The gaps of the investigation of the facts of ill-treatment conducted by the law enforcement officers and legal status of the victims in Georgia

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Chapter 1. Introduction

Facts of torture, inhuman and degrading treatment against persons detained by police and inadequate follow-up to such cases by the law-enforcement authorities still remain to be a challenge in Georgia. Late and ineffective response to such crimes to a greater extent reveals the way the law-enforcement and justice authorities are functioning in the country; although the lack[1] of respective investigative mechanism and the quality of investigation by the prosecutors of the alleged crimes committed by the law-enforcements impedes the efficiency of the process to a great extent.

In order to learn about the existing situation thoroughly and to prepare the relevant recommendations, a study was undertaken which primarily aimed to draft an analysis of the legislative and practical shortcomings in the investigation of the facts of torture, inhuman and degrading treatment by police, the existing practice of respective judicial proceedings as well as the assessment of the human rights protection of the victims. In spite of the requests on the investigation of ill-treatment cases, the Prosecutor's Office of Georgia, as a body with the authority of investigative subordination of cases, fails to ensure the implementation of positive obligations of the state in terms of conducting the efficient investigation. Such assessment has been claimed in the reports of the Public Defender of Georgia as well as the local and international non-governmental organizations studies and reports.

In order to achieve the above-mentioned aim, within the framework of the study, the Georgian legislation and the International standards as well as the reports and studies of the Public Defender of Georgia and of local and international non-governmental organizations have been examined. The substantial part of the research is devoted to the analysis of the cases, available at the GDI and other local organizations and of the respective judicial practice. The study contains conclusions and recommendations, which we believe, should promote the efficient investigation of alleged crimes committed by law-enforcement officials in Georgia and the improvement of human rights situation of victims.

Chapter 2. Methodology

The aim of the present study is to analyze the legislative and practical shortcomings in the investigation of the facts of torture, inhuman and degrading treatment by police, the existing practice of respective judicial proceedings as well as the assessment of the legal rights of the victims; whereas its objective is to assess the efficiency of investigation of cases which took place in 2013-2017.

In order to achieve the given aim, 10 criminal cases submitted to the GDI for examination as well as the information received from different non-governmental organization on cases of torture, inhuman and degrading treatment they had under the examination (in total 38 cases).

1 According to the current information, the Parliament of Georgia has adopted the Law "on the Service of the State Inspector" which envisages the investigation of crimes committed by the law-enforcement authorities independently by the State Inspector. The law enters into force on 1 January 2019.

Moreover, in order have the whole picture, two types of questionnaires have been elaborated with the participation of the sociologist – for the lawyers and for the victims. These questionnaires were used to interview 9 victims of torture, inhuman and degrading treatment and 132 lawyers.

The reports of the Public Defender of Georgia, International and non-governmental organizations published in 2013-2016 have been reviewed in terms of response to and conducting efficient investigation to the facts of torture, ill-treatment and degrading treatment by police.

The study contains review of international standards on efficient investigation and the aspects of positive obligation of the state envisaged by the Georgian legislation. Likewise, we have assessed the law "on the Service of the State Inspector" drafted by the Government of Georgia in order to find out whether the legislation properly meets the challenges and whether it would be able to solve shortcomings revealed in the investigation practice.

Within the framework of our research, we requested the statistical data and the judgments delivered by common courts on such cases from the Prosecutor's Office of Georgia and the Supreme Court of Georgia and examined them. The analysis of the received information gives a clear picture for the assessment of the efficiency of investigation of the facts of torture, inhuman and degrading treatment by the state.

After having analyzed the above-mentioned information, the report ends with our vision and relevant recommendations for solving the problems revealed by the study.

Chapter 3. The main findings

While assessing the efficiency of the investigation of the cases that took place in 2013-2017, based on the information obtained during the research period and its analysis, we could conclude the following:

- The reports of local and international non-governmental organizations as well as the special or the annual reports of the Public Defender of Georgia drafted in 2014-2017, while paying attention to the problem of growing tendency of excessive use of power by police, emphasize the failure to start the investigation, belated launch of investigation, investigation with wrong qualification in most cases by the biased agencies and the victim's insufficient involvement in the investigation process. According to the author's of the present report, the mentioned problems cause the failure of the state to fulfill the positive obligations. Therefore, all the reports contain recommendations on setting up the independent investigation mechanism.
- The provisions of the Criminal Procedure Code of Georgia as well as the Georgian law "on Service of the State Inspector" still leave the space for shortcomings in terms of efficient investigation of the facts of torture, inhuman and degrading treatment by police: for example, the laws still contain the provisions giving the chief prosecutor the authority, which endangers the institutional independence of the investigation.
- The indicator of launching the investigation by the Prosecutor's Office of Georgia into the alleged crimes committees by policemen has been improving since 2014, although, in proportion to the mentioned, in 2014-2015, the decrease in the number of criminal prosecutions into such cases as well as of the investigations with the qualification of torture, inhuman and degrading treatment has been noticed. The situation had been aggravated in 2016-2017, when the investigation was launched into 322 cases and the criminal prosecution was initiated only against 6 persons and merely under article 333 of the Criminal Code of Georgia (exceeding official powers). Taking into consideration the fact that in reality the cases of ill-treatment committed by policemen has been increasing an-

nually, such statistical data directly indicates to problems existing in adequate investigation and efficient criminal prosecution and confirms the views on inefficient investigation into such cases expressed by the Public Defender of Georgia or any other organizations and experts;

- The information provided by the Supreme Court on 11 August 2017, shows that in 2013-2017, none of the cases were tried by the common courts under article 1442 of the Criminal Code of Georgia; whereas 25 criminal cases were tried under articles 1441 and 1443 against 85 persons and 18 out of them (most of them were charged with committing torture) were acquitted by the court. Unfortunately, the information provided by the Supreme Court of Georgia does not give the possibility to identify the cases related to crimes committed by the law-enforcements under the mentioned articles. Though, the information received from the common courts on judgments showed that out of the case tried under these articles none of them were related to the facts of ill-treatment by law-enforcements and absolute majority of verdicts were delivered on the crimes committed by private persons. There is no uniform standard for the assessment of the grounds for launching the investigation into these types of crimes and such decisions in each case have been made solely by the investigator and his/her mentor prosecutor, belatedly in most cases. The European Court of Human Rights (hereinafter: "ECtHR"), says that while making decision about launching the investigation into the cases of ill-treatment, the investigative bodies should be guided by such standards which allow launching investigation on the grounds of substantiated complaint.
- Moreover, the studied cases show that the Prosecutor's Office of Georgia refrains from the giving proper qualifications to the facts of torture and inhuman treatment even when in individual cases there is a motive for ill-treatment (getting the information, evidences or confession) or the treatment (intensive beating or beating with such a strength and in such parts of the bodies which cause prolonged physical pain even after the termination of violence) which cause severe physical or psychological pain or/and moral suffering. It could be explained on the one hand by the motive of "improving" the statistics and on the other hand by the desire to reduce the victims of crime.
- The Law of Georgia "on the Service of the State Inspector fail to ensure the fulfillment of positive obligations of a state in terms of independent and unbiased investigation of cases of torture, ill-treatment or degrading treatment committed by police;
- Having examined the cases at our disposal and by interviews, we could conclude that in spite of having the relevant information, the majority of the victims of torture, inhuman and degrading treatment committed by police refrain from going to court for receiving the compensation for the health damage, illegal administrative detention and/or any other harm made by law-enforcements.

Chapter 4. Tendencies related to the facts of ill-treatment committed by police officers

The reports of the Public Defender of Georgia, local and international organizations serve as an important source for the thorough assessment of the situation regarding torture, inhuman and degrading treatment committed by law-enforcements.

The first problem we came up to while studying the cases on ill-treatment by police officers is the tendency of increase in the number of such cases from 2014 until the end of 2017. It should be noted that in spite of the tendency if increase and worsening of the human rights situation, the state does not undertake timely and effec-

tive steps for the prevention and eradication of such cases.

According to the report of the Public Defender of Georgia drafted in 2014, 40 persons submitted a complaint to the Public Defender's Office (hereinafter: "PDO") on the ill-treatment by the law-enforcements in 2013; the PDO reviewed 12 cases out of them in the report.[2] In some cases, the victims have even mentioned the certain names and surnames. In its report for 2015, the Public Defender of Georgia stated that the human rights situation in the system of the Ministry of Internal Affairs had worsened.[3] It is also confirmed by the fact that compared to the previous years, in 2015, the number of proposals the Public Defender addressed the Prosecutor's Office of Georgia on launching investigation into the alleged cases of ill-treatment by police officers has increased.[4] Moreover, in the same report the Public Defender points out that the tendency of the previous year of using excessive power during the apprehension process turned into the tendency of ill-treatment. The Public Defender was extremely concerned about the types and location of the injuries on the bodies on the applicants. It should be noted that due to the severity of injuries, it became necessary to transport the victims to the medical facility for inpatient treatment. Therefore, along with the increase in the number ill-treatment cases, the severity of the injuries is getting worse, which could have been a result of impunity.

In 2016, out of 10 proposals sent by the Public Defender to the Prosecutor's Office, 7 were related to the alleged cases of ill-treatment committed by police officials.[5] In 2017, the Public Defender reiterated that due to the increase In the number of persons admitted in temporary detention isolators with injuries and therefore, in the number of complaints against the police,[6] fight against the ill-treatment remains to be one of the most significant challenges for the state in 2017. Problems remain in practice and in the legislation and the state fails to conduct independent, unbiased, effective and timely investigation into the alleged crimes committed by police officers.[7]

In terms of geographic distribution area, the alleged cases of ill-treatment by police officers particularly problematic in Tbilisi, Marneuli, Gori, Zugdidi, Batumi, Mtskheta, Telavi and Kutaisi. In 2015, most of the cases have been detected in the Imereti region.[8]

One more serious problem that exists in terms of ill-treatment cases is keeping the detained person under the control of law-enforcements in their own cars or at the police stations. It should be noted that a great part of the victims have not been delivered directly to the temporary detention isolators after the apprehension. They often have to stay for hours in police cars or police stations where there is neither control of the police officer's actions and nor the medical examination.

