



Georgian Democracy Initiative (GDI)

Report on Human Rights and Freedoms in Georgia

Second Half of 2014

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Introduction

The Georgian Democracy initiative presents the report on Human Rights and Freedoms in Georgia for the second half of 2014. The paper covers the developments and problems in terms of human rights protection and rule of law revealed in the country during the reporting period.

The report contains a number of issues raised during the reporting period including the cases of violation of freedom of religion and discrimination on religious grounds, discriminatory speeches made by public officials, role of media in broadcasting the minority issues, problems related to regulations for compensation of damage to religious groups and the implementation of anti-discrimination legislation. Substantial part of the report is dedicated to the situation in penitentiary system, in particular, cases of ill-treatment and suicide and to the legislative changes regulating the penitentiary system. The document also covers the topics of excessive use of force by police, domestic violence, and legislative changes aimed at elimination of domestic violence, personal data protection and illegal surveillance.

Some positive developments could be seen in term of legislative changes in the fields of fights against domestic violence and personal data protection; although, one should underline here that problems detected in these fields are not that much caused by legislative gaps but are more related to the impediments in effective implementation of the laws.

The situation in penitentiary establishments as well as an increasing number of suicide cases there remain very problematic and indicate to the inadequate protection of fundamental rights of prisoners.

A dangerous tendency of growing number of facts of religious persecution and confrontations has been revealed for the last two years generated by the inability of the state to choose a right policy or by inaction of a state in certain cases. Recent developments show that the State Agency for Religious Issues has not been efficient in solving these problems.

The adoption of anti-discrimination legislation deserves positive assessment, though its deficiencies and ineffective mechanisms of its implementation make it less efficient in terms of human rights protection.

Human rights violation facts and tendencies revealed during the reporting period require thorough systemic analysis by state and stronger efforts in addressing them in order to ensure the rule of law and adequate protection of human rights.

Discrimination and minority rights

The Constitution of Georgia ensures the principle of equality and prohibits any form of discrimination obliging the state, on the one hand, to undertake positive steps to secure the enjoyment of equality by all persons nevertheless their ethnic, religious or other affiliations and, on the other hand, imposing negative obligation to abstain from creating discriminatory environment. Development of pluralistic society by ensuring the principle of equality is an indicator for democracy in a state. Therefore, the state should make efforts to fulfill obligations undertaken on national and international levels in order to promote pluralism in a society and ensure common living space for different ethnic, religious and other groups, their equal participation as well as further engagement of minorities in various spheres of public life.

Discrimination on religious grounds and freedom of religion

The reporting period witnessed several cases of violations of religious freedom and discrimination on religious ground as a sign of aggravation of religious intolerance considering the failure of authorities to adequately react to the violations of these rights.

The facts of religious intolerance revealed during the reporting period and, generally, within the last two years clearly indicate to the ineffectiveness of the policy the authorities pursue in dealing with freedom of religion. The facts of persecution and discrimination against different religious groups, particularly Muslims, prove that the authorities fail to ensure timely response to them. Furthermore, often the actions of state representatives even turn out to serve as an encouraging factor for conflict escalation. The state authorities, instead of facilitating full participation of religious minority groups in public life and eliminating discriminatory approach towards them, tend to show loyalty to religious majority and try to find solution to problems either by hiding them or by protracting the process thus showing a dangerous tendency and undermining the democratic development of the country.

It should be noted, that the State Agency for Religious Issues set up a year ago by the authorities in order to address the problems in exercising freedom of religion in the country, has been reluctant to undertake efficient steps aimed at solving the existing hostility. Moreover, the Agency usually defends those who allegedly demonstrate intolerance towards religious minority groups and constantly protracts examination of disputable cases that impedes finding solution to such disputes and hostilities. Therefore, a year after functioning of the Agency the assumptions about its inefficiency and alleged advocacy of dominant religious group's interests became even stronger.

The case of religious intolerance towards Muslims in Kobuleti

On 10 September 2014, a case of religious intolerance occurred in Kobuleti municipality: "Kobuleti inhabitants who adhere themselves to orthodox parishioners, protested opening

of Muslim boarding school. The protesters slaughtered a pig at the boarding school entrance and hanged its head over the door. They even blocked the road requesting to close down the boarding school”. The use of threatening and verbal assault was reported as well.¹

On 11 September, during the manifestation² bearing the islamophobic nature, the law-enforcements arrested three persons to whom the court imposed fine for administrative offense.³ Kobuleti orthodox population continued monitoring the situation in front of the boarding school in shifts. The protesters declared that they would in no case let the boarding school open.⁴ It should be noted here that the representative of “Georgian Dream” fraction of Adjara High Council, MsMakvalaTsenteradze was taking part in the protest and supporting the participants. At the same time, a peaceful manifestation of Muslims took place in front of Adjariangovernment residence. They were requesting construction of new Muslim mosque in Batumi and opening of Madrasa in Kobuleti.⁵

The Georgian Democracy Initiative tried to find out whether the State Agency for Religious Issues was involved in the developments around opening the Muslimboarding schooland in what form; whether any party has approached the Agency and if the Agency provided any type of recommendations/consultations upon request or by its initiative. In its official reply, the State Agency for Religious Issues stated that “after the incident the representatives of the State Agency had arrived onsite in order to clarify the situation. They called on the law-enforcements to act in accordance with law and after the meetings and consultations with local self-government bodies, managed to restore the negotiation process”.

As a result, the intervention of the State Agency on Religious Issues aimed at protecting the rights of Muslims turned out to be inefficient – the Adjarian government officials decided not to open the mentioned boarding school⁶ on Lermontov Street in Kobuleti, taking into consideration the position of local Christians. The representatives of the authorities promised to enlarge the already existing boarding school; although nowadays neither the newly built boarding school on Lermontov Street functions neither the existing boarding school has been enlarged.

The incident in Kobuleti attracted attention of non-governmental organizations, among them “the Georgian Democracy Initiative.”⁷ The organizations assessed in their statement the comments made by local authority representatives being discriminatory and

¹<http://www.interpressnews.ge/ge/regioni/296548-qobulethshi-muslimtha-pansionis-karze-ghoris-thavi-daamagres.html?ar=A>

²<http://www.interpressnews.ge/ge/regioni/296671-qobulethshi-muslimur-pansionthan-aqcia-mimdinareobs.html?ar=A>

³<http://www.interpressnews.ge/ge/regioni/296671-qobulethshi-muslimur-pansionthan-aqcia-mimdinareobs.html?ar=A>

⁴<http://www.youtube.com/watch?v=4niEHbXi1Bg>

⁵<https://www.youtube.com/watch?v=oev2bREwvWg>

⁶http://www.myvideo.ge/?CI=1&ci_c=video&ci_m=embed&id=2t_it2q2byg

⁷<http://gdi.ge/en/news/statement-of-the-no-to-phobia-civil-platform-ngos-on-a-report-by-the-ps-of-rustavi-2.page>

promoting escalation of hostility. The organizations emphasized inaction on the part of police and local municipality and assessed the policy pursued by the authorities as inefficient and deserving sharp criticism.⁸

* * *

Hereby it should be noted that due to the order of the Prime Minister, based upon the appeal of Adjarian Muslim leaders, the Government of Autonomous Republic of Adjarian consultations with the State Agency on Religious Issues, made a decision to purchase a building in Batumi for providing a space for religious educational institutions (Madrassa). As the Agency stated, the decision would “allow free the additional space in Batumi “OrtaJame” for reconstruction solve the problems of praying in the mosque in the open air.”⁹In light with the mentioned decision, despite the requests of the Muslim community and promises given by Georgian Government, the issue of construction of a new mosque in Batumi has been removed out of the list.¹⁰

The case of violation of Muslims’ rights in village Mokhe of Adigeni municipality

On 22 October 2014, by the decision of Adigeni local authorities and with the help of police forces, the process of clearing the remnants of the mosque in village Mokhe started that should have been followed by a reconstruction of the building of former mosque into a cultural center by winner company of the tender. The Muslim community, representing the majority of the village population, protested and requested either to transfer the historical building of the mosque to them or at least to conserve it in order to avoid its destruction.¹¹Notwithstanding the numerous promises to resolve the problem given by the state authority representatives including the Prime Minister,¹² the demolition of the mosque was launched.

During the protest, there was a clash in between the protesters and police forces as a result of which police detained up to 14 persons. According to the witnesses, during the apprehension of the protesters, police officers resorted to verbal assault and physical abuse; they bit several persons, took away and broke the telephones from those who were recording the demolition of the mosque on cameras.

The State Agency on Religious Issues commented on the situation in village Mokhe and stated that the “problem requires substantial analysis and subsequent decisions” and “the problems should be solved based on a consensus with participation of all interested parties.”¹³ At the same time, the Agency representatives were partly justifying the

⁸<http://www.gdi.ge/ge/news/ngos-kobuleti.page>

⁹<http://religion.geo.gov.ge/geo/news/mtavroba-batumshi-medreses-shenobas-sheisyidis>

¹⁰http://www.myvideo.ge/?video_id=2384628

¹¹The case concerns the building that is listed on the balance of Adigeni municipality as an inalienable property with the status of cultural center which according to Muslim community historically used to be a mosque whereas the Christian population claims about its Christian origin.

¹²<http://www.liberali.ge/ge/liberali/news/120937/>

¹³<http://religion.geo.gov.ge/geo/news/gancxadeba-adigenis-raionis-sofel-moxeshi-dghes>

repressive measures used by the police against some of the aggressive protesters; in particular they stated that “some of the Muslims who confronted police were aggressive”, therefore the force used against the police has been countered by available means.¹⁴ It should be mentioned hereby that non-governmental organization “Human Rights Education and Monitoring Center” addressed the prosecutor’s office on alleged cases of excessive use of force by police; thereby, the investigation into the conduct of police officers was launch.¹⁵

A decision was made on 2 December 2014 to set up a special commission for resolving the issue of a disputed building. The first meeting of the commission was held on 27 December 2014. The Commission headed by the chairman of the State Agency on Religious Issues consists of 3 representatives of Muslim community, 3 envoys from Patriarchate of Georgia, 2 representatives of local self-governmental body and one from the National Agency on the Protection of Cultural Heritage. The State Agency on Religious Issues was tasked with drafting the statute of the Commission and together with the National Agency on Cultural Heritage was assigned to define the main goals and objectives of the Commission’s work.¹⁶ At the first above-mentioned meeting, the Commission approved its Statute. At this stage, there has not been any decision adopted.

