**SECRETARIAT / SECRÉTARIAT**

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

*Contact: Zoë Bryanston-Cross*
*Tel: 03.90.21.59.62*

**Date**: 01/02/2022

**DH-DD(2022)141**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1428th meeting (March 2022) (DH)

Communication from an NGO (The Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (21/01/2022) in the case of the Tsintsabadze group v. Georgia (Application No. 35403/06).

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.

* * * * * * * * * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1428e réunion (mars 2022) (DH)

Communication d'une ONG (The Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (21/01/2022) dans l'affaire du groupe Tsintsabadze c. Géorgie (requête n° 35403/06) ***[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.

15 J. Kakhidze Street, 0102 Tbilisi, Georgia Tel: (995 32) 2 95 23 53 Fax: (995 32) 2 92 32 11

DGI
21 JAN. 2022
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

# Georgian Young Lawyers' Association

*By e-transmission only*

**To:** Department for the Execution of Judgements
of The European Court of Human Rights
Council of Europe F-67075
Strasbourg Cedex, France

Dear Sir/Madam,

The Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC) wish to present Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of the ***Tsintsabadze Group of Cases*** (Application № 35403/06) . Since the execution of these judgements and decisions is still subject to the supervision, the present submission aims to provide to the Committee of Ministers the information regarding the general measures taken to date by the Georgian Government and brings the key concerns and challenges to the attention of the Committee of Ministers with regard to the execution of this group of cases.

Please, find the enclosed Rule 9 (2) Submission. Should you require additional information about the provided submission, please, do not hesitate to contact us.

Yours faithfully,

Tamar Oniani

Georgian Young Lawyers' Association

**List of the annexes**

1. Annex 1: Rule 9.2 Communication of the GYLA and EHRAC to the Committee of Ministers of the Council of Europe in respect of the implementation of the Tsintsabadze Group of Cases.
   Annex 1.1: Supplementary information to the Communication.
2. Annex 2: Statements of the SIS.
3. Annex 3: Statements of the NGOs.
4. Annex 4: Statements of the PDO.
5. Annex 5: Statement of the Commissioner for Human Rights of the Council of Europe.
6. Annex 6: Statement of the U.S. Embassy in Georgia.
7. Annex 7: Statement of the UN Human Rights Office (OHCHR).
8. Annex 8: Statements of the Ambassador of France in Georgia; the Deputy Head of the Diplomatic Mission of UK in Georgia; the Ambassador of Netherlands in Georgia; the Ambassador of the Czech Republic in Georgia.
9. Annex 9: Statement of the Deputy Head of Division Eastern Partnership / Bilateral Relations.
10. Annex 10: Statement of the Associate director, Europe and Central Asia Division of Human Rights Watch.
11. Annex 11: The amendments adopted in December, 2021 with regards to the abolition of the SIS.

DGI

21 JAN. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

# Rule 9 (2) communication to the Committee of Ministers of the Council of Europe in respect of the execution of the

## *Tsintsabadze Group of Cases (№ 35403/06)*

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

**European Human Rights Advocacy Centre (EHRAC)**

January 21, 2022

# Contents

**EXECUTIVE SUMMARY** ..... 3

**1. The Developments of December, 2021 - The abolition of SIS** ..... 5

***Background Information*** ..... **5**

***The expedient adoption of the law and abolition of SIS*** ..... **6**

***Evaluation of abolition of SIS by different stakeholders*** ..... **7**

**2. Existence of criminal underworld in penitentiary establishments** ..... 10

**3. Use of amnesty / pardon for grave crimes committed by the state authorities** ..... 14

***Recent Developments – Amnesty Law on violations committed on 20-21 June, 2019*** ..... **15**

**5. Recommendations for execution of general measures** ..... 18

**EXECUTIVE SUMMARY**

1. The **Georgian Young Lawyers' Association** (GYLA) and the **European Human Rights Advocacy Centre** (EHRAC) present this communication pursuant to Article 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' judgments and decisions delivered in the *Tsintsabadze Group of Cases*. This submission is communicated for the supervision of the execution of judgments for consideration at the 1428th CM-DH meeting (March 2022).

2. The present communication addresses 3 key problems at the national level: **(1) the abolition of the State Inspector's Service (SIS) in December 2021; (2) the strengthening of the criminal subculture in the penitentiary establishments; (3) the national legislation's failure to preclude granting an amnesty or pardon by State officials who are responsible for grave human rights violations.** The details are as follows:

3. On December 30, 2021, the Georgian Parliament, in a peremptory manner, without previous consultations with the SIS and/or other stakeholders, including civil society, and despite sharp criticism from local civil society organizations and Georgia's partner states, adopted legislative amendments according to which the State Inspector's Service will be abolished in its current form and two new offices will be created, which will be responsible for protecting personal data and investigating crimes against law enforcement. Also, the term of office of the current State Inspector is terminated, indeed in spite of the fact that she (Londa Toloraia) was elected by the parliament until 2025 (see Chapter 1).

4. These amendments were evaluated by civil society and international stakeholders as a **"planned attack by the Georgian Dream authorities on yet another independent body, the State Inspector's Office, [and a] breach of the independence of and trust in the institution (Annex 3)."** This is also evidenced by the fact that no investigative capacities has been improved and the challenges remain the same. In particular, **(i) the lack of jurisdiction as regards high-ranking officials; (ii) problems related to its investigative jurisdiction; (iii) the continued control of the Prosecutor's Office over the investigation process and an exclusive power to conduct the prosecution; (iv) the lack of authority to conduct investigation of certain categories of crimes; (v) problems related to the unhindered access of the State Inspector's Service staff to penitentiary institutions and temporary detention facilities** (Annex 1.1).

5. Furthermore, various legal factors, which hinder the effective, institutionally and practically impartial investigation of cases of ill-treatment remain the same, in particular: (i) **The deficiencies related to correct classification of cases;** (ii) **the legislative shortcomings related to the existing hierarchical and institutional subordination.** The number of issues related to right of victims also remain unresolved, in particular, (iii) **the problems related to the effective participation of a victim in legal proceedings;** (iv) **shortcomings related to granting the status of victim;** (v) **shortcomings related to appealing the decree on termination of investigation/prosecution and on the rejection of the instigation of a prosecution;** (vi) **the failure to inform the victim about the criminal proceedings;** (vii) **effective legal aid for the victims of ill-treatment**. In addition, (viii) **the shortcomings related to audio-video surveillance of communication of law enforcement authorities and citizens/detainees;** (ix) **shortcomings related to the processing of documentation in police stations;**

(x) **shortcomings related to the exercise of the right to take photographs in penitentiary institutions by the Public Defender of Georgia, as well as members of the Special Prevention Group** also remain the same. Hence, taking into account the fact that these problems have remained unresolved since last year, this submission refers to the Rule 9.2 communication of 2020 and annexes renewed information in this respect (see Annex 1.1, see also communication of GYLA and EHRAC pursuant to Rule 9.1 and 9.2 of the Rules of Committee of Ministers, 2020[1]).

6. The strengthening of the criminal subculture in penitentiary establishments, as well as the impact and scale of informal governance, is also a matter of concern as it creates an unhealthy environment for the prisoners and puts the prisoners' life and health at serious risk. This was again revealed in the recent case of the former President of Georgia, Mikheil Saakashvili. The numerous reports on the penitentiary system have raised concerns about the existence of a criminal subculture in prisons and its use/promotion by the administration of institutions for their informal governance. Increased influences of the criminal subculture in penitentiary institutions endanger the physical and psychological inviolability of prisoners, and, remarkably, the prosecutor's office usually does not respond appropriately or effectively to crimes committed by criminal subcultures and the employees of penitentiary institutions. This undermines the principle of the rule of law, as well as puts a group of prisoners in danger, who are not the part of the criminal underworld.

7. The national legislation fails to preclude granting an amnesty or pardon to State officials who are responsible for grave crimes committed against life and health, as well as torture, inhuman treatment, and punishment.

8. Finally, in this communication, GYLA and EHRAC provide recommendations and a number of steps that we consider the Georgian authorities should undertake for the full and effective execution of the *Tsintsabadze Group* of cases.

[1] Communication from NGOs (Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (20/10/2020) concerning the case of TSINTSABADZE GROUP v. Georgia (Application No. 35403/06), available at: https://hudoc.exec.coe.int/eng?i=DH-DD(2020)944E, [06.01.2022].

## 1. The Developments of December, 2021 - The abolition of SIS

***Background Information***

1. For many years the need to establish an independent investigative mechanism, which would investigate alleged crimes committed by representatives of law enforcement organs, has been reiterated by international organizations, the Public Defender of Georgia and non-governmental organizations, including GYLA. On July 21, 2018 the Georgian parliament adopted the law on the State Inspector's Service, and the SIS started its operations on November 1, 2019.

2. It is noteworthy, that the Committee of Ministers has welcomed the establishment of the SIS and has urged the State to develop its mandate. In particular:

   - In 2018, the Committee "*noted with interest the authorities' aim to establish a new State Inspector's Service (SIS) as an independent investigative mechanism and the adoption of a law to this end on 21 July 2018 by Parliament, following consultations with the Public Defender and other national and international stakeholders, and invited the authorities to submit detailed information on the adopted law and the final set-up of the SIS including its jurisdictional competences*."[2]

   - In 2019, the Committee: "*while noting with satisfaction that on 1 November 2019 the SIS became fully operational, and the inclusion of a broad category of ill-treatment-related crimes within its investigative competence, invited the authorities to keep the Committee informed about the concrete results achieved and any legislative or other measures that may prove necessary to further enhance the effectiveness of the SIS*."[3]

   - In 2020, the Committee: "*welcomed the additional institutional and capacity building measures adopted in order to strengthen the effective operation of the newly established State Inspector's Service (SIS) and invited the authorities to continue to update the Committee about the results of the SIS's work, as well as any legislative or other measures that may prove necessary to further enhance its independence and effectiveness*."[4]

3. Although the establishment of the State Inspector's Service and the enactment of its investigative jurisdiction was a step forward, this mechanism has had several key problems which has reduced its effectiveness. In particular: (1) the lack of jurisdiction as regards high-ranking officials; (2) problems related to its investigative jurisdiction; (3) the continued control of the Prosecutor's Office over the investigation process and an exclusive power to conduct the prosecution; (4) the lack of authority to conduct investigation of certain categories of crimes; (5) problems related to the unhindered access of the State Inspector's Service staff to penitentiary institutions and temporary detention facilities (Annex 1.1). These problems were also noted in the activity report of 2020 of the State Inspector's Service that reviewed the legislative challenges, which hindered the Inspector's service in terms of effective, objective and impartial investigation.[5] Despite the above-mentioned legislative challenges, the SIS's independence and impartiality have been positively assessed by both the non-governmental

[2] CM/Del/Dec(2018)1324/6, available at: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1324/H46-6E, [06.01.2022].
[3] CM/Del/Dec(2019)1362/H46-8, available at: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-8E, [06.01.2022].
[4] CM/Del/Dec(2020)1390/H46-10, available at: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1390/H46-10E, [06.01.2022].
[5] The report on the activities of the State Inspector's Service, 187-194, available at: https://info.parliament.ge/file/1/BillReviewContent/272657?, [27.04.2021].

organizations and international partners.[6] It is noteworthy, that the SIS quickly and effectively dealt with the facts of the alleged ill-treatment of the former President of Georgia, Mr Saakashvili.[7]

***The expedient adoption of the law and abolition of SIS***

4. On December 30, 2021, the Georgian Parliament, in an expedited way, without previous consultations with the SIS and/or other stakeholders, including civil society, and despite sharp criticism from local civil society organizations and Georgia's partner states, adopted legislative amendments according to which the State Inspector's Service will be abolished in its current form and two new offices will be created since March 2022, which will be responsible for protecting personal data and investigating crimes against law enforcement (Annex 11). On 13 January 2021 the President signed the bill and it entered into force.[8]

5. Also, the term of office of the current state inspector and her deputies is terminated, indeed in spite of the fact that she (Londa Toloraia) was elected by the parliament until 2025. These amendments were evaluated by the civil society (Open Society Georgia Foundation (OSGF), Georgian Young Lawyers Association (GYLA), Transparency International Georgia (TI Georgia), Social Justice Center (formerly EMC), Institute for Democracy and Safe Development (IDSD), International Society for Fair Elections and Democracy (ISFED), Economic Policy Research Center (EPRC), Partnership for Human Rights (PHR), Georgian Democracy Initiative (GDI), Rehabilitation Initiative for Vulnerable Groups (RIVG), Democracy Research Institute (DRI), Human Rights Center (HRC), Institute for Development of Freedom of Information (IDFI), Media Development Fund (MDF), Georgian Court Watch (GCW) and Sapari) as a ***"planned attack by the Georgian Dream authorities on yet another independent body, the State Inspector's Office, breach of the independence of and trust in the institution."***[9]

6. The official purpose of adopting the law was to comply with the recommendation issued by the non-governmental organizations in 2018 made prior to the establishment of the SIS.[10] The Non-governmental organizations made a statement on 27.12.2021, that, *"In the process of establishing the State Inspector's Service, the non-governmental sector considered that the transfer of control functions over the legality of investigations and information processing to a single agency might not have been effective. However, observations on the institute have clearly proven that no shortcomings have been identified in practice in terms of the compatibility of personal data protection and investigative functions."*[11] However, the recommendations indicating the challenges to the SIS's mandate, also reported by the Inspector's 2020 Activity Report once again remained ignored. This is strongly

[6] "Report: Independent Investigative Mechanism in Georgia – Achievements and Existing Challenges", 2021, available at: https://idfi.ge/public/upload/Analysis/Independent%20Investigative%20Mechanism%20in%20Georgia-min.pdf, [06.01.2022].
[7] See the Statement Of The State Inspector's Service, 17.11.2-21, available at: https://personaldata.ge/en/library/post/7726, [06.01.2022].
[8] Statement of Salome Zurabishvili, 13.01.2022, available at: https://www.president.gov.ge/en/News/Article/sakaryvelos_prezidentis_gantskhadeba_1642077945 [18.01.2022].
[9] See Statement of the NGOs on the possible abolition of the State Inspector's Service, 27.12.2021, available at: https://osgf.ge/en/statement-of-the-ngos-on-the-possible-abolition-of-the-state-inspectors-service/, [06.01.2022].
[10] See the explanatory note, available at: https://info.parliament.ge/file/1/BillReviewContent/289992?, [07.01.2022]; Annex 11.
[11] Statement of the NGOs on the possible abolition of the State Inspector's Service, 27.12.2021

evidenced by the fact, that no amendments have been made for the strengthening the investigative agency and/or protection of personal data (Annex 2). The new law simply abolished current form of SIS without strengthening its capacities.