According to the reports of the Public Defender of Georgia, usually, the violence takes place in police departments and police cars.[9] As to the forms of violence, the reports of the Public Defender clarifies that almost in all the examined cases physical and psychological violence as well as a verbal abuse has been used. The Public

2 Page 46, Special report of the Public Defender of Georgia, "Practice of Investigation of Alleged Crimes Committed by Law-enforcement Officials, Regulations and International Standards On Effective Investigation", 2014.

3 The Public Defender of Georgia, the National Preventive Mechanism, Situation in Agencies subordinated to the Ministry of Internal Affairs of Georgia, 2015; page 12.

4 Ibid, page 12

5 Report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2016, page 366

6 Report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2017, page 40

7 Ibid, page 57

8 The Public Defender of Georgia, the National Preventive Mechanism, Situation in Agencies subordinated to the Ministry of Internal Affairs of Georgia, 2015; page 387

9 Special report of the Public Defender of Georgia, "Practice of Investigation of Alleged Crimes Committed by Law-enforcement Officials, Regulations and International Standards On Effective Investigation", 2014, page 7.

Defender revealed even such severe case when the victims lost their conscious after having been beaten. The cases of threatening containing the signs of crime against the victims and their family members have also been detected.[10]

The practice of transporting the detained person first to the police station and keeping them there instead of delivering immediately to the temporary detention isolator needs special attention. According to the reports of the Public Defender , the length of keeping the detained persons under the police control before delivering them to the TDI fluctuates in between 5 and 23 hours.[11] In number of cases, the detained have been kept in the police facilities overnight. This problem was also detected in the cases examined by the GDI and it will be discussed in the relevant chapter of analysis of practice. We believe that in this regard, the practice of the MIA should be examined and changed.

Proper description of ill-treatment resulted injuries into the investigation action's protocol is a significant problem. In the report of 2017, the Public Defender states that in one third out of the examined cases, the detention protocol does not contain the injuries, which are documented in the external examination protocol. The Public Defender believes that in such cases the firm presumption occurs that the physical violence was used against the detained person.[12]

The failure to launch or belated launch of the investigation, by the Prosecutor's Office, protraction of the investigation, wrong qualification of actions and inadequate involvement of the victim in the investigation process deserve separate discussion.

The information requested by the Public Defender of Georgia confirms that in a considerable number of cases the investigation does not start on the notifications on alleged ill-treatment in Tbilisi and regions of Georgia. According to the data, in 2016, the Prosecutor's Office failed to launch investigation into 146 applications/alleged cases of ill-treatment committed by police.[13] The Prosecutor's Office made an explanation that in those cases when the alleged physical abuse or psychological violence could not be confirmed the investigation does not start. To the Public Defender's opinion, such explanation is not in line with the Criminal Procedure Code of Georgia as far as the existing law does not grant the investigation bodies the discretional authority to decide individually whether to start or not the investigation into the alleged crimes.[14]

The Prosecutor's Office often starts investigation belatedly. The examination of the cases by the Public Defender of Georgia clearly revealed this problem. For example, after having examined the case of alleged ill-treatment against the accused G.O. by the employees of the penitentiary establishment and the case of alleged ill-treatment committed against accused M.P. by the law-enforcements the Public Defender concludes that in none of the case the Prosecutor's Office ensured thorough and timely investigation and reasonable involvement of the victim of the alleged ill-treatment. Inefficiency of the investigation was a result of the failure to timely reveal of the video recordings, to question/interrogate the persons who witnessed the scene, to examine the place of the crime, reconnaissance and other investigative actions.[15]

In the report we came across the cases when the detained person had lost his conscious as a result of beating, although, in spite of the request

10 Ibid, page 11

11 The Public Defender of Georgia, the National Preventive Mechanism, Situation in Agencies subordinated to the Ministry of Internal Affairs of Georgia, 2015; page 21

12 Report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2016, page 57

13 Report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2016, pages 373-374

14 Ibid, page 375

15 Ibid, page 372

of the family members, the medical examination was not provided for him.[16] Similar cases were found in the cases, which were available at the GDI for the examination. For example, in case of T.D. the medical examination was appointed after 3 months of the alleged ill-treatment when the injuries have almost disappeared from the body of the victim. We will elaborate about this issue below in the report. The problem of belated and inefficient investigation has also been mentioned in the report by the Georgian Young Lawyers' Association (hereinafter: "GYLA"). According to GYLA, the investigation often either doe not start at all or the process goes ineffectively with protraction and other shortcomings. In the report, GYLA mentions the cases which were initiated in 2013 and 2014 and were still ongoing in 2016 without any result; only some of them were terminated.[17]

One more problem, which has been quite acute from 2014 including 2017, is launching investigation into the cases with the inadequate qualification.

In the report for 2015, the Public Defender stated that in all the alleged cases of ill-treatment the investigation was launched not under articles 144^1 and 144^3 but mainly under article 333 (exceeding official powers) of the Criminal Code of Georgia.[18]

In 2016, the Public Defender of Georgia was talking about the certain numbers: out of 10 cases, only in 2 cases the investigation was launched under article 144^3.[19] It should be noted that out of 10 cases submitted to the GDI, the investigation was not launched in any of the cases under the article stipulating torture and inhuman treatment; in each of the cases the Prosecutor's Office decided that they had to deal with the alleged excessive use of official powers. Moreover, the Public Defender of Georgia officially requested from the Prosecutor's Office information about investigation launched into the alleged cases of ill-treatment. The report contains the data received by the Prosecutor's Office according to which, in 2016, the investigation was launched on 173 cases f alleged ill-treatment committed by the policemen; out of them the prosecution was initiated only in 5 cases and only against 2 persons the guilty verdict was ruled out. It should be noted that in all the cases the prosecution was initiated not under the qualification of torture or ill-treatment but under the article on exceeding official powers.[20] The GYLA also raises the issue of conducting investigation with the inadequate qualification. According to the GYLA report, apart from the cases of ill-treatment, in case of any crime committed by the police employee, the state ensures granting less grave qualification for them.[21]

One more aspect of ineffective investigation of the alleged cases of ill-treatment is related to the rights of victims themselves. It should be noted that the facts of unsubstantiated refusal by the prosecutors to grant the victim the legal status remains to be a great problem even in those cases when there was a medical report/certificate on the existence of injuries.

The Public Defender has repeatedly mentioned that only launch of the investigation by the Prosecutor's Office on the alleged facts of ill-treatment or excessive use of official power by the law-enforcement officials was not enough for ensuring the effective investigation. Unreasonable delay of the investigation, not providing enough information to the victim on the results

16 Special report of the Public Defender of Georgia, "Practice of Investigation of Alleged Crimes Committed by Law-enforcement Officials, Regulations and International Standards On Effective Investigation", 2014, page 11.

17 "Crimes, Allegedly Committed by Law Enforcement Officers and the State's response to them", analysis of the cases litigated by the Georgian Young Lawyers Association, M. Daushvili, Tbilisi, 2016, page 8..

18 The Public Defender of Georgia, the National Preventive Mechanism, Situation in Agencies subordinated to the Ministry of Internal Affairs of Georgia, 2015; page 387

19 Report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2016, page 366

20 Ibid, page 371

21 "Crimes, Allegedly Committed by Law Enforcement Officers and the State's response to them", analysis of the cases litigated by the Georgian Young Lawyers Association, M. Daushvili, Tbilisi, 2016, page 9

of investigation and all the shortcomings discussed above would not ensure the fulfillment of state's positive obligation on timely, effective and unbiased investigation of such crimes.[22]

The ineffectiveness of the investigation has been proved by the fact that following the proposals sent by the Public Defender to the Prosecutor's Office, in some cases the launch of the investigation was delayed and there has been neither any person was charged nor any victim was revealed in any of the cases. Out of 10 cases, the GDI is working on, only in three of them the persons were granted a status of a victim. Out of 16 cases presented in the report of the GYLA related to the issue of granting the status of a victim, in 15 cases the victims of the alleged crimes committed by the law enforcements were refused to be granted the status of a victim.[23]

The Public Defender also underlines the problem of institutional independence of the investigation. According to the Public Defender's opinion, presented in the report for 2014, the problem of institutional independence exists in the investigation of the alleged crimes committed by the police officers by the General Inspection of the Ministry of Internal Affairs. In spite of the fact that investigation of the criminal cases committed by the police officers falls under the competences of the Prosecutor's Office, the number of cases examined by the PDO for that period show that it was the General Inspection of the MIA, which was investigating the alleged crimes committed by police officers. The Public Defender of Georgia addressed the MIA regarding the mentioned issue and requested to send the cases to the Prosecutor's Office of Georgia.[24]

The GDI found out that the Statute of the General Inspection and the Criminal Procedure Code of Georgia was still giving the possibility to conduct investigation of the alleged crimes committed by police officers by the General Inspection. Therefore, this problem still exists at least at the legislative level.

