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Communication from another organisation (07/12/2017) and reply from the authorities (14/12/2017) in the cases of MAKHARADZE AND SIKHARULIDZE, TSINTSABADZE, IDENTOBA AND OTHERS v. Georgia (Applications No. 35254/07, 35403/06, 73235/12).

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Réunion : 1310^e réunion (mars 2018) (DH)

Communication d'une autre organisation (07/12/2017) et réponse des autorités (14/12/2017) dans les affaires MAKHARADZE ET SIKHARULIDZE, TSINTSABADZE, IDENTOBA ET AUTRES c. Géorgie (Requêtes n° 35254/07, 35403/06, 73235/12) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.4 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



OUTCOMES OF THE STUDY OF THE PUBLIC DEFENDER OF GEORGIA

DISCIPLINARY PROCEEDINGS AGAINST THE EMPLOYEES OF THE PROSECUTOR'S OFFICE OF GEORGIA, MINISTRY OF INTERNAL AFFAIRS, PENITENTIARY AND STATE SECURITY SERVICE OF GEORGIA ON THE BASIS OF INDIVIDUAL COMPLAINTS



Tbilisi
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ევროკავშირი
საქართველოსთვის
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Introduction

Since 2013 monitoring objective and effective investigation of crimes committed by the representatives of the law-enforcement bodies constituted one of the key priorities of the work of the Public Defender of Georgia. Later in 2014, Public Defender issued a recommendation to establish an independent investigatory mechanism, which will serve to building public trust toward law-enforcement systems through objective investigation and eradication of impunity. The necessity of establishing an independent institution is still acute, due to the fact that individual complaints are still submitted on facts of human rights violations by the relevant agencies and the rate of detecting and punishing offenders is almost zero.¹

Bodies implied in the law-enforcement system include those institutions, that carry a state function to often make an intervention into citizen's right: Prosecutor's Office, Police (MIA), Penitentiary Institution (Ministry of Corrections) and State Security Service. These bodies are equipped with a number of compulsory and restrictive levers against an individual.

In order to ensure democratic order and protection of human rights, state control of such institutions is particularly necessary to neutralize the increased risk of human rights violations. One of such instruments remains controlling legality and ethical standards of employees of these bodies, which along with other parameters is measured against objective, timely and transparent consideration of individual complains and adequate response toward the violation, committed by the employees of these institutions.

Incomplete, nontransparent and protracted process of the individual complaint review and refusal of informing an applicant hinders establishment of public trust toward justice and legality. Impartial, complete and timely examination of facts serve to the establishment of principles of legality, are directed against arbitrariness and abuse of power and facilitate increase of the public trust toward law-enforcement bodies.

A number of individuals apply to the Public Defender of Georgia on facts of violation of their rights by the law-enforcement officers. In line with the responses provided by this body, as a general rule, facts of disciplinary misconduct have not been confirmed. Outcomes of the responses to such facts, which in most instances do not reveal facts of misconduct, resulted in the need to study the effectiveness of consideration of individual complaints regarding activities of the law-enforcement officers.

Present report delivers the outcomes of the study of the inspections carried out by the General Inspectorates of the Prosecutor's Office of Georgia (hereinafter the Prosecutor's Office), Ministry of Internal Affairs of Georgia (hereinafter the MIA), State Security Service of Georgia (hereinafter Security Service), and Ministry of Corrections of Georgia (hereinafter the Ministry of Corrections).

The report aims to highlight analysis of the current practice and detected gaps, as effectiveness of the work of the general inspectorates in the process of individual complaint handling has not become an agenda item either of the government or the legislative body yet.

Present report scrutinizes existing situation and confines itself with providing initial recommendations, which do not imply systematic and fundamental changes. Pursuing effective ways for eradicating existing gaps, which shall also include systematic changes, constitutes common effort of the Government, Public Defender and civil society. Public Defender ponders the delivery of systematic recommendations and the development of a subsequent and a common action plan as a rationale behind the present report.

