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Meeting: 1398th meeting (March 2021) (DH)

Communication from an NGO (Georgian Young Lawyers' Association (GYLA) (01/12/2020) concerning the case of Sarishvili-Bolkvadze v. Georgia (Application No. 58240/08).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1398e réunion (mars 2021) (DH)

Communication d'une ONG (Georgian Young Lawyers' Association (GYLA) (01/12/2020) concernant l'affaire Sarishvili-Bolkvadze c. Géorgie (Requête no 58240/08) ***[anglais uniquement]***

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

DH-DD(2020)1165: Rule 9.2 Communication from an NGO in Sarishvili-Bolkvadze v. Georgia.
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DGI

01 DEC. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Committee of Ministers DGI-Directorate
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*1 December 2020* *By mail*

**Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of the case Sarishvili-Bolkvadze v. Georgia**

Dear Sir/Madam,

The Georgian Young Lawyers' Association (GYLA) would like to present this communication pursuant to Rule 9.2 of the Rules of Committee of Ministers to draw attention to the inadequacies in the execution of the European Court of Human Rights' judgment in the case of *Sarishvili-Bolkvadze v. Georgia*.

The present communication aims to provide to the Committee of Ministers the information on the general measures and brings the key concerns and challenges to the attention of the Committee of Ministers with regard to the execution of general measures in this case.

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

Annex 1: Rule 9.2 Communication of the GYLA to the Committee of Ministers of the Council of Europe in respect of the implementation of *Sarishvili-Bolkvadze v. Georgia*.

Yours sincerely,

Nino Jomarjidze

Giorgi Tabatadze

Lawyers at the Georgian Young Lawyers' Association

DH-DD(2020)1165: Rule 9.2 Communication from an NGO in Sarishvili-Bolkvadze v. Georgia.
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**Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of**

# *Sarishvili-Bolkvadze v. Georgia (No. 58240/08)*

**1 December 2020**

**Georgian Young Lawyers' Association (GYLA)**

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## Introduction

1. The Georgian Young Lawyers' Association (GYLA) would like to present this communication pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgment to draw attention to the inadequacies in the execution of the European Court of Human Rights' judgment in the case of *Sarishvili-Bolkvadze v. Georgia*, application №58240/08, judgment of 19 July 2018.
2. The present communication addresses the matters arising in relation to the general measures undertaken by the Georgian Government on the case of *Sarishvili-Bolkvadze v. Georgia* and brings to the attention of the Committee of Ministers the key concerns regarding the flawed legislation unjustifiably depriving the next-of-kin of the victims to claim an enforceable award of compensation for non-pecuniary damage through civil proceedings and lack of relevant regulation on renewal of administrative proceedings based on the judgment/decision of the European Court of Human Rights as well as lack of an effective mechanism to ensure adequate protection of patients' lives and health in the private medical institutions. Finally, GYLA provides recommendations that we consider, are required to ensure the full and effective execution of this judgment.

## I. Summary of the case *Sarishvili-Bolkvadze v. Georgia*, №58240/ 08, judgment of 19 July 2018

3. The case concerns the improper treatment of the applicant's son at Batumi N1 Hospital in 2004, as a result of which he died, as well as failure to provide adequate redress to the applicant through domestic proceedings.[1] In its judgment of 19 July 2018, the Court found a violation of Article 2 (right to life) of the European Convention on Human Rights noting that although there were legislative regulations to supervise compliance with the requirements of the license, Batumi # 1 Hospital operated in certain areas without proper licenses while the state, within the framework of its positive obligation, failed to ensure the effective functioning and enforcement of these regulatory norms in practice. At the same time, the Court noted that the unconditional legislative restriction in force at the time had unjustifiably deprived the applicant, as a surviving next-of-kin of the deceased, of the opportunity to claim compensation for non-pecuniary damage caused by the death of a family member through civil proceedings.