The number and the identity of the Public Defender's recommendations regarding the ill-treatment cases from year to year confirm the gravity of the problem. The Public Defender of Georgia has repeatedly addressed the relevant structures at different time with recommendation and his vision of solving the problem of ill-treatment, although the recommendations have not been implemented and they have been staying in the reports from year to year. In almost all the reports the Public Defender of Georgia states the following:

- An independent body shall be set up in order to investigate the alleged crimes committed by the employees of the Ministry of justice, Prosecutor's Office of Georgia and the Ministry of Corrections;
- The Prosecutor's Office of Georgia shall start investigation timely immediately after receiving the information and ensure provision of investigative actions within the short deadlines. In case of existing of signs of crime, the investigation should start under the article 1441 and 1443 of the Criminal Code of Georgia and should be conducted wit maximum effectiveness;
- The Ministry of Internal Affairs of Georgia should ensure the intensive training of its employees on the topics of apprehension procedures, using proportional power and refraining from the use of excessive power. All the facilities of the Ministry of Internal Affairs shall be equipped with the relevant vide-cameras ,which will make recording in those places where the citizens have direct contact with the representatives of the law-enforcement bodies. The information on the implemented activities should be sent to the PDO.

22 Special report of the Public Defender of Georgia, "Practice of Investigation of Alleged Crimes Committed by Law-enforcement Officials, Regulations and International Standards On Effective Investigation", 2014, page 11

23 Crimes, Allegedly Committed by Law Enforcement Officers and the State's response to them", analysis of the cases litigated by the Georgian Young Lawyers Association, M. Daushvili, Tbilisi, 2016, page 11.

24 Special report of the Public Defender of Georgia, "Practice of Investigation of Alleged Crimes Committed by Law-enforcement Officials, Regulations and International Standards On Effective Investigation", 2014, page 29-30.

Chapter 5. From independent investigative mechanism to the Service of the State Inspector

According to the information discussed in the first chapter, it is a fact that a problem of ill-treatment by law-enforcement officials really exist. Moreover, is also a fact that the state, taking into consideration the institutional setup of the relevant structures, does not have the ability to efficiently fight the problem. After the elections in 2012, the authorities had real possibility and the mandate granted by people to undertake effective steps in order to eradicate this vicious practice, although without any result. Therefore one of the main requests that has been raised before the state for the last several years is the creation of institutionally and hierarchically independent body, which will be responsible for the investigation of the alleged facts of ill-treatment and on the procedural supervision.

Even back to 2011, the Directorate of Human Rights and Rule of Law of the Council of Europe elaborated the guidelines on eradicating the impunity for serious human rights violations. According to this guideline, the state should pay special attention to the protection of the European convention, in particular Article 3 (prohibition of torture and ill-treatment). For this aim the national legislation should envisage the relevant criminal mechanisms.[25]

Already in 2013, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg was talking about the problem of ill-treatment committed by police officers in Georgia and the need for introduction of the independent investigatory mechanism. To his opinion, in spite of the fact that since 2007 the situation as regards to the treatment of persons detained by police had considerably improved over time, there were allegations on ill-treatment by police officers and these were generally not investigated.[26] The Commissioner addressed the state with the recommendation that "As part of the ongoing structural reforms, time has come for Georgia to decide, without delay and in the light of a history of past systematic abuses, on the best way to conduct independent and impartial investigations of violations of human rights whenever there is a suspicion that law enforcement agents may be involved. By doing so, decision-makers should try to minimise the pernicious consequences of "colleagues investigating colleagues",[27] and take into consideration all the principles established by the ECtHR based on articles 2 and 3 of the European Convention of Human Rights.[28]

The Council of Europe expert, James Murdoch in his report drafted in 2013, that the establishment of independent investigatory mechanism for the investigation of all the complaints on the alleged cases of ill-treatment and etc. He believes that the alternative to the independent investigatory mechanism cold be at least the establishment of a n independent body, which would have the supervisory authority over the individual cases examined by the prosecutor.[29]

The problem of lack of independent investigatory mechanism was underlined in the Human Rights Watch reports for the years of 2016[30], 2017[31] and 2018[32]. The organization clearly

25 Guidelines on Eradicating Impunity for Serious Human Rights Violations". Directorate of Human Rights and Rule of Law, Council of Europe, Strasbourg, 2011.

26 "Georgia in Transition: Report on the Human Rights Dimension: Backround, steps taken, remaining challenges", page 22, Thomas Hammarberg, September 2013, available on the following web-page: http://eeas.europa.eu/archives/delegations/georgia/documents/human_rights_2012/20130920_report_en.pdf

27 Ibid, page 23.

28 Ibid, page 22.

29 James Murdoch: "Country report on Georgia: Combating ill-treatment and impunity and effective investigation of ill-treatment. Technical Report". Council of Europe and EU joint Project on fighting against ill-treatment and impunity

30 Human Rights Watch, World Report 2016: https://www.hrw.org/world-report/2016

31 Human Rights Watch, World Report 2017: https://www.hrw.org/world-report/2017

32 Human Rights Watch, World Report 2018: https://www.hrw.org/world-report/2018

stresses the non-existence of independent and effective mechanism for the investigation of ill-treatment by law-enforcements. This problem is mentioned by the UN Special Rapporteur in his 2015 report. Having learned about the tendencies of physical and verbal abuse of detained persons by law enforcement officers, despite the guarantees provided by law, the Special Rapporteur expressed concern about the improper investigation[33]. In the context of the ineffectiveness of the investigation, the Special Rapporteur expressed doubts about the establishment of the new department within the prosecution system. He stated that in a situation when the Prosecutor's Office is not the substitute for the independent investigating mechanism for investigating the cases of torture and ill-treatment, it is unclear, how the newly created department will act/work within the Prosecutor's Office.[34] The Council of Europe believed that the best way of solving the problem of ill-treatment in Georgia was the establishment of an independent investigative mechanism, which will deal with the complaints against law enforcement officers and employees of the penitentiary establishments on the facts of ill-treatment based on the recommendations and proposals by the Public Defender of Georgia and other organizations.[35]

According to the authors of the report of the International Center on Transitional Justice for 2017, the authors of the mostly comprehensive set of recommendations made for the government regarding the establishment of the independent investigating mechanism were the Offce of the UN High Commissioner for Human Rights, "Open Society Fund", the Council of Europe and the EU.[36] The proposal considered three investigative and prosecutorial models: 1) a completely independent investigative mechanism situated outside the executive; 2) a mechanism located within the executive branch of government, but which enjoys independence guaranteed by law; and 3) an executive government agency with powers akin to that of the Ombudsman. The proposal concluded that in the Georgian context only an independent mechanism located outside of the executive would be consistent with international standards.[37]

Although, in spite of the multiple promises, the authorities failed to ensure the establishment of the independent investigative mechanism and the problem of impunity of the law-enforcement officers for violating human rights remained. In June 2017, instead of the independent investigative mechanism, the government initiated the proposal to establish a new department within the Prosecutor's Office, the mandate of which would be the investigation of alleged facts of ill-treatment by law-enforcement officers.[38] This initiative was followed by an acute criticism on the part of the local non-governmental organizations and other interested persons. The author of the research funded by the Open Society Georgia in 2017, agrees with the international experts, local non-governmental organizations and the Public Defender of Georgia on the opinion about the creating the independent investigative mechanism. To his opinion, it should be a body which will have the authority to investigate and prosecute and strongly opposes the version suggested by the Ministry of Justice about the creation of a separate department as far as the Prosecutor's Office could not be considered as impartial body, which would allow it to conduct effective investigation and prosecution.[39] The author talks about the additional steps and believes that the role of a judge

33 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia; 2015, December 1, A/HR/31/57/Add.3; P. 8.

34 Ibid, page 10

35 Council of Europe, Observations on the human right situation in Georgia: an update on justice reforms, tolerance and non-discrimination; Strasbourg, 12 January 2016, P. 3-4. Para 12.

36 The Prospects of Transitional Justice in Georgia, ICTJ, February 2017, page 23.

37 Ibid, page 23.

38 Amnesty International Report for 2017/2018 "The state of the world's human rights", page 129

39 Brief Analysis on the existing situation on torture and ill-treatment in the recent years in Georgia, Besarion Bokhashvili, 2017, funded by Open Society Georgia, pages 19-20.

regarding torture and ill-treatment should be increased. In particular, if a judge has a reasonable doubt that a person had been subjected to torture or ill- treatment, the judge must be afforded the possibility to order the relevant agencies conduct efficient investigation, take measures to protect the victim, transfer the person to another detention facility and allowing a person to bring relevant materials before a judge.[40]

On 1 March 2018, the Government of Georgia presented to the Parliament of Georgia completely new investigative mechanism by the draft law on the "Service of State Inspector ". The draft law was approved by the Parliament of Georgian 21 July 2018. The main part of the law will enter into force on 1 January 2019. According to the explanatory note[41] of the draft law, its aim is to create an independent institution for impartial and effective investigation of certain type of human rights violations committed by the law-enforcement bodies.

