchal linkage to the events in question. Persons responsible for the execution of the investigation as well as the investigative body – are independent in law and in practice.

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

With a view of carrying out a thorough, prompt, independent and effective investigation into alleged ill-treatment against of the applicants, the investigation was renewed on 26 June 2015 and was being conducted by the Tbilisi Prosecutor's Office. On 12 January 2016 the cases have been transferred to the Department to Investigate Offenses Committed in the Course of Legal Proceedings of the Chief Prosecutor's Office of Georgia.

Throughout the criminal proceedings up to 50 witnesses have been questioned among them the applicants and other participants of the demonstration as well as the employees of the MIA who participated in dispersal of the demonstration.

Most of the demonstrators reported the similar development of events. In particular, the witnesses explained that on 15 June 2009 they participated in the peaceful demonstration, which took place in front of the Tbilisi police headquarters. The police officers started dispersing the demonstration without any prior warning. They alleged that they were ill-treated by the officers. According to them the demonstrators were not blocking the road or involved in any provocative action. Afterwards many of them were detained. The witnesses stated that the policemen who drew the protocols of administrative offences did not take part in the dispersal of the demonstration or in administrative detention. The same evening the demonstrators were brought before the Panel of Administrative Cases of the Tbilisi City Court. Subsequently, they were placed in the administrative detention and were sanctioned with fines (400 GEL - approx. 150 euros) by the domestic court. Moreover, the witnesses stated that the policemen who drew the protocols of administrative offences participated in the proceedings before the national court and deceived the court while giving the testimony that the witnesses had resisted them and that they had allegedly detained them during the demonstration for these actions.

On 20 February 2017 the investigative authorities requested respective information from the Tbilisi City Court in respect of the list of persons with regard to whom the Panel of Administrative Cases issued a ruling on June 15, 2009 on the imposition of administrative penalty.

Furthermore, the investigative authorities conducted an examination of various internet web-sites for further collection of information regarding dispersal of the demonstration.

In addition for the purpose of appointment of Habitoscopic expertise on April 28, 2017 the examination was conducted of the information presented on the CD disc attached to the letter of 18 June 2009 of the Secretary-General of the political party "Movement for United Georgia," addressed to the Chief Prosecutor of Georgia which was enclosed to the criminal case.

On May 1, 2017 the Habitoscopic expertise was appointed in respect of the criminal case in order to identify the law enforcement officers participating in the dispersal of the demonstration of 15 June 2009. Subsequent to the results of the expertise, the investigative authorities will carry out interrogation of all identified police officers.

New investigation in respect of the case Chantladze v. Georgia

Throughout the renewed investigation, dozens of demonstrators have been identified who underwent a medical treatment for their bodily injuries sustained at the demonstration and whose identities were not known until now. At this stage the investigative bodies are in the process of their final identification and interrogation.

Consequently, numerous demonstrators have been questioned in the capacity of witnesses. They confirmed their participation in a peaceful demonstration held on 6 May 2009 in front of the Tbilisi police headquarters, protesting an unlawful detention of three persons and demanding their prompt release from the detention.

Furthermore, medical files of all injured demonstrators were requested from relevant medical institutions. On 12 August 2016, after acquiring the medical files, investigative authorities assigned a forensic medical expertise in order to assess the severity and degree of the injuries sustained to the demonstrators, among others, to the applicant. Conclusions of the expertise have already been received.

On 14 July 2016 the investigative authorities requested information from the MIA regarding the identification of its employees who participated in the dispersal of the demonstration and the detailed information of police officers to whom riot the guns were assigned.

According to the answer received from the Ministry, the order - regarding the participation of the members of Main Division of Special Tasks of the MIA in the dispersal of the demonstration - could not be found.

Moreover, the applicant has been summoned several times to participate in the investigative activities but to no avail. Last telephone conversation took place on 28 September 2016 whilst he had firmly denied to be involved in the investigation and refused to cooperate with the investigative bodies.

The former employees of the MIA – M.Ch., I.K., A.M., G.Kh., D.G. and G.G. were interviewed by the investigative authorities. The aforesaid persons noted, that they did not participate in the confrontation with the demonstrators. According to them, they were in the building of parliament.

Also, as a result of the investigation it was ascertained that guns FN-303 made in Belgium were used for dispersing the demonstration. It was also elucidated that after purchasing the guns, the representatives of the producer company arrived and conducted instruction trainings for the workers of the Special Tasks Division. During the trainings the representatives clearly prohibited shooting the guns towards the particular parts of humans' body as it might have resulted in grave injury, mutilation or lethal result.

The video footage on demonstration received from the broadcasting company "Maestro" was inspected by the investigative authorities for the second time.

In terms of decree of the prosecutor, the legal qualification of the case was specified on 12 July 2017 and the investigation proceeded on the basis of the Article 333, paragraph 3, subparagraph "b" of the CCG.[12] Furthermore, as a result of the motion of the prosecutor, Tbilisi City Court passed the ruling on 13 July 2017 concerning the recovery of the information, which was delivered to "Geocell" on 17 July 2017 in order to fulfil it.

The investigation will be actively carried out until the exhaustion of all investigative activities for the identification of those responsible.

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

The Government of Georgia submits the measures taken in the course of the execution of the decision in the case of *Gegenava and Others v. Georgia*, a friendly settlement with undertaking to ensure the effectiveness and prompt finalisation of the ongoing investigations of criminal cases related to the ill-treatment of three applicants.

Regarding another separated criminal case related to the third applicant, the Government also undertook to conduct a new effective investigation into allegations of ill-treatment on 6 March 2010 in Rustavi no. 2 Prison (procedural violations of Articles 3 acknowledged by the Government in their unilateral declaration).

[12] Article 333, paragraph 3, subparagraph "b" of the Criminal Code of Georgia envisaging exceeding official powers by an official or a person equal thereto, using violence or a weapon.

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

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

Within the context of renewed investigation, the investigative authorities collected all relevant information from Rustavi no. 6 Prison for the period of September 2006 (reports of disciplinary sanctions imposed on prisoners placed in punishment cells, reports of their visual examination before placing in such cells, transfer of the convicts, etc.). It has been established, that during the period of 2 - 30 September 2006, 54 prisoners have indeed been placed in punishment cells of Rustavi no. 6 Prison for different time periods. Out of the aforesaid 54 prisoners, six convicts have passed away, nine have departed from the country and the residing place of several convicts is unknown - they do not live at the registration place, on which the relevant reports had been filled.

Until now, the investigative authorities have interrogated more than 30 convicts. One of them Z.G., explained that due to the violation of the internal rules of the prison, he had been placed at the punishment cell. Prior to his placement, the prison officer on duty, in the presence of another officer, ordered him to take off his clothes for the purpose of examination which was not returned to him. Therefore, Z.G. had been placed in a punishment cell without any clothes (except for underwear). It was too cold in a punishment cell during the night hours. He had been asking for his clothes to be returned but to no avail. Z.G. added that the prison officers had returned his clothes only after his release from the punishment cell. The witness is not aware of the identities of the prison officers.

The similar testimonies were given by seventeen other witnesses (former convicts). They stated that during the whole period of their placement in punishment cells, they had been without any clothes (except for underwear).

Six other witnesses explained that they were ordered to take off their clothes due to examination before placing in punishment cells, which were returned upon the end of examination and consequently, subsequent to their placement they were already dressed up. Also, they pointed out that while being in punishment cells, no one has assaulted them verbally/physically, therefore they do not have any claims. According to the former convicts – V.M., Z.Kh. and L.S. – they do not remember the circumstances under which they spent the relevant period in the punishment cell.