## II. Information on general measures undertaken by the Georgian Government

4. In the recent Action Plan[2] of 2 September, 2019 submitted before the Committee of Ministers and in the 2019 report[3] submitted to the Parliament of Georgia on March 31, 2020, the Georgian Government highlighted the steps taken within the framework of the execution of the general measures on this case. According to the 2019 Action Plan and 2020 Report , following the European Court's judgment the applicant was awarded non-pecuniary damages by the Supreme Court of Georgia, regardless of the fact that the domestic legal system did not afford a deceased victim's surviving next-of-kin the ability to claim and receive non-pecuniary

[1] *Sarishvili-Bolkvadze v. Georgia*, application N58240/08, judgment of 19th July 2018.
[2] Action Plan of the Ministry of Justice of Georgia, 2 September 2019, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2019)976E%22]}
[3] 2019 Report of the Ministry of Justice of Georgia on the implementation of the Judgments/ Rulings issued by the European Court of Human Rights against Georgia, available at: https://info.parliament.ge/file/1/BillPackageContent/26132?

damages in cases of death resulting from medical negligence.[4] Based on the several judgments of the national courts, the Government further noted that despite the lack of proper regulations, the national courts referring to the case of *Sarishvili-Bolkvadze* granted the request of the next-of-kin relatives of the deceased and awarded compensations for non-pecuniary damage caused by the death of the person.[5] The Government also presented information on the activities of the Agency for Regulation of Medical Activities and statistical data of the Agency.

5. The Committee of Ministers sent its feedback to the authorities on 16 March 2020.[6]

## III. The issue of awarding compensation for non-pecuniary damage caused by the death of a next-of-kin

*3.1. Legislation currently in force*

6. The Civil Code of Georgia (the CCG) stipulates the rules for compensation for harm, including harm caused by the actions of medical personnel. Under Article 1007 of the Civil Code, harm caused to a person's health during treatment at a medical institution (a result of a surgery or misdiagnosis, etc.) shall be compensated on a general basis.

7. The general grounds for compensation of the harm are determined by Article 992 of the Civil Code, according to which a person who harms another person who unlawfully, [whether] intentionally or negligently causes damage to another person shall compensate the damage to the injured party. Additionally, chapter 4 of the Civil Code sets out the rules for the duty to compensate damages. According to Article 413 of the CCG, the rule for compensation for non-pecuniary damage is established as follows:

    1. *Monetary compensation for non-pecuniary damage may be requested only in the cases expressly prescribed for by law, in the form of reasonable and fair compensation;*

    2. *In cases of bodily harm or damage inflicted to a person's health, the victim may also request compensation for non-pecuniary damage.*

8. The Law of Georgia on Patients' Rights also regulates the right of a patient or their legal representative to apply to the court. According to Article 10 of the Law, the patient or their legal representative has the right to apply to the court and request: a) compensation for pecuniary and non-pecuniary damage caused by: 1) a violation of the patient's rights; 2) by medical error; 3) other deficiencies in the functioning of the medical institution; 4) improper supervision and regulation by the State; B) suspension or revocation of the medical staffs license; C) amendment of the State's medical and sanitary standards.

9. The analysis of the regulations outlined above reveals that under the Civil Code and related legislation reimbursement for non-pecuniary damage is provided only in cases expressly provided for by law and therefore, the law directly determines in which situations the victim may claim compensation for non-pecuniary damage. Further, as it derives from these provisions, the legislation does not specify the possibility of receiving compensation for non-pecuniary damage by a victim's surviving next-of-kin in the event of the victim's death, including as a result of the actions of medical staff during treatment at a medical facility.

[4] Action Plan of the Ministry of Justice of Georgia, 2 September 2019, see also, 2019 Report of the Ministry of Justice of Georgia on the implementation of the Judgments/ Rulings issued by the European Court of Human Rights against Georgia;
[5] Ibid.
[6] *Sarishvili-Bolkvadze v. Georgia*, 58240/08, Status of Execution, CM: http://hudoc.exec.coe.int/eng?i=004-50723

Consequently, the possibility of compensation for non-pecuniary damages to a deceased victim's surviving next-of-kin is not provided for by the national law in force.

10. The non-existence of relevant domestic legal regulations is also confirmed by the judgments of the national courts in which the courts directly refer to this shortcoming of the law. Neither the Government refuse the lack of proper regulation in the information submitted before the Committee of Ministers or the Georgian Parliament. In particular, Georgia clearly noted in their Action Plan and Report that the applicant was awarded non-pecuniary damage despite the non-existence of relevant regulations and that in several cases, the national courts satisfied the victims' request on the basis of the European Court's judgment on *Sarishvili-Bolkvadze* case and not on the basis of relevant law.

*3.2. The practice of national courts*

11. It should be noted that in recent years the practice of national courts on awarding compensation for non-pecuniary damage to a deceased victim's surviving next-of-kin has indeed improved.