This model of independent investigative mechanism caused diversity of opinions and s skepticism. According to the Public Defender of Georgia, if the aim of the Governments initiative was the creation of an independent investigative mechanism, leaving the investigative authority to lead the proceedings with the Prosecutor's Office will considerably weaken the process. It is necessary to allow the Service of the State Inspector to conduct investigation independently, without mandatory instructions given by the Prosecutor's Office and without obtaining the permission from them.[42]

Coalition "for an Independent and Transparent Judiciary" shared the opinion of the Public Defender and stated that in order to effectively perform the imposed duties, the newly crated investigative institution at least should be granted with all the necessary powers and authority to conduct independently the significant investigative actions. The Service should be equipped at least with the minimum level of operational independence, which is necessary for thorough investigation and in the best case, the Service should have the functions of criminal prosecution and representation at court.[43]

To our opinion, the Georgian Law "on Service of the State Inspector" does not comply with the recommendations given to the government by the local and international organizations and its existing edition yet again leaves the threats for ineffective investigation of the ill-treatment cases because of the following reasons:

According to the law, the Service of the State Inspector will have the authority to conduct investigation into the crimes committed by law-enforcement officers such as torture, threat to torture, degrading or inhuman treatment, excessive use of power/exceeding the power by means of violence or by use of the arms or by abuse of dignity of a victim; forcing to testify and other crimes committed by a law-enforcement official which caused the termination of human life when the victim was under control of the police. This regulation leaves out of the mandate of the State Inspector those crimes which are committed by the law enforcement officers but are not connected with the violence or the termination of one's life, although by nature amount to the illegal use of the granted authority, for example putting the drug or firearms, which are the ground for recent accusations towards the law-enforcement bodies.[44]

40 Ibid, page 22.

41 See the draft law on "Service of State Inspector" and its explanatory note in Georgian on the following web-page: https://info.parliament.ge/#law-drafting/15233

42 News: Public Defender Assesses the Draft law on State Inspector's Service: http://www.ombudsman.ge/en/news/public-defender-of-georgia-assesses-draft-law-on-state-inspectors-service.page

43 Coalition for an Independent and Transparent Judiciary, 14 February 2018: http://coalition.ge/index.php?article_id=176&clang=0

44 http://www.tabula.ge/ge/story/130696-gdi-m-birzha-mafias-saqmeze-moraluri-zianis-anazghaurebistvis-sasamartlos-mimarta; http://liberali.ge/news/view/28233/eliso-kiladze-saertashoriso-organizatsiebs-mimartavs-misi-shvilis-saqmes-monitoringi-gautsion; https://imedinews.ge/ge/dzalovnebi/24055/narkodanashaulistvis-dakavebuli-huseinovis-ojakhi-ambobs-rom-mas-narkotiki-chaudes;

Also, according to the law, the independent investigative mechanism will be established under the Office of the Personal Data Protection Inspector, whose primary function is the protection of personal data. Therefore, it is arguable and neither the government managed to present the convincing arguments how one and the same institution would manage two extremely important functions – protection of personal data and investigation, moreover, considering the fact that the personal data obtained during the investigation will fall again under the competence of the same institution. Coming from the mentioned, there are doubts that the Personal Data Protection Inspector will fail to be a controlling and independent party while performing his/her duties at least in the areas under its competences in protecting the personal data from the interference of the Prosecutor's Office. Therefore, we think that the investigative body should be established as a separate institution. As for the competence of the Chief Prosecutor's Office in this part, we consider it unconstitutional with regards to Article 17 of the Constitution. Therefore, we have filed a lawsuit within the framework of the project and addressed the Constitutional Court of Georgia. We will talk about this issue below in the report.

The subject of criticism of the law is also the fact that its jurisdiction is also spread on the Minister of Internal Affairs and the Head of State Security Service. According to the draft law, the inspector will not be able to investigate the crimes is they are committed by the **Minister of Internal Affairs and the Head of the State Security Service**. These officials are head f the law-enforcement bodies and in reality have the possibility to point out, order and give a task to thousands of employees to undertake certain actions. Therefore, it's not logical to restrict the mandate of the law with regards to those persons who possess in their hands the mostly concentrated authority. The latter would promote impunity among the certain group of people.

We believe that in order to ensure the effective functioning of the given service, it is important to grant the institution with the authority to conduct the investigation independently, without the interference of a prosecutor and only with the adequately substantiated written application of the prosecutor in order to fully avoid unlawful interference into the work of the institution and ensure the establishment more or less independent investigative mechanism.

Chapter 6. International Standards and Strategic Litigation

Taking into consideration that one of the aims of the study is the assessment of the effectiveness of the investigation of the alleged facts of torture, inhuman and degrading treatment by police officers, in this respect, it is important to analyze the positive obligations envisaged by the international standards on the investigation of torture, degrading and inhuman treatment by police officers.

For the absolute prohibition of the ill-treatment, the UN[45] and CoE[46] member states (including Georgia) undertook the positive obligation of conducting investigation on all the crimes. By means of the case-law, the European Court of Human Rights established set of standards, ac-

45 UN Convention on Torture and other cruel, inhuman and degrading treatment, article 12: 10 Dec 1984, available on the following web-page: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx,; Declaration N3452(xxx) on of the UN General Assembly on Protection of all the persons against Torture and other cruel, inhuman and degrading treatment, 9 December 1975, article 9; available on the following webpage: http://www.un-documents.net/dpptcidt.htm.

46 Council of Europe Convention on Human Rights and Fundamental Freedoms, 4 November 1950, article 3, available on the following web-page: https://www.echr.coe.int/Documents/Convention_ENG.pdf

cording to which, within the framework of the several judgments[47] delivered against Georgia, the country took the obligation before the Committee of Minister of the Council of Europe to undertake the measures such as on the other hand the creation of the proper legislative guarantees in order to ensure the independence and effectiveness of the investigation of crimes committed by public servants and on the other hand, conducting effective investigation into the lost cases or the cases terminated with plea bargain.

According to the internationally recognized standards, on the alleged facts of torture, , inhuman and degrading treatment by police:

a. the state shall ensure immediate and effective investigation;

b. the investigative bodies shall have the obligation to fully obtain all the information needed for the investigation;

c. the maximum involvement of a victim in the investigation process and his/her access to the investigation materials shall be ensured;

In order to ensure full incorporation of the above-mentioned standards in the Georgian legislation, we addressed the Constitutional Court of Georgia with a lawsuit where we made disputable the authority of the Chief Prosecutor, which implies the right to change the investigative subordination on a certain case without any prerequisite.

According to paragraph 6(a) of article 33 of the Criminal Code of Georgia, "the Chief Prosecutor of Georgia, as well as the person authorized by him/her, shall have the power to take a criminal case from one investigative agency and to submit it to another agency for investigation regardless of jurisdiction". This norm means that the Chief Prosecutor has a right to retrieve the criminal case from one investigative agency (in spite of the defined subordination) and to transfer it to the agency, whose employee (police officer) is blamed to have allegedly violated the right ensured by Article 17 (prohibition of torture, inhuman, cruel or degrading treatment) of the Constitution of Georgia.

We believe that Article 17(2) of the Constitution of Georgia stipulates the positive obligation of the to state to conduct effective investigation. Coming from the fact that the Constitutional Court does not have a case-law on the positive aspect of Article 17(2), for the better understanding of the case, the lawsuit is mainly based on the case-law of the European Court of Human Rights. The ECtHR points out that the state has two obligations: (1) negative, according to which the states are not allowed to interfere or to restrict the right and (2) positive, which implies from the states "that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity".[48]

The court practice introduced the legal standards for the effective implementation of positive obligation. Among them, in 7 cases (so called cases of "Gharibashvili Group")[49] against Georgia, the court stated that it was necessary to ensure practically as well as hierarchically and institutionally independent investigation[50]. The person responsible for and carrying out the investigation should be impartial legally as well as

47 judgments of the European Court for Human Rights: Garibashvili v. Georgia (11830/03; Khaindrava and Dzamashvili v. Georgia (18183/05; Mikiashvili v. Georgia (18996/06; Dvalishvili v. Georgia (19634/07; Tsintsabadze v. Georgia (35403/06; Enukidze and Girgvliani v. Georgia (25091/07).

48 Gharibashvili v.Georgia #118030/03, § 59; *Anguelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 338, ECHR 2005-III

49 CharibaSvili v.Georgia (compleint #118030/03), 29 July 2008; Dvalishvili v.Georgia (complaint #10634/07)m 15 February2012; Girgvliani and Enukidze v,Georgia (complent @25091/07/2016, 26 April 2011. Mikiashvili v Georgia (Compleint #18996/06, 9 October 2012, Khaindrzva and Zdamashvili v. Georgia (complaint # 18183/05), 8 June 2010.

50 Gharibashvili v.Georgia, para 61

in practice. No hierarchical or institutional connection with those implicated in the events[51]

To our opinion, the positive obligation emerged by reading together the first and the third article has been stipulated identically by Article 17(2) of the Constitution of Georgia, whereas the disputable norm contradicts the latter as far as provides grounds for conducting institutionally subordinated, ineffective investigation.

Chapter 7. Statistical data

Before staring the overview of the individual cases and description of the violations found in them, it is important to analyze the information received from the Prosecutor's Office and from the common courts on launching investigation and on the judgments delivered on this category of cases. In particular:

In response to our request, on 17 October 2017, we received the information from the Prosecutor's Office of Georgia that in the years 2013-2017, the investigation was launched in 452 cases of torture, inhuman and degrading treatment whereas the prosecution was initiated only in 76 cases. The Chart below shows the detailed information:

	YEAR 2013				YEAR 2014				YEAR 2015		YEAR 2016	YEAR 2017 9 MONTHS
Launch of investigation (cases)	203 cases				95 cases				130 cases		173 cases[1]	149 cases[2]
Initiation of prosecution (persons)[3]	144[1]	144[3]	333	332	144[1]	144[3]	147	333	144[1]	333	333	333
	14	4	10	7	3	4	7	13	4	3	5	1

1 Article 1441 of the Criminal Code - 1 case, Article 1443 of the Criminal Code - 3 cases, Article 333 of the Criminal Code - 169 cases.

2 Article 1441 of the Criminal Code - 5 cases Article 1443 of the Criminal Code - 10 cases, Article 333 of the Criminal Code - 134 cases.

3 The number indicated hereby does not coincide to the above-mentioned data of 76 persons, as far as in some cases the prosecution against one and the same person was initiated under two different articles and in the prosecution indicator, such persons are mentioned twice.

As it is seen on the chart, the indicator of launching the investigation by the Prosecutor's Office in cases of alleged crimes committed by police officers increases starting from 2014, although, in 2014-2015, there is a proportional decrease in launching the investigation on torture, inhuman or degrading treatment and in number of initiated prosecution. The situation in 2016-2017 deserves special attention as far as the investigation was launched in 322 cases (29 out of them under Articles 144[1] and 144[3] of the Criminal Code of Georgia) and prosecution was initiated only against 6 persons and only under the Article 333 of the Criminal Code of Georgia – exceeding official powers). Such statistical data when, in reality, the facts of torture and inhuman treatment cases have been increasing annually, directly indicates to the problem in adequate

51 Enukidxe and Girgvliani v. Georgia, para. 243

investigation and effective prosecution and full confirms the opinions expressed by the Public Defender of Georgia or other organizations and experts related to ineffectiveness of investigation into this category of cases.