¹ See Parliamentary and Special Reports of the Public Defender of Georgia for 2013-2016, which relate to the problem of effective investigation, alleged crimes committed by the police officers and employees of penitentiary establishments against individuals and persons deprived of liberty.

Methodology

Present report was prepared as a result of the analysis of the internal legislation and cases examined by the Office of the Public Defender of Georgia. In the process of preparation of the report, issues to which particular attention was paid during the working meetings held with the representatives of the general inspectorates separately were taken into account.

Examined cases include inspection materials provided by relevant authorities launched on the basis of complaints of individuals, lawyers or prisoners submitted in different periods of time against employees of relevant bodies and their full analysis. The Office of the Public Defender of Georgia chose the time period of requesting data itself through the principle of random selection. The Office examined following inspection cases submitted by relevant authorities.

- 12 cases examined by the General Inspectorate of the Security Service² from August 1, 2015 to June 1, 2016;
- 108 cases examined by the General Inspectorate of the Ministry of Corrections³ in April, May and June 2016;
- 165 cases studied by the General Inspectorate of the MIA in first halves of September 2016, November 2016 and January 2017;⁴ The report also includes those 7 cases,⁵ which were examined by the Public Defender of Georgia based on citizens' complaints;
- In spite of the fact that the General Inspectorate of the Prosecutor's Office was applied in 552 instances during January – first of June 2016, examination has started only on 6 cases⁶; Office of the Public Defender of Georgia scrutinized 5 complete cases provided by the Prosecutor's Office.⁷

As a result of the case studies, Office of the Public Defender of Georgia has analyzed not only the content-wise or relevant tendencies of inspections, but also prepared statistics in accordance with the data related primarily to the inspection and which followed from the examination materials. Statistics are annexed to the report.

During preparation of the report consideration was given to the wide spectrum of readers, who do not possess legal profession. Therefore, text, to its maximum extent, is free from a legal discourse, which would be clear only for the audience with legal background. Taking this into account, the report does not include wide normative analysis and only outlines legal and practical gaps as a conclusion.

Public Defender expresses his gratitude toward the General Inspectorates of the Prosecutor's Office, MIA, Ministry of Corrections and Security Service for cooperation. With their assistance, meetings were held with the representatives of the General Inspectorates; their collaboration facilitated receipt of respective information by the Public Defender.

² Letter N3115186 of the State Security Service of December 14, 2016.

³ Letter NMOC81600874171 of the Ministry of Correction of October 21, 2016.

⁴ On October 25, 2017, three representatives of the Public Defender of Georgia studied the materials of 165 complaints at the General Inspectorate of the MIA.

⁵ 7 cases presented by the MIA with the letter NMIA51701676462 of July 13, 2017, letter NMIA916026840016 of October 26, 2016 and the letter NMIA31701836633 of August 01, 2017.

⁶ Letters N13/41948 and N13/56463 of the Prosecutor's Office of Georgia of July 4, 2016 and August 30, 2016 respectively.

⁷ 5 cases annexed to the letter N13/79531 of the Prosecutor's Office of Georgia of December 20, 2016.

Main Findings

General Inspectorates of Four Bodies

- Statutes of the General Inspectorates do not foresee obligation to launch inspection as soon as the information on the misconduct is received;
- In the process of inspection or its finalization, individuals, as a general rule, are not informed about the activities carried out by the General Inspectorates and about their final decisions, except those of the State Security Service;
- Legislation fails to foresee the right, rule and procedure for appealing the refusal to find the fact of misconduct⁸;
- Statistics are not proactively processed and published; furthermore, information on cases with high public interest is not published;
- Number of disciplinary liabilities imposed as a result of the application/complaints is extremely low in every institution;
- Level of public awareness on the authorities and competences of the General Inspectorates is extremely low.

General Inspectorate of the Prosecutor's Office of Georgia

- Inspection is launched only on an insignificant number of applications;
- Normative act fails to foresee the criteria for launching inspection;
- Launched inspection is carried out in a timely and exhaustive manner;
- Recommendation of the General Inspectorate might not be shared with the Consultative Council for Advancing, Promoting and Disciplinary Issues of the Employees of the Prosecutor's Office without any justification and an individual might be free from imposition of any liability.