7. In particular, as a result of legislative changes, the Special Investigation Service (legal successor institution of SIS in the field of investigation) has an increased investigative jurisdiction which covers a wider range of crimes committed by law enforcement agents. However for reasons, which are not clear, prosecutors are excluded from the jurisdiction of the Special Investigation Service. In contrast to the increased responsibility, the budget funding for this body will not increase soon, which calls into question the possibility of effectively exercising the powers assigned to it. Wider jurisdiction does not necessarily mean better investigation if the investigative body will not have proportional means to achieve its goals. Moreover, as it was mentioned in the statement of the United Nations Country Team in Georgia "substantial broadening of the list of crimes falling within the mandate of a newly created Special Investigation Service entails a serious risk of overburdening the agency and distracting its team from fulfilling its primary mandate to combat impunity."[12]

***Evaluation of abolition of SIS by different stakeholders***

8. The expedient nature of the changes, without any effective and tangible involvement of the SIS, civil society and other relevant stakeholders and adoption of the new law in several days clearly did not fully comply with democratic processes or the rule of law. That was also mirrored in the statements of the SIS, the civil society, Public Defender of Georgia, the different international bodies and the states (Annex 2).

9. **The civil society organizations** stated, that: "A draft law, secretly and expeditiously registered behind closed doors, against the background of extreme political polarization, seizure of state institutions, public distrust of law enforcement agencies and the judiciary, aiming at abolishing an independent institution and the early termination of the authority of the State Inspector is nothing more than a political retaliation against an exceptional institution that has more or less been able to gain public confidence in recent years" (Annex 3).[13]

10. **The State Inspector, Londa Toloraia,** stated, that, by abolishing the SIS, the parliament of Georgia "undermined the independent agency which has never agreed its decisions with anyone and acted only in accordance with the law; the agency of citizens of Georgia which boldly charged public bodies for unlawful interference in their private life and use of personal data; which was the first to respond to the release of covert recordings and stated that this fact must not be left without response; which made every effort with limited legislative, human and financial resources to investigate facts of violence by representatives of law enforcement agencies; the agency of citizens of Georgia which had to fight constantly in order to somehow punish violent civil servants who had committed crimes; the agency of this country which dared to say loudly that it had been confronted with problems and obstacles in the process of obtaining evidence and was not provided with evidence – documents, video recordings

[12] The Statement of The United Nations Country Team in Georgia On The Abolition Of The State Inspector's Service, 14.01.2022, available at: https://georgia.un.org/en/168152-united-nations-concerned-over-decision-georgian-authorities-abolish-state-inspectors-service?fbclid=IwAR3E4Gktn43y28qm-T3BDMtCNQ0dIRS6vJ13hf8-DZSAS2icnsWKeLRL-IA, [19.01.2022].

[13] *Ibid.*

needed to punish violent civil servants; the agency of this country which actually stood on the European path and had been introducing new, European standards; the agency which managed to gain unprecedented public trust and support in 2 years; the agency which dared to boldly express its critical opinions concerning prepared legislative amendments while these reforms were pretentious; decided to dismiss the State Inspector and her three Deputies, who managed to create an independent state agency despite all the obstacles." (Annex 2).[14]

11. **The Public Defender of Georgia** expressed great concern about the abolition of the SIS, evaluated the work of the existing SIS as being transparent and effective within the legal framework that it was capable of doing, and stated, that "The draft law initiated in the Parliament of Georgia does not offer any novelty in the content, just indicating that two new bodies will be created instead of the State Inspector's Office and the investigative jurisdiction will only slightly be increased. At the same time, there is nothing new in terms of dependence on the Prosecutor's Office (which is one of the big challenges today). On the contrary, according to the bill, the employees of the Prosecutor's Office will no longer be covered by the investigative mandate of the State Inspector's Office." The Public Defender stated, that one of the main shortcomings of the law was the dismissal of the State Inspector, Deputies of the State Inspector and employees of the State Inspector's Office (Annex 4).[15]

12. This process has also been evaluated by **the Commissioner for Human Rights of the Council of Europe**, calling "on the Georgian Parliament to refrain from adopting, in an expedited manner and without proper consultation with the relevant stakeholders, the draft law aiming at the abolition of the State Inspector's Service which is an independent institution responsible for personal data protection and investigation of certain crimes committed by law enforcement officials. This draft legislative proposal also provides for the dismissal of the State Inspector and all those employed by the Service. If adopted, this draft law can only weaken the independent functioning of the national human rights protection mechanisms in Georgia" (Annex 5).[16]

13. **The UN Human Rights Office (OHCHR)** also expressed "deep concern over proposals for Parliament to abolish State Inspector's office, an independent institution with key role in Torture Prevention & privacy protection" and called "for the initiative to be withdrawn & to ensure independence of national human rights mechanisms" (Annex 7).[17]

14. **The Deputy Head of Division Eastern Partnership / Bilateral Relations** explains that it is disturbed by the development of events in connection with the bill discussed in the Parliament on the basis of an expedited procedure, which abolishes the service of the State Inspector. The European Union was

---

[14] The Statement Of Londa Toloraia, State Inspector On The Abolition Of The State Inspector's Service, 30.12.2021, available at: https://personaldata.ge/en/press/post/7814, [06.01.2022].

[15] Public Defender's Statement on Attempt to Abolish State Inspector's Office, 27.12.2021, available at: https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-sakhelmtsifo-inspektoris-samsakhuris-gaukmebis-mtsdelobastan-dakavshirebit, [06.01.2022].

[16] Commissioner for Human Rights: "The Georgian Parliament should reject draft legislation undermining the independent functioning of the State Inspector's Service," 28.12.2021, available at: https://www.coe.int/en/web/commissioner/-/the-georgian-parliament-should-reject-draft-legislation-undermining-the-independent-functioning-of-the-state-inspector-s-service, [06.01.2022].

[17] See the tweet of the OHCHR, 27.12.2021, available at: https://twitter.com/UNHumanRights/status/1475408100458999811?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1475408100458999811%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fagenda.ge%2Fen%2Fnews%2F2021%2F4062, [06.01.2022].

involved in the creation of this service and invested significant resources in its development (Annex 9).[18]

15. The amendments were also criticized by various states. Statements were published by **the Ambassador of France in Georgia:** "I share the concerns about the ongoing reform of State Inspector. When dealing with key democratic checks + balances, we call for reforms to take place carefully, with wide consultations, with appropriate transitions, avoiding chilling effect on incumbents."[19] **The Deputy Head of the Diplomatic Mission of UK in Georgia** stated, that it was "very worrying news regarding the sudden proposal to dismantle the State Inspector's Service. I hope any decision will be afforded the time, care and openness it requires, involving all relevant stakeholders."[20] **The Ambassador of Netherlands in Georgia** stated: "Concerned about initiative towards dissolving State Inspector's Office, important human rights institution, in a rushed manner leading to dismissal of all staff."[21] **The Ambassador of the Czech Republic in Georgia** stated: "Circumstances of planned abolition of State Inspector´s Service, dismissal of all employees and timing of this rushed action are worrisome, not helping to checks and balances system working properly." (Annex 8).[22]

16. **The U.S Embassy in Georgia** published a statement, noting, that "the ruling party undermined government accountability by abolishing the State Inspector Service, which is mandated to investigate police abuse and protect data privacy, undermined the independence of individual judges by amending the Law on Common Courts, and undermined faith in the judiciary by appointing yet another Supreme Court judge using a flawed selection process. No credible reasons were provided to the public for why these actions needed to be rushed through without appropriate consultations" (Annex 6).[23]

17. **The Associate director, Europe and Central Asia Division of Human Rights Watch** assessed the process as non-transparent, regressive and retaliatory (Annex 10).[24]

[18] See the tweet of Dorota Dlouchy – Suliga, 28.12.2021, available at: https://twitter.com/DorotaDlouchy/status/1475897207899439107, [06.01.2022].
[19] See the tweet of Diégo Colas, 28.12.2021, available at: https://mobile.twitter.com/ColasDiego/status/1475851295554736134?s=20&fbclid=IwAR39N8RtYwTUc4kkv-oHXh-_-VurZRrObUNmxESAG2Dv6_E9Jg7JmVWtNlk, [06.01.2022].
[20] See the tweet of Clare Allbless, 29.12.2021, available at: https://twitter.com/ClareAllbless/status/1476157506972008449, [06.01.2022].
[21] See the tweet of Maaike van Koldam, 28.12.2021, available at: https://twitter.com/MaaikevanKoldam/status/1475841600584658949?s=20&fbclid=IwAR0mhGn4DDW3je3DdfNbL-OW19A3W_Li8ymzOZVUt5CO8lD2_8k9OLXSdhw, [06.01.2022].
[22] See the tweet of Petr Mikyska, 29.12.2021, available at: https://twitter.com/mikyska_petr/status/1476092568492548101?fbclid=IwAR3Ihb5a177sQKvTAEQ2PvlaZRxVkHKEPpecf26XgV3Vsl0iZAh5UhqcsBo, [06.01.2022].
[23] U.S. Embassy Statement on the Ruling Party's Rushed, End-of-Year Legislation, available at: https://ge.usembassy.gov/u-s-embassy-statement-on-the-ruling-partys-rushed-end-of-year-legislation/, [06.01.2022].
[24] See the tweets of Giorgi Gogia 27.12-31.12.2021, available at: https://twitter.com/Giorgi_Gogia/status/1475480672655622146, https://twitter.com/Giorgi_Gogia/status/1476661380342333448, [06.01.2022].

## 2. Existence of criminal underworld in penitentiary establishments

18. In the case ***Tsintsabadze v. Georgia*** the European Court focused, inter alia, on illicit practice in the prisons of Georgia at the time of the death of the applicant's son.[25] In this case, the Court concluded, that the official explanation that a Georgian inmate committed suicide, despite allegations that he had been racketeered in prison, was not convincing. In addition, the Court made important clarifications with regards to the existence of a criminal subculture in Georgian prisons and its illegal influence.

19. Zurab Tsintsabadze, born in 1975, was discovered hanged in Khoni Prison (Georgia) storeroom on 30 September 2005. He was serving a three-year sentence for having resisted police officers who had been called to his former wife's home on account of his violent behaviour. The applicant, the mother of Mr Tsintsabadze, consistently denied before the domestic authorities that her son had committed suicide, claiming that he might have been killed and that the prison authorities had covered the murder up. She actively claimed that there was a criminal subculture in the prison. In 2011, the Court found, that the investigation into the death of Ms Tsintsabadze's son had not been independent, objective or effective. Nor did the State provide a satisfactory and convincing explanation as regards the death, which had occurred in suspicious circumstances in prison. Georgia could thus be held directly responsible for the loss of her son's life, in violation of Article 2.

20. The judgment clarifies that **"The Court, in general, is not oblivious to the well-known illicit practices prevailing in Georgian prisons at the material time and of the consequent fear amongst ordinary prisoners of either mafia bosses or prison administrations** […]**,** the latter being capable of acting, as the applicant eloquently described, through the informally privileged inmates known as makurebelis […] **In particular, as was also confirmed by the statements of Zurab Tsintsabadze's father, when the latter came to the Khoni prison on 1 November 2005 to collect his son's body, X approached him as if he wanted to confide something in him but could not do so as the meeting was closely watched by one of the makurebelis in questio**n […]**. Indeed, the Court does not find it implausible that, being in the hands of the MAKUREBELIS[26] and the prison administration, the inmate X, possessing incriminating information against them, was too intimidated to speak up overtly and dared to give the relevant hints to the deceased's parents only during telephone conversations** […]**. The same fear factor could also be the reason for the retraction of the incriminating statements against the makurebelis and the prison administration by another inmate, V.M.-shivili, who had apparently also observed the suspicious events preceding Zurab Tsintsabadze's death on 30 September 2005** […]**."**[27]

21. In these circumstances, when within the scope of the Tsintsabadze Case, the Court focused on the existence of a criminal subculture in prisons and the challenges related to it, it is vital for the State to take effective measures to eliminate such non-formal governance in the penitentiary system, which in turn will in future help to prevent cases similar to the Tsintsabadze case.

---

[25] *Tsintsabadze v. Georgia,* cited above, § 89.

[26] A *makurebeli* (the Latin transliteration of the Georgian word "*mayurebeli*", which can be translated literally into English as "observer") is an influential prisoner, either unlawfully favoured or tacitly tolerated by the prison administration, who oversees the activities of other inmates. The institution of *makurebeli* ("*смотрящий*" in Russian) is a criminal phenomenon dating back to the Soviet era.

[27] *Tsintsabadze v. Georgia,* cited above, § 89.