According to the information provided by the Supreme Court on 11 August 2017, none of the cases were tried by the common courts under article 144^2 of the Criminal Code of Georgia in 2013-2017; whereas 25 criminal cases were tried under articles 144^1 and 144^3 against 85 persons and 18 out of them (most of them were charged with committing torture) were acquitted by the court.

The following table shows the statistics of the cases tried in courts:

	YEAR 2013		YEAR 2014		YEAR 2015		YEAR 2016		YEAR 2017 7 MONTHS		YEAR 2013-2017
Articles of the Criminal Code of Georgia	144^1	144^3	144^1	144^3	144^1	144^3	144^1	144^3	144^1	144^3	144^1,144^3
Total (cases/ persons)	3/16	2/20	6/18	5/9	2/2	2/3	2/11	1/2	2/4		25/85
Tbilisi	1/8	1/15	3/8	2/3			1/7[4]		1/3		9/44
Rustavi	1/5	1/5	½				1/4[5]		1/1		5/17
Zugdidi				1/1	1/1[6]	2/3[7]		1/2[8]			5/7
Kutaisi	1/3			1/1							2/4
Gori				¼							1/4
Ozurgeti			1/3								1/3
Khelvachauri			1/5								1/5
Bolnisi					1/1[9]						1/1

1 Judgement of the Tbilisi City Court delivered on 30 May 2016 on the fact of torture committed by one convicted prisoner against another convict.

2 Judgement of the Rustavi City Court delivered on 17 November 2016 on the fact of torture committed by an indvidual citizen against another one.

3 Judgement of the Zugdidi District Court delivered on 28 July 2015 on the fact of torture committed by an indvidual citizen against another one.

4 Judgement of the Zugdidi District Court delivered on 11 February and 2 July 2015 on the facts that had place in penitentiary establishments in 2010-2012.

5 Judgement of the Zugdidi District Court delivered on 29 November 2016 on the facts that had taken place in penitentiary establishments in 2009-2012.

6 Judgement of the Bolnisi District Court delivered on 19 August 2015 on the fact of torture committed by an individual person against his wife.

Based on the data provided by the Supreme Court of Georgia, we requested the information on all the cases separately from the common courts. Unfortunately, the courts provided only 25 judgments, which constitute only 6-% of the total number and most of them are related to the facts of torture and inhuman treatment in penitentiary system in 2012-2018. In particular, out of 4 cases related to above mentioned crimes committed in 2013-2017 tried at District Courts of Ozurgeti, Bolnisi, Gori and Khelvachauri, 3 of them are delivered not on the fact of torture and ill-treatment committed by law-enforcement officers and 1 is delivered on the fact of inhuman treatment by the employee of the penitentiary establishment in February-April 2012.

Out of the 5 judgments delivered by Zugdidi District Court, 1 was related to the torture committed by an individual person, three – on facts of torture and inhuman treatment committed by the employee of the penitentiary establishment in 2009-2012, and one – on the fact of torture and inhuman treatment committed by high ranking police official in 2009.

In response to our request, Rustavi City Court provided only 2 judgments, one out of them was delivered against the individual person and on – against the employee of the penitentiary establishment for the facts of torture committed in 209-2012. The refusal to send the other judgments was explained by the fact that those cases were tried on closed court hearings.

Because of the similar justification, Kutaisi City Court has not sent any of the judgments. The letter received by them clarified that the hearing of these category of cases was partially closed, and therefore, according to the Georgian Law "on the Protection of Personal Data", they did not have the authority to send the judgments even in the coded form.

The similar argument was used by Tbilisi City Court. They mentioned that the requested information could be sent only partially as far as the hearing of such category of cases was closed, therefore they did not have the possibility to process the information and send the judgments. As for the received 4 judgments, 1 out of them was delivered on the fact of torture of one convict against another on in the penitentiary establishment and 3 – on the facts of torture and inhuman treatment committed by the high ranking officials of the Ministry of Corrections and the Ministry of Defense in 2007-2012.

For thorough examination of the issue, we compared the judgments received from the courts to the statistical data and it turned out that the data for 2015-2016 fully coincides with the judgments that made clear that in these years none of the judgments were delivered on the alleged facts of torture, inhuman and degrading treatment committed by police officers. It is logical that such judgments could not have been delivered in 2017 as far as in 2016-2017, the Prosecutor's Office of Georgia has not initiated any prosecution at all against police officers under the articles 144^1 and 144^3 of the Criminal Code of Georgia.

Therefore, having analyzed the available statistical data, we could conclude that in 2015-2017, none of the judgments were delivered in common courts of Georgia o the facts of torture, inhuman and degrading treatment by police officers, which directly indicates to the ineffectiveness of the investigation and the procedural supervision.

Chapter 8. Analysis of investigation and judicial practice for the facts of torture, ill-treatment and degrading treatment by police

The present chapter of the study will analyze all the cases under the proceedings of the GDI and the cases shared (38 cases in total) by the local organizations with regards to the effectiveness of investigation conducted by state on the ill-treatment cases. In order to identify the problems more precisely, the study contains the information got based on the interviews with 11 victims and 132 lawyers by means of questionnaires elaborated with the involvement of sociologist.

The examination of the cases revealed the following several significant problems, which completely undermined the reliability of the state to fulfill the obligation taken in terns of fighting the torture, inhuman and degrading treatment by police officers:

Failure to launch an investigation or delayed launch of the investigation – The importance of timely investigation has been underlined number of times. This factor is extremely important in terms of effective response to such category of cases as far as the delayed investigation could impede collection of evidences and there is a risk that the evidences related to torture or ill-treatment, especially if committed by a public servant, could be destroyed and the injuries inflicted on the victim – cured. Therefore, the obligation of the state – to ensure the effective investigation of the cases of torture and ill-treatment imply not only to investigate the case in time, but also its timely launch in order not to meet impediments on the way of revealing the offender.

As it could be seen from the examined cases, the launch of the investigation of the cases of torture, inhuman and degrading treatment by police officers is usually delayed unless the person involved addresses himself/herself or the Public Defender of other non-governmental organizations interfere. In spite of the fact that a great part of the victims of ill-treatment had been place in temporary detention isolators for at least several hours and the relevant filed contain information on injuries inflicted upon them. The clear example is a case of D.G., which was detained on 26 June 2016 and accused for robbery. As the victim declares, he was beaten in order to get confession, as a result of which D.G got serious injuries, among them the following: several teeth were damaged, he had cut wound in the areas of nose and face and etc. the Investigation into the case was launched 20 days after the incident. The situation is even worse in case of Sh.P, who because of fear of the strict punishment, swallowed a big dose of drugs and was physically bused while asking for the medical care. As a result, Sh.P had been in the coma for several days. The investigation into this case was also launched later, one week after the incident in spite of the fact that the case file contains video material of delivering Sh.P. to the police station and of his search, which clearly shows the fact of ill-treatment against him. Similar situation is in case of I.Kh., which was detained without any ground by police officers on 16 February 2017 and physically abused by them. As the victim declares, he was asked to confess the crime he had not committed and while the police officers were physically abusing him, they were threatening by putting the drugs a evidence. After it became clear that he was detained mistakenly instead of another person, he was released. The medical examination revealed that I.Kh. had number of injuries and bruises. It should be noted that the

investigation started on 15 March 2017, only one month after the incident, following the statement made by the Georgian Young Lawyers Association.

The victims of ill-treatment were also interviewed regarding this issue. Out of 11, only 6 victims answered the question on the timely follow-up on their statements and only in one case the reaction followed after 5 days of his/her statement; other 5 persons declare that the investigation of their cases were delayed.

According to Article 100 of the Criminal Procedure Code of Georgia, upon receiving the information about the crime, the investigator and prosecutor are obliged to initiate the investigation.[52] Article 101 stipulates that "the grounds for the initiation of investigation shall be the information about a crime that is provided to an investigator or prosecutor, is revealed during the criminal proceedings, or is published in the media".[53] Having analyzed the mentioned provisions we could conclude that unlike the internationally recognized standards, the Criminal Procedure Code of Georgia does not envisage the obligation of immediate launch of the investigation by the investigation agency as well as there are no unified standards for the grounds of lunching the investigation and in each individual case the decision is made by the investigator and his/her supervisor prosecutor. As for the decision-making persons, according to the above-mentioned norms, they could for an unlimited period assess the content of the received information subjectively, wait for the reaction of the society or the human rights defender and only then decided whether to start or not the investigation. This decision has been delayed several times that promoted the destruction of the existing evidences and impede making the final decision.

Wrong qualification of cases – the examination of cases revealed that the Prosecutor's Office refrains from giving the proper qualification to the ill-treatment cases committed by law-enforcement officers. It is proved by number of studies and reports. Even the statistics provided by the Prosecutor's Office showed that in 2016-2017 (unfortunately the similar statistics for the previous years do not exist), out of 322 cases launched on the facts of torture, ill-treatment and degrading treatment by police officers, only 19 (5%) were qualified under Articles 144^1 and 144^3 of the Criminal Code (exceeding official powers). Having analyzed 38 cases, we concluded that only in two[54] cases the investigation was launched under the proper qualification, whereas in two other cases[55], the qualification was changed due to the request by the non-governmental organizations, In all other cases the investigation was ongoing or terminated without changing the qualification. In these cases there were tangible evidences, which proves the fact of ill-treatment by police officers. This problem has also been revealed during the interviews: out of 9 interviewed victims, the investigation was launch with proper qualification only in 3 cases and only 30% of lawyers pointed out[56] that the investigation was launched under the proper qualification.