Some convicts named the first names of the controllers, who forced them to undress. The investigation established that punishment cells were controlled by three guards – B.D., T.M. and D.A. The documentation received from the penitentiary department reveals that the aforesaid guards were on duty on the same day when the former convicts had been placed in the punishment cells. These guards were additionally interviewed on 9 December 2016. They categorically denied the fact of placing the prisoners undressed in the punishment cells.

Considering the fact that former employees of the Office of Public Defender of Georgia witnessed the particular violations as a result of monitoring held in no. 6 Penitentiary Institution on 12-15 September and 28 October 2006, the investigative authorities addressed Public Defender in order to acquire his consent on interviewing the former employees.

Consequently, the employees of the Public Defender of Georgia G.M. and O.K. were interviewed as witnesses.

According to G.M. on 12 September 2006 he was in Prison no. 6 with his colleagues in order to monitor the protection of the rights of prisoners. The witness noted, that during the monitoring process they received the information from the inmates, that the prisoners were placed undressed in the punishment cells. In order to verify the information they went to the 4th floor where the punishment cells were located. The witness indicated that they saw the prisoners, who were placed in the punishment cells undressed, only with the underwear on them. In response to the question why the prisoners were undressed in the

cells, the members of the administration answered cynically that it was hot and the prisoners did not need any clothes. According to the witness, they demanded the head of the regime and the officer on duty of the punishment cells to give the clothes back to the prisoners, but it was in vain. The aforesaid employees informed the Public Defender of Georgia at the material time regarding these facts. It had been decided to conduct the additional monitoring in order to study the case in details. The representatives of the PDO office visited no.6 Prison on 15 September 2006. They met the director of the institution– S. Kh., who denied any fact of undressing of the prisoners. The witness indicated that they asked the authorities the relevant camera footages to be shown to them though the request was rejected. After meeting with the administration, the representatives visited the punishment cells, where the prisoners have indicated that the clothes had been returned to them 10-15 minutes earlier before their arrival. The explanations were taken from the prisoners and the relevant protocols were filed.

According to O.K. under the instructions of the Public Defender he was in Prison no. 6 with other co-workers in October 2006, where they met the prisoners V.G. and R.O. The prisoners stated that they had been placed in punishment cells without clothes in September 2006 which was indicated in the protocol.

The investigative authorities examined the web-site of the Public Defender of Georgia in respect of the aforesaid monitoring. Also, the Parliamentary report of the Public Defender of 2006, in which it is reflected that the prisoners were placed undressed in the punishment cells, was enclosed to the criminal case.

As to the planned investigative step, with the aim to establish the objective truth, the crime scene (detention facilities of the Rustavi no. 6 prison) should be inspected. Also, the former prisoners to whom the damage has been incurred should be recognised as victims. Subsequently, the final decision will be adopted.

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

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

In respect of the second applicant's complaint of his alleged physical/verbal assault upon his transfer from Rustavi no. 2 Prison to Rustavi no. 6 prison on 25 November 2008, the investigative authorities have already interrogated two witnesses – V.P. and I.B. who had been transferred with the second applicant on the same date to Rustavi no. 6 prison. They denied any fact of verbal/physical assault of the prisoners on that day on behalf of Rustavi no. 6 prison staff.

On 8 and 10 May 2017, former convicts V.Ch., K.B. and B.Sh. were also interviewed. According to V.Ch. on 25 November 2008, up to 20 convicts were transferred from Rustavi no. 2 penitentiary institution to no. 6 Institution. In Institution no. 6 he was checked and inspected together with the second applicant and was placed in the cell with Mr. Butkhuzi. In his interview V.Ch. stated that he had not witnessed any insult on the second applicant and had not heard anything about such fact. According to K.B. after being checked and inspected, all convicts were shaved off and the transferred convicts were placed in adjacent cells. Some convicts complained on shaving of hair which caused an argument with the employees of the institution, but it did not turn into the insult. K.B. noted that he had not witnessed any insult on the second applicant and had not heard it. According to him, on that day there was no fact of insulting the convicts by the employees.

Currently, the investigative authorities are identifying the whereabouts of some other prisoners who were transferred with the second applicant for their interrogation in capacity of witnesses.

The second applicant also referred to his alleged ill-treatment on 31 March 2006 upon his transfer to Rustavi no. 6 Prison. He alleged that the officers of the Special Forces, wearing masks, beat him with

truncheons and with their feet, consequently, he received fractures of chest bone and three costal bones. On 17 October 2016, the investigative authorities appointed forensic medical examination in this regard. In spite of several warnings, Mr. Butkhuzi has not appeared in the expert institution. Accordingly, the expertise could not be conducted up to now. The second applicant stated that he will appear at the expert institution, as well as, at the prosecutor's office in order to review the materials of the criminal case.

As to the planned investigative steps, in order to identify the whereabouts of the convicts who were transferred together with Mr. Butkhuzi from Rustavi no. 2 Prison to Rustavi no. 6 prison on 25 November 2008, the relevant investigative activities are carried out. Following identification of their whereabouts and interrogation, final decision will be adopted.

Conclusion

The relevant authorities make genuine efforts and demonstrate necessary diligence required for effective and prompt investigations in respect of all episodes of the case.

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

Also, the main challenge for the investigation constitutes the identification of the whereabouts of the former convicts in order to be interviewed since most of them do not reside at their registration addresses.

GENERAL MEASURES

In order to efficiently execute the *Gharibashvili* group of cases, the Government of Georgia carried out the wide range of general measures which has been thoroughly submitted in their previous action plans/reports and which was noted with interest by the Committee in their decision of December 2016.[13]

In addition to the general measures already submitted, the Committee has requested the Government further information on guarantees in law and in practice of the institutional independence of investigating bodies, in particular the Prosecutor's Office; information on the measures taken vis-à-vis the judiciary to demonstrate that the specific problems revealed in the present cases have been addressed (notably lack of adversarial public proceedings and decisions rendered in camera, court decisions based mainly on the testimony of the police officers involved in the incidents, lack of sufficient time and facilities to study the case materials, etc.); also invited the authorities to submit further information on the measures to prevent excessive use of force by the police in the course of arrest and ill-treatment of persons in custody and on the results achieved, as well as on the measures to prevent violations of Article 38.

In the light of the aforementioned decision of December 2016 the Government present the following further information:

Institutional independence of investigating bodies – in law and in practice

It should be stressed that in this group of cases the Court identified, among others, the following procedural shortcomings regarding the independence of investigations:

1) In the investigation carried out by the Ministry of Internal Affairs of Georgia: lack of the requisite independence and impartiality due to the institutional connection and even hierarchical subordination, between the implicated senior Ministry officers and the investigators in charge of the case (*Enukidze and Girgvliani*);

2) In the investigations carried out by the Prosecutor's Office of Georgia:

[13] 1273rd meeting – 6-8 December 2016, Item H46-10, available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1273/H46-10

Ø the investigations lacked the requisite independence and impartiality:

- there was an institutional connection between the State agents allegedly involved in the incidents and the investigative bodies (*Gharibashvili, Khaindrava and Dzamashvili, Tsintsabadze, Enukidze and Girgvliani*).

In the light of the aforementioned violations, it should be stressed that, as the Committee is well aware, all the cases of *Gharibashvili* group are subjected to independent investigations by the Prosecutor's Office.

Depoliticizing and strengthening the institutional independence of the Chief Prosecutor's Office is one of the key priorities of Georgian Government. The Government assure that the institutional independence of the investigating bodies, in particular, the Prosecutor's Office, is guaranteed in law and in practice.

Furthermore, the Georgian legal framework provides an independent and efficient investigation into the facts of torture and ill-treatment. All facts of alleged torture or other inhuman or degrading treatment are subject to an immediate and thorough investigation conducted by the competent law enforcement authorities. In particular, if the facts in question relate to **exceeding power by police officers**, including beating and ill-treatment of citizens and other facts of gross human rights violations, the Prosecutor's Office investigates such cases which illustrates that the challenge of institutional independence has been resolved at the domestic level.