22. In general, the prison criminal sub-culture was a widespread method in post-soviet era used by the penitentiary authorities to control and manage inmates.[28] The criminal sub-culture gained a foothold in penitentiary institutions of Georgia as well. As a result, over the years criminals have been running prisons informally. In penitentiary institutions of Georgia, especially in semi-open type institutions, the influence of the criminal sub-culture has increased today.[29] The existence of a criminal sub-culture is also evidenced by the facts of the murder of two inmates, Levan Kortava and Giga Partenadze, as a result of a confrontation between them in N14 prison in 2013 and 2014. Both cases show the involvement of criminal authorities and so called "makurebelis" ("watchers").[30]

23. ***The recent case of the former President of Georgia, Mikheil Saakashvili,*** once again reveals the existence of a criminal subculture and its influence in the prison system. On October 1, 2021 Saakashvili was arrested and was on hunger strike, when on the 40th day he was transferred to Gldani Prison Medical Facility N18. The transfer was required in order to safeguard his right to life, health, and personal safety,[31] among other reasons, due to the existence of the criminal subculture in the prison. The existence of such threats had been confirmed by the footage spread by the media on the evening of November 8, 2021, which depicted the aggressive shouting from one group of prisoners in the N18 prison towards Mikheil Saakashvili.[32]

24. As a result of non-formal leadership, the criminal authorities maintainorder between the inmates together with the administration of the prison. The employees of penitentiary institutions fail to take proper measures to change the situation. On the contrary, the administration actively cooperates with "informal leadership" and uses them to "regulate relations" with inmates. As indicated in the report of the Special Preventive Group, the informal leadership gives guidance to the inmates that in case of problems they should come to them and they will try to solve their problems.[33] As a result the inmates refuse to file official complaints in cases when they want to express their discontent.[34] According to the

[28] *ASHLARBA v. GEORGIA* no. 45554/08, 15.07.2014, § 22.
[29]See Report of 2019 of the Prevention National Mechanism, 2020, 55-8, available at: http://ombudsman.ge/res/docs/2020033122424787329.pdf, [07.01.2022]; See also, Special Report of the Public Defender of Georgia, National Preventive Mechanism, post-visit monitoring report of N2, N8, N14 and N15 penitentiary institutions, 2019, 8; available at: http://ombudsman.ge/res/docs/2019121618092132463.pdf, [07.01.2022]; See also, Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on results of 2018 visit to Georgia, CPT/Inf (2019) 16, available at: https://rm.coe.int/1680945eca, [07.01.2022].
[30] Tabula, Regarding the murder case of Levan Kortava, Court has charged criminal authorities, 10.12.2013, available at: https://bit.ly/2ZmkFEH; newspaper Batumelebi, The family of deceased prisoner awaits the conclusion of the examination, 19.03.2014, https://batumelebi.netgazeti.ge/news/7413/; newspaper Batumelebi, Convicted in Giga Partenadze murder attempts suicide in prison 10.02.2019, https://batumelebi.netgazeti.ge/news/181909/, [07.01.2022].
[31] SJC, GYLA: Saakashvili's hospitalization in the penitentiary system medical unit fails to insure risks to his health and inviolability, 09.11.2021, available at: https://socialjustice.org.ge/en/products/saakashvilis-hospitalizatsia-penitentsiuri-sistemis-samkurnalo-datsesebulebashi-ver-azghvevs-misi-janmrtelobis-da-khelsheukheblobis-riskebs, [07.01.2022].
[32] See. Tv. Mtavari: Aggression of Gldani Prison Prisoners against Mikheil Saakashvili [Video], 08.11.2021, Available at: https://bit.ly/3qlyW1S, [07.01.2022].
[33] Special Report of the Public Defender of Georgia, National Preventive Mechanism, post-visit monitoring report of N2, N8, N14 and N15 penitentiary institutions, 2019, cited above, 7-8.
[34] *Ibid.*, 21.

report of the National Preventive Mechanism, together with the increase of non-formal management, the quantity of complaints sent to the Public Defender of Georgia has decreased on a yearly basis.[35]

25. As a result of informal leadership, the violent environment among prisoners has increased.[36] Prisoners are subjected to physical as well as psychological violence from other prisoners.[37] According to the Public Defender, fearing reprisals, inmates are forced to obey informal rules, otherwise they are excluded from the prison society and other prisoners stop communicating with them. This causes their loss of dignity, status and the respect of prisoners and further aggravates their situation.[38] The insufficient quantity of prison employees increases the risk of violence and fails to ensure security among prisoners, as in such conditions the staff often cannot respond in a timely manner.[39]

26. The cases of extortion of money and various personal items is also very common.[40] It should be noted that similar to the incident revealed in the Tsintsabadze case, there still exists the practice of collecting "common funds".[41] For instance, in regard to establishment #15 the Public Defender indicates the following: "coffee and cigarettes equivalent to the "membership fee" are given to the informal leaders by each cell, after which, prisoners buy cigarettes not in the prison shop, but from "watchers". The relatives of prisoners deposit money in the prisoners' bank accounts controlled by "watchers" or in a betting account opened for the above purpose. Making a contribution to the "common funds" is related to quite big amounts of money. Some convicts, considering their income, are able to make a contribution of only GEL 20 per month, but in some cases, the contribution of a cell reaches GEL 300-400. One of the convicts said that his cell collected GEL 200 every month and since he did not have finances, he was marginalized by other prisoners."[42]

*27.* As a result of informal leadership there are privileged prisoners in penitentiary institutions, who enjoy certain benefits and advantages and much better living conditions. Moreover, such prisoners have household items in their cells that other prisoners are not allowed to have.[43] According to the Public Defender of Georgia, the prisoners also enjoy other privileges, e.g., being distributed in cells with their friends, timely medical care etc.[44]

28. Challenges existing in terms of professional skills of penitentiary institution staff, such as the influence and pressure exerted on them by members of the criminal underworld also increases the control of the criminal underworld.[45]

---

[35] *Ibid.*, 22; See also, Report of the National Preventive Mechanism 2019, 2020, 58.
[36] The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on results of September 2018 visit to Georgia, §§ 8, 49-51.
[37] *Ibid.*
[38] Special Report of the Public Defender of Georgia, National Preventive Mechanism, post-visit monitoring report of N2, N8, N14 and N15 penitentiary institutions, 2019, 10.
[39] *Ibid.*, 17.
[40] *Ibid.*, 9-11, 20.
[41] *Ibid.*, 21.
[42] *Ibid.*
[43] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on results of September 2018 visit to Georgia, 28, 36.
[44] Report of 2019 National Preventive Mechanism, 2020, 56-7.
[45] Demetrashvili, N., Ivaniadze T., possibilities and challenges of protection of rights of minorities in penitentiary system, research report, 2020, 10, available at: shorturl.at/prAX8, [07.01.2022].

29. In the 2020 report, the Public Defender stated that "administrations of penitentiary establishments delegate powers to informal leaders to rule the establishments informally with their help that implies silencing prisoners, prohibiting them from discussing problems and maintaining an imaginary order in the establishments".[46] The Public Defender emphasizes that "the informal rule is characterized by physical and severe psychological inter-prisoner violence. Psychological violence is mainly manifested in extortion, debasement, marginalization and other actions".[47]

30. It is noteworthy that, especially at semi-open prisons, the amount of communication of the inmates with the Public Defender of Georgia has been decreasing year on year. This is also observed in terms of the number of prisoners applying to GYLA. The Special Preventive Group indicates in the 2020 report that a great number of problems do not reach the institutions which are established to investigate them, such as the Public Defender's Office.[48]

31. In addition to the issue of the cooperation of prison administrations with the criminal underworld, the Public Defender has studied a small number of cases where the Prosecutor's Office initiated an investigation based on prisoners' appeals into alleged crimes allegedly committed by both the criminal underworld and/or prison administration, which allegedly in an active or inactive manner covered up the involvement of the criminal underworld. The Public Defender of Georgia indicates that "according to the investigation materials inactivity of the penitentiary system towards the existence of the criminal underworld and its influences is rarely assessed from a legal point of view. The investigative authorities did not even question high-ranking officials of the penitentiary system (apart from prison administration) and failed to conduct necessary investigative actions in this regard. This was despite the fact that a representative of the penitentiary system alleged that staff members and the management of the then Penitentiary Department were responsible for granting privileges to the so-called watchers."[49]

32. Therefore, the criminal underworld is encouraged not only by the prison administration, but also by the refusal of the Prosecution to conduct an effective investigation. In addition to the ineffectiveness of the investigations that the Prosecutor's Office has initiated, the Public Defender comments on the refusal of the Prosecutor's Office to instigate an investigation in case of the existence of signs of crime (threatening, beatings, extortion, economic crimes, abuse of power by officials, etc.) and refusal to transfer the case to the Ministry of Justice.[50]

33. As evidenced above, the criminal culture in the penitentiary institutions has grown stronger, therefore, the scopes of influence of the informal rule increases. The administrations of the penitentiary institutions cooperate with representatives of the criminal underworld and the investigative authorities fail to respond adequately to committed crimes. The Prosecutor's Office usually does not initiate an investigation into crimes committed by the criminal underworld and penitentiary institutions, and even if it does so formally, the investigation is ineffective. Therefore, it is vital for the State to develop and implement a clear policy for combating the criminal underworld in Georgian prisons.

---

[46] Parliamentary Report of the Public Defender of Georgia 2020, 49-50.
[47] *Ibid.*, 50.
[48] Report of National Preventive Mechanism 2020, 2021, 14, available at: https://www.ombudsman.ge/res/docs/20210401140451985 98.pdf, [07.01.2022].
[49] Parliamentary Report of the Public Defender of Georgia 2020, 51.
[50] *Ibid.*, 52.

**3. Use of amnesty / pardon for grave crimes committed by the state authorities**

34. ***In Vazagashvili and Shanava case***, which is one of the cases in the Tsintsabade Group, the Court noted with regret that **"the domestic legislator, when enacting the Amnesty Act, did not apparently give a due consideration to the need to punish serious police misconduct with unbending stringency."**[51]

35. In regard to this, the Court reiterated the principle that when a public servant, in particular, a law enforcement officer, is convicted of a crime that violates Article 2 of the Convention, the granting of an amnesty or pardon should not be permissible.[52] It is also recalled that in the case of ***İzci v. Turkey,*** the European stated that when an agent of the State is accused of crimes that violate Article 3 of the Convention, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permissible.[53]

36. Consequently, the European Court in effect expects States to be stricter when punishing their own law enforcement officers for such grave life-threatening crimes, rather than other offenders, as in this case not only is there individual criminal liability, but also the State has an obligation to combat any perception of impunity that the offender might enjoy because of his/her position and also in order to maintain the loyalty and respect of society towards the law enforcement system.[54]

37. Therefore, granting an amnesty or pardon in the abovementioned cases contradicts the relevant international standards. The same approach is shared by the Inter-American Court,[55] UN Human Rights Committee,[56] UN Human Rights Commission,[57] UN Economic and Social Council[58] and European Parliament.[59]

---

[51] *Vazagashvili and Shanava v. Georgia* no. 50375/07, 18.07.2019, § 92;
[52] *Ibid.*, compare among many others, *Nina Kutsenko v. Ukraine*, no 25114/11, 18.07.2017, § 149; *Yeter v. Turkey* no. 33750/03, 13.01.2009, § 70, *Ali and Ayşe Duran v. Turkey*, no. 42942/02, 08.04.2008, § 69.
[53] *İzci v. Turkey,* 23/07/2013, no.42606/05, § 73.
[54] *Ibid*., See as well as *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 16.04.2011, § 274; and mutatis mutandis, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20.12.2007, § 63.
[55] *Barrios Altos v. Peru judgments*, Series C No. 75 [2001], IACHR 5, 14.03.2001, § 41.
[56] Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), HRI/GEN/1/Rev.9 (Vol. I), 10.03.1992, § 15, available at: https://seafarersrights.org/legal_database/hrc-general-comment-no-20-1992-in-respect-of-article-7-ccpr/, [07.01.2022]; Human Rights Committee, General Comment No 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26.05.2004, § 18, available at: https://www.refworld.org/docid/478b26ae2.html, [07.01.2022].
[57] UN Commission on Human Rights, Commission on Human Rights Resolution 2004/72: Impunity, E/CN.4/RES/2004/72, 21.04.2004, § 3, available at: https://www.refworld.org/docid/43f313869.html, [07.01.2022].
[58] United Nations Economic and Social Council, Commission on Human Rights – Sub-commission on Prevention and Discrimination and Protection of Minorities, 39th Session, The Administration of Justice and the Human Rights of the Detainees, Question of Human Rights of Persons Subjected to Any Form of Detention or Imprisonment, Study on Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights, Preliminary Report of Mr. Luis Joinet, Special Rapporteur, 21.07.1985, § § 60-76, available at: http://hrlibrary.umn.edu/Amensty%20Laws_Joinet.pdf, [07.01.2022].
[59] European Parliament, REPORT of the Committee on Foreign Affairs and Security on Human rights in the world and Community human rights policy for the years 1991-1992, Rapporteur: Mrs. Marlene LENZ, A3-0056/93/PART A, 18.02.1993, § 7, available at: http://aei.pitt.edu/48122/1/A9421.pdf, [07.01.2022].

38. Chapter XV of the Criminal Code of Georgia regulates amnesty and pardoning,[60] however, the Criminal Code of Georgia does not contain any provision, which would preclude the possibility of granting amnesty or pardon in the event of grave crimes committed by law enforcement officers within the scope of their authority. The granting of an amnesty is regulated by Article 77 of the Criminal Code of Georgia and of a pardon by Article 78.