The non-governmental organizations released a joint statement on the situation in the village Mokhe and addressed the authorities with specific recommendations. In their statement, the non-governmental organizations expressed deep concern about the recent cases of the violation of the rights of Adjarian Muslims and about the repressive and ineffective governmental policy. They call on the government to “cease the religious oppression of the Muslim community that has recently become a regular occurrence.”¹⁷

Article 19 of the Georgian Constitution guarantees the rights of freedom of speech, thought, conscience, religion and belief. The Constitution stipulates only minimal restrictions on the exercise of the rights, in particular, according to paragraph 3 of the same article, freedoms listed in this article may not be restricted unless expression thereof infringes on the rights of others. This provision clearly indicates to the importance of these rights and caution of the state in interfering in the exercise of thereof. Article 14 of the Georgian Constitution, ensuring the equality and, therefore, among others, prohibiting discrimination on religious grounds, serves as well as an important guarantee of the protection of religious freedom.

Freedom of religion is guaranteed by Article 9 of the European Convention on Human Rights. The European Court of Human Rights has been repeatedly stated that along with the pluralism, freedom of conscience and religion is one of the foundations of a

¹⁴<http://www.liberali.ge/ge/liberali/news/120929/>

¹⁵<http://emc.org.ge/2014/11/03/emc-is-gancxadeba-prokuraturas/>

¹⁶<http://religion.geo.gov.ge/geo/news/sofel-moxes-sadavo-nagebobis-sakitxis-ganmxilveli>
;<http://www.interpressnews.ge/ge/sazogadoeba/311175-sofel-mokhes-sadavo-sakulto-nagebobis-sakithkhis-ganmkhilveli-komisiis-pirveli-skhdoma-mimdinareobs.html?ar=A>

¹⁷<http://www.gdi.ge/en/news/joint-statement-of-ngos-concerning-violation-of-muslims-rights-in-village-mokhe.page>;

"democratic society" (see Kokkinakis v. Greece, no. 14307/88, 25.05.1993, §31), whereas the State has a duty to remain neutral and impartial in order to balance the interests and ensure the religious freedom. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see Metropolitan Church of Bessarabia and Others v. Moldova, no. 45701/99, 27/03/2002, § 116).

Coming from the above-mentioned, the “Georgian Democracy Initiative” calls on the Georgian state authorities to ensure that, on the one hand, the existing problems are solved with respect to the religious neutrality and taking into consideration the position of minority groups and, on the other hand, the adequate legal response is guaranteed on the cases of intolerance against minorities thus preventing the occurrence of the similar hostilities in future.

Compensation of damage to the religious groups

On 27 January 2014, the Government of Georgia adopted Resolution #117 on partial compensation of the damage inflicted during the Soviet totalitarian regime to religious associations existing in Georgia. The State Agency on Religious Issues was assigned to implement the Resolution. Within the obligation undertaken, the Agency concluded that sum of 1 750 000 GEL¹⁸ shall be allocated in 2014 for the compensation of damage inflicted during the Soviet totalitarian regime to four religious groups:

- Islamic Community in Georgia – 1 100 000 GEL;
- Armenian Apostolic Christian Community in Georgia – 300 000 GEL;
- Roman-Catholic Christian Community in Georgia – 200 000 GEL;
- Jewish Community in Georgia – 150 000 GEL.

It should be noted that funds were allocated without calculations defining the real damage and only by taking into consideration the factual circumstances such as the number of persons in each of the religious communities, number of clerics and religious or worship buildings.

In our opinion, the fact of allocation funds for does not indicate to the will of the state to compensate the damage inflicted in the past to these religious groups, but is merely an effort of budgetary funding the religious groups taking into consideration that criteria used for calculating the allocated funds were not defined by the legislation and the reason for applying these criteria is not clear. Moreover, raising the issue of damage compensation only to four religious groups whereas a number of other religious minority groups suffered and were persecuted during Soviet times including Lutheran Church, Jehovah witnesses, Krishna followers, Pentecostal church as well as Baptist church indicates to a discriminatory approach and grants privileges to the Georgian Orthodox Church along with the four above-mentioned religious communities.

¹⁸ in 2015, the amount allocated in the Budget for the same purposes increased twofold becoming 3 500 000 GEL;

The role of media in broadcasting the issues on minorities

Media plays an important role in delivering correct and objective information to public. In terms of information coverage on minority issues, it is extremely important to ensure compliance with the code of conduct for broadcasters by media means and to deliver information free from discriminatory approach.

Georgian law “on Broadcasting” as well as the Code of Conduct for Broadcasters oblige the broadcasters to comply with the principles of equality and tolerance and prohibit broadcasting those programs which in any form use discriminatory approach to any groups of minorities or trigger hostilities against them. Article 7 of the Charter on Journalistic Ethics stipulated the issues of tolerance and states that “a journalist shall be aware of the danger of promoting discrimination by media: therefore, he/she shall undertake all necessary steps in order to avoid discrimination on the ground of race, sex, sexual orientation, language, religion, political or other opinions, national, ethnic or social affiliation or other.”

Unfortunately, the principles of equality and tolerance have often been neglected during the preparation of TV programs or stories and are of assaulting and discriminatory nature towards the minorities. Several facts of violation of obligations envisaged by law on media occurred during the reporting period.

On 14 September 2014, TV channel “Rustavi 2” reported an incident related to the opening of Muslim boarding school in Kobuleti. The first part of the reportage offered a speculative interpretation of the fact, linking the social problem with the minority issue without any ground. Even more alarming was the fact that the suggested interpretation violated child’s rights.¹⁹ As stated by non-governmental organizations, the TV channel violated the Code of Conduct for Broadcasters and reported the story of exercising the right to freedom of religion by Georgian Muslim citizens in a discriminatory context.²⁰

The similar case occurred on 26 November 2014: according to NGOs, the TV program “Nanuka’s Show” aired on Rustavi 2 Channel contained discriminatory approach towards the religious minority groups when covering the problems of Jehovah’s Witnesses. Apart from mentioning Jehovah’s Witnesses in a negative context, the anchorwoman of the program expressed her personal attitude while assessing the change of religious belief. The above-mentioned is a violation of the Code of Conduct for Broadcasters, self-regulatory statute of TV channel “Rustavi 2” as well as of the Code for the anchors of TV

¹⁹ <http://www.gdi.ge/en/news/statement-of-the-no-to-phobia-civil-platform-ngos-on-a-report-by-the-ps-of-rustavi-2.page>;

²⁰ Ibid

shows.²¹ The NGOs filed a complaint to the self-regulatory body of TV channel Rustavi 2.²²

The non-governmental organizations filed a complaint also to the self-regulatory body of TV channel “Imedi” regarding the TV story aired on 25 December 2014 about the “children sent to Madrasa.”²³ As stated by the NGOs, the TV channel violated number of provisions envisaged by the Code of Conduct for Broadcasters in terms of both, discrimination on religious grounds and violation of child’s rights. According to the complaint, during the whole program, the journalist developed an opinion that parents send their children to Muslim boarding school in Kobuleti not because of their religious belief but due to social poverty, therefore, the journalist “drawing parallel in-between religious affiliation and negative events” (Article 33.1) and makes inaccurate and misleading statements regarding minorities and their social problems, thus promoting creation of stereotypes (Article 33.2).²⁴

The similar complaint²⁵ was drafted by NGOs to the self-governing body of TV channel “Kavkasia” for the statements made by anchorman Davit Akubrdia in his TV show “Spectrum” on 26 December 2014. The NGOs assessed the statement as being discriminatory and promoting hostility towards Georgian Muslim citizens that violates the Code of Conduct for Broadcasters.²⁶

According to the NGOs statement, the Code of Conduct for Broadcasters was violated by Public Broadcaster as well when report aired in the main information program on 6 August 2014, created a discriminatory background by indicating to the sexual identity without any grounds and misinterpreting facts.²⁷

The information broadcasted by media has a significant impact on shaping public opinion. Therefore, media means should try their best not to promote creating stereotypes among public especially on minority issues. They reported information should be objective to the highest possible degree, neutral and free from any kind of discrimination, especially in a current situation when intolerance is steadily on the top of agenda and there is still a threat of escalation of conflict in-between the different groups.

Coming from the above-mentioned, the “Georgian Democracy Initiative” calls on media representatives, to ensure that their work is performed in compliance with the Code of Journalistic Ethics and to pay special attention to eradication of discriminatory tendencies in their work in order to avoid creation of stereotypes in society and promotion of intolerance.

²¹<http://www.gdi.ge/en/news/non-governmental-organizations-call-on-rustavi-2-tv-company-to-discuss-discrimination-against-jehovahs-witnesses-in-self-regulatory-body.page>

²²http://mdfgeorgia.ge/uploads/Rustavi2is_tvitregulirebis_organos.pdf

²³http://imedi.ge/index.php?pg=shs&id_pr=3087&id=44

²⁴http://mdfgeorgia.ge/geo/view_news/339

²⁵<http://www.mdfgeorgia.ge/uploads/Complaints/Kavkasia%20complaint.pdf>

²⁶<https://tdigeorgia.wordpress.com/2015/01/12/რელიგიური-ნიშნით-დისკრი-2/>

²⁷<http://gdi.ge/ge/news/arasamtavrobo-organizaciebis-ertoblivi-gancxadeba-sazogadoebrivi-mauwyeblishi-diskriminaciuli-gashuqebis-faqtebis-gamo.page>

Discriminatory statement by public officials

Public officials have a significant role in promoting principles of equality and tolerance in a state; therefore, nevertheless their personal faith or belief, they shall keep the neutrality and facilitate avoiding hostility among different groups in a society. In this respect they also have a negative obligation not to promote violation of principles of equality and tolerance via their actions or speeches. Thus, without any prejudice to the provision of the Georgian Constitution providing for freedom of expression, the public officials are obliged to refrain from discriminatory expressions and hate speech, otherwise, neglecting these obligations might put at risk development of pluralistic society and impede the democratic development of a state. Hereby, one could refer to the first principle of the Council of Europe Committee of Ministers' Recommendation on 'Hate Speech' adopted on 30 October 1997: "...public authorities... as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimizing, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur."²⁸

Hate speech and call for physical violence and reprisal could be easily identified in the speech of the Deputy State Minister on Diaspora Issues, SandroBregadze, in his interview to the newspaper "KvirisPalitra"²⁹, in which he refers to the head of the NGO "Identoba", IrakliVacharadze as "a person with ill mentality", "one-cell creature", "Mankurdish" and states that "once, a group of people would use violence against him on emotional ground". Non-governmental organizations united in a Civil Platform "No to Phobia" commented on this statement and requested dismissal of SandroBregadze from his position.³⁰ The authorities have not undertaken any further steps in response to the petition of the NGOs.