§ ***Reporting by the Chief Prosecutor***

Moreover, as to the independence and accountability of the Prosecutor's Office, pursuant to the recent amendments,[14] the Chief Prosecutor is obliged to submit a report at least once in every six months before the Prosecutorial Council[15] regarding the activities of the agencies of the Prosecutor's Office, which concerns the crime combating policy, statistical data, protection of human rights and freedoms in the course of legal proceedings, issues of high public interest, areas of priority of the Prosecutor's Office, professional retraining and development programmes for prosecutors, and which does not cover matters related to the investigation of a specific criminal case, its hearing in a court and/or specific circumstances of the case.

On 19 July 2017 the Chief Prosecutor presented the report to the Prosecutorial Council as regards the various measures taken by the end of 2016 and in the first half of 2017 aiming at developing the system of the Prosecutor's Office. In particular, during the aforementioned period, the strategy and action plan for the Prosecutor's Office and criteria for prosecutors evaluation have been adopted; important recommendations have been developed; steps to improve electronic program of criminal proceedings have been taken; new training programs have been introduced; number of large-scale preventive events have been carried out and several important researches have been planned; progress has been achieved in juvenile justice.

According to the Chief Prosecutor, one of the major priorities of the Prosecutor's Office is to ensure the independence of prosecutors and to protect the interests of victims.[16]

Furthermore, the new Code of Ethics, which thoroughly prescribes the actions deemed as disciplinary offences, was developed by a special group formed within the Chief Prosecutor's Office. It was approved and published on 25 May 2017 by Minister of Justice. The Chief Prosecutor's Office works to create

[14] Article 9, paragraph 3, subparagraph "s[1]" of the law of Georgia "On The Prosecutor's Office" - Chief Prosecutor at least once every six months, or – by decision of the majority of members of the Prosecutorial Council – without delay, present to the Prosecutorial Council a report on the activities of the agencies of the Prosecutor's Office. Version 27/10/2015 - 21/12/2016 available at: https://matsne.gov.ge/ka/document/view/19090?impose=translateEn&publication=12

[15] As foreseen by the legislative amendments to the Law "On The Prosecutor's Office", which went into effect on 29 September 2015, a 15-member Prosecutorial Council has been established. It consists of the prosecutors elected by their peers at the conference of prosecutors of Georgia, the representatives of legislature, judiciary and the civil society organizations. The Prosecutorial Council is gender-balanced and is chaired by the Minister of Justice. Version 27/10/2015 - 21/12/2016 available at: https://matsne.gov.ge/ka/document/view/19090?impose=translateEn&publication=12

[16] Information is available at: http://pog.gov.ge/eng/news?info_id=1293,
Report is available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf

commentaries on the new Code of Ethics in order to develop uniform practice and predictability of the contents of the Code of Ethics.[17] The new Code of Ethics aims to increase the degree of independence of the whole system and individual prosecutors, improve the standard of professional ethics and mechanism of imposing disciplinary liability of the employees.[18]

§ ***Statistics regarding the facts of ill-treatment***

In order to illustrate the effectiveness of investigative bodies in practice, it should be underscored that according to the data of 2013-2017 (six months) with regard to the **facts of ill-treatment** committed by officials of the penitentiary and the law-enforcement bodies, criminal prosecution has been commenced against **135 persons.**

It is noteworthy that in recent years the facts of ill-treatment of prisoners by the employees of the penitentiary establishments have been significantly reduced. Notably, in 2014, the Public Defender of Georgia addressed the Prosecutor's Office regarding the alleged facts of ill-treatment committed by the employees of the penitentiary establishments with 21 proposals, however, none of the facts mentioned in them constituted torture and only was counted to inhuman/degrading treatment.

It should be noted, that on the same issue, the Public Defender addressed the Prosecutor's Office in 2015 and 2016 with 4 and 2 proposals respectively. In 2017 (six months), the Public Defender has not made any proposals regarding the alleged facts of ill-treatment by the officials of the penitentiary establishments.[19]

It is noteworthy that according to the information provided by the Investigation Department of the Ministry of Corrections and the Chief Prosecutor's Office of Georgia, none of the officers of penitentiary establishments had been convicted for ill-treatment in 2016.[20]

§ ***Statistics in respect of criminal prosecution against State agents***

As for the general statistics regarding the crimes committed by State agents, from November 2012 till July 2017, investigation in respect of the **violent crimes and official misconduct** committed by State agents until October 2012 has been initiated into more than **500 cases** by the Prosecutor's Office.

Moreover, during the abovementioned time period, criminal prosecution has been commenced against the following former high officials: Minister of Internal Affairs of Georgia (MIA), Minister of Justice, Minister of Defence, Chief of the General Staff, Deputy Head of Military Police Department of Georgian Armed Forces, Head of Constitutional Security Department of the MIA, Head of the Special Operative Department of the MIA, Director of Criminal Police Department of the MIA, Deputy Director of the Counterintelligence Department of the MIA, Head of Special Operations Center of the MIA and Head of the Penitentiary Department.

It should be noted that from November 2012 till July 2017, criminal cases against **197 former State agents** were transferred to courts for adjudication. Among them, against **122 persons** judgments of conviction (over **400 episodes**) and towards **9 persons** judgments of acquittal were delivered.[21]

The aforementioned statistical data clearly illustrates that the Prosecutor's Office efficiently tackles to combat crimes committed by high officials as well as other State agents.

[17] Chief Prosecutor's Report, 19 July, 2017, pp. 61-62, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[18] For more information see - A New Code of Ethics Regulating Conduct of Employees of the Prosecutor's Office Came into Force, 2017-05-30, available at: http://pog.gov.ge/eng/news?info_id=1242
[19] Chief Prosecutor's Report, 19 July, 2017, pp. 50-51, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[20] Annual Report of the Public Defender of Georgia on the Situation of Protection on Human Rights and Freedoms in Georgia, 2016, p. 33, available at: http://www.ombudsman.ge/uploads/other/4/4494.pdf
[21] Chief Prosecutor's Report, 19 July, 2017, pp. 36-37, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf

Information regarding Constitutional Amendments on Prosecutor's Office and Judiciary

For the purpose to improve and render the Constitution more effective, through the substantive and technical points of view, the whole Constitution of Georgia has been reviewed (the process started in December 2016) and significant changes has been elaborated for the majority of its norms within the framework of a State Constitutional Commission established by the Parliament of Georgia. The Commission was composed of representatives of parliamentary and non-parliamentary political parties, constitutional bodies, non-governmental organizations, and experts.

For the aim to ensure sufficient guarantees and high standards for the protection of fundamental human rights and independence of constitutional bodies, the new pack of amendments offer a full compatibility of the constitution with the fundamental principles of the constitutional law and an opportunity to reach long-term democratic development of the country. In this respect, it is noteworthy to mention the highly important modifications which have been made in *Chapter two - Fundamental Human Rights* and *Chapter six - Judiciary and Prosecution.*

As for the former, the whole part of the chapter is more developed and formed in a new structure. Changes given in this chapter grant, among others, an essential conceptual load and exceedingly high importance to the fundamental rights to human dignity and physical integrity. The new version of the mentioned chapter ensures full, comprehensive protection of fundamental human rights and provides specifically new sets of rights which were not indicated in the former text of the Constitution. Moreover, it provides complete protection of human rights, even in cases when some aspects of freedoms of individuals are not precisely cited in Constitution.

As to the chapter of Judiciary and Prosecution, significant changes have been made with regard to further enhancing judicial independence. In particular, the High Council of Justice has been granted a role to nominate the Supreme Court judges; guarantees of the judges and the principle of their irremovability have been determined; The composition of the High Council of Justice is articulated in more clear terms; The principle of accountability of the High Council of Justice before the Judicial Conference has been introduced etc. Also, it envisages improved provisions regarding the competences of the Constitutional Court.