39. The Decree of the President of Georgia №556 of November 26, 2019,[61] fails to include state officials convicted of grave crimes amongst the list of people who cannot be pardoned. Thus, there is no safeguard in the legislation which would preclude the possibility of pardoning a state official for a grave crime committed, therefore, there is no prohibition on their pardoning. Accordingly, there have been cases of such state officials being pardoned by the President of Georgia.[62]

***Recent Developments – Amnesty Law on violations committed on 20-21 June, 2019***

40. On 19 April 2021 the Georgian political parties signed a compromise proposal agreed during the mediation process, led by the President of the European Council and with the involvement of the Head of the EU Mission to Georgia and the US Ambassador to Georgia to end the political crisis following the 2020 legislative elections.[63] One of the subjects of the agreement is the response to issues of perceived "politicized justice". According to the relevant paragraph, "in the interest of Georgia's political stability and in order to implement this Agreement, the signatories commit to address, within one week of the signing this Agreement, the two cases of perceived politicized justice either by an amnesty and/or taking such steps as to produce an equivalent outcome. In particular, within one week of signature of the agreement, a party represented in the Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests." The amnesty law was concluded in September, 2021, hence there is no prospect of an effective investigation and meaningful accountability over the alleged mismanagement of the June 2019 protests.

41. On June 20-21, 2019, the Ministry of Internal Affairs ('MIA') failed to manage escalating tensions during the protest and did not resort to communication, negotiation and dialogue mechanisms to

---

[60] Criminal Code of Georgia, available at: https://matsne.gov.ge/ka/document/view/16426?publication=215, [07.01.2022].

[61] Decree of the President of Georgia, dated November 26, 2019, №556, available at: https://matsne.gov.ge/document/view/4712933?publication=0, [07.01.2022].

[62] See e.g. the parole of former Minister of Defence Bachana Akhalaia and former chief of Samegrelo-Zemo Svaneti regional police Tengiz Gunava on so called "prison riot" case. available at: http://www.tabula.ge/ge/story/76638-prezidentma-saakashvilma-bacho-axalaia-sheitskala, [07.01.2022]; See also, the report of Court Monitoinrg on cases of former high ranking officials, cited above, 35.

[63] See ESO: 2020-2021 Political Crisis in Georgia: "Political tension in Georgia increased following the legislative elections held in late 2020, which attributed a third term to ruling Georgian Dream (GD) party. The opposition forces refused to recognise the electoral results and later withdrew their parliamentary representation in protest against alleged fraud and misconduct. Protests were held in the main Georgian cities. In February 2021, a court ruled the detention of Nika Melia, the leader of the main opposition party National Movement (UNM), for failure to post bail in a trial where he was accused of participating in riots in 2019 and encouraging protesters to storm the parliament. The decision further escalated the political crisis. Prime Minister Georgi Gakharia announced his resignation on 18 February 2021 in an attempt to de-escalate the situation. During a visit to Tbilisi on 1 March, European Council President Charles Michel took on the role of presiding the talks aimed at finding a solution to the political crisis. Christian Danielsson was later appointed as Mr Michel's personal envoy to mediate the dialogue between the ruling party and the opposition. An agreement was eventually signed on 19 April 2021. The deal included the release of two jailed opposition figures, a set of electoral and judicial reforms. It would also lead to the return of enough members of Parliament to allow it to convene and function." Available at: https://www.europeansources.info/record/2020-2021-political-crisis-in-georgia/, [07.01.2022].

properly control and de-escalate the confrontation caused by a small segment of protesters. Instead, the MIA used extensive, unlawful and disproportionate force against protestors. Along with tear gas, the MIA unlawfully used rubber bullets without the required prior consent and instruction. Citizens who did not pose any public danger were shot at with rubber bullets, sometimes at close range and in the direction of vital organs. At least 138 civilians were injured.

42. During the events of June 20-21, 2019, there were also numerous cases of physical and verbal abuse by law enforcement officers, in circumstances where protesters / passers-by did not pose a threat, nor in circumstances which could have justified the use of excessive force. Consequently, the force applied by police was excessive and unjustified. The measures implemented by law enforcement officials arguably constitute inhuman treatment.[64] In addition, the events of 20-21 June were widely covered by the media and by international and national human rights organizations.[65]

43. GYLA has on several occasions called on political parties not to initiate a draft law aimed at extending amnesty for crimes committed by law enforcement officials on June 20-21, 2019, and to ensure that the above agreement is implemented in accordance with the Constitution of Georgia and international standards of human rights.[66]

44. The application of an amnesty to state agents who have committed violations of inhuman or degrading treatment (regardless of whether they are properly qualified as crimes at the national level) is itself contrary to Article 3 of the Convention, as it will preclude the investigation into such crimes and lead to impunity of those accountable. Such an outcome makes the safeguards generated by the prohibition of ill-treatment illusory and will have a chilling effect on those individuals considering exercising their peaceful enjoyment to freedom of assembly.[67]

---

[64] *Compare to* the cases of *Abdullah Yasa v. Turkey*, no. 44827/08, 16.07.2013; *Kilici v Turkey*, no. 32738/11, 27.11.2018*; İzci v. Turkey*, no. 42606/05, 23.07.2013.

[65]Human Rights Watch, Georgia: Police Use Teargas, Rubber Bullets Against Protesters, available at: https://www.hrw.org/news/2019/06/21/georgia-police-use-teargas-rubber-bullets-against-protesters, [07.01.2022]; Amnesty International, Georgia 2020, available at: https://www.amnesty.org/en/countries/europe-and-central-asia/georgia/report-georgia/, [07.01.2022]; Human Rights Watch, Georgia: Police Use Teargas, Rubber Bullets Against Protesters; GYLA, Beyond the Lost Eye, Legal Assessment of June 20-21 Events, 2019, pp. 27-31; HRIDC, June 20-21 Events, Legal Analysis, 2019, pg. 12; PDO's Statement: Public Defender of Georgia Responds to the Events Developed on Rustaveli Avenue on June 20-21, 21.06.2019, available at: https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsveli-rustavelis-gamzirze-2019-tslis-20-21-ivniss-ganvitarebul-movlenebs-ekhmianeba, [21.07.2021]; Joint Statement of International Federation. HRIDC and Norwegian Helsinki Committee (NHC), 27.06.2019, available at: http://www.humanrights.ge/index.php?a=main&pid=19893&lang=eng, [07.01.2022].

[66] GYLA: GYLA submitted opinions on the draft laws on amnesty to the Parliament of Georgia, 18.05.2021, available at:https://gyla.ge/en/post/saiam-saqartvelos-parlaments-amnistiis-kanonproeqtebis-shesakheb-mosazrebebi-tsarudgina, [07.01.2022];GYLA calls on political parties not to initiate a draft law aimed at extending amnesty for crimes committed by law enforcement on June 20-21st, 2019, 21.04.2021, available at: https://gyla.ge/en/post/saia-moutsodebs-politikur-partiebs-ar-daushvan-kanonproeqtis-inicireba-romelic-miznad-isakhavs-amnistiis-gavrcelebas-2019-tslis-20-21-ivniss-samartaldamcavta-mier-chadenil-danashaulebze, [07.01.2022]; The parties involved in the mediation process should sign a compromise proposal submitted by the President of the European Council, 19.04.2021, available at: https://gyla.ge/ge/post/mediaciis-processhi-chartulma-mkhareebma-kheli-unda-moatseron-evropuli-sabtchos-tavmjdomaris-mier-tsarmodgenil-kompromisul-tsinadadebas, [07.01.2022].

[67] *Margus v. Croatia*, no. 4455/10, 27.05.2014, § 127; *McCann and Others v. the United Kingdom*, Series A no. 324, 27.09.1995, § 146; The same approach is shared by the CAT. The Committee has also continuously criticized amnesty laws and stressed that waivers of prosecution and statutes of limitations do not apply under any circumstance to the crime of torture." - CAT, 'Concluding Observations: Algeria' (2008) UN Doc CAT/ C/ DZA/ CO/ 3, para 11; CAT,

45. The Amnesty Law does not sufficiently exclude the possibility of violating international law by providing de facto amnesty to those who have committed serious human rights violations. In particular, there is a clear possibility that state officials who violate Article 3 of the Convention could benefit from the amnesty law. Although under the draft law Articles $144^{1-3}$ of the Criminal Code (torture, threat of torture, humiliation or inhuman treatment) are excluded from the amnesty law, there is a systemic failure or unwillingness by law enforcement officials in Georgia to correctly classify crimes as torture / inhuman and / or degrading treatment, which are instead routinely and incorrectly classified under Article 333 of the Criminal Code of Georgia (Exceeding Official Powers), which would bring the offences within the remit of the proposed Amnesty. This problem of incorrect classification has been highlighted by the Public Defender's Office in its report of 2019[68] and by the Committee of Ministers in its latest decision adopted on the *Tsintsabadze group of cases*, which expressed clear concerns with regard to the persistent problem of perpetrators being investigated and charged with official misconduct rather than more serious and specific crimes concerning forms of ill-treatment (see also Annex 1).[69]

46. To eradicate these deficiencies, GYLA presented its opinion to the Parliament of Georgia, that, in addition to the complete exclusion of the possibility of extending the amnesty to crimes under Articles $144^{1-3}$ of the Criminal Code, the amnesty should also not extend to Article 333 (3) (b) and (c) of the Criminal Code (abuse of office using violence or a weapon/ committing outrages upon personal dignity of the victim). In the alternative, should the amnesty include Article 333, an amnesty must require the consent of the victim as a mandatory precondition. However, none of these recommendations have been supported by the Parliament of Georgia.

47. Therefore, the amnesty law poses a threat to the rights of the victims of the June 20-21 protests. It erodes public trust and respect for the law enforcement system, as well as the fulfillment of the state's obligation to combat impunity that an offender may have due to their official position.

48. Therefore, it is significant for the national legislation to clearly regulate the prohibition of extending amnesty/pardoning to state officials who have committed grave human rights violations.

'Concluding Observations: Yugoslav Republic of Macedonia' (2015) UN Doc CAT/ C/ MKD/ CO/ 3, para 16; cited in: The United Nations Convention Against Torture and Its Optional Protocol, Commentary, Second Edition, by Nowak M., Birk M., Monina G.,Oxford University Press, 2019, 342.

[68] PDO, Annual Report 2019, pg. 71; see also Annex 46 enclosed to the application.

[69] CM/Del/Dec(2020)1390/H46-10, 1390th meeting, 1-3 December 2020 (DH), *Tsintsabadze group v. Georgia* (Application No. 35403/06), available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1390/H46-10E, [07.01.2022].

## 5. Recommendations for execution of general measures

**This submission maintains the recommendations provided in the Communication from NGOs (Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (20/10/2020) concerning the case of TSINTSABADZE GROUP v. Georgia (Application No. 35403/06), and in addition, wishes to draw the Committee of Minister's attention to the following:**

I. The authorities should stop the politically motivated attacks on independent institutions and to create all conditions for their effective operation.

II. The authorities should ensure the independence of the Special Investigation Service (legal successor institution of SIS in the field of investigation). They should provide it with the mandate to eradicate:- (i) the lack of jurisdiction as regards high-ranking officials and the prosecutor's office; (ii) problems related to its investigative jurisdiction; (iii) the continued control of the Prosecutor's Office over the investigation process and its exclusive power to conduct the prosecution; (iv) the lack of authority to conduct investigations into certain categories of crimes; and (v) problems related to the unhindered access of the State Investigation Service staff to penitentiary institutions and temporary detention facilities.

III. All necessary measures should be carried out ***in a timely manner*** to reduce the level and influence of criminal underworlds and tackle 'informal governance' in Georgian prisons, including with the engagement of civil society and other stakeholders. To that end, a plan and strategy should be developed, which will provide for detailed measures to be taken by the state. Furthermore, the number of prison employees should be increased, and they should be provided with appropriate continuing education for their professional and educational development.

IV. ***The legislative changes should be made***, which would in future preclude granting an amnesty or pardon to State officials who are held to be responsible for grave crimes committed against life and health, as well as torture, inhuman treatment, and punishment.

DGI

21 JAN. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Annex 1**

**Shortcomings related to investigation of facts of ill-treatment**

1. The rapid and effective investigation on cases of torture and ill-treatment conducted by representatives of the law enforcement bodies is vital for the prevention of such crimes, however, effective investigation of such facts still remains a systematic problem. The Public Defender of Georgia has been pointing out this problem over years in annual and special reports,[1] as well as a local civil society[2] and international organizations.[3]

2. The Public Defender of Georgia has noted in 2020 report that, this examination revealed that prosecutorial authorities of Georgia discharge their powers inadequately and their investigative actions are conducted with serious shortcomings. The conclusion is that the state/investigative authorities are not motivated to respond effectively or punish perpetrators.[4] According to the report, as of 2020, based on Public Defender's 107 proposals to commence investigation that were forwarded to the Prosecutor's Office through 2013-2019, the criminal prosecution has been started only against 3 police officers, and only 1 individual was granted the victim status.[5]

3. Below we discuss in detail the problems which represent the major challenges in terms of effective investigation of ill-treatment cases, in particular, (1) proceedings of the criminal cases with improper qualification; (2) legislative shortcomings related to the existing hierarchical and institutional subordination; (3) problems related to the effective participation of the victim in the legal proceeding.