On 8 January 2015, another assaulting statement of SandroBregadze against IrakliVacharadze was spread, following the critical comments of IrakliVacharadze on the Christmas Epistle of Catholicos Patriarch of Georgia. In his statement, SandroBregadze compared IrakliVacharadze with the group of terrorists who killed 12 people during the armed attack in Paris ("From now on, we could easily include Vachardze into the list of extremists – terrorists struggling against Christianity", he said).³¹ In this context, threats of physical elimination of "Identoba" members spread in the social networks, among others from the leader of the NGO "Free Generation" LadoSadghobelashvili. The protest was organized as well in front of the "Identoba" office.³² This fact grasped the attention

²⁸Principle 1, Recommendation No. R (97), Council of Europe Committee of Ministers.

²⁹<http://www.kvirispalitra.ge/public/23148-sandro-bregadze-didi-imeri-maqvs-rom-araraoba-irakli-vacharadzes-arsad-shevkhvdebiq.html?add=1>

³⁰<http://gdi.ge/en/news/the-petition-of-civil-platform-no-to-phobia-to-the-state-minister-of-georgia-on-diaspora-issues.page>

³¹<http://reportiori.ge/?menuid=3&id=50538>

³²<http://gdi.ge/en/news/civil-platform-notophobia-statement-regarding-threats-against-identoba-georgian-lgbt-organisation.page>

of NGOs, which requested urgent investigation³³ and called on the Prime Minister to dismiss Sandro Bregadze from his post.³⁴

On 12 September 2014, the Vice-Chairwoman of the Parliament Georgia and Head of Gender Equality Council placed on her Facebook page the following statement: “When absolutely strange persons, these totally amoral men and scoundrels assault verbally women, it might happen that either a husband or a brother of the latter could make a whole in that villain’s forehead and then, don’t tell us that criminal situation is worsening in the country”.³⁵ The NGOs assessed this statement as “promoting violence and facilitating creation of gender stereotypes on the ground of political and cultural intolerance”.³⁶ At the same time, this statement “refers to a woman as an imperfect creature, unable to defend her dignity and dependent on her male family members”.³⁷

Such statements made by public and high political officials are completely unacceptable and require adequate reaction from the state authorities. Otherwise, inaction of authorities in addressing such facts would be perceived by public as an expression of tolerance towards them and would facilitate promotion of hate speech and establishment of intolerance and violence in a society.

Adoption of Anti-discrimination Legislation and its implementation

On 2 May 2014, the Parliament of Georgia adopted Georgian Law on “Elimination of All forms of Discrimination”. The adoption of the law is itself a positive development, although it should be noted hereby that during the process of its adoption, part of the NGO sector was talking about its inefficiency as far as the effective mechanisms necessary for its implementation and envisaged under the initial draft-law were removed upon its submission to the Parliament.

The issue of effectiveness of the anti-discrimination legislation has been discussed many times. The Resolution on the “Functioning of Democratic institutions in Georgia” adopted by the Council of Europe Parliamentary assembly on 1 October 2014 stated, that “The Assembly welcomes the law on the elimination of all forms of discrimination that was adopted on 2 May 2014 and which significantly enhances the legal framework for the protection of persons from discrimination. It takes note of concerns by civil society that the draft law would lack effective mechanisms to implement its provisions. The

³³ Ibid

³⁴ <http://gdi.ge/en/news/civil-platform-no-to-phobia-members-appeal-to-georgias-prime-minister-irakli-gharibashvili.page>

³⁵ <http://hotpost.ge/news/politics/16636-manana-kobakhidze-mere-meughlem-an-dzmam-an-shvilma-marthla-shubli-rom-gaukhvritos-mere-ar-gvithkhras-vinmem-kriminogenuli-vithareba-damdzimdao>

³⁶ <http://gdi.ge/ge/news/statement-of-non-governmental1.page>

³⁷ Ibid

Assembly therefore suggests that the authorities conduct a comprehensive evaluation of the results of this law one year after its adoption, with a view to improving the effectiveness of the implementation mechanisms contained in it, if need be.”³⁸

“The Georgian Democracy Institution” tried to find out how many persons approached the Public Defender’s Office with complaint; the ground of discrimination mentioned in complaints; how many complaints have been processed and what was the result of already finalized cases since the anti-discrimination legislation entered into force. According to the reply from the Public Defender’s Office, since the enforcement of anti-discrimination law until 30 January 2015, 50 persons filed a complaint at the Public Defender’s Office; out of these 50, 10 complaints were sent to the other departments as far as they concerned the violation of other rights and not discrimination; processing of 10 cases was terminated due to the absence of the signs of discrimination; 2 cases were suspended due to the fact that the complainant appealed to the Court; a general recommendation was sent to relevant agency on 1 case;³⁹ file-processing on other 27 cases was still on-going. According to the information provided, the issues of discrimination at a workplace, on the ground of deferent opinion, affiliation to professional unions, nationality, sexual orientation, skin color as well as discriminatory jobs vacancies prevail in the complaints.

It should be taken into consideration that anti-discrimination legislation contains number of gaps that makes it less efficient. One of the problematic issues is the mechanism obliging a person to make a choice of addressing either the Public Defender or a Court. Whereas the Georgian Law on the Public Defender of Georgia enshrines the Public Defender with the right to make his/her own decision about the termination of the case processing, Anti-discrimination Law obliges him to terminate case-processing if the dispute is under the consideration by Court. This apparently reduces the efficiency of the Public Defender in dealing with cases on discrimination and might explain such a low number of complaints submitted.

The “Georgian Democracy Initiative” states that the adoption of anti-discrimination legislation was correct and important decision in terms of human rights protection, although admits that the human rights protection mechanism envisaged under the law is ineffective and the existing shortcomings shall be addressed.

³⁸ Para 14, Resolution 2015 (2014) on “Functioning of Democratic institution in Georgia”, Council of Europe Parliamentary Assembly, 1 October 2014; <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21275&lang=EN>

³⁹ The case is about the television commercial advertisement of the Bank of Georgia that was assessed by Public Defender as baring the sexist nature. The Public Defender addressed the Bank of Georgia with a general recommendation and urged the company to refrain from producing and disseminating the adverts of sexist character in future and take into consideration at the highest possible extent woman’s dignity and her equality with man in the process of adverts’ development. <http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/the-public-defender-addressed-jsc-bank-of-georgia-with-a-general-recommendation-on-avoiding-discrimination-and-issues-of-combating-discrimination.page>

Penitentiary System and the Rights of Prisoners

Article 10 of the International Covenant on Civil and Political Rights states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” According to the European Convention of Human Rights, no one shall be subject to torture, inhuman or degrading treatment or punishment.

There is a high risk of human rights violations, especially in terms of torture, inhuman and degrading treatment in penitentiary establishments. Georgia, as a member of the Council of Europe, shall adhere to the standards stipulated in “European Prison Rules”, which define the obligations for states with the aim of protection of prisoners’ rights.⁴⁰ It is important for the country to have domestic legal norms in the penitentiary field, which will be fully in line with international standards and serve as a guarantee for the protection of prisoners’ rights.

A number of legislative changes were made in the penitentiary field during the reporting period, although not all of them were aimed at improving the conditions for inmates. Thus, the list of special equipment to be used in exceptional cases in order to ensure the security of inmates, prison staff members or the third party was enhanced, though the staff members have not been trained how to use those special means before the changes to the legislation entered into force. The list of forbidden items on the territory of penitentiary establishment was enhanced as well. It’s quite vague what was incentive for making such changes in particular, prohibition of some of the items, for example, wearing a watch by the visitor.

The reporting period was still marked with the number of alleged cases of ill-treatment, high number of which proves that ill-treatment remains to be a systemic problem.

Moreover, recent years witnessed the increase in the number of suicide cases, which on the one hand is related to the inadequate psycho-medical treatment and, on the other hand, raises speculations about strengthening the authority of so called “Makureblebi” (“watchdogs”) in penitentiary establishments that leads to increased intimidation of prisoners and in individual cases incites them to commit a suicide. The management of the penitentiary system either does not take pay appropriate attention to these circumstances or is not able to undertake relevant measure in order to ensure the security of prisoners. In any case, the increase in the number of ill-treatment or suicide cases indicates to the inadequate protection of or neglecting the fundamental rights of prisoners by state.

⁴⁰Recommendation Rec (2006) 2 of the Council of Europe Committee of Ministers on European Prison Rules, adopted on 11 January 2006.

Legislative changes in the Penitentiary system

A number of significant legislative changes were made in the penitentiary field in 2014. New provisions of Imprisonment Code of Georgia entered into force on 3 May 2014, defining the living conditions for inmates, rules for visual and electronic surveillance and control.

Enhancement of the list of special equipment to be used as a security measure is one of the important changes. The instructions for the use of these special equipments was approved by #245 Order of the minister of Corrections and Probation on 12 September 2014.⁴¹ The Order regulates the circumstances in which the special are allowed to be used – “Special means shall be used as a security measure at last possible resort when the other measures are ineffective...” (Article 2 (2)). The Order defines the cases when the use of certain special means is prohibited.

According to the order, special equipment shall be used by specially authorized person of the system, who has completed the appropriate training (Article 14.1). Referring to this provision, the “Georgian Democracy Initiative” tried to obtain information whether the penitentiary system staff members undertook the mentioned trainings. According to the information provided by the Ministry of Corrections and Probation, two trainings of trainers were organized for 28 members of the penitentiary system on the use of special means with the participation of two international experts. The same training was envisaged under the long-term training program for prison regime staff, which was organized for 24 participants. In 2015, the similar training is planned for 120 participants.

According to the information provided by the Ministry, from 1 August until December 2014, there were 236 cases of using the handcuffs and single case of using a restraint bed in penitentiary establishments #2, #3, #6, #8 #15 and #17.