General Inspectorate of the State Security Service of Georgia

- Level of citizens' reporting is extremely low;
- Investigates applications which do not fall within its authority;
- Majority of individuals are informed about the final decision.

General Inspectorate of the Ministry of Internal Affairs of Georgia

- Recording of shoulder-strap cameras and/or other video recordings are not examined during the inspection process;
- Response to the application/complaint in most of the cases is rapid and all concerned individuals are interviewed;

⁸ "Administrative Branch of the Tbilisi City Court examined several cases and stated that notification as well as conclusion of the General Inspectorate constitutes a so called Interim Act, which due to its legal characteristic cannot be appealed. In addition, "the claim of a re-assignment of the official inspection exceeds the scope of review by the Common courts according to the rule of the Administrative proceedings and the dispute does not derive from the legislation of the administrative law, consequently, is not subject to the court review" – see Disciplinary Liability System in Law-Enforcement Agencies, pp 22-24. <http://bit.ly/2hFjZmK>

- In most instances, texts of the interviews of the police are identical;
- Response to the complaints with a high number of intensity of violations is immediate, which is facilitated by the existence of regional offices;
- Inspection is not launched on complaints related to the alleged facts of ill-treatment and the application is transmitted to the Prosecutor's Office.

General Inspectorate of the Ministry of Corrections of Georgia

- Lack of human resources, which results in the belated response, in particular on applications/complaints received from the west part of Georgia.
- Texts of employees of the penitentiary institutions during the interviews are identical;
- Archiving video recordings carried out during the inspection process, as objective evidence, is almost never carried out.
- Often, additional evidence is not obtained.

Analysis of the examined practice

The analysis of the cases requested from the General Inspectorates of all four state bodies show that the activities of these institutions are mainly similar and differentiate only in terms of particularities of their work due to having similar purpose, functions and legislative basis.

In all four instances proportionality of detecting misconduct is very low. Such index might not give the possibility to make a concrete conclusion on the objectivity of the inspection carried out by the General Inspectorate; however, inspection flaws in terms of obtaining evidence, which would assist in revealing the fact, have been discovered in all four bodies.

Level of reporting also has an influence on the activities of General Inspectorate. Statistics show that for example General Inspectorate of the Ministry of Corrections lacks human resources for a comprehensive study of each and every complaint, while General Inspectorate of the Security Service is addressed by a very low number of individuals.

Despite these differentiations, common gaps characteristic to all bodies can also be defined – this mainly refers to the relationship with the complainants. It is obvious that citizens, in most of the cases, lack any or possess incorrect information on activities or the purpose of the General Inspectorates. Besides, these bodies do not inform the complainants about the outcomes of legal response toward their complaints.

Increasing level of public awareness reflects proportionally on the quality of activities of these bodies; this shall also be in the interests of law-enforcement bodies. Moreover, individuals should be aware of the outcomes on the facts indicated by him/her, have information on activities carried out and introduced with the final conclusion, in order to raise public trust toward a relevant body.

General Inspectorate of the Prosecutor's Office of Georgia

Between the period of January 1 – June 1, 2016, 552 individuals, accused persons and lawyers have addressed the General Inspectorate of the Prosecutor's Office, however, inspection was launched only on 6 cases⁹. Present report is based on the analysis of 5 complete cases, which were presented by the Prosecutor's Office to the Office of the Public Defender.¹⁰

Due to the fact that no normative criteria exists based on which inspection shall be launched, grounds for launching inspection on 6 cases out of 552 and refusal on others, is not clear. The only normative basis states that the Head of the General Inspectorate makes a decision on launching examination¹¹, however, guiding criteria during decision making is not determined by a public and accessible normative act. This flaw establishes a high possibility of inconsistent practice and arbitrariness, which on the other hand, decreases public trust.