[1] Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2020, 78-83. available at: https://www.ombudsman.ge/res/docs/2021040110573948397.pdf [07.01.2022]; Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2019, 111-21, available at: http://ombudsman.ge/res/docs/2020040215365449134.pdf, [07.01.2022];

[2] Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020; Prevention of and Response to Incidents of Ill-Treatment, Georgian Young Lawyers' Association, 2019; Ill-treatment Prevention in Police Work, Human Rights Education and Monitoring Center (EMC), 2019; The shortcomings of the investigation of the facts of ill-treatment conducted by the law
enforcement officers and legal status of the victims in Georgia, Georgian Democracy Initiative, 2018; Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020, 23; available at: shorturl.at/els13, [07.01.2022];

[3] Report of US Department of State 2020 (2020 Country Reports on Human Rights Practices: Georgia), 5-6, available at: https://www.state.gov/wp-content/uploads/2021/03/GEORGIA-2020-HUMAN-RIGHTS-REPORT.pdf, [07.01.2022]; Report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the results of 2018 visit to Georgia, §§ 13-5; Human Rights Watch 2019 Report on Georgia, available at: http://bit.ly/2Q4VOA7, [07.01.2022]; Amnesty International-ის 2017-2018 Report on Georgia available at: http://bit.ly/2Ind9A0, [07.01.2022];

[4] Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2020, 51;

[5]Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2020, 81;

***Proceedings of the criminal cases with incorrect qualification***

4. Like previous years, investigation with incorrect qualifications on cases of ill-treatment committed by the law enforcement officers was still problematic. In particular, as the practice shows, in mentioned cases, the investigative body initiated the investigation under the general article, rather than the special one. Namely, the investigation may be initiated under an article such as exceeding the powers and not under ill-treatment or torture.[6]

5. According to the Public Defender 2020 Parliamentary Report, "both the Prosecutor's Office and the State Inspector's Service tend to institute an investigation into the crimes allegedly committed by police officers and prison staff, mainly under Article 333 of the Criminal Code of Georgia (exceeding official powers). In 2020, an investigation was not instituted under Article $144^1$ of the Criminal Code of Georgia (prohibition of torture). As regards Article $144^3$ of the Criminal Code of Georgia (degrading or inhuman treatment), in 2020, the State Inspector instituted investigation under this provision in 18 cases involving police officers and in 5 cases involving prison staff in alleged ill-treatment".[7]

6. Problem of incorrect qualification is also outlined in GYLA litigated cases. In the 2020 Report of GYLA, which reviewed the GYLA litigated cases, it is noted that despite the grave forms of physical and psychological violence, out of 10 GYLA litigated cases related to the ill-treatment the investigation on 6 cases was launched under Article 333 of the Criminal Code of Georgia.[8]

7. The Committee of Ministers of the Council of Europe also emphasizes incorrect qualification practice, and, within the framework of the cases of Tsintsabadze Group urges the State to correct the mentioned. Furthermore, the Committee of Ministers emphasizes the lack of a mechanism for the victim to appeal in case of incorrect qualification.[9]

***Legislative shortcomings related to the existing hierarchical and institutional subordination - Order №3 of the Prosecutor General of Georgia of August 23, 2019***

8. Order №3 of the Prosecutor General of Georgia of August 23, 2019, defines the investigative and territorial subordination for criminal cases.[10] The order regulates certain crimes defined for investigative subordination of each authority (the Ministry of Internal Affairs, the Prosecutor's Office, the State Security Service, the Ministry of Justice, the Ministry of Finance, the Ministry of Defence and the State Inspector's Service of Georgia). According to the order, the criminal case falls under the investigative jurisdiction of the investigator of the organs of internal affairs, unless otherwise specified by the mentioned order.

9. After enactment of investigative subordination of the State Inspector's Service, an investigation for the crimes allegedly conducted by representatives of the law enforcement body, officers or persons equal

[6] *Ibid.* 80;
[7] *Ibid.*
[8] Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020, 23;
[9] CM/Del/Dec(2020)1390/H46-10, 1390th meeting, 1-3 December 2020 (DH), Tsintsabadze Group v. Georgia (Application No. 35403/06), available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1390/H46-10E, [07.01.2022];
[10] Order №3 of the Prosecutor General of Georgia of August 23, 2019, available at: https://matsne.gov.ge/document/view/4638682?publication=0, [07.01.2022];

to them in most cases is conducted by this organ. However, the mentioned order allows for investigation of crimes allegedly committed by the representative of the certain organ to be conducted by the organ in which the alleged perpetrator is employed. For instance, investigation of crime under 342 will be conducted by the General Inspection of the Ministry of Justice, if this crime has not caused the death of a person.

10. Furthermore, according to the order the dispute on investigative subordination will be decided by the superior prosecutor.[11] Pursuant to the Criminal Procedure Code of Georgia, the Prosecutor General of Georgia or a person authorized thereby may, regardless of the investigative jurisdiction, withdraw a case from one investigative authority and transfer it to another investigative authority.[12] Furthermore, should be noted that the law does not require the Prosecutor General or a person authorized thereby to substantiate the decision of transferring the case from one authority to another.

11. The Parliamentary report of the Public Defender of Georgia 2020 focuses on the problem of the independence of investigative authorities. The mentioned problem was outlined based on an analysis of certain cases. In particular, "the Public Defender's Office looked into 17 criminal cases administered through 2015-2018 concerning deaths of prisoners. Investigations in these cases were ceased on the grounds that investigative authorities did not detect elements of a crime. Four of the cases concerned alleged suicides, while 13 other cases involved sudden deaths due to deteriorated health of the prisoner. The examination revealed both flawed investigations and ineffective medical services the prisoners were provided with.[13] In regard to investigations, we found the following: investigations into the deaths of prisoners would be initiated and conducted by the Investigative Department of the Ministry of Corrections – a body lacking institutional independence. None of the cases we studied was investigated by the Prosecutor's office".[14]

12. For the investigation to be conducted effectively, the persons responsible for investigation should be independent and impartial in terms of law and practice.[15] This implies both, a lack of hierarchical and/or institutional connections with the stakeholders as well as practical independence.[16] As evidenced above, despite an unequivocal approach of the European Court to investigative independence, there still remain some kind of shortcomings in the existing legislation. The mentioned shortcomings preclude the possibility of impartial and independent investigation since authority for investigation is given to the organ, employees of which may be guilty of committing a certain crime. Furthermore, extensive powers of the Prosecutor General are also problematic, who can regulate the investigative subordination issues without proper reasoning, differently from the standards of independence and impartiality and the requirements of the law. Therefore, the mentioned shortcomings hinder investigations to meet the standards set by the European Court of Human Rights for an effective investigation and need further refinement.

---

[11] Order №3 of the Prosecutor General of Georgia of August 23, 2019, Article 15;
[12] Criminal Procedure Code of Georgia, Article 33, paragraph 6, sub-paragraph „a", second sentence
[13] See also the 2020 report of activities of the Department of Criminal Justice of the Public Defender of Georgia, available at: https://www.ombudsman.ge/geo/saqmianobis-angarishebi/siskhlis-samartlis-martlmsajulebis-departamentis-sakmianobis-2019-tslis-angarishi, [07.01.2022];
[14] Parliamentary Report of the Public Defender of Georgia 2020, 38;
[15] *Tsintsabadze v. Georgia*, 35403/06, 15.02.2011, § 76;
[16] Ibid, See *Scavuzzo-Hager and Others v. Switzerland*, №41773/98, §§ 8-86, 07.02.2006;

13. It should be noted, that according to article 33, paragraph 6, subparagraph "a" of the Criminal Procedure Code of Georgia, the Prosecutor General or a person authorized by him/her, has the right, regardless of the investigative subordination, to remove the case and transfer it to another investigative body. The constitutionality of the abovementioned authority was under examination of the constitutional Court of Georgia. On 23 September 2021 Court ruled decision №1/4/1330[17] which declared certain content of article 33 unconstitutional. The Court clarified that the conduct of an investigation by a law enforcement body when there is a well-founded complaint of possible ill-treatment committed by an employee of that investigation body is an obvious case of disregarding the principle of independence and impartiality of the investigation. The impugned norm allowed the authorized person to exercise discretionary power in any case, including when such a decision was not caused by objective necessity, which was considered a violation of the positive obligation under article 9 (Inviolability of human dignity) of the Constitution.

***Problems related to the effective participation of a victim in legal proceedings***

14. Involvement of the victim is one of the main cornerstones, however, ongoing practice shows that in a majority of cases victims are not involved effectively in the legal proceedings and the existing legislation cannot ensure adequate protection for their interests.

15. Over the last years GYLA actively demanded resolution of problems related to the rights of victims and their proper regulation both in practice as well as in legislation.[18] However, the situation has not changed, and the victims are facing serious challenges. In particular, the challenges remain: (1) shortcomings related to granting the status of a victim; (2) shortcomings related to appealing the decree on termination of investigation/prosecution and on a rejection of the initiation of prosecution; (3) failure to inform the victim about the criminal proceedings; (4) legal aid for victims of ill-treatment. Each one will be discussed in detail below.

***Shortcomings related to granting the status of victim***

16. Based on current data, the rate of granting the victim status within the scopes of investigation on alleged crimes conducted by the representatives of law enforcement authorities is significantly low. According to the 2020 parliamentary report of the Public Defender of Georgia, within the investigations instituted, based on the said 107 proposals, only one person was given a victim status.[19]

17. The problem of granting the victim status has also been talked about for years by non-governmental organizations based on their legal practice.[20] For instance, out of 10 GYLA proceeded cases, related to

[17] Decision of the Constitutional Court of Georgia, dated September 23, 2021, on case "*Giorgi Tsertsvadze v. Parliament of Georgia"*.

[18] In regard to the mentioned see Alternative Report 2019 of GYLA submitted to the Human Rights and Civil Integration Committee on the report of the Ministry of Justice 2018 (1-6104/19/9; 27.03.2019), regarding the state of enforcement of decisions/judgments delivered by the European Court of Human Rights against Georgia, 2019, 3; available at: https://gyla.ge/ge/post/saiam-parlaments-alternatiuli-angarishi-tsarudgina#sthash.VdyUf5vz.dpbs, [07.01.2022]; Communication from a NGO (03/09/2018) and reply from the authorities (13/09/2018) in the cases of Bekauri and Others, Studio Maestro and Others and Tsintsabadze v. Georgia (Applications No. 312/10, 22318/10, 35403/06), available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2018)880E, [07.01.2022];

[19] Parliamentary Report of the Public Defender of Georgia 2020, 81;

[20] The shortcomings of the investigation of the facts of ill-treatment conducted by the law enforcement officers and legal status of the victims in Georgia, Georgian Democracy Initiative, 2018, 28; Prevention of and Response to Incidents of Ill-Treatment, Georgian Young Lawyers' Association 2019, 32;

the facts of ill-treatment from law enforcement officers, only two persons were granted victim status.[21] The problem of granting victim status was also outlined in cases of June 20-21, 2019, in which, despite the existence of relevant evidence, most of the injured persons are still not granted victim status.[22]

18. Together with challenges existing in practice, the fact that the legislation does not provide for the obligation of the prosecutor to substantiate the decree about refusal on granting the victim status, unlike the decree on the restriction of other rights of the victim that clearly defines the obligation to substantiate the prosecutor's decree.[23] Due to an unsubstantiated decision, the victim is deprived of the opportunity to be informed about the reasons of the decision on refusal to grant the victim status, which, on one hand, deprives the victim of the effective opportunity to appeal such decision and, on the other hand, increases the risk of willfulness of the decision-making prosecutor. The mentioned could be balanced if the decision regarding the victim status would at least indicate the grounds and reasons, which may be disputed by a victim.[24]

***Shortcomings related to appealing the decree on termination of investigation/prosecution and on rejection of initiation of prosecution***

19. According to the current legislation, the right of a victim to appeal a decree of the prosecutor to terminate an investigation and/or criminal prosecution and to initiate prosecution is limited both by the person/authority receiving the appeal as well as by the category of a crime. In particular, the victim has the right to appeal the decisions made on the abovementioned issues only once to a superior prosecutor. The victim may appeal the decision of the superior prosecutor to the court of the first instance only once and only when a particularly serious offence has been committed or a crime, which falls under the jurisdiction of the State Inspector's Service.[25]

20. In the situations when the decision made on termination of criminal prosecution or not initiating the prosecution has a direct or indirect impact on the protection of rights and interests of the victim in the criminal proceedings, the victim should be allowed to check the reasonableness and legality of refusal on initiation of prosecution. The Constitutional Court of Georgia has repeatedly emphasized in its rulings the need to provide adequate safeguards for the protection of interests of a victim and the need of the right to appeal to the court,[26] explaining that regardless of the crime category, in order to protect the rights of a victim, the judicial control (oversight) is the most strong and effective way to force a prosecutor to be impartial in the exercise of discretionary powers.[27]

---

[21] Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020, 8-9;
[22]See GYLA statement: GYLA APPLIES TO EUROPEAN COURT ON BEHALF OF DEMONSTRATORS AND JOURNALISTS AFFECTED BY JUNE 20 EVENTS, 07.04.2021, cited above;
[23] For instance, Criminal Procedure Code of Georgia, Article 57, paragraph 3;
[24] See Constitutional Claim N1389, available at: https://constcourt.ge/ka/judicial-acts?legal=1489, [07.01.2022];
[25] See Criminal Procedure Code of Georgia, Articles $106.1^1$ and 168.2;
[26] Decision of the Constitutional Court of Georgia, dated September 30, 2016, on case "*Citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia"*, decision of December 14, 2018 on case "*Citizens of Georgia – Khvicha Kirmizashvili, Gia Patsuria and Gvantsa Gagniashvili, and LTD "Nikani" v. Parliament of Georgia".*
[27] Decision of the Constitutional Court №1/8/594, dated September 30, 2016 on case "*Citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia,"* § 50;

21. Should be noted that according to existing practice, issues related to termination/initiation of investigation/prosecution are generally agreed with the superior prosecutor.[28] Therefore, in case of appeal the superior prosecutor does not change the decision made by a subordinate prosecutor. Moreover, the decisions of the superior prosecutor do not meet the minimum standard of justification. In most cases, the superior prosecutor just indicates that he/she agrees with the decision made by the subordinate, without any additional justification.[29] Should be noted that the prosecutor is not obliged to substantiate the mentioned decisions by legislation, which also can be considered as one of the most significant shortcomings. Therefore, appeal to the superior prosecutor is not an effective mechanism of protection of rights, as in most cases it is not effective and is of a formal nature.[30]