In spite of the fact that the use of special means is not prohibited by international standards, it is important to now that they should be used as a last possible resort in full compliance with the legislation when the other restraint means turn out to be ineffective. Taking into consideration a small number of penitentiary staff-members, who undertook trainings on the use of special means, one could assume that there were cases when the special means were used by those who had not attended the special trainings nevertheless the requirements stipulated by law.

* * *

On August 14 2014, the Minister of Corrections and Probation issued Order No. 135 on making changes to Order No. 97 of May 30 2011. Order No. 135 establishes a list of

⁴¹ #245 Order of the Minister of Corrections and Probation of 12 September 2014 on Approving the Categories of Special Restraining Means within the Weaponry of the System of Institutions of Enforcement of Detention and Deprivation of Liberty, the Rules and Terms of their Storage, Carrying and Use as well as Determining the Personnel Allowed to Use Special Restraining Means. The Order contains certain specifications concerning the use of special means.

items forbidden to bring to the territory of penitentiary establishment. The list is quite extensive and, among others includes compasses, watches, and costume jewelry. Such restrictions are aimed at ensuring the security in penitentiary establishments and the list of items was identified based on analysis of longstanding experience.⁴²

The given changes legalized the bad practice of obliging visitors, including the lawyers, to leave their personal belongings at the entrance without any logical substantiation. The reason of such changes is absolutely unclear taking into consideration that inmates themselves were given a right to wear the same items, for example a watch or jewelry. Placing compass and similar items on the list finds its roots in restrictions used in penitentiary establishments during Soviet times in terms of possibility of escape considering the geographical peculiarities in Russia. Therefore, it is completely unclear which criteria and experience were applied while including watches and compasses on the list of forbidden items.

The prohibition of taking any type of documents (except copies of court judgments or decisions, receipts for money, items, and valuables that are entrusted for keeping) into a penitentiary establishment is particularly inadmissible as far as due to legal proceedings, it might become necessary to bring different types of documents to the inmate in order to let him/her familiarize himself/herself with them or put his/her signature. The given prohibition might substantially violate the rights of prisoners.

* * *

On 31 October 2014, a legislative change was made to the Imprisonment Code and Criminal Code of Georgia, according to which, it became possible to release a life-sentenced prisoner upon the decision of the Local Council of the ministry of Corrections and Probation after the 20-year instead of 25-year imprisonment. At the same time, according to the amendments, the same body is authorized to substitute the deprivation of liberty with community work or restriction of liberty after 15-years of imprisonment.

In spite of the fact that life imprisonment in itself does not contradict the European standards, the European Court of Human Rights stated in case “Vinter and Others v. the United Kingdom”, that a whole life prisoners shall have the right to have his/her sentence reviewed, otherwise, failure to grant the prisoner such right amounts to inhuman and degrading treatment violating Article 3 of the European Convention of Human Rights (§122, Vinter and Others v. the United Kingdom No. 66069/09, 1130/10 and 3896/10). Hereby it should be noted that in most of the states, parties to the European Convention of Human Rights, life imprisonment is not used as a custodial measure. Although even in case of existence, the domestic legislations envisage mechanism for review, usually after 15, 20 or 25 years’ imprisonment (§68, §117, Vinter and Others v. the United Kingdom No. 66069/09, 1130/10 and 3896/10). Therefore, in this respect the changes made to the Georgian legislation comply with European standards.

⁴²<http://www.interpressnews.ge/ge/samartali/294891-sasjelaghsrulebis-saministro-im-produqtebisa-danivthebis-sias-aqvaynebs-romeltha-patimrobis-datsesebulebashi-shetana-akrdzalulia.html?ar=A>

Cases of ill-treatment and suicide in penitentiary establishments

Article 15 of the Georgian Constitution guarantees the rights of a person to life. In reference to this right a state has an obligation not to infringe upon life of a person except the cases of “absolute necessity” and at the same time to undertake all necessary steps in order to protect life of persons.⁴³ The obligation to protect a right to life requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (*Nachova and Others v. Bulgaria* [GC], no. 43577/98 and 43579/98, § 110). While interpreting Article 2 of the European Convention of Human Rights, the European Court of Human Rights often reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. Therefore, where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (*Selmouni v. France* [GC], no. 25803/94, § 87). Moreover, where that individual dies, the obligation of the State to account for any injuries suffered in custody becomes particularly stringent (*Keenan v. the United Kingdom*, no. 27229, § 91).

In case “*Tsintsabadze v. Georgia*”, the European Court of Human Rights found that there was a violation of Article 2 of the Convention as far as there were serious inconsistencies and deficiencies in the manner in which the investigative measures were conducted (*Tsintsabadze v. Georgia* no. 35403/06 § 77). In the Court’s opinion, the state failed to prove that the death of the prisoner have not resulted from the negligent functioning of the prison authorities. The Court raised legitimate doubts on the independence of the investigation, which was conducted by the very same ministry (Ministry of Corrections and Probation), taking into consideration that the ministry’s findings were then straightforwardly endorsed by the public prosecutor, without any additional inquiries of his own. Those doubts were further substantiated by the actual manner in which the investigative authority acted in the present case (*Tsintsabadze v. Georgia* no. 35403/06 § 78). In the light of the foregoing, the Court found that the investigation into the death of the applicant’s son was not independent, objective or effective (*Tsintsabadze v. Georgia* no. 35403/06 § 94).

Therefore, in the light of the above-mentioned context, it is particularly important that the state protects the rights of prisoners in penitentiary establishments and ensures timely, independent, objective and effective investigation into the cases of any type of offences.

Hereby, one should underline that investigation into offences committed in penitentiary establishments still falls within the competencies of the Investigation Department of the ministry of Corrections and Probation.⁴⁴ In spite of the fact that the Prosecutor’s Office

⁴³ Comments on Part II of the Constitution of Georgia; Tugushi, Mshvenieradze, Burjanadze, Gotsiridze, Menabde; page 62, 2013;

⁴⁴ Para 8, # 34 Order (of 7 July 2013) of the Minister of Justice on “defining the subordination on criminal and territorial investigation proceedings”: “The investigators if Investigative unit of the Ministry of

supervises the investigation process, the questions about the impartiality and independence of the investigation performed by the Department have been still raised among them by the European Court of Human Rights as well. The situation has been even aggravated by the growth of the number of alleged ill-treatment and death cases of prisoners requiring from the state to undertake necessary measures for the protection of prisoners' rights, among them, crate security guarantees and provide for adequate reaction on each cases of offence.

The "Georgian Democracy Initiative" addressed the Prosecutor's Office of Georgia with the following questions:

- How many complaints have been submitted to the Prosecutor's Office on the alleged cases of ill-treatment;
- On how many cases the investigation have been launched and pursuant which Article/Articles;
- The result of the investigations launched (whether anyone was accused or not);
- How many cases have been sent to the court or terminated (indicating the grounds of termination).

The reply received from the Prosecutor's Office contained information only on launching prosecution against 33 persons on the facts of ill-treatment and abuse of/excessive use of authority. Such a general answer makes it impossible to separate the cases of prosecution on the facts of ill-treatment from other offences committed during one's service. As for the other questions related to the number of complaints, prosecution cases, terminated cases as well as the number of cases sent to the court, the Prosecutor's Office replied that they did not possess the relevant statistical data.

It should be noted hereby, that the Inter-Agency memorandum on co-operation in producing the legal statistics signed on 30 April 2010 obliges the Chief Prosecutor's Office of Georgia to process recording on statistical data on launch/termination of prosecution and sending the cases to the court. Thus, the Ministry of Corrections did not reply to the above-mentioned questions of the "Georgian Democracy Initiative" referring to the given memorandum and avoiding the responsibility of providing the requested statistical data.

The following cases of ill-treatment occurred during the reporting period:

- At the briefing held on 5 August 2014, the Chairman of the Georgian Bar Association, ZazaKhatiashvili and his two colleagues revealed to the public the information about convict Sh.Sh who considers himself be a victim of violence.⁴⁵ The lawyers stated that on 26 April 2014, the Deputy Director of penitentiary

Corrections, Probation and Legal aid, conduct investigation into the criminal cases under Articles 342¹, 378, 378¹, 378², 379, 380 and 381 of the Criminal code of Georgia (in the part of application of non-custodial measures) as well as crimes committed in the territory of establishments under the control if the Penitentiary Department."

⁴⁵<http://www.netgazeti.ge/GE/105/News/34578/>

establishment #2, ShmagiBandzeladze, committed violence against the inmate and exerted pressure on him with the aim of getting a confession on the offence that according to the inmate he had not committed. According to the information provided by the lawyers, the convicted Sh. Sh had been placed in isolation under the video-surveillance for 5 months without enjoying the adequate medical treatment. The lawyers have also underlined that this is not an exceptional case and the ill-treatment against inmates is still an on-going practice generally in penitentiary system.