We are not aware of the circumstances leading to the refusal to launch inspection on 547 applications/complaints out of 552. According to the verbal explanations of the employees of the General Inspectorate, the inspection is preceded by the examination, however no information exists whether such examination is documented or how it is kept in relevant materials. This obscurity directs to the lack of control of the legality of activities and ethical standards of the employees of the Prosecutor's Office, since complaints specified in all these applications are kept unanswered, despite the fact that an individual has addressed the General Inspectorate of the Prosecutor's Office for examination of the case and for the relevant response.

Misconduct was revealed only in one out of five inspections, however, in this case as well, disciplinary liability was not imposed on the relevant person.

The analysis of these 5 cases shows that if launched, the inspection is carried out exhaustively. The General Inspectorate obtained and studied explanations and other written documentation rapidly and requested relevant video materials too.

The tenure of the inspection has not extended rational terms. Relevant memoranda have been prepared for extending one-month period enshrined in the legislation, which was duly justified. After examination of each case, conclusions have been developed, which were justified and based on the objective circumstances of the case.

In spite of the fact that analysis of 5 cases cannot show the general tendencies on how the General Inspectorate of the Prosecutor's Office carries out the inspections, following gaps have been revealed, which might take place in other instances too:

In one of the cases, significant violations have been detected¹² based on the individual complaint. As a result the General Inspectorate addressed the Prosecutor's Office with a justified recommendation to impose a disciplinary sanction against a concrete prosecutor.¹³ This issue has been discussed by the Consultative Council for Advancing, Promoting and Disciplinary Issues of the Employees of the

⁹ Letters N13/41948 and N13/56463 of the Prosecutor's Office of Georgia of July 4, 2016 and August 30, 2016 respectively.

¹⁰ 5 cases presented by the Letter N13/79531 of the Prosecutor's Office of Georgia of December 20, 2016 (3 cases of 2015, 2 cases of 2016)

¹¹ Article 5 (3) of the Statute of the General Inspectorate (Department) of the Prosecutor's Office of Georgia.

¹² „At the initial stage of investigation of this case not only comprehensive, full and objective investigation has been carried out, but it was conducted in an incomplete and in a low-quality manner. As a result, delay in questioning eyewitness and seizing the object impeded fast and effective investigation, [...] and created the risk of losing or destroying of evidence necessary to the case“ – See case N02/13–114108.

¹³ Memoranda of the Head of the General Inspectorate of January 27, 2016 on the Case N02/13–114108.

Prosecutor's Office. In accordance with the recommendation of the Council, disciplinary measure against the prosecutor was not imposed. No justification exists in the case materials on the refusal of the Council on imposing disciplinary sanction, which in certain cases might be arbitrary.

Informing applicants is another gap after the completion of the case study. No final written decision has been sent to the individuals in any of the five cases, which is a result of lack of normative and practical bases. In order to increase public trust toward the General Inspectorate, providing individuals with information on examination processes of their complaints and final outcomes plays an important role.

Furthermore, for practical transparency of the case management, periodic publication of statistics and development of customer friendly web-page carries similar importance.

General Inspectorate of the Security Service

In comparison with other bodies, individuals apply to the General Inspectorate of the Security Service more rarely. Low level of reporting does not provide the possibility to show the tendencies; nevertheless, Public Defender of Georgia made evaluation on the basis of the analysis of 12 cases.

As a result of 12 inspections, misconduct was revealed only in one case, followed by the disciplinary liability. No misconduct was shown in other cases.

7 out of 12 complaints related to issues not falling within the competence of the General Inspectorate. These complaints also include those instances, when employee indicated by the complainant did not work at the Security Service.

Study of these cases showed that the General Inspectorate of the Security Service launches and carries out relevant activities also in instances when the complaint is clearly irrelevant and addresses, for example a civil dispute.

An incomplete inspection was carried out in one of the instances. In particular, video-recording was requested lately, which led to the failure to obtain relevant data. Furthermore, individual, indicated by the complainant, and whose identification did not constitute a problem, was not interviewed at all. In other instances, activities of the General Inspectorate were carried out in due time.

The conclusion of the General Inspectorate is, as a general rule, justified. However exceptions exist, which are the results of incomplete inspections. In one of the cases Inspection Report/Conclusion has not been prepared at all. Drafting of an Inspection Report/Conclusion after finalization of the inspection is important to reflect all information regarding the process of inspection.