22. GYLA emphasized the problematic nature of the mentioned regulation in 2019 and 2020 in Alternative Reports submitted to the Parliament,[31] and, also emphasized in the communication on cases of Tsintsabadze Group 2018 and 2020 before the Committee of Ministers.[32]

23. When evaluating the execution of cases of Tsintsabadze Group on December 1-3, 2020, the Committee of Ministers called the State to take measures and to make mechanism for appeal of the decision on non-initiation of investigation or termination, or termination of criminal prosecution accessible for all victims of ill-treatment.[33]

***Failure to inform the victim about the criminal proceedings***

24. Pursuant to existing legislation, a victim can only obtain information on the measure of restraint applied against the accused, and information on the leaving of a penitentiary facility by the accused/convicted person upon request and the abovementioned is not an obligation of the Prosecutor's Office.[34]

---

[28] GYLA, RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS, LEGISLATION OF GEORGIA, PRACTICE AND INTERNATIONAL APPROACHES, 2016; available at: https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/dazaralebulis%20uflebebi.pdf , [07.01.2022];

[29] Communication from a NGO (03/09/2018) and reply from the authorities (13/09/2018) in the cases of Bekauri and Others, Studio Maestro LTD and Others and Tsintsabadze v. Georgia (applications No. 312/10, 22318/10, 35403/06), § 38, pg.15;

[30] GYLA research RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS, 2018; https://bit.ly/2dwr7Aj [19.04.2021];

[31] See Alternative Report 2019 of GYLA submitted to the Human Rights and Civil Integration Committee on the report of the Ministry of Justice 2018 (1-6104/19/9; 27.03.2019), regarding the state of enforcement of decisions/judgments delivered by the European Court of Human Rights against Georgia, available at: https://gyla.ge/ge/post/saiam-parlaments-alternatiuli-angarishi-tsarudgina, [07.01.2022]; See also GYLA 2020 Alternative Report on 2019 Report of the Ministry of Justice of Georgia, available at: https://gyla.ge/ge/post/saiam-parlaments-strasburgis-sasamartlos-saqmeebis-aghsrulebis-mdgomareobis-shesakheb-alternatiuli-angarishebit-mimarta, [07.01.2022];

[32] Communication from a NGO (03/09/2018) and reply from the authorities (13/09/2018) in the cases of BEKAURI AND OTHERS, STUDIO MAESTRO Ltd AND OTHERS and TSINTSABADZE v. Georgia (Applications No. 312/10, 22318/10, 35403/06), available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2018)880E, [07.01.2022]; Communication from NGOs (Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (20/10/2020) concerning the case of TSINTSABADZE GROUP v. Georgia (Application No. 35403/06), available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)944E, [07.01.2022];

[33] CM/Del/Dec(2020)1390/H46-10, 1390th meeting, 1-3 December 2020 (DH) *Tsintsabadze Group v. Georgia* (Application No. 35403/06), available at: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1390/H46-10E [07.01.2022];

[34] Criminal Procedure Code of Georgia, Article 57, paragraph 1, sub-paragraph "i", Article 58.

Considering the current provisions it is also ambiguous how can victims request this information – whether they have to apply to the prosecutor in written or the telephone call shall be sufficient.

25. This regulation is problematic, as in the majority of cases the victims are not informed properly regarding their rights and it is not perceptible to them that they have to apply to the Prosecutor's Office with this request. As a result, in most cases, the Prosecutor's Office transfers the cases to Court without the victim being informed about it and is deprived of a possibility to attend the court hearings. Therefore, the current legislation does not ensure effective participation of the victim of the crime and its proper information regarding the criminal prosecution process.

***Legal aid for victims of ill-treatment***

26. Effective legal aid is substantial for the proper protection of victims of ill-treatment. Although protection of rights of victims is envisaged in the Action Plans,[35] however the mentioned measure has not been fulfilled yet. Therefore, victims of torture, ill-treatment and degrading treatment are not provided effective legal aid and are unable to receive adequate assistance at the expense of the state.[36]

***Shortcomings related to audio-video surveillance of communication of law enforcement authorities and citizens/detainees***

27. The CPT considers that one of the most important safeguards for the prevention of torture and ill-treatment and protection from such treatment is the audio-video recording of the communication, including questioning/interrogation process, between the representative of law enforcement authority and a citizen.[37] With a committee recommendation, the interrogation process in police detention facilities should be carried out with continuous electronic (audio and/or video) recording. Upon request, the person to be interrogated should be given access to recordings.

28. Pursuant to law only the patrol police is authorized to conduct video-audio recording. And in this regard, the problem is that audio-video recording is an authority of the patrol police rather than an obligation. This recommendation, according to the 2020 report of the Public Defender remains unfulfilled.[38]

29. In addition to the officers of the Patrol Police, officers of the Criminal Police often communicate with citizens who detain, interrogate and/or transport the detainees as well. However, the legislation flaw here is that unlike the Patrol Police the law does not stipulate not only the obligation but even the

[35] The 2018-20 Human Rights Action Plan, as well as the 2019-20 Action Plan for Combating Torture, Inhuman, Degrading Treatment or Punishment, provides for the protection, compensation and rehabilitation of victims of ill-treatment. It should be noted that the same objectives were set out in the 2017-18, 2016-17 and 2014-15 Human Rights Plans, as well as in the 2017-18 Action Plan for Combating Torture, Inhuman, Degrading Treatment or Punishment. Strategy and action plans available at: http://myrights.gov.ge/ka/documents/action%20plans%201/, [07.01.2022];

[36] Law of Georgia on Legal Aid, available at: https://matsne.gov.ge/ka/document/view/21604?publication=23, [07.01.2022];

[37] European Committee for the Prevention of Torture to Ireland, 2006, available at: https://cdn.penalreform.org/wp-content/uploads/2016/01/factsheet-2-cctv-2nd-ed-v4.pdf, [07.01.2022]; Concluding observations on the sixth periodic report of the Russian Federation, CAT/C/RUS/CO/6, 2018, available at: https://undocs.org/en/CAT/C/RUS/CO/6, [07.01.2022]; Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment- (CPT), CPT/Inf (2018) 21, 2017, 16,23; available at: https://rm.coe.int/16808b5ee7, [07.01.2022];

[38] Parliamentary Report of the Public Defender of Georgia 2019, cited above, 10; Parliamentary Report of the Public Defender of Georgia 2020, cited above, 475;

authority of Criminal Police officers to wear body video cameras during their communication with citizens. According to the Law of Georgia on Police, the police is obliged to be equipped with a video camera only during special police control.[39]

30. Moreover, the nonexistence of video cameras in the inner perimeter of police stations, in interrogation rooms and places where alleged ill-treatment most occurs is also a significant challenge.[40] GYLA emphasized this problem in previous years as well.[41] The 2019 report of the Public Defender indicates that according to information of the Ministry of Internal Affairs of Georgia, in 2019, all territorial units were equipped with indoor and outdoor surveillance cameras except three police stations,[42] however, all the spaces where citizens or detainees have to be placed in are not covered by video surveillance.[43]

31. The report 2020 of the Public Defender of Georgia also indicates that adequate coverage of indoor and outdoor perimeter with video cameras remains a problem in police stations. Moreover, the practice of interviewing the detainees or persons at the station with another status in the offices of chiefs and deputy chiefs of police continues. The mentioned is problematic since there is no audio-video recording conducted in the working offices, which increases risks of ill-treatment.[44] For instance, in case of Irakli Khoperia which was proceeded by GYLA, the victim was subjected to ill-treatment in the working office of the chief police.[45]

32. Therefore, it is important to set up a special interrogation room, where the interrogation process will be conducted through audio/video recording. However, if the citizen is still taken to the room of the chief/deputy chief of the police, in such cases it must also be obligatory to have audio/video recording of communication between the police officers and detained person.

**Shortcomings related to the processing of documentation in police stations**

33. At present, the improper process of documentation in the police stations still remains one of the challenges. An essential guarantee of protecting from ill-treatment in the police stations are the custody records, which contain detailed information regarding the detention of a person, including what measures were taken towards him/her at the time when s/he was brought to the police station, when was s/he allowed to contact with the lawyer/family members, were there any injuries identified, when were rights explained to him/her and other relevant information. A detained person, as well as the lawyer, should have access to such individual logs. Such documentation is recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well.[46] However as of today, there are no such standardized documents processed in

[39] Prevention and Forms of Torture and Ill-Treatment, Georgian Young Lawyers' Association, 2020, 21;
[40] *Ibid.*
[41] GYLA research „Prevention of and Response to Incidents of Ill-Treatment", 2019, 30-1, available at: https://gyla.ge/files/news/2006/Report.%20Geo.pdf, [07.01.2022];
[42] These are: Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; Akhalgori District Division of Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; Jakhunderi Police Department of Lentekhi District Division;
[43] Parliamentary Report of the Public Defender of Georgia 2019, 90;
[44] Parliamentary Report of the Public Defender of Georgia 2020, 72;
[45] See GYLA statement, available at: https://gyla.ge/ge/post/saiam-irakli-khoferias-tsamebis-saqmeze-evropul-sasamartloshi-tserilobiti-argumentacia-tsaradgina#sthash.rwaBEw54.dpbs, [07.01.2022];
[46] CTP, Police custody, Extract from the 2nd General Report of the CPT, published in 1992, CPT/Inf(92)3-part, available at: https://rm.coe.int/16806cea2f, [07.01.2022];

Georgia. Therefore, it is obligatory to introduce maintaining such logs in the police stations which will create additional guarantees for the prevention of torture and ill-treatment.

***Shortcomings related to the exercise of the right to take photographs in penitentiary institutions by the Public Defender of Georgia, as well as a member of a Special Prevention Group***

34. The Decree of the Minister of Corrections of Georgia N123 regulates the issue of the exercise of the right to take photos in penitentiary institutions by the Public Defender of Georgia, as well as a member of a Special Prevention Group.[47] The Code of Imprisonment and Decree 123 define that Public Defender of Georgia and member of the Special Prevention Group shall take photos of the accused/convicts and/or the conditions of their immediate placement in the penitentiary institution with the consent of these persons. Pursuant to the order, the Public Defender shall inform the institution no less than 5 days prior to visit, inter alia, the details such as the specifications of the camera (brand, model, serial number), which will be used for photography in the institution, as well as the details of the person who will take the photos (name, last name, ID number, position).[48] The obligation to inform 5 days prior to visit may result in the loss of significant evidence for the victim of ill-treatment, as the traces of physical violence may disappear after 5 days. Therefore, this regulation hinders the effective work of the National Prevention Mechanism and deprives it of the practical significance of this right granted to the Special Prevention Group.

[47] The Decree on right to take photographs in the penitentiary institutions of the Ministry of Corrections of Georgia by the Public Defender of Georgia as well as members of the Special Preventive Group, available at: https://matsne.gov.ge/ka/document/view/3377814?publication=0, [07.01.2022];
[48] *Ibid.*, Article 3.

Sound Fontsize A A A Contrast

DGI
21 JAN. 2022
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

# Statement Of The State Inspector Londa Toloraia

2021-12-27 15:43:42

On 25 December 2021, the staff of the State Inspector's Service including myself learnt through the media that the Parliament of Georgia initiated a draft law on abolishing the State Inspector's Service and establishing two new institutions instead. The process of drafting the law was completely conspiratorial. Its drafting was unknown to the State Inspector's Service as well as international organizations and other experts in the field.

The date of initiating the draft law and accelerated process of its examination, somehow coincided with the pre-New Year situation, including, the absence of the absolute majority of the representatives of international and diplomatic corps in Georgia and personally, the period of my maternity leave.  It makes me think that this is not a coincidence, actually. As it seems, it was deemed that with an infant of a few days, it would be hard to defend the interests of my institution. However, I am here and I will do the maximum to protect the integrity of the Service and the interests of every employee.

The State Inspector's Service is a team of highly qualified professionals, which, over the last two years has done maximum to respond to all the challenges and on the one hand, preserved a high standard of personal data protection and on the other hand, created a policy for the effective investigation of crimes committed by civil servants. By this, the Service has addressed the major challenge and the reason it was created for – it managed to raise the public trust in investigating this category of crimes.

SHARE

CONTACT US

human resources, we had and still have a problem in terms of cooperation with other public agencies, the team of the Service, through conscientious work managed to establish as an independent state authority and gained public trust. After two years of its establishment, the work of the Service is positively assessed by the international as well as local organizations.

In order to address the challenges the Service faces:

- Back in 2019, we submitted a new draft law on "Personal Data Protection" in line with the international standards to the Parliament of Georgia, which has been pending discussion for more than 2 years;
- In 2021, we submitted a detailed and critical report of 2020 activities to the Parliament, which for the first time in history, the Parliament has not heard;
- On 24 December 2021, we submitted a legislative proposal to the Parliament aimed at institutional strengthening of the Service and elimination of the obstacles existing in the process of investigating crimes committed by civil servants. The Parliament has not expressed an interest in this proposal either.

I would like to remind the Parliament of Georgia and the public that Since 2019, the Personal Data Protection Authority got entrusted with the function of investigating crimes committed by civil servants by the Parliament, with the participation of the Members of the Parliament who are the authors of the current draft law.

Instead of supporting the Service to further strengthen it, the Parliament of Georgia has started an accelerated and dangerous process of  abolishing the Service.

The reason for the abolition of the State Inspector's Service as indicated is that accumulating two functions – personal data protection and investigative functions creates a conflict of interest and endangers the protection of data. Furthermore, it was mentioned that by this, the recommendation issued by the non-governmental sector in 2018 on establishing an independent investigative service will be fulfilled.