One of the issues of significant importance is that the Prosecutor's Office will become an **independent constitutional body**. In particular, *Article 81*[4] of the current Constitution of Georgia envisages that - *Bodies of the Prosecution Office are under the system of the Ministry of Justice*. According to the draft amendments to the Constitution, **the Prosecutor's Office of Georgia does not act under the system of the Ministry and the new version of the Constitution establishes the Prosecution office as an independent constitutional body** as it is no longer the executive branch of the Government. According to the constitutional changes, the Prosecutor General is elected by the Parliament for the term of 6 years and is accountable only to the Parliament. Under the rules suggested through the changes, the issues related to the Prosecution office are governed by an organic law.

Independence of the Prosecution office is a remarkable change in terms of independence, legitimacy and justice, as well as of strengthening the trust of the society. Hence, the new version of the Constitution establishes higher standards of democracy and protection of human rights.

It is noteworthy to mention, that the Venice Commission welcomes the reforms envisaged by the constitutional amendments. According to its opinion (876/2017, CDL-AD(2017)013), "*the proposed reform deserves a positive assessment*" and that it is "*[…]a positive step forward to consolidate and improve the country's constitutional order, based on the principles of democracy, the rule of law and the protection of fundamental rights.*"[22]

Measures taken vis-à-vis the Judiciary

[22] Please, see the Opinion available online at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29013-e

§ ***Reform of the judiciary***

As to the violations regarding judicial proceedings brought against State agents, the following shortcomings have been identified by the European Court:

a) in the case of *Gharibashvili*, no adversarial public proceedings were carried out and a final decision was rendered in camera;

b) in the cases of *Mikiashvili* and *Dvalishvili*, the domestic courts based their conclusion mainly on the testimonies given by the police officers involved in the incidents;

c) in the case of *Enukidze and Girgvliani*, the domestic courts refused to provide the applicants with sufficient time and facilities to study the case materials and disregarded the applicants' numerous requests for the collection of additional evidence directly relevant to the establishment of the truth in the case. As regards the punishment of the convicted persons, the Court concluded that the sentences initially imposed by the courts on those convicted and the sentences actually implemented by the relevant domestic authorities did not constitute adequate punishment.

Aimed to ensure a genuine independence of the judiciary from any kind of interference and frame public confidence in the courts system, during the last four years, the Government has taken a number of consequential and significant steps to liberate the judicial branch from political, financial or any other influences.

By adopting a wide range of legislative amendments in May 2013, the first phase of institutional reforms was completed. As a result of these amendments, the key judicial institution, **the High Council of Justice became more democratic, open and transparent. Representatives of the civil society and academia replaced members of the Parliament sitting in the Council and the TV cameras were allowed in the courtrooms.** It should be stressed that these amendments were positively assessed by the Venice Commission.[23]

In August 2014, the second phase of the judicial reform was completed. It resulted from the constitutional amendment introducing the life tenure for the judges which enhanced the independence of the judiciary.

On 29 December 2016, the Third Wave of judicial reforms was adopted by the Parliament. The package of amendments, which were developed and proposed by the Ministry of Justice, includes issues such as: guarantees for non-interference with judicial decisions which are clearly articulated; presidents of courts will no longer be authorized to initiate disciplinary proceedings against their judges; a principle of automatic and electronic distribution of cases is introduced; judges are selected based on clear criteria and fair and transparent procedures; moving procedures of a judge to a different court are strictly regulated; admissibility criteria for cassation appeals in the Supreme Court of Georgia are amended by making an appeal admissible, *inter alia*, if the appealed decision contradicts the European Court of Human Rights case-law; court decisions will be published at the court`s website; *etc*.

The Venice Commission also welcomed these initiatives.[24]

The fourth phase of the reform concerned the Juvenile Justice Code adopted in 2015 by the Parliament of Georgia.

In his report, the Public Defender of Georgia has positively assessed the aspects of the reform envisaged by the amendments.[25]

Apart from the reforms, it should be underscored that on 29 May 2017 the High Council of Justice of Georgia approved the Strategy of the Common Courts System (2017-2021) and the Action Plan (2017-2018) for the implementation of the mentioned Strategy. The aim of the strategy is to meet its objectives in 5 directions: independence and impartiality, accountability, high quality justice, efficiency of judicial

[23] Available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29007-e
[24] Available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29031-e
[25] The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2016, p. 398 available at: http://www.ombudsman.ge/uploads/other/4/4494.pdf

system and access to justice. The last part of the mentioned Strategy concerns the implementation mechanisms, monitoring and procedure of evaluation.

Furthermore, the representatives of the courts' system are actively engaged in different training courses on ECHR. Among others, it should be noted that training sessions on the application of various standards of the European Convention on Human Rights contributed to the improvement of skills and knowledge of more than 1000 legal professionals. In particular, 150 judges and judge assistants had their skills strengthened through seminars on jury trials and ill-treatment in Georgia. Also, more Georgian judges are now capable of dealing with reopening of cases following a judgment of the Strasbourg Court.[26]

In addition, in 2016 High School of Justice in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) started working on special training module for judges, the title of which is "Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". In order to work out the aforesaid training module, the working group was established at the High School of Justice, in the composition of which there are ex-judges and acting judges as well as the expert of OHCHR.[27]

Moreover, knowledge of standards of the European Convention and research methodology of the staff of the Analytical Department of the Supreme Court and relevant officials from the appellate, city and regional courts were enhanced through training and a study visit to the French Court of Cassation. To improve consistency in criminal proceedings, joint training for judges, prosecutors and lawyers has been carried out, especially on the practical aspects of the right to a fair trial.

It is noteworthy that in 2016, the Supreme Court, the Ministry of Justice and the Registry of the Strasbourg Court agreed to create a Georgian interface of HUDOC that will become operational until the end of 2017 and which will further promote the principles of case-law of the European Court at the national level.[28]

Furthermore, under the joint Programme between the European Union and the Council of Europe highly important research was conducted on the "Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia". In total, 3 000 judgments rendered by the common courts of Georgia in 2013-2016 in respect of criminal, administrative and civil cases have been examined. The presentation of the mentioned research, which was held on 5 April 2017, clearly demonstrated that the application of the standards of ECHR, as well as, reasoning of judgements with the relevant case-law of ECHR is significantly improved[29] which indicates the tangible progress achieved as a result of the aforementioned reform of the judicial system of Georgia.

§ ***Lack of adversarial public proceedings and decisions rendered in camera***

As for the better equality of arms and the prevention of lack of adversarial public proceedings, a set of amendments to the Criminal Procedure Code was adopted by the Parliament in June 2013.

Specifically, the defence obtained the right to compel the prosecution through judicial determination to obtain and disclose such evidence which might lead to defendant's acquittal. The private forensic expert bureaus were allowed to present expert opinions to support the facts which by then could only be proven or disproven by the public forensic expert institutions. And, the duly authorised defence attorneys were

[26] Council of Europe, Human Rights National Implementation Division Highlights 2016, Annual Report 2016, p. 38, available at: https://www.coe.int/en/web/human-rights-rule-of-law/-/human-rights-national-implementation-division-s-2016-annual-report-published

[27] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", pp. 17-18

[28] Council of Europe, Human Rights National Implementation Division Highlights 2016, Annual Report 2016, p. 14, available at: https://www.coe.int/en/web/human-rights-rule-of-law/-/human-rights-national-implementation-division-s-2016-annual-report-published

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

released from the duty to have their client's signature for the validity of their appeals against the lower instance court decisions, including the ones related to remand detentions (it was hard to obtain such signatures within few hours window that was available for some of the appeals).