- In September 2014, an information about beating the inmate in Penitentiary Establishment #6 spread over. According to the lawyers of convicted J.K. the violent beating of J.K resulted in serious injuries in the areas of head and limbs. The Ministry of Corrections and Probation does not confirm the case of beating the inmate justifying the existence of injuries by the fact of resistance from the inmate towards the guard.⁴⁶
- According to the statement of the lawyer of prisoner M.T, made in October 2014, his defendant was severely beaten during his placement in Penitentiary Establishment #8 by the Deputy Prison Director, Head of Security Regime and seven staff-members. Since then, the prisoner has not been able to move independently without a wheelchair. The lawyer stated that the prisoner tried to commit a suicide and was in urgent need of treatment provision of which was suspended. The Ministry of Corrections and Probation refused to confirm the fact of beating in this case as well.⁴⁷
- On 12 November 2014, the envoys of the Public Defender of Georgia witnessed a fact of ill-treatment of prisoners in Penitentiary Establishment # 8 in Gldani. They saw two prisoners lying wet on the floor in the shower room. Inmate M.U had his hands tied by chain and both inmates had visible signs of violence.⁴⁸ According to the information provided by the Ministry, the inmates being under alcohol abuse were aggressive and were inflicting self-injuries that forced the guard to handcuff them.⁴⁹ The ministry added that the case was sent to the Prosecutor's Office for further investigation; at the same time the General Inspection of the Ministry of Corrections and Probation was conducting an internal investigation.⁵⁰
- In November 2014, the information was spread about 25-year prisoner who had been transferred from Batumi Establishment # 3 to Gldani Establishment # 8 with numerous visible signs of violence on his body. As stated by the lawyer, the prisoner inflicted self-injuries in Batumi Prison due to inhuman conditions there

⁴⁶<http://rustavi2.com/ka/news/125>

⁴⁷<http://bit.ly/1zhH3J9>

⁴⁸<http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n8-dawesebulebashi-vizitis-sheaxe-b-2014-wlis-27-28-noemberi.page>

⁴⁹<http://ick.ge/rubrics/humanrights/20156-i.html#.VGzway8rvGY.facebook>

⁵⁰<http://www.interpressnews.ge/ge/samartali/305927-patimrebis-sheadzlo-cemis-faqtthan-dakavshirebith-sasjelagsrulebis-saministrom-prokuraturas-masala-gadaugzavna.html?ar=A>

as well as because of physical and psychological pressure inserted upon him. The prisoner named concrete persons who committed ill-treatment against him.⁵¹ The inhuman conditions reigning in Batumi Prison were mentioned in the letter of inmate of Batumi Prison, Nugzar Tabagari, to the newspaper “Batumelebi” published on 25 November 2014.⁵²

- On 7 November 2014, the envoys of the Public Defender of Georgia visited 3 convicts in Kutaisi Establishment #2, who had visible signs of injuries on their bodies. The information about the injuries proved to be correct according to the recordings in the journal for injuries of prisoners as well as by the visual examination protocol drafted by a doctor. The prisoners declared that after the verbal confrontation, the guard pointed a gun at them through the cell window and threatened to kill. After the court hearing ended, 20 members of guard unit had beaten them up in the isolator building.⁵³ The Public Defender of Georgia addressed the Chief Prosecutor of Georgia with a proposal to launch an investigation to the alleged offence against prisoners.⁵⁴
- In December 2014, a statement of prisoner R.G disseminates on the frequent case of beating of prisoners and ill-treatment in Gldani Establishment. It was mentioned in the statement that after protesting the existing situation in the establishment, the prisoner was beaten by the members of the Gldani #8 Establishment, threatened with the extension of his sentence and, afterwards, transferred to Kutaisi Prison #2. The inmate inflicted injuries upon him and went on hunger strike.⁵⁵ The General Inspection of the Ministry of Corrections and Probation launched internal investigation into the case.⁵⁶
- On 5 December 2014, the Public Defender of Georgia released information about the fact of beating and ill-treatment of prisoner Sh.D in Batumi #3 Establishment in November. Although, as stated by the Ministry of Corrections, on the one hand, inmate Sh.D tried to mislead human rights protectors in order to avoid serving the sentence and on the other hand, the Public Defender disseminated unverified information.⁵⁷
- On 23 December 2014, non-governmental organization “Human Rights Center” organized press-conference and declared about the inhuman treatment of prisoner G.O that had been lasting for months. The lawyers of the organization stated that the prisoner had been a victim of physical abuse by the staff-members of Batumi

⁵¹<http://www.netgazeti.ge/GE/105/News/38646/>

⁵²<http://www.batumelebi.ge/GE/batumelebi/news/38763/>

⁵³<http://www.ombudsman.ge/en/about-us/struqtura/sammartveloebi/regionuli-sammartvelo/siaxleebi-region/proposal-to-chief-prosecutor-regarding-guard-actions.page>;

⁵⁴ Ibid

⁵⁵<http://www.interpressnews.ge/ge/regioni/309411-ojakhis-tsevrebi-amboben-rom-patimari-ruslan-gugunava-cikheshi-scemes.html?ar=A> ; <http://radioatinati.ge/atinati-33/>

⁵⁶<http://imedi.ge/archive/index.php?pg=nws&id=41899&ct=3>

⁵⁷<http://www.mcla.gov.ge/ka/news/2014/12/2029>

#3 and Gldani #8 Establishments many times. Moreover, he had not been provided with adequate medical treatment as well.⁵⁸

The information provided by the Ministry of Corrections and Probation says that 27 prisoners died in penitentiary establishments in 2014, out of the total number, 9 cases of death were recorded in the first half of the year whereas 18 cases – in the second half of the year.

The number of cases of suicide significantly increased in 2013-2014 years. It should be underlined hereby that the year 2013 witnessed the highest rate of suicide cases for the last several years, which were 6, taking into account sharply decreased number of prison population compared to previous years.⁵⁹ Regarding the data for 2014, the information provided in a written reply by the Ministry of Corrections and Probation about causes of death was not comprehensive, although media disseminated the information about 5 cases of suicide in penitentiary system in 2014:

- 24-years old inmate J.P. was found dead in cell sanitary unit by his cell mates on 17 August 2014 in Penitentiary Establishment #6. The investigation was launched pursuant to Article 115 of the Criminal Code of Georgia on the offence of incitement to suicide.⁶⁰ Initially, the family members of the deceased inmate were against the version of suicide referring to the fact that in May 2015 the term of his imprisonment was going to expire. Moreover, it was unclear for them, what could have caused inmate's suicide. One of the versions was related to so-called "Makurebeli" institution claiming that the inmate could have failed to resist a pressure coming from them and commit a suicide.
- The Ministry of Corrections and Probation released a statement that during the detour on 16 September 2014, two inspectors found inmate Z.S hanged in his cell.⁶¹ An important circumstance is the fact that on day prior the death of the inmate, his cell-mate was transferred to the other establishment; prisoner Z.S was left alone in his cell.
- Inmate N.Sh was found dead in Penitentiary Establishment #17 on 17 September 2014 with self-injuries in the neck area that caused his death.⁶² In both cases, the investigation was launched pursuant Article 115 of the Criminal Code of Georgia on the offence of incitement to suicide. The statement made by the Public Defender's Office of Georgia on the given case sheds light on the circumstances

⁵⁸ <http://www.humanrights.ge/index.php?a=main&pid=18045&lang=geo>

⁵⁹ In 2012, the total number of prisoners was 19 340, and in 2013 – 9 093.

⁶⁰ <http://www.ombudsman.ge/en/preveniis-erovnuli-meqanizmi/siaxeebi-npm/gancxadeba-patimris-gardacvalebastian-dakavshirebit.page;>

⁶¹ <http://medianews.ge/ge/patimarigardatsvliliipoves/86332>

⁶² <http://mcla.gov.ge/?action=news&lang=geo&npid=2126>

that the inmate had mental problems and had repeatedly approached the medical personnel of the establishment as well as the Public Defender, although instead of providing the medical treatment for him, he had been transferred several times from one establishment to another. After the prisoner began hunger strike requesting the treatment by a doctor, he was placed in a solitary confinement cell, where he committed suicide the next day.⁶³

Coming from the afore-mentioned, the responsibility of the administration and medical personnel of the penitentiary establishment for the death of the prisoner is vivid. A prisoner who had mental problems and was prone to self-harming (he self-inflicted woundinjuries in his throat area several times) should have been placed in a specialized medical establishment under the relevant supervision. Solely the fact of launching investigation on ill-treatment cases claimed by prisoners could not be assessed as an adequate reaction from state agencies. Merely the fact that the inmate was refused to enjoy his rights to adequate medical treatment should be considered as amounting to ill-treatment.

- One more case of suicide was detected in Penitentiary Establishment #17 in December 2014. An investigation was launched on the death of inmate L.M. pursuant to Article 115 of the Criminal Code of Georgia.⁶⁴
- Alleged suicide was occurred in the Penitentiary Establishment #18, although the family of the deceased inmate does not believe that J.I was threatened to be killed. The family members of the inmate stated that narcotics could be easily bought within the territory of the establishment whereas the staff-members themselves were bringing narcotics inside the establishment. The Minister of Correction and Probation denies this fact; the General Inspection of the Ministry launched investigation pursuant to Article 115 of the Criminal Code of Georgia (incitement to suicide).⁶⁵

⁶³<http://www.ombudsman.ge/ge/previnciis-erovnuli-meqanizmi/siaxleebi-npm/gancxadebasasdjelagsrulebis-n17-dawesebulebis-msdjavrdebulta-dasa-da-nshs-gardacvalebis-shesaxeb.page>

⁶⁴http://pia.ge/show_news.php?id=30029&lang=geo

⁶⁵<http://www.tabula.ge/ge/story/90471-gardacvlili-patimris-ojaks-tvitmkvlelobis-versiis-ar-sjera>

Use of Excessive Force by Police

The primary duty of the police is the protection of human rights and freedoms and fight against crime. This implies that, while performing their duties, policemen shall use proportional measures, which shall be fit, necessary and proportional to the legitimate aim pursued.⁶⁶ One could say that the work performed by police is a means of implementation by state of those positive and negative obligations undertaken by Constitution and in terms of human rights protection. Adherence to the principle of proportionality and fulfillment of duties by police within the limits prescribed by law has a vital importance in increasing the level of credibility towards the police in a society. Police as a law-enforcement body shall act as an example of lawfulness, therefore, a state is particularly obliged to eradicate the illegal acts committed by police and ensure their effective investigation. The given obligation is enshrined in the European Convention of Human Rights, in particular Articles 2 and 3 providing for the right to life and prohibition of torture. One of the most effective methods of acting in compliance with the Convention standards is by ensuring that all credible allegations of violations of improper use of force are subjected to an effective investigation.⁶⁷ This issue finds its special place in the case-law of the European Court of Human Rights.⁶⁸

The reporting period witnessed several cases of excessive use of force by police and abuse of authority:

- On 3 October 2014, in Kutaisi, during the persecution, the policemen wounded 22-year Mirza G. in the head. The latter deceased an hour later after he was delivered to the hospital.⁶⁹ The police officer was arrested and charged with criminal offences on premeditated murder and abuse of authority by using a weapon⁷⁰ and his official authority was suspended until the end of the investigation. The court upheld the motion of the prosecution and decided to apply detention as a preventive measure.⁷¹
- On 25 August 2014, information appeared about the fact of violent beating of G. Tsomaia by members of the Second Division of Saburtalo district police on 14 August. According to the information, inebriated G Tsomaia entered the local police station in his neighborhood and requested return of the mobile phone confiscated during his arrest on the drug use and possession in 2013. One of the policemen got irritated by the fact that inebriated G. Tsomaia visited police station at night and according to the information provided by the victim, he was

⁶⁶ Article 12, Police Law of Georgia

⁶⁷ The European Convention on Human Rights and Policing, A handbook for police officers and other law enforcement officials, Jim Murdoch, Ralph Roche, Council of Europe, December 2013, Pg 25;

⁶⁸ *Ramsahai v the Netherlands* no 52391/99, 15 May 2007, §325; *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, 7 February 2006, §§ 78, 80 86; *Tsintsabadze v. Georgia* no. 35403/06 , 15 February 2011, §76;

⁶⁹ <http://www.frontnews.ge/ge/news/56807->

⁷⁰ <http://bit.ly/1w18zgK>

⁷¹ <http://itv.ge/?m=16&CID=33859>

taken to one of the room upstairs and beaten by 11 persons, presumably by policemen.