12. However, the national courts are not always consistent, thus, in parallel with the successful practice, several judgments from recent practice confirm that the national courts refuse to grant compensation for non-pecuniary damage for the very reason that the legislation did not provide for the possibility of compensation for non-pecuniary damage in respect of a surviving next-of-kin of a victim who died as a result of a crime.

13. In its 2017 judgment, the Supreme Court of Georgia examined whether Articles 1006 and 413 of the Civil Code allowed the possibility of compensation for non-pecuniary damage for the emotional stress caused by the death of a victim, and clarified that such possibility did not derive from the Civil Code. The Supreme Court further added that *"the grief, heartache, disruption of the rhythm of one's inner life, mourning and depression caused by the death of a family member are not sufficient preconditions for compensating non-pecuniary damage to a deceased victim's next-of-kin."* [7] The Tbilisi Court of Appeals has developed the same reasoning in its judgment of 13 May 2013. The applicants appealed this judgment to a higher court, requesting inter alia compensation for non-pecuniary damage, however, the Supreme Court declared inadmissible that part of the cassation appeal which concerned reimbursement of non-pecuniary damage.[8]

*3.3. The necessity for additional general measures*

14. The judgment of the Supreme Court of Georgia on granting the compensation for non-pecuniary damage to the applicant in the *Sarishvili-Bolkvadze case* is indeed in line with the standards established by the case-law of the European Court of Human Rights. However, the above judgments of the national courts confirm that problems with regard to granting the compensation for non-pecuniary damage still remain.

15. In addition, Georgia has an obligation to bring not only the practice of national courts, but also the current legislation in line with the standards established by the case-law of the European Court, and to make relevant legislative changes to this end.

[7] Judgment of the Supreme Court of Georgia of July 14, 2017 in the case # AS-593-568-2016
[8] Judgment of the Supreme Court of Georgia of November 14, 2013 in the case # BS-378-367 (K-13)

16. As it stems from the national court's judgments on compensation for non-pecuniary damage,[9] in the absence of proper legislative regulation, the respondent party often raises in its complaint that the court should not uphold the applicant's claim for non-pecuniary damage on the ground that reimbursement of such damage to a deceased victim's surviving next-of-kin does not derive from the law. According to the case-law of the European Court, in the event of a violation of Articles 2 (right to life) and 3 (prohibition of torture) of the Convention, the victim should have the possibility to claim non-pecuniary damage as a form of an effective remedy. Despite the unequivocal approach of the European Court, in the absence of proper legislative regulation, the deceased victim's next-of-kin has to unjustifiably argue that the death of a close relative had caused moral damage, which should be subjected to compensation.
17. In the absence of proper legislative regulation, the applicant further has to request reimbursement on the basis of Article 413 (2) of the Civil Code which as mentioned above, does not specifically refer to the possibility of compensation for non-pecuniary damage in the event of death. Moreover, based on the requirements of Article 413 (2) of the CCG, the applicant has to prove that the death of a close relative has damaged his/her health as a result of which he/she suffers from mental anguish and distress. Such approach imposes a fairly high burden on the applicant, which is also unjustified.
18. At the same time, it is necessary for the close relative of the deceased victim to have a legal basis for initiating a dispute before the national courts, which would directly regulate the possibility of claiming non-pecuniary damage at the time of the victim's death. The judgments of the national court in terms of imposing non-pecuniary damage may not be known to everyone, therefore, in the absence of a legal basis, the victim's next-of-kin may refrain from lodging a claim before the national court. Consequently, regulation of compensation for non-pecuniary damage in the law would make litigation before the national courts for the victim's next-of kin more accessible.
19. In light of the reasons set out above, GYLA considers that the Georgian Government should amend the relevant national legislation so that the deceased victim's surviving next-of-kin is entitled to request compensation for non-pecuniary damage on the basis of the law. Such measures are significant in order to effectively enforce the Court's judgment in the *Sarishvili-Bolkvadze case* and to bring the Civil Code in full compliance with the standards established by the case-law of the European Court.