As to the lack of adversarial proceedings, Georgian courts consider the adversarial principle as an important aspect of the right to a fair trial. In its reasoning, in one of the judgments,[30] the Tbilisi City Court mentioned that "*it is a fundamental aspect of the right to a fair trial that criminal proceedings… should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused*."[31] Thus the court's approach serves to prevent the lack of adversarial public proceedings and to maintain the principle of equality of arms.

Also, with the objective to support for increasing transparency in the judicial system, even in cases rendered in camera, as noted above within third wave of judicial reforms, the legislative package prepared by the Ministry of Justice introduced the principle of publicity for judicial acts – **all judicial acts adopted as a result of examining a case on the merits at an open session and the resolution part of the decisions rendered as a result of examining a case on the merits at a closed session, in accordance with the rules stipulated in the legislation applicable in the sphere of personal data protection will be published on the website of an appropriate court**.[32] **The amendment came into force on 14 March 2017**.[33]

As for the decisions rendered *in camera* in the case of *Gharibashvili*, as noted above, current Criminal Procedure Code of 9 October 2009 (as well as CCP of 20 February 1998 – invalid nowadays), foresees the procedure of appealing the superior prosecutor's decision on termination of investigation/criminal prosecution at the court. Pursuant to Article 106 of the current CCP after appealing a decree of the prosecutor regarding the termination of investigation and/or a criminal prosecution to a superior prosecutor, a victim may appeal the decision of the prosecutor (if an appeal is not granted) to a district (city) court, when a particularly serious offence has been committed. A court shall deliver a judgment with or without an oral hearing. The issue whether the appeal should be examined with or without an oral hearing is decided by the judge in every individual case on the bases of all the circumstances of the case in the light of the principles of equality of arms and adversarial public proceedings.

In respect of the statistics regarding the superior prosecutor's decision on the annulment of a decree of the prosecutor regarding termination of an investigation are following: in total, in 2015-2017 (until August 8) 131 decrees (63, 40 and 28 decrees in 2015, 2016 and 2017, respectively) were annulled. Subsequently, abovementioned terminated investigations were resumed.

§ *Lack of sufficient time and facilities to study the case materials*

In respect of enhancing victims' involvement in the investigation, the Ministry of Justice drafted legislative amendments to the Criminal Procedure Code of Georgia, which provide victims with the right to information regarding the ongoing investigation. According to these amendments, Article 57 provides that, if it does not contradict the interests of the investigation, a victim has a right to get information about the course of the investigation and get acquainted with the files of the criminal case. Herewith, the amendments envisage the right to appeal a decision not to prosecute in cases of serious crimes; the right

[30] Judgment of the Criminal Cases Panel of Tbilisi City Court dated June 5, 2015, case no. 1/1373-15.
[31] Nana Mchedlidze, Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia, Joint Programme between the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in line with European Standards in Georgia", Tbilisi, January 2017, pp. 107-108, available at*:* https://rm.coe.int/168070a54b
[32] Implementation of the Human Rights Action Plan (2014-2015) of the Government of Georgia, para. 2.3.1., available at: https://matsne.gov.ge/ka/document/view/3315211
[33] Organic Law of Georgia on General Courts, Article 13.3^1, available at: https://matsne.gov.ge/ka/document/view/90676?impose=parallelEn&publication=25

to request the status of a victim; and the right to appeal the subsequent decision of a prosecutor declining this request. Present amendments adopted by the Parliament of Georgia on 24 July 2014 are used in practice effectively.

Mentioned reform relies upon the EU directive on victims' rights (Directive 2012/29 of the European Parliament and of the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime) and the ECHR case-law.

According to the abovementioned amendments, as regards the lack of sufficient time and facilities to study the case materials, it should be underlined that under Article 57 of the Criminal Procedure Code of Georgia, a victim shall have the right, *inter alia*, to be informed about the essence of the charges brought against the accused; during the hearing of a case on the merits, during the review of a motion for rendering a ruling without hearing the merits and at the sentencing hearing, give a testimony concerning the damage he/she has incurred as a result of the offence, or submit, in writing, that information to the court; upon request, to obtain information on the measure of restraint applied against the accused, and information on the leaving of a penitentiary facility by the accused/convicted person, unless this creates a risk for the accused/convicted person; to review the materials of the criminal case at least 10 days before a preliminary hearing; to obtain, free of charge, copies of a decree/ruling, and/or of a judgment on the termination of investigation and/or criminal prosecution, or of other final court decisions.

Moreover, pursuant to Article 58, upon request of the victim, the prosecutor shall inform the victim in an advance on the place and time of the following procedural actions: the initial appearance of the accused before a magistrate judge; preliminary hearing; main hearing; a hearing at which a prosecutor's motion requesting the passing of a judgement without hearing a case on the merits is considered; sentencing hearing; appellate or cassation court hearing.

The Public Defender welcomed the fact that the victims can have access to criminal case materials at least 10 days before a pre-trial hearing and also pointed out that Article 58(1) of the Criminal Procedure Code has expanded the scope of information to be provided to the victim.[34]

It should be noted that the Chief Prosecutor's Office with the support of Council of Europe works on the recommendation regarding the rights of victims. The main goal of the mentioned recommendation is the effective implementation of the rights of victims prescribed by the Criminal Procedure Code and establishment of the unified practice in that regard. In the process of drawing up the recommendation, case-law of the domestic courts and the European Court of Human Rights will be considered.[35]

It can be surely said, that all the regulations stated above unambiguously serve to prevent specific violations of judicial procedures found by the European Court in the present group of cases (specifically in the case of *Enukidze and Girgvliani)*.

§ ***Court decisions based mainly on the testimony of the police officers involved in the incidents***

It is noteworthy, that according to the research conducted under the joint Programme between the European Union and the Council of Europe ***"Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia"*** the European standards on fair trial are actively applied by Georgian courts. In total, 3 000 judgments rendered by the common courts of Georgia in 2013-2016 in respect of criminal, administrative and civil cases have been examined. [36] Apart from the fact, that the national courts refer to Article 6 of the Convention, and the relevant case law, in some cases the reasoning is based on standards, recommendations provided by various bodies of the Council of Europe. As a result of mentioned research: *"The practice of the European Court on prohibition of torture is*

[34] Annual Report of Public Defender of Georgia 2014, on the Situation of Human Rights and Freedoms in Georgia, p. 218, available online at: http://ombudsman.ge/uploads/other/3/3510.pdf
[35] Chief Prosecutor's Report, 19 July, 2017, p. 56, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[36] Nana Mchedlidze, Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia, Joint Programme between the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in line with European Standards in Georgia", Tbilisi, January 2017, p. 8, available at: https://rm.coe.int/168070a54b

correctly applied by the national courts and reflected in their judgments. Common courts provide citations from the judgments of the European Court correctly, and apply its interpretation to the facts of the cases, under their consideration."[37]

In the context of the court decisions based mainly on the testimony of the police officers, it is noteworthy to mention that the practice of Georgian courts clearly reveals, that the court does not prioritize the testimony of a policeman to reach its decision. Nowadays Georgian courts, in case of testimonies given by the police officers, question the quality of investigation and doubt whether it is superficial and one-sided. In its argumentation, Tbilisi City Court[38] has noted that it did not discredit the testimony of the witness as an evidence, but it added that the witness's testimony will only be true if it is based on other objective evidence, even on the testimony of a neutral (not a police officer) witness. Moreover, court reflects relevant European case-law and refers to internationally recognized human rights standards in order to exclude untrustworthy decisions as much as possible.[39]

Measures taken to prevent excessive use of force by the Police in the course of arrest and ill-treatment of persons in custody and the results achieved

As investigations have revealed at national level torture or other inhuman or degrading treatment of prisoners was an established practice of systematic nature in Georgia before 2012. Today, successfully, the fact that the torture is no longer a systemic issue is affirmed by the reports of the Public Defender of Georgia.[40]

As the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mr. Juan Mendez observed during his visit to Georgia in March, 2015 the situation has been drastically changed since the parliamentary election in October 2012.[41]

Moreover, the CPT welcomed the steps taken (or being taken) by the Georgian authorities to prevent ill-treatment by the police.[42] Furthermore, according to the CPT: "*The great majority of the persons interviewed by the delegation stated that they had been treated by police officers in a correct manner. This confirms the generally positive impression obtained during the previous periodic visit as regards the treatment of persons detained by the police in Georgia.*"[43]

Aimed at combating ill-treatment, Georgia's first National Human Rights Strategy, as well as human rights action plans of 2014-2015 and of 2016-2017, envisage fighting against torture and ill-treatment as one of their main objectives.