Public Defender welcomes the fact that in the majority of cases General Inspectorate informed the individuals on the final outcomes of the examination.

General Inspection of the Ministry of Internal Affairs of Georgia

General Inspectorate of the MIA provided the Public Defender with the inspection materials for the requested period with a delay of several months. Therefore, Office of the Public Defender of Georgia studied 7 individual cases, which had been requested on the bases of individual applications beforehand; afterwards 165 cases provided by the General Inspectorate were examined at the MIA premises.

Misconduct was revealed only in 8 out of 172 cases (total number of 165 cases studied on sight and 7 individual applications), followed by the disciplinary liability. Out of this number, in one case misconduct was detected against two persons; therefore, both of them were imposed with the disciplinary sanction. Hence, disciplinary liability was imposed on 9 individuals in total.

Examination of the materials provided by the General Inspectorate show that individuals address the General Inspectorate mainly by the telephone hotline. Irrelevant complaints (such as civil dispute, vague request) are frequent. In addition, individuals often make a waiver on their applications, the reason behind being that “the individual ascertained the situation and withdrew the claim”.

In spite of the high number of complainants, it is clear that they lack knowledge about the authority of the General Inspectorate. Presented material included a number of complaints, which fell into the competence of another body.¹⁴ The fact that the General Inspectorate does not launch inspection on complaints relating to alleged ill-treatment and transmits the complaint to the Prosecutor’s Office shall be welcomed.

Majority of the appropriate complaints related to the indifference from the part of the police or exceeding their power. In such instances documentation (such as protocol on administrative offence) is requested and interview of the complaint addressee conducted. If the protocol does not contain factual circumstances in details, information is filled in by the explanatory protocol. Inspectors regularly contact the citizens and obtain information related to the complaint.

The response to the complaint is speedy. Immediate response is made to the complaints relating to the high intensity human rights violations, which is supported by the existence of regional offices.

Two types of gaps were revealed while obtaining documentation. The former includes obtaining recordings of shoulder-strap cameras. According to the verbal explanations by the MIA representatives, some documents might not have been reflected in the provided materials due to technical errors. However it is clear that no activities related to obtaining shoulder-strap cameras featured in the case presented to the Office of the Public Defender, therefore, no recordings exist.

Another important gap is the following: proceedings are ceased if the individual cannot identify a police Officer. This constitutes a problem in cases when the General Inspectorate could identify the complaint addressee itself (for example when the incident was carried out on the territory of the Metro). Particularly problematic are those cases which include a neutral evidence of misconduct, such as video recording or a court judgement, however proceedings are ceased due to the unjustified reason that “human rights violation has not been revealed”.

As in other cases of General Inspectorates, materials of inspection include explanations of police officers having similar texts. They contain not only the word by word similarities of the separate texts, but the entire document, which puts the inspection under doubt.

¹⁴ For example: other departments of MIA (on fine issued by the Patrol Police, or conducting investigative activity), Prosecutor’s Office (legality of investigative activity, fact of committing a crime), Court and etc.

Justification of the final decision of the General Inspectorate is another important problem. As a general rule, final documents of the case include very minimal information. Cases do not include documents confirming that the information was sent to the individuals; nevertheless a number of instances included directions toward informing the applicant about the finalization of the case by phone. Informing the applicant on activities carried out as a result of the complaint and their outcomes in a written form is similarly important.

Lack of justification constitutes a problem also in those cases where police officers are imposed disciplinary sanctions. Presented material sometimes fails to show the precise violation. Documents analyzed only included a general indication that official duties have not been fulfilled, in particular that the police officer did not comply with the #201 Order of the Minister of Internal Affairs. It is important that the final document includes concrete activity which led to the imposition of the sanction and a rule violated by the police officer.

Study of seven individual cases revealed more severe violations. In all these cases, unsatisfactory quality of the inspection carried out by the General Inspectorate was alarming.