## IV. The judgment of the European Court as a newly discovered circumstance

20. In the case of *Sarishvili-Bolkvadze v. Georgia,* the Supreme Court of Georgia by its decision of 22 February 2019, upheld[10] the applicant's claim for reopening the proceedings due to newly discovered circumstances. In the decision, the court noted that although Article $34^2$ of the Code of Administrative Procedure (CAP) did not allow for reopening of administrative proceedings on the basis of newly discovered circumstances, it was still possible to resume the proceedings in the present case. The Supreme Court of Georgia referred to two main arguments regarding the restriction defined by this Article of the Code of Administrative Procedure:

> *"The Cassation Chamber further notes that it is possible that Article $34^2$ of the Administrative Procedure Code of Georgia aims at excluding the State from double*

[9] Judgment of the Supreme Court of Georgia of February 20, 2020 in the case # AS-1800-2019; Judgment of the Supreme Court of Georgia of July 14, 2017 in the case # AS-593-568-2016.
[10] Decision #B-1504-8 (A-18) of the Chamber of Administrative Cases of the Supreme Court of Georgia of February 22nd, 2019.

> *liability for the same action on the one hand (because the subject of the dispute is a compensation for damage), and on the other hand the stability of the consequences of the administrative body's actions, ensuring building of public confidence towards the actions of the administrative institution."*[11]

21. The Supreme Court of Georgia further strengthened its decision on admitting the case with the argument that the applicant was seeking only to receive compensation for non-pecuniary damage and, at the same time, underlined that: *"(...) It is important that the judgment of the European Court did not oblige the State to pay compensation in favor of the applicant, as the applicant had not made such a claim [before the European Court]."*[12]

*4.1. Legislation currently in force*

22. Article 423 (1) (g) of the Code of Civil Procedure of Georgia (CCP) provides for a right to request the re-opening of civil proceedings based on newly discovered circumstances if "there exists a final judgment (decision) of the European Court of Human Rights finding a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and/or its Protocols in relation to that case, and the violation found [by the European Court] originates from the judgment to be reviewed."
23. Pursuant to Article 1 (2) of the Code of Administrative Procedure, unless otherwise provided by this Code, the rules established by the Code of Civil Procedure shall apply in the administrative proceedings.
24. As a result of the amendments made to the CAP in 2010, a new $34^2$ (Inadmissibility of reopening proceedings based on newly discovered circumstances) Article was added to the Code, according to which:

> *Article 423 (1) (g) of the Civil Procedure Code of Georgia shall not apply to the reopening of the proceedings based on the newly discovered circumstances in the administrative proceedings.*

25. Thus, the CAP proposes a special regulation on the reopening of administrative cases based on the judgment/decision of the European Court and directly prohibits the reopening of the case where the Court found a violation of the relevant right.

*4.2. Existing mechanisms for reopening of administrative proceedings based on a judgment/decision of the European Court of Human Rights in other member states of the Council of Europe*

26. The Committee of Ministers of the Council of Europe, in its Recommendation[13] of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following the judgments of the European Court of Human Rights, stated that in exceptional cases the re-examination of a case or a reopening of proceedings has proved most efficient, if not the only means of achieving *restitutio in integrum*.

[11] Decision №B-1504-8 (A-18) of the Chamber of Administrative Cases of the Supreme Court of Georgia of February 22, 2019.
[12] Ibid.
[13] Recommendation of the Committee of Ministers of the Council of Europe of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, https://rb.gy/lcfewt

27. The Committee of Ministers called on the signatory states of the Convention to review their national legislation in order to ensure adequate opportunities for re-examination/reopening of cases where the European Court has found a violation of the Convention.[14] In the Explanatory Memorandum to the Recommendation, the Committee further notes that, although the mechanism for re-examination or re-opening of cases is primarily relevant in criminal cases, the establishment of a similar mechanism is also recommended for civil and administrative cases.[15]

28. A number of the Contracting States to the European Convention have taken into consideration the recommendation of the Committee of Ministers and, for this purpose, have included in the national law the possibility of reopening cases in criminal, civil and administrative cases.