In addition, in May 2017 the inter-Agency Council on Combating torture and ill-treatment has approved the national anti-torture action plan for 2017-2018 which provides a strong basis for further improvement of anti-torture activities which are well coordinated by the inter-agency council. The report on the progress of implementation of the activities envisaged by previous 2015-2016 action plan was elaborated

[37] *Ibid*, p. 42
[38] Judgment of the Criminal Cases Panel of Tbilisi City Court dated June 26, 2015, case no. 1/6258-14, pp. 12-13
[39] Nana Mchedlidze, Application of the Standards of the European Convention on Human Rights by the Common Courts of Georgia, Joint Programme between the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in line with European Standards in Georgia", Tbilisi, January 2017, pp. 31-33, Available at: https://rm.coe.int/168070a54b
[40] Annual Report of the Public Defender of Georgia, the Situation of Human Rights and Freedoms in Georgia, 2O13, p. 7, available at: http://www.ombudsman.ge/uploads/other/1/1934.pdf
[41] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, Human Rights Council, Thirty-first session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/31/57/Add.3, Distr.: General 1 December 2015, para. 26, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/273/24/PDF/G1527324.pdf?OpenElement
[42] 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, Strasbourg, 15 December 2015, p. 6, available at: https://rm.coe.int/16806961f8
[43] *Ibid*

in the first quarter of 2017. The present chapter sets out the information regarding the basic achievements of the mentioned progress report.

The work and structure of the Council perfectly illustrate the transparency and readiness of the Government to cooperate not only with relevant state agencies but also with national and international human rights non-governmental and intergovernmental organizations. The Council is responsible for the elaboration of national anti-torture policy, national strategy and action plan as well as for the monitoring of the action plan implementation policy.

In the process of development of the 2017-2018 anti-torture action plan international and local recommendations were taken into account, which has been reflected within the plan in the form of activities. Moreover, it is worth to mention that representatives of the non-governmental sector have taken a significant part in the contribution of the document. Precisely, the new plan specifies the areas of legislative regulation which will be analysed in order to meet international standards against ill-treatment; Herewith, the additional organizational, normative and institutional measures are planned to be taken in order to address the needs of vulnerable groups, when they are subjected to the risk of possible ill-treatment, including elaboration of referral procedures.

Effective legal aid for victims of torture and ill-treatment is one of the most important components in the policy of fighting against torture. In order to ensure this, the anti-torture action plan for 2017-2018 envisages to study the existing legislative basis and to refine it, if necessary. Herewith, it also envisages the analysis of the issue of increasing the capacity of the Legal Aid Service (the need to improve material and financial base).

It is noteworthy, that the progress of Georgia in fighting against torture has been repeatedly noted within the scope of Human Dimension Committee of the OSCE. A clear illustration of mentioned is that in March 2017, Georgia was invited to share the best model for the fighting against torture by the chairman of the Human Dimension Committee, the UK.

In particular on 28 March 2017, Georgia presented to the OSCE Human Dimension Implementation Meeting the report which highlights measures taken in the country in order to eliminate torture and ill-treatment and the progress made in this regard. The hearing was held under the initiative of the chairing state of the committee - the UK. European countries have expressed their desire to become acquainted with the Georgian experience in prevention of torture and inhuman treatment.

The report covered the areas, such as: the national policy and strategy in combating torture and ill-treatment; the role of the national mechanisms of prevention; effective and impartial investigation of cases of inhuman treatment, infrastructural improvement in the penal system and so on.

As to the specific information **to prevent excessive use of force by the police in the course of arrest**, it should be underlined that according to the decree #999 of the Minister of Internal Affairs, issued on 31 December 2013, the workers of the temporary detention facility are obliged to inform the appropriate person or body when there is a doubt that a person has been the victim of ill-treatment. Once the detained person has the signs of newly received injuries, the authorized employee of the facility informs the Prosecutor's Office whether or not the detained complains about the police officer.

The territorial bodies of the Prosecutor's Office used to receive daily information from the temporary detention facilities and penitentiary institutions regarding the detainees who were placed in the facility or institution with body injuries, the aim of which was disclosing the facts of ill-treatment of detained persons.

Within this procedure, the prosecutors were meeting with the inmates, who had at least minimal injuries. The prosecutor of Human Rights Protection Division of Chief Prosecutor's Office met with 107 persons in 2015 and 47 persons in 2016.[44]

In order to monitor the detention isolators internally, monitoring division was established in the Main Division of Human Rights and Monitoring of the MIA, which implements abrupt visits to the temporary

[44] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", p. 52

detention isolators, so that it checks: conditions (body injuries, availability of attorney and/or doctor, registration of complaints of detainees) of detention; employees, and detainees.

For the purpose to enhance the effectiveness of human rights protection and to provide public with adequate services, the General Inspection of the MIA has created a public relations service hotline, which applies to violations committed by the law enforcers, violation of constitutional rights of citizens and various illegal acts.

In addition, the Public Defender positively assessed Order # 691 of the Minister of Internal Affairs of 8 December 2016, which approved Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators. In the opinion of the Public Defender of Georgia, the Instructions comply with the CPT standards. The Instructions reflect the Public Defender's recommendations made in 2014-2015 concerning timely and adequate medical services, medical ethics and documenting injuries.[45]

The Public Defender welcomes such regulation and states that comprehensive medical examination upon admission and leaving at an isolator of an arrested person will significantly diminish risks of ill-treatment and contribute to the identification and documentation of incidents of alleged ill-treatment before both admission and staying in an isolator.[46]

In order to combat ill-treatment of persons in custody and to prevent human rights violations in the penitentiary settings, the Ministry of Corrections strengthened its internal monitoring mechanisms by establishing a new structural entity - Systemic Monitoring Unit. The Unit ensures the systemic monitoring within the system of Ministry of Corrections.[47]

All inmates enjoy the unrestricted right to file written complains. Boxes and special envelopes for confidential complaints are available at every penitentiary establishment. Confidential or regular written complaints are regularly processed and prisoners are informed in due time on actions or responses related to their complaint.[48]

As to the most significant highlights of the implementation reports of the aforementioned human rights/ anti-torture action plans, it should be noted that legislative basis in respect of combating ill-treatment of defendants/convicts and persons deprived of liberty has been analysed in respect of its efficiency and conformity with international standards. This process was followed by improving legislative acts with legislative amendments, including the Imprisonment Code, under which, as of 1st September 2016, the Public Defender/Special Preventive Group with the consent of accused/convicted persons, may take photos of the accused/convicted persons and/or of the conditions of their accommodations, walking areas, medical units, catering facilities, etc.

It should be underlined that cooperation with and strengthening the role of the National Preventive Mechanism remains one of the priorities of the Government of Georgia.

Moreover, with increasing the technical support, the duration and protection of data storage, in the line of internationally recognized standards of protection of personal life and data, audio and video monitoring system in penitentiary establishments was improved.