According to Article 144^1 of the Criminal Code of Georgia torture means creating conditions or any act which by its character, intensity and length causes severe pain or suffering, whether physical or mental, with the aim of getting information, evidences or confession, or intimidating

52 Criminal Procedure Code of Georgia, Article 100
53 Ibid, Article 101.
54 Cases of A.K. and I.KH.
55 Cases of S.M. and A T.
56 In total 10 lawyers answered the question

or coercing or punishing him for an act he or a third person has committed or is a suspect of having committed.[57]

According to the comments of the General Part of the Criminal Code of Georgia, "creating conditions" means putting a person in inhuman conditions, for example placing a person in a dark, unfurnished room with permanent noise, where there is no so called "sanitary unit", not providing a person with adequate meal and with small doses and etc. whereas "treatment" means more active, aggressive act such as beating, other type of violence, coercing a person to stay for hours on toes, with the hands risen, on knees and etc. These actions amount to torture in cases when they bear a special character, intensity, length and therefore causing the severe results.[58]

According to the same book, the character of the action means a case, when such action conducted once, causes as a rule the severe results amounting to torture, the intensity of the action means the level of violence and its continuity (for example: periodic beating or beating with such a force and to such organs, which causes continuous physical pain even after the termination of violence, whereas the length of the action refers to the cases when taken separately, is not distinctive by character or intensity but continues for such a long period enough to cause the result mentioned in the provision – severe physical pain and mental suffering.[59]

According to Article 144^3 of the Criminal Code of Georgia, degrading treatment of a person or coercion, putting in an inhuman and degrading condition, which inflicts serious physical, mental pain or suffering.[60]

The authors of the comments on the General Part of the Criminal Code of Georgia believe that putting a person in inhuman condition in fact does not defer from the objective part of torture as far as it could be expressed in the same act which is characteristic for the torture, the difference is that inhuman treatment is not driven by the desire to get the information, evidence of confession.[61] As for the Criminal Code of Georgia, it is regulated under Article 333, which envisages responsibility for exceeding official powers by an officer or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest.[62]

According to the opinion of the authors of the comments on the General Part of the Criminal Code of Georgia, the exceeding official power could happen in the following situation: a) when a public servant conducts an action which falls under the authority of another public servant or another institutions; b) Action undertaken by a public servant, which could have been done only in exceptional circumstances, defined by law; c) Action undertaken by a public servant, the decision on which should be made by a collegial body; d) Action undertaken by a public servant, which shall not be undertaken in any circumstance by any official.[63]

57 Article 144^1 of the Crominal Code of Georgia.

58 Comments on the General Part of the Criminal Code of Georgia, Part I, G. Mamulashvili, M. Lekveishvili, N. Todua, Publishing House Meridiani, 2011 year, page 248

59 Ibid, page 247

60 Article 144^3 of the Criminal Code of Georgia.

61 Comments on the General Part of the Criminal Code of Georgia, Part I, G. Mamulashvili, M. Lekveishvili, N. Todua, Publishing House Meridiani, 2011 year, pages 258-259

62 Article 333, Criminal Code of Georgia.

63 Comments on the General Part of the Criminal Code of Georgia, Part I, G. Mamulashvili, M. Lekveishvili, N. Todua, Publishing House Meridiani, 2011 year, page 146.

As we see, these two notions (on the one hand torture and inhuman treatment and on the other hand – exceeding official powers) by its content significantly differ from each other. While the provision on exceeding official power generally pushes the public servant to act within his/her authorities, the provision on torture and inhuman treatment envisages the punishment of all the acts which cause physical and mental pain and suffering. The threat posed by the actions could be assessed by the severity of a sentence stipulated by the legislation: while the most severe punishment of exceeding official powers is up to 8 years, and it considered to be severe crime, come cases of torture could lead to the life imprisonment.

Considering the above-mentioned, the logical question is raised, why the state refrains from granting the proper qualification to the facts of torture and inhuman treatment while in individual cases either the motive of torture is vivid (receiving information, evidences, confession) or the treatment (systematic beating and beating with such a strength and in parts of bodies, which causes continuous physical pain even after the termination of a violence), causing severe physical or mental pain and/or mental suffering.

First of all it is driven by the desire to make the criminal statistics more better and on the other hand it is related to refraining from granting the status of victim to a persons suffered as far as Article 333 envisaged severe crime and if the prosecutor refuses to to grant the status of victim to a person the latter will not have the possibility to appeal to the court until 01 January 2019. This point of view has been confirmed by the number of decisions made by the prosecutors on refusal to grant the status of victim in such cases. We will elaborate this issue later in the report.

Involvement of a victim in the investigation process and access to the investigation materials – Involvement of a victim in the investigation process of a criminal case and access to the investigation materials is a serious problem in the investigation practice. In particular, out of 38 cases, examined by use, the person was granted with the status of victim only in 6 cases. In one case[64] a person was granted with the status of a victim in a case when the prosecution was initiated against a police officer under the Article 333 of the Criminal Code of Georgia, in another case[65], the victim of ill-treatment committed a suicide and his father was granted a status as assignee of the victim. In other 4 cases[66] the persons were granted a status of a victim after the human rights defenders persistently insisted on it (in case of V.M. – nine months after the incident), even by means of court appeal.

In all other cases, the victims of torture, inhuman and degrading treatment were refused the status of victim by the motive that the persons who committed crimes have not been identified and therefore, all these persons were devoid the right to get acquainted with the case files and to be involved in the investigation process. The analysis of cases reveals that a person has not been granted the status of victim even in cases when there was a forensic medical conclusion that bodily injuries had been inflicted on a person and/or the person named the name of police officers who inflicted injuries and conducted inhuman and degrading treatment against him.[67]

The existence of a problem with regards to the mentioned issue has also been confirmed the victims interviewed within the framework of

64 Case of P.K.
65 Case of A.K.
66 Cases of A.T., V.M., I.K.,and I.Kh
67 Case of K/s., I.N., G..G.and others

the study. According to them (9 respondents in total), none of them were granted a status of a victim by the initiative of the Prosecutor's Office. After having requested the status of a victim, 3 of them received the status within different timeframes[68] after launching the investigation and 5 persons were refused by unknown motive. The mentioned persons appealed the decision to the superior prosecutor and one of them – to the court. Thus, the court satisfied one complaint and another one was satisfied by the superior prosecutor, although in 3 other cases, the superior prosecutor refused the status by the same motive. The same situation has been described by the interviewed lawyers as far as out of the 132 interviewed lawyers only 8 had the cases in their practice when their defendant was granted the status of a victim in such category of cases.

As we could see, the prosecutor's Office does not make decisions on granting the status to the victims of torture, inhuman or degrading treatment in spite of the fact that this issue is on of the main parts of the effective investigation and the Public Defender of Georgia and local and international experts expressed their concern around this issue.

This problem derived from the Georgian legislation as well as from the practice generally established at the Prosecutor's Office on granting the status of a victim. In particular, the Constitutional Court of Georgia in case Khatuna Shubitidze against Parliament of Georgia circumstantially discussed this issue and stated that the victim with her interest is naturally more than a witness, which implies her adequate involvement in the process. The victim should be informed about the proceedings of the case at all stages. She shall have the possibility to appeal on any category of crime, in the court inter alia as well as the decision of the prosecutor to grant a status of a victim, refuse to initiate the prosecution or termination of prosecution/investigation; she shall have an access to all the case files if it does not contradict the investigation interests; and shall have the possibility to attend the hearings, to make a statement, express opinions and present the evidences.[69]

Paragraph 5 of Article 56 of the Criminal Procedure Code of Georgia, before the changes made to it on 21 July 2018, stipulated hat in case of existence of adequate grounds for granting a person a status of victim, the prosecutor delivered a decree by himself/herself by his initiative or upon the application of a person. If the prosecutor does not satisfy the application, a person has the right to appeal to the superior prosecutor with the request only once. The decision of the superior prosecutor is final and cannot be appealed except the cases [70]when the severe crime took place.

This formulation, in particular a reservation made by the lawmakers on existence of "adequate ground, is a serious problem. Moreover, having a status of a victim a person is given the right to get acquainted with the case filed and be informed about the decision of the investigator and prosecutor such as the initiation of a prosecution, type of deprivation of liberty against him/her, etc

To the opinion of the authors of the comments to the Criminal Procedure Code of Georgia, for the participation of a victim in the criminal proceedings with the procedural status, it is necessary to have the formal and material prerequisites – upon the launching the investigation, if a prosecutor learns about the fact of inflicting in-

68 5-10 days - 1; 10-20 days - 1, a month later - 1

69 Decision of the Constitutional Court of Georgia on case Khatuna Shubitidze against the Parliament of Georgia, №1/8/594, 30.09.2016, available on the following web-page in Georgian:<http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaqe-xatuna-shubitidze-saqartvelos-parlamentis-winaagmdeg1.page

70 Article 56(5) of the Criminal Procedure Code of Georgia.

juries as a result of act of crime, he should grant the status of victim by Decree.[71]

The prosecutor's Office interpreted this provision in a different way not only for this category of cases, but for al the criminal cases.
In a criminal case, a person is granted a status of a victim after the fact of the crime is determined and the prosecution is initiated against the person to committed a crime. Such practice results in a situation when the victims of torture, inhuman and degrading treatment by police officers do not have access to the case files during the whole investigation and thy do not have the information whether the adequate investigative actions have been undertaken and therefore, how thoroughly and objectively the process is going, which is a part of an effective investigation in such cases.