The conflict of interest was not seen by the Parliament of Georgia in 2018 and was not deemed as a reasonable argument. The recommendation of the non-governmental sector became topical only today when the State Inspector's Service managed to become an independent state agency. Before initiating the draft law, the Parliament of Georgia has not asked any questions about whether or not the coexistence of two functions under one agency has created any problems. Moreover, the annulment of the State Inspector's Service by the Parliament of Georgia in the name of personal data protection cannot resist any critics given the fact that since May of 2019, a draft law on "Personal Data Protection" aimed at establishing a high standard of personal data protection in Georgia is submitted to the Parliament of Georgia without further discussion.

CONTACT US

SHARE

that this initiative serves to the strengthening of the investigative function, is not in compliance with the reality. The draft laws are copies of the existing law on State Inspector's Service. There is not a single word in the draft law on strengthening the Service. There are not reflected any of the recommendations issued by the international organizations, non-governmental sector, nor any of the challenges indicated in the 2020 activities report of the State Inspector's Service submitted to the Parliament of Georgia.

Two novelties are proposed by the draft Law:

- Firstly – several provisions from Criminal Code of Georgia are to be added to the jurisdiction of forthcoming investigative entity. However, these crimes practically do not occur in the context of official misconducts. It is also noteworthy that these newly added provisions do not apply to the employees of prosecutor's office as well as to other civil servants. The new jurisdiction applies solely to the employees of law enforcement agencies, that in fact, was already subordinated to the State Inspector's Service's jurisdiction.
- Secondly, and the most alarmingly, the new draft Law abolishes the institution instead of its reorganization/restructuring. Elected position of the State Inspector is also abolished and from 01 March, 2022 all the employees of the Service remain unemployed. In other words, in spite of reallocation of the existing qualified staff in two entities that are to be created on the basis of the State Inspector's Service (as it took place in 2019 in case of the establishment of the State Inspector's Service and in case of division of the Ministries of Education and Culture), the Parliament of Georgia decided to dismiss us all. Not only an independent State Inspector is unacceptable for them, but also the whole staff of the Service. The employees that were hired through an open and transparent competition and were selected for their professionalism. Simultaneously, the draft law provides for various discriminatory approaches towards the employees of the Service, that is anti-constitutional.

This is an extremely dangerous precedent not only for the State Inspector's Service, but also for the entire country. This process endangers all the elected officials, creates a feeling of uncertainty and pressure on their activity. At the same time, this is a clear message to all civil servants that for their fairness they may become unemployed one day.

The State Inspector's Service and Londa Toloraia will never be against progressive reforms. However, it is obvious, that this initiative is not a reform – it's an operation against an independent institution and its independent staff. This is a punishment of the Service for its: independence; impartial and faithful attitude to the job; being law-abiding institution; its legitimate decisions towards public intuitions;

SHARE

CONTACT US

Sound Fontsize A A A Contrast

was asked against officials, however none were satisfied; implementing new standards for the prosecution of official misconducts; our different position on the Law of Georgia on Information Security and many other factors. Moreover, the members of the Parliament in their comments expressed dissatisfaction about the decisions of the Service several times.

No institution has been reorganized/restructured through these methods; all the more – no elected positions were abolished prematurely.

More than 100 professional and dignified persons are employed at the Service. The illegitimacy and unfairness camouflaged/faked by the adoption of the law shall not be the basis for their dismissal.

Therefore:

I address the Parliament of Georgia to:

- Discontinue/cease the process of abolishment of the independent institution;

- Instead, to discuss the draft Law on “Personal Data Protection” that was presented by the State Inspector’s Service two years ago and which definitely serves advancement of data protection standards in Georgia;

- To initiate and discuss legislative amendments presented by the State Inspector’s Service 3 days ago (on 24 December), that aimes eradication of the real challenges in the process of investigating official misconducts.

In addition, I would like to ask international community, civil sector, the Public defender, members of society/public, please despite the holiday season, participate in the discussions, as this case concerns an extremely important institution which serves to protect human rights.

Hereby, I would like to thank everyone who supported the Service in this critical moment.

SHARE

CONTACT US

"This website has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its

European Union and the United Nations Development Programme (UNDP)"

The European Union for Georgia
Human Rights 4All

Empowered lives. Resilient nations.

Privacy Policy

CONTACT US

SHARE

Sound Fontsize A A A Contrast

DGI
21 JAN. 2022
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

# The State Inspector, Londa Toloraia Held A Meeting With Kelly Degnan, The Ambassador Extraordinary And Plenipotentiary Of The United States Of America To Georgia

2021-12-27 22:23:30



The State Inspector, Londa Toloraia held a meeting with Kelly Degnan, the Ambassador Extraordinary and Plenipotentiary of the United States of America to Georgia.

The meeting touched upon the draft Law prepared by the Parliament of Georgia on the abolishment of the State Inspector's Service and establishment of two new entities instead.

Londa Toloraia provided the U.S. Ambassador with detailed information on the recent developments regarding the State Inspector's Service. The State Inspector drew the Ambassador's attention to the timing of initiation of the draft Law and its examination in a rushed manner. Londa Toloraia highlighted that the draft Law does not correspond to any of the recommendations issued by international organisations and the non-governmental sector. At the same time, none of the challenges that were identified several times in the 2020 annual report of the State Inspector's Service have been reflected in the same draft Law. The State Inspector's Service is to be abolished instead of its reorganization on

CONTACT US

SHARE

“The State Inspector’s Service is a team composed of highly qualified professionals that throughout these two years did its maximum in response to all the challenges. One the one hand, it has maintained high standard of personal data protection and on the other, has established the best practice for an effective investigation of official misconducts and thus, responded to the key purpose for its establishment – it managed to raise public trust towards the investigation of such category of crimes” - stated Londa Toloraia.




At the meeting, Kelly Degnan highlighted the role of the State Inspector’s Service, an independent institution, in protecting human rights and democracy. She has noted that the Service is tasked with an important function of investigating crimes committed by officials who are accountable to the public. Kelly Degnan negatively assessed the fact that this process has been rushed through without any necessity and without transparency and consultations, including with the State Inspector’s Service. According to her statement, an obscured and non-transparent process is a missed opportunity for the implementation of actual changes.

The most concerning for the U.S. Ambassador was the fact that the draft Law provides for the dismissal of every employee of the State Inspector’s Service from 01 March 2022 whereas no questions or complaints have been raised against their work. The Service is composed of the specialists in the field and qualified experts, who have performed their duties conscientiously throughout these years – stated Kelly Degnan.

the Ambassador Extraordinary and Plenipotentiary of the United States of America to Georgia, Kelly Degnan pledged her full support to the Service and addressed the Parliament of Georgia with the recommendation to pause and slow down the process of accelerated examination of the draft Law. In addition, she has called for inclusive discussion and consideration of actual initiatives for strengthening the State Inspector’s Service.



SHARE

"This website has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its contents are the sole responsibility of the office of the Personal Data Protection Inspector and do not necessarily reflect the views of the European Union and the United Nations Development Programme (UNDP)"

Sound Fontsize A A A Contrast

The European Union for Georgia
Human Rights 4All

UNDP
Empowered lives. Resilient nations.

Privacy Policy

CONTACT US

SHARE

Sound Fontsize A A A Contrast

# State Inspector Londa Toloraia Met With The EUDEL Deputy Head Asuncion Sanchez Ruiz And Representatives Of 8 EU MS Embassies

2021-12-28 22:31:14



State Inspector Londa Toloraia met with the EUDEL Deputy Head Asuncion Sanchez Ruiz and representatives of 8 EU MS embassies. The meeting was also attended by the Ambassador of the Kingdom of the Netherlands Maaike Van Koldam, the Ambassador of the Republic of Poland Mariusz Maszkiewicz, the Ambassador of the Czech Republic Petr Mikyska, the Deputy Ambassador of the Federal Republic of Germany Tanja Hutt, the Deputy Ambassador of Greece Georgios Papanikolaou, Deputy Head of Mission of Romania Dragos Ispas, Deputy Head of Mission of the Embassy of Italy Nicola Iorio, Representative of the Embassy of Estonia Peeter Pals and representatives of the EUDEL.

The meeting with the diplomatic corps representatives was covering the draft law on the abolition of the State Inspector's Service and creation of two new agencies instead of it, prepared by the

SHARE

CONTACT US

progress made by the Service over the past 2 years and the challenges faced. Londa Toloraia also spoke about the reasons that led to the conspiratorial, urgent drafting of the draft law by the Parliament of Georgia.



"A reform of such scale without the involvement of the service itself is unbelievable. There is no precedent for abolishing agencies using this form and methods. Firing all employees of the Service is a very bad message for all public servants. The Parliament of Georgia did not ask any questions to the State Inspector's Service regarding the ongoing reform and we received information about it through the media. When we submitted a draft law on strengthening the Service to the Parliament of Georgia, it turns out that the Parliament was conspiratorially preparing a draft law to abolish the Service. "This 'reform' is to punish the Service for lawful and impartial decisions," Londa Toloraia said. Representatives of the diplomatic corps expressed their concerns about the non-transparent and accelerated conduct of the processes around the State Inspector's Service. At the same time, they noted that in order to bring the country closer to European standards, it is important that all processes to be carried out with maximum involvement of stakeholders and through broad discussions. Representatives of the diplomatic corps underlined the role of the State Inspector's Service in the process of human rights' protection. According to their assessment, such a large representation of the diplomatic corps in the State Inspector Service office, once again expresses their great support for the Service.

"This website has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its contents are the sole responsibility of the office of the Personal Data Protection Inspector and do not necessarily reflect the views of the European Union and the United Nations Development Programme (UNDP)"

The European Union for Georgia
Human Rights 4All

UNDP Empowered lives. Resilient nations.



SHARE

DGI

21 JAN. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

# The Statement Of Londa Toloraia, State Inspector On The Abolition Of The State Inspector's Service

2021-12-30 21:19:08

I would like to inform you that the Parliament of Georgia adopted the law on the abolition of the State Inspector's Service.

With the adoption of the law, the main purpose – to dismiss the State Inspector appointed by the Parliament for 6 years in 2019 and her deputies, was achieved.

The law was passed in the name of approximation to European standards, while this law, the form and methods of its adoption, have nothing in common with the European values. The law was passed in the name of the European values, while the EU, the CoE High Commissioner for Human Rights, the UN, the representatives of the diplomatic corps accredited in Georgia, Members of the European Parliament, the US Ambassador demanded that adoption of the law be paused. All of them pointed out that abolition of the independent state institute in such an expedited and non-transparent manner was unacceptable and the adoption of this law should have been based on broad, open and in-depth discussions, including first of all with the participation of the State Inspector's Service.  The reform had to be carried out carefully and such a chilling effect on officials had to be avoided. They also pointed out that this process threatens democracy in Georgia and undermines the independent functioning of the Service.

In addition, the law was adopted in the name of the recommendation issued by the non-governmental sector in 2018 made prior to the establishment of the State Inspector's Service, in the name of the recommendation that was submitted to the Ministry of Justice and the Parliament of Georgia when establishing the Service, but it was not taken into account back then.



SHARE

The law was adopted in the name of the recommendation made many years ago by non-governmental organizations that positively assess the work of the Service today and note that the process of monitoring the work of the Service did not reveal any problems related to the risk of a conflict between these two functions. In parallel to this, the Parliament of Georgia in the process of making this decision ignored all the recommendations issued by international organizations and the non-governmental sector following the establishment of the Service. These recommendations actually served to strengthen the Service and its institutional development.

The law was passed in the name of raising personal data protection standards, in 4 days, while the draft law on Personal Data Protection which is in line with European standards has been on the shelf in the Parliament for over two years and none of its provisions have been transposed in this new law.

The law was passed in the name of strengthening the investigative agency in charge of official misconduct, while the new investigative service has not additionally been empowered with any effective mechanisms to investigate official misconduct. The law did not take into account any of the challenges being indicated as impeding circumstances mentioned by the State Inspector in their reports.

The law was passed on the grounds of incompatibility of investigative and personal data protection functions, however, no one asked the Service whether these two functions were compatible with each other and what were the challenges the Service faced in carrying out these two functions. The Parliament was unable to name a single specific example when the coexistence of these two functions within one institution created a problem in practice.

The Parliament of Georgia has taken an unprecedented decision and has abolished an elected position prematurely.

Fortunately, after the 3-days resistance/opposition from an international community, non-governmental sector and ourselves, the Parliament of Georgia has changed its attitude towards the staff of the Service and decided to redistribute them in two newly established entities. However, this could not affect the final result- an independent state institution has stopped existence. I don't think that after such message any public official will be able to operate independently and take an independent decision. Obviously, this is an extremely dangerous for human rights as well as for an effective functioning of the independent institutions.

According to the newly adopted Law, me and my deputies were dismissed. This, once again, proves that an independent authority together with its independent management was unacceptable for them. With this decision, we have once again observed that impartial and lawful assessments/findings are unacceptable.

Yesterday, one of the leader of the parliamentary majority mentioned that with this new Law two anti-constitutional entities were established. In other words, besides the fact that the Parliament has clearly confessed adoption of anti-constitutional Law which is already nonsense, it has in fact announced the abolition of

CONTACT US

SHARE

these new two entities and conveyed a very clear message to their future management that in case they act independently, their dismissal will not be a problem at all.

Unfortunately, none of the answers to my questions posed at the Committee meeting were reasoned. My questions were the following: 1) why **they did not involve us** in this so-called reform; 2) why the process went **in an expedited manner**; 3) **why the head of the entity appointed for a 6-year term could not lead** the reformed entity; 4) how these **two directions strengthen** after the division; 5) **which European country** implements reforms in such a manner. Instead of asking me at the Committee meeting what challenges the Service had and what my opinion on the draft Law was, the only concern of the Parliament was the source of getting the draft Law abolishing the Service and annulling the position. That is, where did the head of the agency get the bill that the parliament was obliged to send by law.