**Latvian legislation**

29. Latvian law provides for the possibility to reopen the administrative proceedings in parallel with criminal and civil proceedings, on the basis of a judgment/decision of the European Court.[16] According to the Code of Administrative Procedure, there are two possibilities for reopening the administrative proceedings on the basis of the European Court's judgment: 1) within the institution that issued the administrative act and/or 2) before the national court. According to Article 88 of the same Code, the administrative body has an obligation to reopen administrative proceedings on its own initiative, if it is necessary for the implementation of the judgment of the European Court and/or any other international organization. When re-assessing the case, the administrative body shall base its decision on a legal assessment of the factual circumstances of the case as provided by the Court. As for the administrative court proceedings, the proceedings may be reopened on the basis of newly discovered circumstances upon the request of a party to the administrative proceedings. Article 353 of the Code of Administrative Procedure lists the grounds during which it is possible to reopen administrative proceedings. One of such grounds for the reopening of administrative proceedings is the judgment/decision of the European Court of Human Rights.[17]

**Polish legislation**

30. The legislation in force in Poland allows possibility to reopen only criminal and administrative cases.[18] The 2002 Act on Proceedings before the Administrative Courts defines two possibilities for reopening of proceedings on the basis of a judgment/decision of the European Court, namely:

    - Pursuant to Article 272 (3) of this Act, the reopening of administrative proceedings can be requested if such a need results from a ruling of an international body acting on the basis of an international treaty ratified by Poland.
    - Reopening of administrative proceedings can be requested if a court has adopted a ruling finding a violation of the principle of equal treatment and if this violation has affected the outcome of administrative proceedings ending in a final decision.

[14] Ibid.
[15] Ibid.
[16] Extracts from Latvian legislation, available at: https://rm.coe.int/090000168066b424
[17] Ibid.
[18] Extracts from Polish legislation, available at: https://rb.gy/a6j2cx

### Estonian law

31. The possibility of reopening the administrative proceedings upon the party's request is also regulated by the Estonian Administrative Procedure Code. In particular, Article 240 (2) (8) of the Code provides for the possibility of reopening of an administrative case on the basis of a judgment/decision of the European Court. According to this provision, reopening is possible if with the judgment/decision, the European Court has found a violation of the rights under the European Convention on Human Rights or its additional protocols, which affects the determination of the administrative matter and it would be impossible to compensate the damage without reopening the case.[19]

### Ukrainian legislation

32. The Code of Administrative Procedure of Ukraine also provides for the grounds for re-opening an administrative case. According to Article 237 (1) (2) of this Code, one of the grounds for the reopening of administrative proceedings is the following: if the international judicial body, jurisdiction of which is recognized by Ukraine, established violation by Ukraine of its international obligations in course of the court proceedings.[20]

*4.3. The need for general measures to be carried out*

33. Although the case of *Sarishvili-Bolkvadze* belonged to the category of administrative dispute, the national court reopened them despite the existing law. This decision of the national court is indeed welcomed. However, this decision of the Supreme Court does not change the direct prohibition imposed by the law regarding the reopening of an administrative dispute. On the contrary, the renewed *Sarishvili-Bolkvadze case* at the national level and its ongoing process confirm that the existing regulation in the CAP needs to be amended allowing the party to request the re-opening of the administrative dispute in cases provided for by law.

34. Unfortunately, when Article $34^2$ was added to the CAP in 2010, the explanatory note of the draft law did not specify the reason for introduction of such a restriction and the legitimate ground justifying such restriction.[21] Thus, only the decision of the Supreme Court of Georgia, dated 22 February 2019, provides some explanation about the purpose and content of this provision. The Supreme Court explains the existence of this provision on the ground that the state shall be protected from double payment of compensation for the same case. However, this argument is not valid, especially considering the fact that, even in the event of an applicant's appeal, the national court is entitled to refuse the applicant to uphold those claims that relate to reimbursement of damages twice for one and the same action. Accordingly, that argument cannot justify the restriction of applicant's right to access to the court and cannot be regarded as a legitimate ground for prohibition.

35. As regards the second argument indicated by the Supreme Court in its decision of 22 February 2019, which includes ensuring the stability of the accompanying consequences of the administrative body's actions and the establishment of public confidence in the actions of this

[19] The Estonian Code of Administrative Procedure, Article 240 (2 (8)), available at: https://www.riigiteataja.ee/en/eli/527012014001/consolide
[20] The Code of Administrative Procedure of Ukraine, Article 237 (1 (2)), available at: https://rb.gy/0icq4n
[21] The Draft Law of 12 February 2010 on Amendments and Addenda to the Code of Administrative Procedure of Georgia, available at: https://info.parliament.ge/#law-drafting/7573

body, that argument is also unfounded. As noted above, the Code of Administrative Procedure provides for the possibility of reopening a dispute on the basis of other specific circumstances. It is therefore unclear if the reopening of the administrative dispute in the presence of other circumstances does not lead to a breach of the stability of the administrative body's actions and the loss of public confidence, how the judgment or decision of the European Court of Human Rights may lead to this. Contrary, the existence of this prohibition has a higher risk of reducing public confidence in administrative bodies. This approach is also acknowledged by the Committee of Ministers in its recommendation, which indicates that the re-opening of civil disputes may pose problems for third parties, especially when these have acquired rights in good faith, however, the Committee notes that this should not be grounds for refusing the re-examination of cases or reopening of the proceedings because this problem already exists in any country in the application of the ordinary domestic rules for re-examination of cases or reopening of the proceedings.[22]