We believe that the rights of the victims in the criminal procedure should be improved to a certain extent. As the Constitutional Court stated, a victim plays an important role in the criminal proceedings. A victim is a person, who was harmed as a result of a crime. Therefore, he/she has a direct interest in proper and effective implementation of justice. Thus we believe that a victim shall have the right to get acquainted with the case files. In spite of the fact that the victim is not a party in the criminal procedure, his/her interest in the implementation of justice is not less important. A victim has a right to have access to criminal case files but he/she will not receive the copies. In case of Khatuna Shubitidze against the Parliament of Georgia, the Constitutional Court ruled out that the victim shall have the right to receive copies of a criminal case files, although this issue is not regulated by the legislation. It should also be noted that in practice a criminal case files could consist of several volumes, which makes difficult the adequate involvement of a victim in the criminal proceedings.

Thorough and timely investigation – According to the Georgian legislation, it is the investigator who is obliges to conduct overall, thorough and objective investigation. The fulfillment of this obligation is especially important in cases if investigation of crimes committed by public officials as far as this is the way to maintain the credibility of society towards the law-enforcement bodies. Hereby it should be taken into consideration that according to the international standards, timely and thorough investigation is one of the important components of effective investigation and during the assessment of the delay of the investigation the importance is given not to the timeframes on the investigation, but whether the active investigation action were undertaken during the whole process.

Within the frames of the launched investigation, the ineffectiveness of the investigation is clearly seen in the cases of V.L. and O.B,. In the first case, none of the investigative actions have been undertaken unless the final decision was made on the charges against V.L. and in another case, the investigation was terminated without thorough examination of the circumstances and despite the existence of proof that O.B got his injuries while being under the control of law-enforcement bodies. Similar situation is in case of V.M. in which no investigative actions have been undertaken from July 2015 until March 2017 tht proves the fact of delay. The case of Sh.P. should be noted separately in which the main witnesses have been questioned only after the video shooting on the fact of inhuman treatment against him as released in media in spite of the fact that this video shooting was available for the investigation even before its release and the necessary steps could have been undertaken earlier.

Unfortunately, in most of the cases examined by us (81%) the victims have not been granted a legal status and were devoid of the access to the

71 Comments to the Criminal Procedure Code of Georgia, ABA Rule of Law Initiative, page 219, 2015.

case files. Therefore, it is impossible to conclude what kind of investigatory actions are conducted by the prosecutor's Office and what is their intensity. Although, the statistics of the cases at our disposal on the prosecution and delivered judgments shows that the problem of delay of investigation is vivid at least in the cases launched in 2014-2016.

According to Article 33 of the Criminal Procedure Code of Georgia, the investigator is obliged to conduct thorough, complete and impartial investigation.[72] Moreover, in spite of the fact that the Criminal Procedure Code does not define the timeframes of the investigation, it stipulates that the investigation shall be conducted within a reasonable time, not to exceed the statutory limits for criminal prosecution set forth for a respective crime under the Criminal Code of Georgia.[73]

At the same time, an investigator and a prosecutor, both represent prosecution in the criminal proceedings, who could decide what kind of investigatory action to undertake on each of the individual criminal case, to which direction they should turn the case and what should be a result base on already collected evidences. In practice, as a rule, this actions are directed towards collecting the inculpatory evidences and if there is no will to investigate any individual case, the investigator and the prosecutor could simply not undertake those actions which would not be directed towards revealing the offender.

Besides the existence of certain shortcomings in the legislation, which grant the investigator and the prosecutor with authority to make their own decision on the issue of undertaking any of the investigatory actions, the examination of cases gives the impression that due to the lack of qualification and/or impartiality, the investigators do not conduct all the necessary investigative actions or artificially delay the process of collecting the evidences. In this way they eliminate all the possibilities for the final decision of initiating the prosecution. The given situation directly indicates to the need of creating the independent investigative mechanism not only to exclude the possibility of conducting investigation by a biased person but also to ensure the thorough and complete investigation.

Independent and impartial investigation – The problem of independent and impartial investigation is mentioned in number of reports of the Public Defender of Georgia and of other organizations. The analysis of the cases also confirms the existence of the problem. In particular: In the absolute majority[74] of the cases examined by us the prosecution has not been initiated whereas almost in all of them the forensic medical expertise confirms the existence injuries[75] on the bodies of victims of ill-treatment and in some cases the victims name the persons who committed ill-treatment and degrading treatment.[76] There are cases, when the investigation allegedly does not conduct the investigation activities intentionally in order not to reveal the offender.[77] In some cases the guilt of a certain person is visible and there is no decision on the initiation of the prosecution. The analysis of the examined cases showed that in spite of the existence of injuries, which the persons did not have before the apprehension, not only the police officers were not punished but the prosecution was initiated against the applicant on the false

72 Article 37(2) of the Criminal Procedure Code of Georgia.

73 Ibid, Article 103

74 Only the case of P.K is the exception, in which the prosecution was initiated against one police officer out of two who inflicted injuries.

75 Cases of D.G., Q.Kh., I.N., O.R. and others.

76 Cases of G.Q., Q.Kh., I.N., T.G. and others.

77 Cases of S.Ts.

whistleblowing and the case is now under trial at court.[78]

The clear example of biased investigation is a case of M.M, in which the latter was forced as a result of torture at the police station to sign a false testimony against his friend and after he informed everyone that he did not want to live with this burdain, he was found hanged on the territory of Tbilisi Sea. The investigation of the case was conducted by the General Inspection of the Ministry of Internal Affairs, which concluded that the physical and mental injuries of the deceased were not inflicted by the criminal police officers and thus, terminated the investigation. Also, the cases of T.G and other, in which, according to the victims, police officers of Terjola had three juveniles (one was not of that age to be the subject of criminal responsibility) under the unlawfully detaintion for about 7 hours and were forcing them to confess the crime they had not committed and to co-operate with the investigation. Police officers threatened them that they would "put" the stolen things and bring them before a court. In spite of the fact that the incident took place in Dekember 2015 and at least their unlawful detention has been proved, the prosecution has not been initiated until now, whereas T.G and others are not granted the status of a victim and are devoid the right to be informed about the ongoing proceedings.

The above-mentioned fact indicates that in spite of subordination of these cases under the investigators of the Prosecutor's Office, conducting investigation and prosecution by independent and impartial body still remains to be problematic that is the important component for the assessment of the effectiveness of the investigation.

In spite of the fact that according the second and the third paragraph of the Order #34[79] of the Minister of Corrections as of 7 July 2013, the crimes committed by police officers as well as the crimes falling under the Article 333 of the Criminal Code fall under the investigative subordination of the investigator of the Prosecutor's Office that on its part should be the guarantee of the impartiality. The impartial investigation of misconducts committed by police still deserves criticism from the Public Defender of Georgia and other organizations.

The shortcomings in legislative and practice about the transfer of a detained person to a police station - In most of the cases under our proceedings, the persons were brought to the police departments before being placed to the Temporary Detention Isolator. The Georgian legislation does not provide the exact reference whether who is responsible for the arrest (giving the warrant for arrest) or for checking the lawfulness of the arrest, which is derived from the fact that there is no internal administrative mechanism, which will serve as a guide for the law-enforcement officers[80]. Lack of effective controlling mechanism and the way to avoid maintenance of records for persons brought to the police station, increases the risk of ill-treatment.

The practice of bringing a person to the police station before transporting him/her to the Temporary Detention Isolator, is often justified by the need of preliminary "conversation". The law-enforcement officers state that in order to get the initial basic information, it is important at the initial stage to talk with the person and the police station provides the relevant environment and equipment and such comfort is not available at the Tempo-

78 Cases of Q.S and N.B.

79 Order #34 of the Minister of Justice, signed on 7 July 2013.

80 The Procedural rights of suspects in Georgia, page 133, Open Society Georgia; G.Mshvenieradze, B. Bokhashvili, I. Kandashvili

rary Detention Isolators.[81] Moreover, in 2016, in line with the Order #108 of the Minister of Internal Affairs on "Approving the Statute and the Rules for the Temporary Detention Isolators of the Ministry of Internal Affairs", for the transfer of a person to the Temporary Detention Isolator, it was necessary to approve an arrest record by the head of the investigative body.[82] Therefore, the law-enforcement officers declared that in order to comply with the above-mentioned protocol, it was necessary to take the arrested person to the police station in order to have the arrest record signed by the head of the body. Although, It should be noted that the rule stipulated in the Order has been updated by the changes made on 2 August 2016 and Order #423 does not require the signature of the head of the investigative body any more. Furthermore, the separate space, rooms has already been allocated in the Temporary Detention Isolators which could be used for the investigation purposes, for example for questioning the arrested person.

Considering the above-mentioned, it's clear that the shortcoming on a legislative level has already been improved, although the practice of "taking to the police station" by the law-enforcement officers still remains a problem. Special attention should be paid to the fact that in order to ensure the procedural rights of the arrested person and reduce the risk of ill-treatment, transferring an arrested person to the Temporary Detention Isolator shortly after the filling up the arrest record is a way of reducing the risks of ill-treatment against him and is a high standard of the protection of the rights of the arrested person. In particular, as the Constitutional Court of Georgia states, a person is detained since his the moment of formal deprivation of his/her liberty. It does not matter where and in what conditions the liberty of a person was deprives will it be a police car, police station or simply a public space. The arrest of a person does not depend on the moment when the police officer made a decision for his arrest, but the arrest starts from the moment of deprivation of liberty.[83] According to the Criminal Procedure Code of Georgia, the arrested person automatically enjoys the rights envisaged for the accused persons in spite of the fact whether the indictment exists or not. If we take into consideration the above-mentioned logical chain, the arrested person enjoys the status of an accused person. Enjoying the rights of an accused person automatically means that a person has a number of procedural rights and guarantees, among them the access to medical examination. Therefore, it is necessary to bring the arrested person to the Temporary Detention Isolator that would reduce the risk of ill-treatment by police officers. Furthermore, it is also possible to fill in the arrest record/protocol in the Temporary Detention Isolator. It should also be noted that even the Temporary Detention Isolator, which is according to this document an important mechanism for reducing the risks, does not always endure the security of an arrested person. For example, in case of G.Ts., the injuries of an arrested person have not been recorded at the Temporary Detention Isolator, which is a disturbing case. A person brought to the isolator at least should have the guarantee that his complaints and injuries would be detected, otherwise, the victim is left completely unprotected against the alleged arbitrariness.