Inspection was not complete; easily accessible, relevant information to the case was not obtained. For example:

- In some cases authors of the complaints, who indicated to the alleged human rights violations, were not interviewed;
- In spite of the citizen's complaint, relating to the fact of violation of his rights at the narcology centre, no written, video or other documentation have been obtained; in other instances, only one person being at this centre was interviewed;
- A citizen stated that he was verbally assaulted in the yard and the building of one of the MIA departments, where surveillance cameras are allocated. Nevertheless, no action has been carried out to obtain the video recording.

Therefore, inspection carried out in these cases by the General Inspectorate cannot be perceived as complete. Besides, another important problem was a formal proceeding itself, in particular:

- General Inspectorate sends the information on human rights violations that do not include signs of the crime and clearly constitute disciplinary misconduct to the Prosecutor's Office. The inspection is launched only when the Prosecutor's Office sends the case back which prolongs the process and decreases the possibility of obtaining objective evidence;
- According the inspection materials source of information on which facts in the conclusion are deemed to be determined is unclear. The case materials lack notification, application and/or report on the information which became the basis of launching inspection;
- Legislation fails to regulate cases of conflict of interests.¹⁵ One of the applicants addressing the Public Defender of Georgia was indicating to the conflict of interest too which puts the objectivity of the examination carried out by the General Inspectorate into question.

To conclude the low quality of justification exercised by the General Inspectorate in these cases makes examination of legality of the actions impossible.

¹⁵ When the complainant is indicating on the violence conducted by the person, who later on is commissioned to study the complaint.

General Inspectorate of the Ministry of Corrections of Georgia

In comparison with the above-mentioned bodies, majority of individuals address the General Inspectorate of the Ministry of Corrections. Due to high number of reporting of individuals, prisoners and lawyers, General Inspectorate needs increase in human resources, which has been confirmed by the representatives of this body during the working meeting.

Out of 108 cases analyzed, misconduct was revealed in 6 instances. Out of this number, in one case two individuals were the addressees of the disciplinary liability, therefore liability was imposed on 7 individuals in total.

Lack of human resources distinctly reflects on the terms of the response to the violation. Cases, when the General Inspectorate carried out relevant activities two or more weeks afterwards of the submission of the complaint, are frequent. Due to lack of the regional offices, responses toward complaints submitted from the west Georgia are particularly problematic, which in most cases are conducted a month after the submission.

Delay in conducting initial activities, in particular – interview with the accused/convicted – decreases effectiveness of the inspection; however, it shall also be mentioned that response toward complaints relating to physical and verbal assaults are more rapid. Office of the Public Defender also welcomes the small number of complaints relating to the physical assault.

Study of the presented materials show that persons in the penitentiary establishments often address the General Inspectorate on issues that do not fall within the competence of this body.¹⁶ However, even in such cases General Inspectorate does not cease the proceeding and carries out irrelevant activities.¹⁷ Considering limited human resources, it would be expedient to confine the issue in a short written explanation.

General Inspectorate conducts 2-3 activities on each case. A small number of performed activities cannot be justified only due to the high number of irrelevant complaints. Vice versa, as a general rule, more activities are carried out on irrelevant complaints.

After the receipt of the complaint, the General Inspectorate starts the interview process. Practice of the Inspectorate, which implies interviewing the complainant, as well as individuals indicated by him/her shall be welcomed. At the outset, interview is conducted with the prisoner, and in case of necessity – employee of the penitentiary establishment. In case of medical problems, profiled individuals are interviewed.

During the interview, all-encompassing information is obtained from the complainant; however cases exist, when the individual does not trust the authority, or refuses to make an interview. It can be stated that content-wise, the interview is carried out completely,¹⁸ however significant problems have been revealed by the examination of interview protocols of the employees of penitentiary establishments.

In particular, interview protocols of the employees include the identical description of not only the instance and the characterization of the convict, but certain phrases are also repeated word by word. Sentence structures of these protocols are also identical, sequence of words are repeated, even

¹⁶ For example: to transmit to another establishment, to enroll in economic activity, to confirm one's innocence, to change security risk or with other requests. For details, please, refer to the statistical analysis.