Furthermore, according to the requirements of the Istanbul Protocol, the Minister of Corrections issued the Order #131 on "The Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment", which was published on 26 October 2016 and came into force on 1st January 2017. The following Order foresees the rules and procedure of establishing the injuries allegedly caused by torture and other cruel, inhuman or degrading treatment. In particular, in

[45] Public Defender (Ombudsman) of Georgia, Human Rights Situation in Closed Institutions, the Report of the National Preventive Mechanism 2016, p. 215, available at: http://www.ombudsman.ge/en/reports/specialuri-angarishebi/the-report-of-the-national-preventive-mechanism-2016.page
[46] *Ibid*, p. 216
[47] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment", p. 57
[48] *Ibid*, p. 47

cases where a health-care professional has suspicions about torture and other cruel, inhuman or degrading treatment, he/she has to inform the Investigative Department of the Ministry of Corrections. [49]

The Public Defender of Georgia welcomes the fact that the issue at stake has been legally regulated and considers that the approval of the above-mentioned procedure is clearly a step forward.[50] In addition, The Public Defender welcomes the fact that the obligation of a health-care professional to inform investigative authorities has been statutorily stipulated.[51]

It should be noted that the Ministry of Corrections actively works on protection, compensation and rehabilitation of victims of ill-treatment. Within the scope of its competence, the Ministry is conducting judicial disputes with regard to the facts of torture. On this basis, the amount of compensation paid to the victims, from 2012 up to now, represents approximately 41 000 GEL. [52]

It is quite significant that a list of basic medicines in the penitentiary system has been renewed under the order #31 of the Minister of Corrections and hereby issues regarding the general medical and psychiatric services were also regulated.[53] By virtue of these means, the order #2775 of the Government of Georgia has been drafted according to which the Ministry has been granted the right to purchase medicines, medical goods and health care facilities within a solid amount of money (120 000 GEL).[54]

In respect of ensuring effective investigation of the facts of ill-treatment, in 2015, the Chief Prosecutor's Office improved the statistics module, which implies complete statistical record of criminal prosecution data on ill-treatment. In particular, the Human Rights Division developed a detailed schedule of torture and ill-treatment, by which the collection of facts of torture, degrading or inhuman treatment committed by the MIA, employees of the relevant institutions of the penitentiary establishments or private persons were separated.[55]

Moreover, as to the effective detection of ill-treatment and timely, impartial and effective investigation of all complaints/charges, it might be mentioned that the strategy of 2017-2021 of the Prosecutor's Office has been drafted which, among others, involves fighting against torture and ill-treatment.

With the aim to establish the best practice in respect of qualification of crimes on the facts of ill-treatment, in 2016 recommendation regarding the investigation of the facts of ill-treatment committed by an official or a person equal to an official was developed. The recommendation became accessible on 10 March 2017 within the system of the Prosecutor's Office of Georgia.[56]

It should be underlined that Chief Prosecutor's Office studied and analyzed all judgments of the European Court of Human Rights rendered against Georgia regarding the activities of the Prosecutor's Office and other investigative bodies. Subsequently, the manual in respect of interpretations of the Court concerning the activities of the investigative bodies during an investigation was drawn up.[57]

As to the awareness raising, it is noteworthy, that the obligation of informing the accused/convict on his/her rights (including the right to lodge an application) in written form is foreseen in the statutes of penitentiary institutions. Besides, the Ministry of Corrections of Georgia has the special booklets printed

[49] Order #131 on "The Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment." issued by Minister of Corrections, dated October 26, 2016, art. 6, Available at: https://matsne.gov.ge/ka/document/view/3402759
[50] Public Defender (Ombudsman) of Georgia, Human Rights Situation in Closed Institutions, the Report of the National Preventive Mechanism 2016, p. 28, available at: http://www.ombudsman.ge/en/reports/specialuri-angarishebi/the-report-of-the-national-preventive-mechanism-2016.page
[51] *Ibid*, p. 28
[52] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", p. 58.
[53] Order #31 of the Minister of Corrections, available at: https://matsne.gov.ge/ka/document/view/2787230
[54] Activity has been implemented within the scope of State Program of Georgia of 2016 – "Provision of Equivalent Medical Services to Defendants and Convicts". The Order available at: https://matsne.gov.ge/ka/document/view/3158832
[55] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", p. 68.
[56] Chief Prosecutor's Report, 19 July, 2017, p. 50, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[57] *Ibid*, p. 57

regarding the accused/convicts' rights, which were distributed among the prisoners in penitentiary institutions.

Furthermore, in order to raise the awareness of the prisoners about their rights in the context of complaints, disciplinary and administrative procedures, they are provided with documents with relevant information (brochures – in Georgian, as well as in foreign languages), educational meetings and consultations.

The trainings are conducted successfully in the institutions. In 2016 - 513 convicts attended the trainings concerning the rights of the accused/convicts while in 2015 - 63 persons participated in such trainings.[58]

The Public Defender welcomes the steps made towards informing prisoners of their rights, including the right to lodge an application/appeal as well as the procedures for their consideration. In particular, handing out information booklets on the rights of remand and convicted persons and delivering training sessions in several establishments were positively assessed.[59]

In that regard, the training in respect of the national and international standards of treatment of prisoners (covering issues of the Istanbul Protocol, the documenting of torture and the prevention of torture and ill-treatment) are intensively conducted for the medical personnel since 2015 by the Ministry of Corrections.[60]

In order to disseminate information and to enhance public awareness regarding torture and ill-treatment, several measures have been completed. Penitentiary and Probation Training Centre (PPTC) has developed training modules, which include issues such as prevention of torture; human rights, juvenile justice, health care, procedural safety, rules for treatment of women convicts, non-custodial sentences, hunger strike management, probation and correctional system management etc. It is noteworthy that in 2015 and 2016 the training/educational activities were undergone by 3378 and 3887 staff members respectively.[61] In particular, in PPTC training sessions regarding the prevention of torture or other inhuman or degrading treatment (among others, the issues of documenting the facts of torture) was undergone by 1397 and 2877 persons in 2015-2016 respectively.[62]

In the course of the investigation and proper qualification of torture and ill-treatment, 5 training activities were fulfilled in 2016, in which over 100 representatives of the Prosecution's Office participated, including prosecutors, investigators and interns.

Moreover, in 2017, in cooperation with the European Union and Council of Europe, the training in respect of the torture and ill-treatment was undergone by 39 prosecutors and investigators. The following issues were discussed in the course of the training: the scope of Article 3 of the European Convention and interpretations thereof, problems related to the qualification of ill-treatment and standards of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[63]

It should be underlined that the MIA Academy, which represents the authorized special professional educational institution in charge of training of the personnel of the law enforcement officials conducted trainings regarding the torture, inhuman or degrading treatment in 2016 (from 1st July till 31st December). Mentioned trainings were undergone by 241 persons (before an appointment) and 361 employees.[64]

On 4-6 February 2017, the Council of Europe Office in Georgia and European Union Delegation organized two-day training sessions for the doctors working in the temporary detention isolators of the

[58] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", pp. 13-14
[59] Public Defender (Ombudsman) of Georgia, Human Rights Situation in Closed Institutions, the Report of the National Preventive Mechanism 2016, p. 22, available at: http://www.ombudsman.ge/en/reports/specialuri-angarishebi/the-report-of-the-national-preventive-mechanism-2016.page
[60] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", p. 19
[61] *Ibid*, pp. 59-60
[62] *Ibid*, p. 62
[63] Chief Prosecutor's Report, 19 July, 2017, p. 51, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[64] Implementation Report on 2015-2016 Action Plan "on Combating Torture, Inhumane or Degrading Treatment or Punishment ", p. 63

MIA. During the training the participants received the comprehensive knowledge on how to document the injuries inflicted upon the alleged torture and other cruel, inhumane and degrading treatment or punishment of prisoners according to the recently approved instructions for the doctors. They also learned about how to fill forms, what are the main challenges while filling up the forms and interpreting the results of the medical examination, how to ascertain the degree of compliance of the injuries with the circumstances described by the inmates. The participants were also equipped with practical skills on how to take pictures of the injuries as well as exchanged ideas on all the problematic issues they encounter during daily work. In total, during 3 days 32 medical staff of the TDI have been trained.[65]

To sum up, in order to reduce and prevent the facts of torture and ill-treatment, training activities are permanently held by the Ministry of Corrections, the MIA and the Prosecutor's Office. Likewise, in order to raise awareness of prisoners regarding their rights including complaints, disciplinary and administrative procedures, they are provided with educational meetings/consultations, as well as informational documents, such as brochures, are distributed.