36. The 2002 recommendation of the Committee of Ministers, as well as the legislation of other countries outlined above, confirms that it is important the legislation to provide for the possibility of reopening the administrative proceedings in certain cases. This is also confirmed by the case law of the European Court. In particular, in the case *Khizanishvili and Kandelaki v. Georgia*, which concerns the infringement of the applicant's property rights by the Tbilisi City Hall, the European Court considered that "a re-opening of the civil proceedings and review of the matter in the light of the principles it has identified in this judgment would be the most appropriate means of affording reparation to the applicants."[23] Consequently, in many cases, re-opening of administrative disputes is the most effective way to achieve full restitution.

37. *Khizanishvili and Kandelaki's case* further confirms that, based on another judgment of the European Court of Human Rights against Georgia, national courts would once again have to consider the need to reopen an administrative case seeking awarding compensation despite the prohibition laid down by law. At the same time, if the national court applies the approach established in the *Sarishvili-Bolkvadze case* also in other cases and re-examines the case based on the judgment/decision of the European Court of Human Rights, despite the prohibition included in Article $34^2$ of the Administrative Procedure Code then such situation further confirms the need for the revision of this provision.

38. GYLA therefore considers it necessary to amend Article $34^2$ of the Code of Administrative Procedure, which would allow the applicant to request reopening/re-examination of an administrative case on the basis of the European Court's judgment/decision.

## V. Deficiencies in the activities of the State Regulation Agency for Medical and Pharmaceutical Activities

39. According to the legislation currently in force, the LEPL State Regulation Agency for Medical and Pharmaceutical Activities carries out state regulation on medicinal and medical activities of natural persons and legal entities in the whole territory of Georgia. In addition to various issues, the Agency's competence includes quality control[24] of the medical assistance provided to patients by the legal entities and natural persons. According to the 2019 activity report of this Agency, the agency has carried out planned and unplanned audits/controls in certain

[22] Recommendation of the Committee of Ministers of the Council of Europe of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights
[23] *Khizanishvili and Kandelaki v. Georgia*, application 25601/12, judgment of 17 December 2019
[24] №01-64/N Order of the Minister of Labor, Health and Social Affairs of Georgia, 28 December 2011, available at: https://bit.ly/35Sl96X [09.05.2020];

institutions.[25] However, as it derives from the statute of the agency, the latter directly inspects/audits only the state health care program (s) in medical institutions.

40. Consequently, a significant challenge with respect to the Agency's activities is the fact that the Agency carries out the quality control of medical care provided in private medical institutions only on the basis of referrals from individual persons and investigative authorities and not proactively, on its own initiative.[26] Under these conditions, an existing agency cannot be considered as an effective mechanism to ensure adequate protection of patients' lives and health.

## VI. Suggested Recommendations to ensure full and effective execution of general measures

41. In order that the Court's judgment on *Sarishvili-Bolkvadze case against Georgia* is effectively and adequately implemented, GYLA considers that the following general measures need to be taken by the relevant state authorities:

- The Georgian authorities should introduce amendments to the national law which would give a deceased victim's next-of-kin the right to claim compensation for non-pecuniary damage caused by the death of the victim;
- The national authorities should amend Article $34^2$ of the Code of Administrative Procedure allowing reopening of the administrative case in cases provided for by law;
- The Government should ensure that the LEPL State Regulation Agency for Medical and Pharmaceutical Activities is equipped with the authority to proactively inspect private medical institutions at certain intervals.

**Georgian Young Lawyers' Association (GYLA), Tbilisi**

[25] "Report on the activities of the Agency for Regulation of Medical and Pharmaceutical Activities for 2019", available at: http://rama.moh.gov.ge/geo/attachment/418/2019-tseli, [09.05.2020].
[26] Letter of the LEPL State Regulation Agency for Medical and Pharmaceutical Activities, 30.06.2020