81 The Procedural rights of suspects in Georgia, page 135, Open Society Georgia; G.Mshvenieradze, B. Bokhashvili, I. Kandashvili

82 Order #108 of the Minister of Internal Affairs on "Approving the Statute and the Rules for the Temporary Detention Isolators of the Ministry of Internal Affairs", annex 3, para.1, part 3.

83 Decision of the Constitutional Court of Georgia made on 4 February 2005 on the case Georgian citizen Giorgi Chkheidze against the Parliament of Georgia.

Coming from the above-mentioned, it is necessary to change the existing practice. In particular, Since the moment of arrest, the accused person should spend less time together with the law-enforcement officers and should be immediately brought to the Temporary Detention isolator on order not to leave a time and a space for the alleged ill-treatment of an arrested person by law-enforcement officers.

Compensation for damage caused as a result of the unlawful procedural actions and unlawful decisions – and finally, it is important to cover the part of the compensation of damage caused as a result of cases of torture, inhuman and degrading treatment by police officers, regulated by the Article 92 of the Criminal Procedure Code of Georgia, which grants the individual the right to request by means of civil/administrative proceedings and receive compensation for the damage caused by the unlawful procedural actions and unlawful decisions.

In spite of existence of such formulation in the legislation, the analysis of the cases revealed that only in 3 cases[84] out of the total number of cases examined by the non-governmental organizations, the individuals applied to the court for receiving the compensation and at the time of drafting the present report, none of the decision have been made by the courts. Moreover, one of the applicants[85] has withdrew his appeal and refused to continue a dispute due to unknown reasons.

Also, out of 11 interviewed victims, 9 persons declared that at different stages they have learned about the right to request the compensation but only one of them applied to the court with such request. The mentioned confirms the opinion that despite having the information, vast majority of victims of torture, inhuman and degrading treatment by police officers refrain from applying to the court with the request of compensation for the damage caused by the unlawful decision and the examination of the reasons for that is a separate topic for a study.

We have three cases under our proceedings related to the compensation of damage caused by the unlawful actions by law-enforcement officers. Among them there is a case of Giorgi Keburia, one of the members of "Birzha Mafia", in which, we request from the Ministry of Internal Affairs and the Prosecutor's Office of Georgia up to 40000 GEL for the moral damage. The case is under at the preliminary preparation stage in the first instance court.

According to the practice of the Supreme Court of Georgia, in case of existence of rehabilitating circumstances stipulated by Article 105 of the Civil Code of Georgia, the state is obliged to compensate the damage inflicted by its representative notwithstanding the fact whether the latter was guilty or not (judgment of the Panel on Administrative cases of the Supreme Court of Georgia on the case ##ბს-134-132(კ-17)). As for the rehabilitating circumstances, the Court of Cassation declares that the existence of an unlawful result (confirmed unlawful conviction/accusation, unlawful imprisonment by means of deprivation of liberty, to bring unlawful criminal charges against an individual) will cause the emergence of the obligation of compensation for damage as far as at the moment of imposing imprisonment as the preventative measure, formally lawful procedural actions will be considered unlawful for the purpose of Article 1005 (3) of the Civil Code of Georgia in case of proved rehabilitative circumstances.

While requesting the compensation from the state, the victim has a right to request compensation for material as well as for moral damage.

84 Cases of G.G., G.Q. and G.Ts.
85 Case of G.G.

It should be noted that the Constitution guarantees the right to compensate the damage inflicted by the state from the State Budget. According to para. 9 of Article 42, the material damage proved by an individual shall be fully compensated.

Out of three cases under the proceedings at GDI, the first instant court decision is available only in one case. It is a case of T.T, in which the Court decided to compensate the damage caused to our applicant as a result of unlawful administrative detention by 100 GEL. In spite of the small compensation, we believe that the court made significant explanations on the importance of compensation in such cases and its legal grounds. In particular:

By this decision, the Court rules out that (1) the possibility of compensating the damage stipulated under Article 1005 (3) of the Civil Code of Georgia is also applied to the person detained administratively; (2) the termination of the administrative proceedings automatically implies the recognition of unlawful arrest for the purpose of requesting the compensation for the damage.

With regards to the first issue, the court ruled out that Article 1005 (3) of the Civil Code of Georgia should be applied to the administrative arrest in spite of the fact that the above-mentioned norm envisages compensation for damage only for the persons under the administrative detention.

The court referred to the ECtHR practice, which states that according interpretation of Article 5 of the ECHR, the difference between the deprivation of liberty and freedom of movement is only a matter of intensity and level than of a nature and content. The City Court shared the mentioned approach and indicated that administrative arrest and administrative detention by their nature are similar, in particular, both of them restricts the right of a freedom of movement guaranteed by the Constitution and in both cases there is a negative result, which implies placement of a person for some period of time in a certain facility, impact on the reputation of a person and creating negative emotions. Thus, the court rules out that for the purpose of the compensation of damage, Article 1005 (3) was also applied to the administrative arrest.

As for the second case, the court ruled out that administrative arrest could be considered as unlawful not only when the person appeals it and the competent authority declared the arrest unlawful, but also when the administrative proceeding are terminated against an individual. The Court admitted that the appeal of the arrest for the purpose of requesting the compensation and declaration the arrest as unlawful has an impact on the result only when the person has been found guilty. In such case, the compensation will be paid only if the unlawfulness of the administrative arrest is proved. The latter is not necessary in case of termination of administrative proceedings as far as it automatically means recognition of the arrest as unlawful. The court stated that "the termination of administrative proceedings against the person proves that this person had not committed an offense in response to which the administrative arrest was used. That's why, the non-existence of this circumstance is enough for the compensation for the damage and it's not necessary that the person should have appealed the administrative arrest or the arrest be declared as unlawful by the relevant bodies. Otherwise, the person would not have the possibility for receiving the compensation for damage."

Apart the above-mentioned legal interpretations, the court raised one more important issue in its judgment. In this case, the judge refers to the Decision of the Constitutional Court on the case #23/630. In this case the Constitution-

al Court stated that taking into consideration the scopes, volume and nature state resources, undertaking unlawful steps on the part of the state often contains much more threat than the actions undertaken by private persons. Therefore, setting the obligation of compensating the damage will promote the prevention of abuse of power by state institutions, institutions of autonomous republics and self-government bodies. Thus we believe that the use of compensation mechanism for the victims should become one of the important leverage in terms of prevention of ill-treatment by law-enforcement officers.

Chapter 9. Recommendations

As the present study confirmed, the situation with regards the investigation of cases of ill-treatment does not comply with the internationally recognized standards in terms if effective investigation and some certain steps should be undertaken almost in all the directions. In particular:

- It is necessary to considerably improve the Georgian Law "on the Service of State Inspector" adopted by the Parliament of Georgia so as the Service of the State inspector envisaged by law ensures the effective investigation of facts of torture, ill-treatment and degrading treatment. It is also important that while performing the official authorities, the Service is not dependent on political will and conducts investigation of such facts with the high level of publicity.

- The police officers shall undergo trainings on the detention procedures and on principles of use of proportional power in order to avoid the excessive use of power.

- The Prosecutor's Office of Georgia shall elaborate the guidelines on investigation and procedural supervision of such cases. It is desirable that the document contains the following:

    a. The obligation to launch the investigation immediately, without any preliminary checkup, in case of the existence of visible grounds envisaged by the law;

    b. Mechanism of launching the investigation and granting the proper qualification to the cases in the investigation process;

    c. The list of those investigative actions, which should be conducted necessarily and without any delay during the investigation process of these cases;

    d. Standards on granting the status of victim, in particular: when and in what circumstances shall the person be granted the status of a victim; also, what kind of rights will the victim have during the investigation process; mechanisms of effective response to their complaints and motion;

    e. Issues of defining proper qualification on the cases of ill-treatment;

    f. Internal disciplinary response mechanism for violations of the provisions of the guidelines.

- To introduce changes into the relevant norms, which will impose on the law-enforcement officers the obligation to transfer the arrested person to the Temporary Detention Isolator immediately upon the apprehension. It should be noted that according to the former provisions of the Order, the arrested person was taken to police station by police officers as far as in order to transfer the arrested person to the Temporary Detention Isola-

tor, it was necessary to have the signature of the head of the relevant unit. The mentioned rule has changed, although the practice remained unchanged. Also, there is no record, which obliges a police officer to immediately transfer the arrested person to the Temporary Detention Isolator. The Ministry of Internal Affairs, the Service for the State Security and the Prosecutor's Office shall ensure the creation of effective mechanism for the response/follow-up to the complaints of the persons placed in the Temporary Detention Isolator with injuries;

- The Prosecutor's Office of Georgia and the Supreme Court of Georgia shall ensure the creation of an effective mechanism for making records on the cases of torture, ill- treatment and degrading treatment by police officers and publishing the relevant statistical data proactively;

- To diminish the authorities of the Prosecutor's Office in terms of transferring the case to other investigative bodies. In particular, to restrict the authorities of the Chief Prosecutor to send the case for subordination to such body, the representative of which has allegedly committed the ill-treatment and is an interested party in the investigation;

- To define the rights of the victim to get the copies of the criminal case files under the Criminal Procedure Code.