It was recorded in the protocol of visual examination of the temporary detention isolator as well as in the Form No. IV-100 issued by Academic N. Kipshidze University Clinic on 14 September, that the affected had injuries on his face and a head. G. Tsomaia was arrested pursuant to Article 353 of the Criminal Code of Georgia that envisages punishment for resisting, threatening or committing violence against the police officer acting as a protector of public order. For the offence committed during the probation period, pre-trial detention was applied against G. Tsomaia. On 27 August, civil activist organized a protest of solidarity towards Giorgi Tsomaia in front of the Division II of Vake-Saburtalo Police and requested timely, impartial and effective investigation into the case; the same request came from the non-governmental organizations.⁷²

- On 7 September 2014, policemen arrested a person, who was recording “police ride” on his mobile phone. The information spread that policemen forbade recording to him and his accompanying person and deleted the recorded information from the phone.⁷³ When journalist’s accompanying person pointed out that the files in the mobile phone contained personal data and that the police did not have a right to see them, he was detained. According to the information, the detained person was initially kept at the police station and later was transferred to the temporary detention isolator. The press office of the ministry of Internal Affairs stated that the detained person was charged pursuant Article 173 of the Code on Administrative Offences. Disobedience to the legal orders or instructions of law-enforcement officers.⁷⁴ According to the statement of press office of the court, on 8 September, Tbilisi City Court terminated proceedings against the detained person due to the absence of a crime.⁷⁵
- On 7 September 2014, on the stadium “Dinamo Arena”, before the football match between Georgia and Ireland, a young man was physically abused in front of his little son.⁷⁶ A man was standing on the staircases at the entrance of one of the sectors’ of the stadium with his son in his hands when he had a verbal confrontation with the law-enforcement officers. A witness said that “a person having a 3-4-years old baby in his hands was strongly kicked by the policeman by his fist into the face. The man shattered but tried not to fall down, although he failed to resist the second hit and fell down together with his baby. The lying

⁷²<http://www.humanrights.ge/index.php?a=main&pid=17863&lang=geo> ;
<http://www.tabula.ge/ge/story/88424-arasamtavroboebma-policiashi-giorgi-comaias-cemis-faqtze-gancxadeba-gaaketes>

⁷³<http://www.humanrights.ge/index.php?a=main&pid=17863&lang=geo> ;
<http://www.tabula.ge/ge/story/88424-arasamtavroboebma-policiashi-giorgi-comaias-cemis-faqtze-gancxadeba-gaaketes>

⁷⁴<http://bit.ly/1wCj347>

⁷⁵<http://www.netgazeti.ge/GE/105/News/35592/>

⁷⁶<http://www.netgazeti.ge/GE/105/News/35612/>

person was surrounded by dozens of police officers”.⁷⁷ The ministry of Internal Affairs confirmed the incident that took place on the stadium.⁷⁸ According to the information of press office of the Ministry, it was that person himself who physically abused policemen; therefore the investigation was ongoing pursuant to Article 353 of the Criminal Code of Georgia.⁷⁹ It is still unknown whether investigation was launched on the excessive use of force by police.

- On 30 September 2014, during the attack of Union “Freedom Generation” on the non-governmental organization “Freedom Zone” police detained two members of the latter. Later, the lawyer of the detained persons stated that the members of “Free Zone” P. Chkadua and D. Gogokhia had been severely beaten while being under arrest at the temporary detention isolator. Moreover, according to the information provided by the lawyer, head of investigative unit of patrol police threatened detained Gogokhia with raping.⁸⁰
- On 23 October 2014, information about the alleged excessive use of force by police was spread: billing manager of “Energo pro Georgia’s” Tsalenjikha office L. Kilasonia, accused police officers in beating and threatening with sexual violence. He state that police detained him on 8 September and urged to write a confession on purchase and abuse of morphine by means of physical violence and threatening with rape. According to L. Kilasonia’s statement, detained V. Belkania has been physically abused as well.⁸¹ General Inspection of the Ministry of Internal Affairs launched investigation into the case,⁸² although the results have not been known yet.
- An alleged fact of excessive use of force by police took place as well against local Muslim population during the incident in village Mokhe of Adigeni municipality. As seen on the video shooting, police has beaten the protesters while apprehending and transferring them to the police station and verbally abused other participants of protest on the ground of religious affiliation.⁸³ An investigation was launched into this fact.
- On 4 January 2015, street artists left a signs in from of the patriarchy residence. The sign was saying “25 million” indicating to the amount allocated from the state budget to the patriarchy. The aim of the street artists was to remind the society that patriarchy have been finance on an annual bases from tax-payers money, which in most cases have been spent unreasonably. The authors of the signs, M. Natroshvili and J. Jishkariani were summoned to the police station. One

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Article 353 of the Criminal Code of Georgia refers to resistance, threat or violence against protector of public order or other government representative.

⁸⁰ <http://www.tabula.ge/ge/story/88186-advokati-dakavebul-gogoxias-da-chkaduas-policiashi-sastikad-scemes>

⁸¹ <http://transparency.ge/en/node/4729>

⁸² <http://www.livepress.ge/ka/site/news/10179/>

⁸³ <http://emc.org.ge/2014/11/03/emc-is-gancxadeba-prokuraturas/>

of the street artists recalls that on 8 January they were still in Tbilisi, in police station on Tabukashvili Street where 3 representatives of the patriarchy were present during the “interview”. Then they were transferred to the police unit of Ortachala where the protocol was drafted. As Natroshvili declared, on the question to the law-enforcement officials on the status of their detention and pursuant which articles they were going to be charged, the patriarchy representative answered, that the good will of patriarch was that they should not be punished and it was merely an interview and not an interrogation.

Unfortunately it has been unknown up until now, what was the response of the relevant bodies on the above-mentioned alleged cases of excessive use of force and abuse of power by police as well as what was the result of on-going investigations. Establishment of independent investigation mechanism has its important role in the context of these problems so far as it would have ensured objective and effective investigation into the alleged cases of excessive use of force and abuse of power; although, the Georgian legislation does not envisage the existence of such body. The number of violations committed by police prove that neither the Prosecutor’s office nor the General Inspection of the Ministry of Internal Affairs do comply with the high standards of impartiality, promptness and effectiveness set by the case-law of the European Court of Human Rights.

Non-existence of independent investigation body in Georgia has been underlined by European Court of Human Rights,⁸⁴ as well as by other international organizations, in particular, Human Rights Watch, which stated in its 2014 report that accountability of law-enforcement officials still remained a problem in Georgia because of the absence of the independent investigation mechanism, which would have investigated crimes committed by them.⁸⁵ Ineffective investigation into the crimes committed by members of police creates grounds for flourishing of syndrome of impunity being quite dangerous and impeding factor for the democratic development of the country. Therefore, the “Georgian Democracy Initiative” calls on authorities to undertake all the necessary steps for the prevention of such cases and ensuring impartial, effective and objective investigation thereof.

⁸⁴ *Tsintsabadze v. Georgia* no. 35403/06 , 15 February 2011, §78, §94;

⁸⁵ Human Rights Watch, World Report 2015 (for 2014), Georgia, pg 254;

Domestic violence

The domestic violence, i.e. psychological, physical, sexual or economic violence against family member, is one of the most significant problems in all countries, considering the fact that, contrary to other offences, it is continuity and covertness that are pertinent to them and revealing thereof is quite difficult, especially in societies which tolerate such offences or as a minimum, have indifferent attitude towards them and perceive as an internal family problem without a need for intervention.

Usually these are the vulnerable groups, in particular women and children who become victims of domestic violence that is directly linked with the attitude of a society towards them. Council of Europe Convention on preventing and combating violence against women and domestic violence (so called “Istanbul Convention”)⁸⁶ states, that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men” and it is “a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.”⁸⁷

Thus, domestic violence is closely related to the gender inequality and discrimination on the gender ground. In most cases, it threatens the health and life of a person not to mention the honor and dignity of a victim. Therefore, a state is obliged to introduce the relevant legislative basis and ensure its implementation in order to minimize the appearance of such cases. Within the framework of fight against crime, it is also necessary to raise public awareness (including victim women) that plays an important role in prevention and revealing cases of domestic violence.

Cases of Domestic violence and offences committed on the ground of domestic violence

Georgia as a follower of patriarchal traditions, in which the role assigned to women as a rule is limited to taking care of family and children, has always been notorious for its discriminatory approach towards women that in some cases even led to violence. Although, one could recently see the significant increase in the number of domestic violence and women’s murder cases, the fact, which draw the attention of wider society.

According to the statistics released by the Ministry of Internal Affairs of Georgia on domestic violence cases (offences committed within families) committed under the Criminal Code of Georgia (Articles 11'-108, 11'-109, 11'-117, 11'-118, 11'-126', 126'), in

⁸⁶ Georgia signed the Convention on 19 June 2014.

⁸⁷ <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

total, there were 591 cases, out of which an investigation was launched on 434 cases. The Court approved Restraining Order in 817 cases.⁸⁸ As for the data as of 10 February 2015, in the beginning of 2015, already 89 cases of domestic violence were recorded; the investigation was launched on 60 out of these cases.