¹⁷ For example, while studying the complaint on transmitting in another establishment, a number of written documentation has been requested, individuals were interviewed, etc.

¹⁸ However, gaps have been revealed when examining group applications; furthermore, instances of interviewing an individual regarding the least important problem, whereas, the complaint also indicated to other issues, were also detected.

orthographic and mechanic flaws are similar. In the case of T.M. explanations of 4 employees are hand written and indicate that they are first-hand written by these employees; however these explanations not only coincide with each other word by word, but are also written with the same calligraphy. Such “coincidences” pose questions with regard to interview process of the employees.

Drafting of a memoranda or a conclusion after finalization of the inspection shall be welcomed; however such a justification indicated therein not always constitutes a consequence of factual circumstances.

At the outset, it shall be mentioned that justification of the conclusion is always problematic, when interviews of the prisoner and employees of the penitentiary establishments contradict with each other. Delay in the response, obtaining video-recording and determining objective factual circumstances are generally impossible. In such cases, proceedings are ceased, however, in certain cases obtaining additional information was possible, which has not been carried out.¹⁹

Reviews of complaints related to inadequate medical treatment are characterized with significant gaps. After interviewing the personnel, information is not always obtained from the medical card of the patient. Therefore, only those final memoranda of the cases can be deemed justified, which along with the interview protocol of the medical personnel is strengthened with other documentation; yet number of such cases is very low.²⁰

Justification of the memoranda on ceasing the proceeding is problematic from another point of view too. Generally, inspection is ceased when the convict states that the conflict with the employees of the penitentiary has been eradicated with the intervention of the administration. Proceeding on alleged verbal assault was also ceased, when the individual, based on his own motion, was transmitted to another institution.

One of the cases, where the complainant requested remuneration for an economic activity, shall particularly be emphasized. Apart from requesting information from the personal history, General Inspectorate has not carried out any other activity. Therefore conclusion indicated in the memoranda, that the misconduct has not been revealed, is unjustified.

To conclude, analysis of the materials show that due to ineffective practice and flaws in the inspection process, final memoranda generally are not justified; disciplinary misconduct is only determined when the employee of the establishment confesses relevant fact and written documentation affirming the misconduct through the records of the establishment exist.

Recommendations

- To inform the applicants about the conducted inspection and final decision in a written form;
- To obtain video-recording if possible during the inspection;
- To prepare a conclusion/report of the inspections carried out by the General Inspectorates of the MIA and Security Service, which will include complete information about the inspection.

¹⁹ For example, during examination of I.K.’s complaint, other eyewitness convicts or employees were not interviewed.

²⁰ It shall be mentioned, that during conducting this inspection, General Inspectorate lacked expert resources to analyze medical documentation; however, by this time a specialized medical control unit is established and is functional.

| Penitentiary | | | |
|-----------------------------------|-----|---|---|
| Misconduct | | Type of complaints | Conducted Examination |
| Number of complaints* | 104 | Verbal assault | 12 Activity was conducted |
| Inspection were launched | 90 | Unethical conduct | 12 Complainant was interviewed |
| Misconduct was confirmed | 6 | Physical abuse | 6 Activity indicated by the complainant was conducted |
| Sanction was imposed | 7 | Low-quality medical service | 16 Invitation of a specialist/expert |
| Conclusion/Memoranda was compiled | 99 | uncertainty/distrust | 4 Obtaining video recordings |
| Response to the complainant | 4 | Other (transfer to another establishment, innocence of guilt, employment, etc.) | 40 Request of documentation |
| Complainant refused | 22 | | Request of personal history |
| | | | Irrelevant activities |
| | | | Other types of activities |
| | | | 90 |
| | | | 3 |
| | | | 1 |