In conclusion, an effective fight against ill-treatment remains the top priority of the Government of Georgia both by means of improving methods of prevention and prosecution and enhancing protection of victims.

Information regarding Article 38

In the case of *Enukidze and Girgvliani*, the Court found that the authorities of Georgia had not complied with their obligations to furnish all necessary facilities to the European Court (violation of Article 38).

At the outset it should be underlined, that violation of Article 38 of the Convention has been found by the European Court only in one case against Georgia – *Enukidze and Girgvliani* and since then (date of judgment: 26/07/2011) no such violation has been found by the Court against Georgia.

As to the measures taken by the Government to prevent similar violations, Georgia constantly co-operates with the European Court during the examination of pending cases in order to furnish all necessary facilities as envisaged by Article 38 and to prevent finding a violation of the aforesaid Article.

SUMMARY

Individual Measures

To conclude, the Government of Georgia underline that as demonstrated above the individual measures undertaken by the State authorities in terms of execution of *Gharibashvili* Group encompassed a number of significant initiatives.

- New investigations have been implemented in compliance with the European Court's case-law and the Committee of Ministers practice. Independence and impartiality of the investigators/prosecutors are ensured to the fullest extent. The investigation is comprehensive as possible, consisting of all reasonable steps that could have been taken for securing evidence related to the allegations in question.
- **In the light of the aforementioned, the Government kindly invites the Committee to close the examination of the following two cases - *Gharibashvili v. Georgia* (No. 11830/03, final on**

[65] Increasing the number of trained medical staff on documenting the injuries, p. 2, news available at: https://rm.coe.int/1680703e56; See also - The Temporary detention isolators' medical personnel were given the training sessions in the MIA Academy, 11-02-2017, available at: http://police.ge/en/shss-s-akademiashi-droebiti-motavsebis-uzrunvelkofis-departamentis-sameditsino-personals-treningi-chautarda/10373

29.10.2008) and *Khaindrava* and *Dzamashvili v. Georgia* (No. 18183/05, final on 08.09.2010) since the investigations have been completed.

- As to the pending cases, the Government kindly refer to the Committee to recall member States of the Council of Europe as well as Interpol and other international bodies to give support to the Georgian authorities in conducting the legal proceedings effectively in respect of the accused/convicted for the facts which led the European Court to the gross violations of the Convention in the case of *Enukidze and Girgvliani* as well as in the case of *Surmanidze and others v. Georgia*.
- Also the Government draw the Committee's attention to the fact that in the light of the decision of 1273rd meeting of the Committee[66] the authorities accelerated pending investigations and reinforced the resources allocated.
- **Thus, the Government kindly asks the Committee to take note of the aforesaid information of the Government of Georgia and to reflect them in its relevant decision of the upcoming 1294th meeting (September 2017) (DH).**

General Measures

As for the general measures undertaken for the execution of *Gharibashvili* Group, the Government draw the Committee's attention to the following significant achievements:

- **Today, successfully, the fact that the torture is no longer a systemic issue is affirmed by the reports of the Public Defender of Georgia[67] and by the UN Special Rapporteur Mr. Juan Mendez**.[68]
- **Institutional independence of investigating bodies** – If the facts of torture or ill-treatment relate to exceeding power by police officers, the Prosecutor's Office investigates such cases which illustrates the institutional independence of the investigative bodies.
- **In recent years the facts of ill-treatment of prisoners by the employees of the penitentiary establishments have been significantly reduced.**
- Notably, in 2014, the Public Defender addressed the Prosecutor's Office regarding the alleged facts of ill-treatment committed by the employees of the penitentiary establishments with 21 proposals, however, **none of the facts mentioned in them constituted torture and only was counted to inhuman/degrading treatment**. **It should be noted, that on the same issue, the Public Defender addressed the Prosecutor's Office in 2015 and 2016 with 4 and 2 proposals respectively.** In 2017 (six months), the Public Defender has not made any proposals regarding the alleged facts of ill-treatment by the officials of the penitentiary establishments.[69]
- **The Prosecutor's Office will become an independent constitutional body** – According to the draft amendments to the Constitution, **the Prosecutor's Office of Georgia does not act under the system of the Ministry of Justice.** The Prosecutor General will be elected by the Parliament for the term of 6 years and will be accountable only to the Parliament. The constitutional amendments were welcomed by the Venice Commission. [70]

[66] Available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1273/H46-10
[67] Annual Report of the Public Defender of Georgia, the Situation of Human Rights and Freedoms in Georgia, 2O13, p. 7, available at: http://www.ombudsman.ge/uploads/other/1/1934.pdf
[68] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, Human Rights Council, Thirty-first session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/31/57/Add.3, Distr.: General 1 December 2015, para. 26, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/273/24/PDF/G1527324.pdf?OpenElement
[69] Chief Prosecutor's Report, 19 July, 2017, p. 51, available at: http://pog.gov.ge/res/docs/angarisi19_07_2017.pdf
[70] Please, see the Opinion available online at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29013-e

- In order to reduce and prevent the facts of torture and ill-treatment, **training activities are permanently held by the High School of Justice, Ministry of Corrections, the MIA and the Prosecutor's Office.**
- **As to the reforms of judiciary during the last four years,** the Government has taken a number of consequential and significant steps to liberate the judicial branch from political or any other influences which resulted in successful waves of reforms.
- **A better equality of arms –** In 2014 the Ministry of Justice drafted legislative amendments providing victims with an **enhanced rights to information regarding ongoing investigation, as well as the rights to be heard and to appeal. The right to appeal a decision not to prosecute in cases of serious crimes, the right to request the status of a victim and to appeal the subsequent decision of a prosecutor declining this request, are all provided for by the amendments.**
- **New Safeguards for Witnesses in Criminal Proceedings -** In December, 2015 the Parliament of Georgia adopted amendments to the Criminal Procedure Code of Georgia drafted by the Ministry of Justice regarding the interrogation of witnesses. Under the new rules, no witness may be compelled to show up in investigative authorities to give testimony.
- **It should be underlined that in 2013-2017 (As of August 2017) 201 cases have been communicated to the Government of Georgia by the European Court. Among them, 8 cases concerned the alleged violations occurring since the parliamentary election of October 2012 under Articles 2 and 3** (the mentioned cases are still pending).
- **Moreover, none of the judgments/decisions rendered since 2012 concern the violations since the parliamentary elections of October 2012.**
- **The aforementioned institutional reforms also led to the significant reduction of the applications lodged with the European Court against Georgia.** In particular, only 44 applications against Georgia were allocated to the judicial formation in 2017 (as of July 2017), 74 – in 2016, 80 – in 2015, 102 – in 2014 and 157 - in 2013, while in 2012 it was the total of 367 applications, 395 - in 2011 and 375 - in 2010.
- **The aforementioned statistics indicate the enhanced trust and confidence of the public towards the Government.**

In the light of the aforementioned, the Government kindly invites the Committee to close the examination of the general measures regarding *Gharibashvili* Group of cases.