It should be mentioned that the highest rate of domestic violence cases goes for Kakheti and Shida Kartli regions. Based on the information provided by the Prosecutor's Office, according to the statistics disseminated by the NGO "Freedom of information development Institute," in 2009-2014 years there were 45 cases of criminal prosecution on murder on the grounds of domestic violence. Most of these – 19 cases were recorded in 2014.⁸⁹

Several cases of offences on the ground of domestic violence occurred during the reporting period:

- On 17 October 2014, a former husband of the lecture of the Ilia State University wounded his ex-wife in the university building and committed a suicide. The victim passed away later in the hospital. It turned out that the victim M.Ts. had been repeatedly addressing the police because of the threats coming from her ex-husband, but the reaction of police was limited to verbal warning.⁹⁰
- On 18 October 2014 a man killed his wife with a knife in village Darcheti, Gurjaani municipality. Natela J. died at the scene. According to the preliminary information, the man was drunk. The police arrested Iuri Ch. and charged him with murder.⁹¹
- 30-years old woman committed a suicide in village Iormughanlo, Sagarejo municipality. The reason was the physical and verbal abuse as well as the degrading treatment of the deceased by village population and relatives due to the alleged adultery.⁹²
- A young woman was found hanged in village KvedaSalibauri, Khalvachauri municipality. The investigation was launched pursuant Article 115 (incitement to suicide). The family members and friends do not exclude the presence of the signs of violence in private talks.⁹³
- Fact of violence was detected in Dedoplistskaro: a man had beaten his 31 pregnant wife, who was taken to hospital with multiple fractures and bruises.

⁸⁸ It should be noted that in 2013, the number of similar cases was 459; the investigation was launched only on 185 cases whereas the Restraining Order was issued only in 227 cases.

⁸⁹ <https://idfi.ge/ge/statistic-domestic-violence>

⁹⁰ <http://www.interpressnews.ge/ge/samartali/301157-ilias-universitetshi-mkvleloba-mokhda.html?ar=A>

⁹¹ <http://police.ge/en/shss/7246>

⁹² <http://ick.ge/articles/19726-i.html#.VDgNN8QhYY4.facebook>

⁹³ <http://www.interpressnews.ge/ge/samartali/303061-sofel-samebashi-akhalgazrda-qali-gardacvlili-poves.html?ar=A>; <http://1tv.ge/news-view/79266>

The husband of the victim was charged with the offence pursuant Article 118 (3). The accused has been placed under the preliminary detention.⁹⁴

- On 18 October, the Ministry of Internal Affairs spread a statement on the incident that happened on Kazbegi avenue,⁹⁵ Tbilisi: a police officer was shot by one of the family members when he tried to interfere into the family conflict in between a couple; policemen from the patrol car opened the fire in response. As a result, one police officer and an offender B.M were wounded.
- A man killed his wife in village Verkhviani, Sagerejo municipality in Kakheti region.⁹⁶ Law-enforcement officials arrested Elimkhan E. without a delay. According to the information provided by the Ministry, the detained first tried to kill his wife Meleika G. by firearms, and then he deliberately hit her by car causing her death.⁹⁷
- A murder case occurred in village Ruispiri, Telavi municipality, where as a result of the confrontation, a man T.A. wounded his wife E.M. by a cold weapon. The woman died as a result of wounds, whereas a husband tried to commit a suicide. An investigation was launched on charges of premeditated murder.⁹⁸

The increased number of murders on the grounds of domestic violence indicated to the need of relevant necessary steps on behalf of the state aimed not only at improving the legislations, but first of all at using the already existing mechanisms of protection against domestic violence. Considering the complexity of domestic violence, it is extremely important to ensure the coordinated work of the relevant governmental and non-governmental organizations as well as to look for the effective ways of problem solving.

Legislative amendments aimed at prevention and elimination of domestic violence

In Georgia, there is a Georgian Law on “Elimination of Domestic Violence, Protection of and Support to its Victims.” The domestic violence has been criminalized in Georgia since 2012. According to article 126¹ of the Criminal Code of Georgia, domestic violence includes “violence, systematic abuse, blackmailing, and humiliation from one family member towards other one, that caused physical pain or suffering and that was not affected by Articles 117, 118, 120 of the present Code.” It should be noted that a special Interagency Council was set up as well and an Action Plan for 2013 – 2015 for fight against domestic violence and protection of victims of domestic violence was elaborated.

⁹⁴<http://www.interpressnews.ge/ge/samartali/302808-orsuli-meughlis-cemisthvis-qmars-patimroba-sheefarda.html?ar=A>

⁹⁵<http://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/7245> ; <http://rustavi2.com/ka/news/830>

⁹⁶<http://www.interpressnews.ge/ge/samartali/308334-sofel-thularshi-qmarma-coli-mokla.html?ar=A>

⁹⁷<http://police.ge/en/shss-m-sagaredjoshi-momkhdari-ganzrakh-mkvlelobis-faqti-tskhel-kvalze-gakhsna/7445>

⁹⁸<http://police.ge/en/shss-m-ganzrakh-mkvlelobis-braldebit-erti-piri-daakava/7498>

Georgia is a party to international mechanisms such as UN Convention of “Elimination of all forms of violence against Women” and the Resolution #1325 of the UN General Assembly, in compliance to which, the Parliament of Georgia approved 2012 – 2015 Action Plan for the implementation of UN General assembly Resolutions #1325, 1820, 1888 and 1960 on “Women, Peace and Security”.

The following legislative changes were introduced in the second half of 2014 aimed at the prevention and elimination of domestic violence:

1. Number of changes were introduced to the Georgian Law on “Elimination of Domestic Violence, Protection of and Support to its Victims”, which defined the concept of domestic violence, added the concept of “neglect” to the methods of violence, specified the list of agencies responsible for revealing the domestic violence cases as well as defined the rights and guarantees for the victims of violence, including maintaining the right to temporary housing, right of the victim to be informed, etc. The same changes provide that until 1 May 2015, the Georgian government should ensure the functioning of a hotline for the victims of domestic violence and until 1 September 2015, the implementation of necessary measures for the organization of obligatory training course for the offenders oriented on changing the violent attitude and behaviour.⁹⁹
2. According to the changes made to the Georgian Law on “Non-custodial Measures of Punishment and Probation”, the Probation agency was assigned to organize obligatory training courses for the offenders oriented on changing the violent attitude and behaviour.
3. According to the changes made to the Georgian Law on Police, police was tasked with warning the victim of domestic violence about the release of offender from custody.¹⁰⁰
4. The Georgian Law on the “Protection of Patients’ rights” as well as the Georgian Law on “Medical Activity”, defined the right to disclose confidential information by the medical service provider and interfere into the private and family life in case the patient is a victim of violence.
5. Articles 11¹ (responsibility for domestic violence”) and 150¹ (“coercion to marriage”) were added to the Criminal Code of Georgia. The latter provision will be enacted on 1 April 2015.
6. The changes made to Criminal Procedure Code of Georgia envisage that the questioning of the juvenile victim of domestic violence should not take place in

⁹⁹ According to the changes to the Georgian Imprisonment Code, the obligation of providing the mentioned trainings fell upon the Ministry of Corrections and Probation.

¹⁰⁰ According to the changes to the Georgian Imprisonment Code, the administration of penitentiary establishment is obliged to inform police about the release of offender.

- the presence of an offender; the alleged offender parent shall in no way be appointed as a legal representative to the juvenile; an offender might be a subject to diversion in case of passing the obligatory training course for the offenders oriented on changing the violent attitude and behaviour. According to the same changes, in order to protect the interests of victim of a domestic violence, a court shall have the right to conduct a closed hearing; apart from application of custodial measures, in case of domestic violence, the entrance to certain places or approaching the victim might be forbidden for an offender.
7. The changes to the Georgian “Code on Administrative Offences” specified the parent’s responsibility for neglecting the child’s needs. Article 172⁶ added to the Code defines the responsibility of a person involved in referral procedures in case he/she does not inform relevant state institutions about the child abuse.
 8. The changes to the Georgian “Code on Administrative Offences” regulated the issues of applying to court in case of domestic violence and limitation of authority of parent/legal representative. According to the same changes, non-appearance of any person, party of the process, before a court does not impede the discussions about the issuing the restraining order. The court shall have the right to define on its own the validity period of restraining order, which shall not exceed one month. The court shall also have the right to indicate in the restraining order a diversion of the offender from the place of residence or sending him/her to the obligatory training courses.
 9. The Law of Georgia on Legal Status of Aliens or Stateless Persons defined the rule and possibility for granting the aliens or stateless persons, who are victims of domestic violence, with temporary residence permit. Expulsion of person from Georgia is prohibited until the finalisation of the relevant legal procedures and during period of placement of victims of domestic violence in temporary housing.
 10. The prohibition of methods of upbringing a child causing physical pain or psychological suffering was added to the Civil Code of Georgia.
 11. On 9 December 2015, the Ministry of Internal Affairs issued a special Ordinance on “Toughening the Response Measures on the Facts of Domestic Violence”.¹⁰¹
 12. On 18 February 2015, the Parliament of Georgia adopted a law on “Changes to the Criminal Code of Georgia” toughening the criminal liability in case of domestic violence. In particular, Paragraph 1 of Article 126¹ of the Criminal Code of Georgia defined a year term of deprivation of liberty as a sanction, whereas the second paragraph of the same article defined a three-year of deprivation of liberty instead of a year. Moreover, the concept of “family member” was broadened and included persons who cohabit or used to cohabit constantly. Furthermore, in case of committing a crime pursuant to Article 126¹ of the Criminal Code of

¹⁰¹<http://police.ge/en/shinagan-saqmeta-saministros-pasukhi-ombudsmenis-mimartvaze/7550>

Georgia, imposition of a fine as an additional sanction shall be prohibited. These changes will enter into force on 12 March 2015.

Apart from the legislative changes, Ministry of Internal Affairs provided for the vocational training of police officers/district inspectors¹⁰² on domestic violence issues in police academy. With the support of the US Embassy, the Ministry launched a campaign against violence - "No to Violence!"¹⁰³ According to the statistics released by the MIA, the ministry held 2 182 meetings in total within the framework of the campaign against domestic violence.¹⁰⁴

We consider, that the mentioned legislative changes and the state attempts to bring the national legislation in compliance with the international one is a step forward in fight against domestic violence. Although, it should be taken into account that the main problems lies not in the absence of a legislative basis, but in the effective implementation of the existing laws and timely and adequate reaction of law-enforcement bodies on each case of violence.