* + three complaints, which related to commitment of a crime infringement by the convict

| State Security Service | | | |
|-----------------------------------|----|---|---|
| Misconduct | | Type of complaints | Conducted Examination |
| Number of complaints | 12 | Verbal assault | 0 Activity was conducted |
| Inspection was launched | 7 | Physical abuse | 4 Complainant was interviewed |
| Misconduct was confirmed | 1 | Crime | 1 Activity indicated by the complainant was conducted |
| Sanction was imposed | 1 | Other (start of an employment, plea bargain and etc.) | Request of documentation/video materials |
| Conclusion/Memoranda was compiled | 3 | | Other types of activities |
| Response to the complainant | 6 | | |
| Complainant refused | 0 | | |
| | | | 8 |
| | | | 5 |
| | | | N/A |
| | | | 4 |
| | | | 0 |

| Prosecutor's Office | | | |
|-----------------------------------|---|-----------------------------------|--|
| Misconduct | | Type of complaints | Conducted Examination |
| Number of complaints | 5 | Verbal assault | 1 Activity was conducted |
| Inspection was launched | 5 | Unethical conduct | 2 Complainant was interviewed |
| Misconduct was confirmed | 1 | Physical abuse | 0 Activity indicated by the complainant was conducted |
| Sanction was imposed | 0 | Other (ineffective investigation) | 2 Request of documentation |
| Conclusion/Memoranda was compiled | 4 | | Other types of activities |
| Response to the complainant | 0 | | |
| Complainant refused | 0 | | |

| MIA (Individual cases) | | | |
|-----------------------------------|---|----------------------------------|--|
| Misconduct | | Type of complaints | Conducted Examination |
| Number of complaints | 7 | Verbal assault | 4 Activity was conducted |
| Inspection was launched | 6 | Unethical conduct | 2 Complainant was interviewed |
| Misconduct was confirmed | 1 | Physical abuse | 0 Activity indicated by the complainant was conducted |
| Sanction was imposed | 1 | Other (narcological examination) | 1 Request of documentation |
| Conclusion/Memoranda was compiled | 1 | | Other types of activities |
| Response to the complainant | 0 | | |
| Complainant refused | 0 | | |

| MIA (requested cases) | | | | |
|-----------------------------------|-----|-------------------------------|----|---|
| Misconduct | | Type of complaints | | Conducted Examination |
| Number of complaints | 165 | Verbal assault | 10 | Activity was conducted |
| Inspection was launched | 103 | Unethical conduct | 5 | Complainant was interviewed |
| Misconduct was confirmed | 7 | Physical abuse | 9 | Activity indicated by the complainant was conducted |
| Sanction was imposed | 8 | Crime | 4 | Request of documentation |
| Conclusion/Memoranda was compiled | 7 | Failure to act | 29 | Other types of activities |
| Response to the complainant | 31* | | | |
| Complainant refused | 38 | other (irrelevant complaints) | | 46 |
| | | | 79 | |

* – reflects also those cases, where it is indicated that the complainant was informed about the decision



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA



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№7698

14 / December / 2017

Department for the Execution of Judgments
of the European Court of Human Rights

Subject: Groups of cases Tsintsabadze v. Georgia (Application no. 35403/06) - Judgment of 15/02/2011, final on 18/03/2011; Identoba and Others v. Georgia (Application no. 73235/12) - Judgment of 12/05/2015, final on 12/08/2015; Makharadze and Sikharulidze v. Georgia (Application no. 35254/07) - Judgment of 22/11/2011, final on 22/02/2012

Dear Sir/Madam,

With reference to your letter dated 11 December 2017 (reference: DGI/FS/CA/MLO), the Government of Georgia underscores that the Public Defender's observations and recommendations in respect of the General Inspectorates of four state bodies (General Inspectorate of the Prosecutor's Office of Georgia; General Inspectorate of the Security Service of Georgia; General Inspectorate of the Ministry of Internal Affairs of Georgia and General Inspectorate of the Ministry of Corrections of Georgia) are valuable sources.

The Government will render respective detailed observations with regard to the said remarks of the Public Defender in the context of the forthcoming action plans/reports relating to the execution of the judgments/decisions of the Tsintsabadze; Identoba and Makharadze and Sikharulidze groups.

I remain at your disposal for any requests or questions that you might have.

Sincerely,

Head of the Department of State Representation to the
International Courts

Beka DZAMASHVILI