In its concluding observations, published on 24 July 2014, on fourth and fifth combined periodic reports of Georgia, the UN Committee on Elimination of Discrimination against Women expressed concerns about the growing number of women who were murdered by their husbands or partners and of women who are victims of other forms of violence; low rate of reporting of cases of sexual and domestic violence against women; lack of State-funded crisis centers and shelters for women who are victims of domestic violence, especially in rural areas,¹⁰⁵ and about the fact that women were sometimes subjected to virginity tests in violation of their right to privacy.¹⁰⁶ Therefore, the Committee urges the Georgian Government to take measures to prevent the growing number of such cases and encourage women to report acts of sexual and domestic violence by raising awareness about the criminal nature of such acts; to ensure the effective investigation of cases of violence against women; to prosecute and punish perpetrators with sanctions commensurate with the gravity of the crime and to provide victims with adequate compensation for damages suffered.¹⁰⁷

¹⁰² <http://police.ge/en/shss-s-akademiashi-odjakhshi-dzaladobis-sakitkhebze-ubnis-inspeqtorebis-gadamzadeba-grdzeldeba/7228>

¹⁰³ <http://www.interpressnews.ge/ge/sazogadoeba/306567-shss-ojakhshi-dzaladobis-tsinaaghmdeg-brdzolis-socialur-kampanias-itsyeb.html?ar=A>

¹⁰⁴ <http://police.ge/en/home>

¹⁰⁵ In Georgia, there is a State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking, which among other tasks, provides the assistance to the victims of domestic violence, protects their lawful interests, provides the medical or other services and facilitates their full reintegration into the family and society. The statistics of the years 2010-2014 for the beneficiaries of shelters for the domestic violence victims witness a growth in the number of the beneficiaries, the number of which reached 114 in 2014, although the number is still low compared to the increased number of domestic violence cases.

¹⁰⁶ Concluding observations on the combined fourth and fifth periodic reports of Georgia", CEDAW, 24.07.2014, §20;

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en

¹⁰⁷ Ibid, §21;

Considering the above-mentioned, it is extremely important that the Georgian Government concentrates on recommendations provided by international organizations and on implementation of the national legislation and undertakes effective steps for reducing the number of domestic violence cases and related murders by timely reaction to each of the facts as well as by adequate punishment of perpetrators and protection of victims.

Personal Data Protection and Illegal Surveillance

Articles 16, 20, 36 and 41(2) of the Constitution of Georgia as well as Article 8 of the European Convention of Human Rights provide for the right for one's private and family life, his/her home and correspondence. The Georgian Constitution imposes on the state on the one hand, a positive obligation to ensure the realization of this right and on the other hand, a negative obligation, not to restrict the exercise of the right without any justification. In spite of the fact that the right to private life is not an absolute one, the state interference is allowed only in case of a legitimate aim and by only those means that restrict the exercise of the right to a lesser extent.

Illegal surveillance is one of the most significant challenges for a state nowadays that is linked with respecting person's private life and correspondence to a considerable extent. The European Court of Human Rights had repeatedly noted that interference into the private life and correspondence should have some basis in domestic law, which should be accessible to the person concerned, who must moreover be able to foresee its consequences for him or her.¹⁰⁸ At the same time, there must be measures of legal protection in domestic law against arbitrary interferences by public authorities; especially the risks of arbitrariness are evident, where a power of the executive is exercised in secret.¹⁰⁹

Along with the regulation of illegal surveillance, personal data protection is one of the most important components of the right to private life, stipulated to a greater extent by Article 41 of the Constitution of Georgia. By ratification of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of

¹⁰⁸ Association for European Integration and Human Rights and Ekimdzhiev v. Bulgarians. 62540/00, 30 January 2008 §§71–77;

¹⁰⁹ Malone v. the United Kingdom. 8691/79 02 August 1984, §67;

Personal Data, Georgia undertook an obligation to ensure confidentiality during processing of personal data.

Since 1 July 2013, A Personal Data Protection Inspector supervises the implementation of the data protection legislation in Georgia, including the inviolability of the right to private life. The mandate of the Inspector is defined by the Law of Georgia on Personal Data Protection. The main objective of the work of the Inspector and his/her staff is consulting public and private organizations on issues related to data protection and inspection of lawfulness of data processing, as well as receiving complaints from citizens.

The annual report on Personal Data Protection of 2014 says that the office of Inspector provided in total 924 consultations on the issues related to lawfulness of personal data processing and protection; monitoring visits were conducted; 7 public and 6 private agencies were inspected and 1936 organizations submitted filing systems catalogue. In case of revealing the violations of the provisions stipulated by law by a data processor, Personal Data Protection Inspector is authorized to use one or several law enforcement measures of altogether. The decision of the Inspector is obligatory to fulfill and it might be appealed in the court according to the legislation.

During the reporting period, significant changes were introduced into the Georgian legislation in terms of personal data protection and undercover investigation.

Changes to the Law of Georgia on Personal Data Protection

According to the changes made to the Law of Georgia on Personal Data Protection on 1 August 2014 and enacted on 1 November 2014, the authority of Personal Data Protection Inspector extended on the private sector as well. The enacted provisions stipulate that Inspector, within his/her mandate, upon either the appeal of a person or his own initiative, has the right to inspect the lawfulness of data processing by any private organization and in case of a violation, to use the sanctions prescribed by law, including a fine.

New formulation of Article 11 of the Law of Georgia on Personal Data Protection, defined the places where video surveillance would be allowed – streets, parks, gardens, playgrounds, public transport stops, public transport and other places of gathering. The aim of video surveillance is the prevention of crimes as well as the protection of a person's security and property, public order and safeguarding the juveniles from bad influence.

On 1 September 2014, newly revised Article 35 (3) of the mentioned law entered into force, defining the authority of the inspector while performing inspection of any type of institutions in the process of requesting documents and information from physical or legal entities. In particular, the Inspector was allowed to request information containing commercial or professional secrets, as well as the materials on operational investigative activities, defined as state secrets, which are important in the inspection process.

Enhancing the mandate of the Personal Data Protection Inspector and in particular, extension of his/her mandate on private sectors is a positive step as far as it strengthens the guarantees of human rights protection and minimizes the risks/facts of violation of the right to private life.

Changes to the Law of Georgia on Operational Search activities

In August 2014, the Parliament of Georgia adopted a law introducing changes to Law of Georgia on Operational Search Activities. According to the changes, paragraphs 3¹¹⁰ and 5¹¹¹ of Article 5 were removed from the law, which in exceptional cases was granting a right to certain persons to get acquainted with the information gathered under operational search activities for scientific or other purposes. Paragraph 2 of Article 6 of the Law granted a person the right to appeal in relevant higher state structures, prosecutor's office or a court against the legality of implemented operational search activities. The new formulation of the Law stipulates that declaring illegal the operational search activities leads creates the basis for recognizing the evidences collected during these operational search activities be inadmissible. The burden of proof of the legality of operational search activities relies upon the body conducting the operational search activities.

New Regulations on Illegal Surveillance

On 30 November 2014, the Parliament of Georgia overturned the presidential veto and adopted the legislative package initiated by the members of the Parliament, E. Beselia, G. Popkhadze and I. Sesiashvili, on making the amendments to the Law of Georgia on Electronic Communications, Law of Georgia on Personal Data Protection and Criminal Procedure Code of Georgia. The changes secured the right of the Ministry of Internal Affairs to have direct access to the means of covert surveillance by introducing the so called "two-keys system", according to which, the second "key" was given to the Personal Data Protection Inspector, who will exercise supervision on operational search activities falling under the Articles 136, 138 and 143¹ (a, b) of the Criminal Procedure Code of Georgia (CPC).

It should be noted that two-stage electronic system of implementing the covert operational activities apply only to covert audio- and video-surveillance and does not apply to other forms of operational activities related to Internet-communications.

The significant part of the changes, in particular, related to two-stage implementation of covert investigation activities and duties and responsibilities of Personal Data Protection

¹¹⁰“It is prohibited to withdraw any document or information containing operational search activities with scientific or other purposes within the period of not less than 25 years after collecting thereof.

¹¹¹“The restrictions envisaged under the paragraph 3 of the present Article do not apply to the person, who has the authority, prescribed by established rules, to get acquainted with the state secret, if he/she needs these data and documents for scientific, research purposes or for educational activities”.

Inspector will be enacted on 31 March 2015. With regard to the covert operational activities falling under the sub-paragraph “a” of Article 143¹ of the CPC of Georgia, such as surveillance and recording of telephone conversations, the Personal Data Protection Inspector shall check the legality of bases for data processing by means of electronic system; shall give electronic consent to implementation of covert investigation activities by means of electronic system for covert investigation as well as check (inspect) the legality of data processing performed by data processor/authorized person.

The adoption of the legislative changes was preceded by several months of intense debated, during which several variations of the draft-laws have been discussed. The President of Georgia also submitted his comments to the Parliament, pointing out to the fact that the Data Protection Inspector shall not be a supervisor on covert surveillance process and the integral part of the process at the same time, but shall be entitled only to control from outside, whereas it should be a court to become involved as a participant of the process instead of the Personal Data Protection Inspector. In President’s opinion, two-stage electronic system¹¹² for implementation of covert operational activities shall be applied not only to video-and audio surveillance, but to other types of covert operational search activities related to internet-communications.¹¹³ Although, as we have already mentioned, the Parliament of Georgia overturned the Presidential Veto and adopted the changes without taking into consideration the latter’s comments. Subsequently, the President signed the adopted Law.

One should underline hereby that in September 2014, Council of Europe experts Joseph Cannataci and Graham Sutton, called on the Parliament of Georgia to annul all those laws, which allowed the state bodies and government representatives to have a direct access to electronic communications without prior informing the operator.

In spite of the legislative changes, one of the most determining factor of implementation of covert operational search activities itself, in particular, the direct access of the Ministry of Internal Affairs to the means of covert surveillance, has not changed. Transferring of so called “second key” into the hand of the Personal Data Protection Inspector does not ensure proper guarantees for the protection of human rights and does not reduce the risk of illegal and massive covert surveillance of personal conversations. Therefore, we could not assess positively the implemented changes as a whole.

¹¹²Two-stage electronic system for the implementation of covert operational search activities is a combination of technical and programmed solution, which excludes the possibility of the implementation of order on activation the object by means of monitoring system of law-enforcement bodies independently without electronic consent of the court.

¹¹³<https://www.president.gov.ge/ge/PressOffice/Documents?9158>