I remind the members of the Parliament who supported this decision today - supervisory authorities are not formed for an unconditional obedience to every decision of the Government. Developed countries establish supervisory authorities in order to let them respond to the infringements/violations of human rights by the state authorities.

Contrary to this:

- The Parliament of Georgia undermined the independent agency which has never agreed its decisions with anyone and acted only in accordance with the law;
- Today you abolished the agency of citizens of Georgia which boldly charged public bodies for unlawful interference in their private life and use of personal data;
- Today you abolished the agency, which was the first to respond to the release of covert recordings and stated that this fact must not be left without response;
- Today you abolished the agency of citizens of Georgia which made every effort with limited legislative, human and financial resources to investigate facts of violence by representatives of law enforcement agencies;
- Today you abolished the agency of citizens of Georgia which had to fight constantly in order to somehow punish violent civil servants who had committed crimes;
- Today you abolished the agency of this country which dared to say loudly that it had been confronted with problems and obstacles in the process of obtaining evidence and was not provided with evidence – documents, video recordings needed to punish violent civil servants;
- Today you abolished the agency of this country which actually stood on the European path and had been introducing new, European standards;
- Today you abolished the agency which managed to gain unprecedented public trust and support in 2 years and you saw this clearly during the last 3 days;
- Today you abolished the agency which dared to boldly express its critical opinions concerning prepared legislative amendments while these reforms were pretentious;



SHARE

- Today you made the step which has nothing in common with a reform;
- Today you made the step which has nothing in common with protecting human rights;
- Today you decided to dismiss the State Inspector and her three Deputies, who managed to create an independent state agency despite all the obstacles.

I would like to thank the international community, Diplomatic Corps, non-governmental sector, Members of the Parliament, public, students, representatives of ethnic and religious minorities for their unprecedented support we have been observing for the last 3 days.

I would like to thank my colleagues for their conscientious and dignified work.

I would like to thank my Deputies: Giorgi Gamezardashvili, Sophio Jiadze and Salome Bakhsoliani for creating this agency and for their worthy and bold decisions.

The word of the President is important now. I would like to thank her for expressed support. I do hope she will veto this law.

This legal fight has not been finished!

I would like to wish you living in a country oriented on human rights!

"This website has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its contents are the sole responsibility of the office of the Personal Data Protection Inspector and do not necessarily reflect the views of the European Union and the United Nations Development Programme (UNDP)"

The European Union for Georgia
Human Rights 4All

UNDP
Empowered lives.
Resilient nations.



Privacy Policy

SHARE

DGI

21 JAN. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Share 1 Tweet Share



# Statement of the NGOs on the possible abolition of the State Inspector's Service

27 Dec, 2021

On December 25, 2021, it was reported (https://netgazeti.ge/life/584169/?fbclid=IwAR1fuZks_3ReVgg8YGOy_vFnvvBoyssaEMr-mvvu0LptqtOb-SDO580kDeI) that the Parliament of Georgia, in an expedited manner, plans to review a draft law aimed at abolishing the State Inspector's Service and replacing it with a Special Investigation Service and Personal Data Protection Service. The signatory organizations are extremely concerned about the planned attack by the Georgian Dream authorities on yet another independent body, the State Inspector's Office, breach of the independence of and trust in the institution.

We wish to remind the public that effective investigation of crimes committed by law enforcement is a significant challenge for our country. Over the years, the lack of an independent and impartial mechanism has contributed to the widespread prevalence of abuse and ill-treatment (http://www.osgf.ge/files/2015/Publication/Final_Report_-_GEO.pdf) in the law enforcement system. To address these systemic shortcomings, back in 2015, civil society produced a draft law (http://www.osgf.ge/index.php?lang_id=geo&sec_id=15&info_id=4070) aiming to establish an independent investigative mechanism with investigative and criminal prosecution functions. The creation of the mechanism was also envisaged in the Association Agenda (https://eeas.europa.eu/sites/default/files/annex_ii_-_eu-georgia_association_agenda_text.pdf) between the EU and Georgia for 2017-2020.

Against the background of these challenges, on July 21, 2018, the Parliament of Georgia adopted the Law on the State Inspector's Service, according to which the inspector was only allowed to conduct an investigation and the right to procedural oversight was fully retained by the Georgian Prosecutor's Office. However, the enactment of the law has been postponed four times in a row by the Parliament and finally, the Inspector's Service came into force from 1 November 2019.

Two years after its coming into force, the service's independence and impartiality have been positively assessed by both the non-governmental sector (https://stateinspector.ge/uploads/files/damoukidebelisagamodziebomeqanizmebisaqartveloshi.pdf) and international partners. As part of its activities, so far, the Inspector's Investigative Service has received 5,523 reports (https://www.facebook.com/DPAGeorgiaOfficial/videos/3091735057812925/), and 8 law enforcement officers have been convicted. The service also quickly and effectively dealt (https://www.facebook.com/DPAGeorgiaOfficial/photos/a.299919413484244/2645533552256140/) with the facts of possible inhuman treatment of the third president of Georgia, the investigation into which is still underway.

In the process of establishing the State Inspector's Service, the non-governmental sector considered that the transfer of control functions over the legality of investigations and information processing to a single agency might not have been effective. However, observations on the institute have clearly proven (https://idfi.ge/ge/independent_investigative_mechanism_in_georgia_achievements_and_existing_challenges) that no shortcomings have been identified in practice in terms of the compatibility of personal data protection and investigative functions.

At the same time, the need exists today, clearly evident and noted by civil society organizations or international actors, is to further strengthen the service. In particular, giving the agency more independence in conducting investigative actions, as well as increasing its competence and disseminating it to a wider range of offences / officials. Further institutional and functional strengthening of the Service is highlighted in the Council of Europe Committee of Ministers' decision on the Tsintsabadze Group's case (https://hudoc.exec.coe.int/eng?i=CM/Notes/1390/H46-10E) in 2020, as well as in the recommendations of the UN Universal Periodic Review and in reports prepared by local organizations (https://idfi.ge/ge/independent_investigative_mechanism_in_georgia_achievements_and_existing_challenges).

In addition, the Inspector, in the annual reports submitted to the Parliament of Georgia, constantly pointed out the legislative gaps that needed to be corrected for the effective functioning of the institution. To this end, he came with an extensive legislative proposal (https://stateinspector.ge/ka/article/saxelmwifo-inspeqtoris-samsaxuris-mier-momzadebuli-sakanonmdeblo-winadadeba/135) to the Parliament of Georgia, just hours before the changes announced by the ruling party.

The preparation of a draft law on an issue of such importance and public interest in a completely closed manner, so that neither the representatives of the service, nor civil society organizations, nor other stakeholders were involved in its drafting process, is extremely problematic and constitutes legislative arbitrariness. At the same time, the hasty initiation of the review of the draft law reveals that the aim of the government is not to have in-depth professional deliberation on the issue, but to gain influence over an independent institution. This suspicion is reinforced by the fact that on December 7 of this year, the State Inspector's Service imposed (https://personaldata.ge/ka/press/post/7757?fbclid=IwAR0v5Y_61tfCRyXB4yhtz1TNaYEXoK33Zo034BewUwFCftGitzzL89y03z0) an administrative fine on the Ministry of Justice of Georgia and the Special Penitentiary Service for obtaining and disclosing personal

data of the third President of Georgia, Mikheil Saakashvili. In addition, in recent times, the State Inspector's Service has been critical of cases of violations of the law by the law enforcement system. The service investigated (https://personaldata.ge/ka/press/post/7657) the legality of the processing of Lekso Lashkarava's personal data, as well as responded (https://personaldata.ge/ka/press/post/7620) harshly to the disclosure of materials reflecting alleged covert surveillance and tracking facts.

A draft law, secretly and expeditiously registered behind closed doors, against the background of extreme political polarization, seizure of state institutions, public distrust of law enforcement agencies and the judiciary, aiming at abolishing an independent institution and the early termination of the authority of the State Inspector is nothing more than a political retaliation against an exceptional institution that has more or less been able to gain public confidence in recent years.

In view of the above, the signatory organizations call on the authorities to stop the attacks on independent institutions and to create all conditions for the smooth operation of the State Inspector's Service.

Signatories:

*Open Society Georgia Foundation (OSGF)*

Economic Policy Research Center (EPRC)

Georgian Young Lawyers Association (GYLA)

*Human Rights Center (HRC)*

*Institute for Democracy and Safe Development (IDSD)*

*Media Development Foundation (MDF)*

*Democracy Research Institute (DRI)*

*Sapari*

*Rehabilitation Initiative for Vulnerable Groups (RIVG)*

*Georgian Democracy Initiative (GDI)*

*Transparency International – Georgia (TI Georgia)*

*Partnership for Human Rights (PHR)*

*Governance Monitoring Center (GMC)*

*International Society for Fair Elections and Democracy (ISFED)*

*Social Justice Center (formerly EMC)*

*Institute for Development of Freedom of Information (IDFI)*

*Rights Georgia*

*Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT)*

## Related News

### On vetoing the legislative change on the abolition of the State Inspector's Service

News

5 Jan, 2022

(https://osgf.ge/en/on-vetoing-the-legislative-change-on-the-abolition-of-the-state-inspectors-service/)

### The Cartographers Case - A Politically Motivated Investigation

Statements

9 Oct, 2020

(https://osgf.ge/en/the-cartographers-case-a-politically-motivated-investigation/)

### Influence of Crim Subculture on th Management of a Penitentiary Inst

Report

10 Sep, 2020

(https://osgf.ge/en/publica of-criminal-subculture-on management-of-a-peniter institution/)

DGI
21 JAN. 2022
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Share 0

# On vetoing the legislative change on the abolition of the State Inspector's Service

5 Jan, 2022

**On December 30, 2021, the Georgian Parliament, in an expedited manner, adopted legislative amendments according to which the State Inspector's Service will be abolished in its current form and two new offices will be created, which will be responsible for protecting personal data and investigating crimes against law enforcement. Also, the term of office of the current state inspector is terminated, even though he was elected by the parliament until 2025.**

Despite sharp criticism from local civil society organizations (https://osgf.ge/en/statement-of-the-ngos-on-the-possible-abolition-of-the-state-inspectors-service/) and Georgia's partner states (https://www.facebook.com/usingeo/posts/10159660050822954), the ruling party has made an unconstitutional decision that is extremely damaging to Georgian democracy, without any justification or involvement of the relevant actors and the state inspector himself.

At the same time, the preliminary assessment from the President of Georgia that initiating and expediting the decision to abolish an independent state institution without prior consultations is unacceptable for her was welcome. Accordingly, the President called on the legislature to suspend consideration of legislative changes and give everyone the opportunity to present their arguments.

Due to all the above, we, the signatory organizations, call on the President of Georgia:

***To exercise her constitutional authority and veto the relevant legislative changes and to send the draft legislative amendments back to the Parliament with motivated remarks.***

*Open Society Georgia Foundation (OSGF)*

*Georgian Young Lawyers Association (GYLA)*

*Transparency International Georgia (TI Georgia)*

*Social Justice Center (formerly EMC)*

*Institute for Democracy and Safe Development (IDSD)*

*International Society for Fair Elections and Democracy (ISFED)*

*Economic Policy Research Center (EPRC)*

*Partnership for Human Rights (PHR)*

*Georgian Democracy Initiative (GDI)*

*Rehabilitation Initiative for Vulnerable Groups (RIVG)*

*Democracy Research Institute (DRI)*

*Human Rights Center (HRC)*

*Institute for Development of Freedom of Information (IDFI)*

*Media Development Fund (MDF)*

*Georgian Court Watch (GCW)*

*Sapari*

## Related News

### Statement of the NGOs on the possible abolition of the State Inspector's Service

Statements

News 27 Dec, 2021

(https://osgf.ge/en/statement-of-the-ngos-on-the-possible-abolition-of-the-state-inspectors-service/)

### NGOS negatively assess Irakli Kobakhidze's statement on constitutional amendments

Statements

News 1 Dec, 2021

(https://osgf.ge/en/ngos-negatively-assess-irakli-kobakhidzes-statement-on-constitutional-amendments/)

### The ruling pa on Western p assumes the alarming tren

Statements

News 17 Nov, 2021

(https://osgf.ge/en/the-on-western-partners-a an-alarming-trend/)

# Public Defender’s Statement on Attempt to Abolish State Inspector's Office

ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-sakhelmtsifo-inspektoris-samsakhuris-gaukmebis-mtsdelobastan-dakavshirebit

DGI

21 JAN. 2022

SERVICE DE L’EXECUTION DES ARRETS DE LA CEDH







The Public Defender of Georgia is extremely concerned about the draft law initiated by the Members of Parliament of Georgia, which abolishes the State Inspector’s Office in an expedited manner. The bill was prepared in a non-transparent manner and without prior

consultation with stakeholders. We believe that this decision contradicts the Constitution of Georgia and human rights and aims to interfere with the activities of an independent institution.

The main shortcoming of the draft law is the dismissal of the State Inspector, Deputies of the State Inspector and employees of the State Inspector's Office.

This type of regulation contradicts Article 25 of the Constitution of Georgia and violates the positive obligations of prohibition of ill-treatment and protection of the right to privacy based on the Constitution of Georgia and the European Convention on Human Rights.

According to the case law of the Constitutional Court of Georgia, early termination of the term of office of an independent body is possible only in exceptional cases, when this action is a necessary and only effective means of achieving the relevant legitimate aim. The element defining the essence of the position of the State Inspector is the degree of independence from the executive and/or legislative branch of government, which can be limited only in exceptional cases for the legitimate aim of improving the management of the service. According to the Constitutional Court of Georgia, such a special case can occur only when the relevant norms are so flawed that they contradict the purpose of a specific state position and their change is an urgent need. The absence of such circumstances is proved by the fact that the draft law does not change the legislation regulating the State Inspector's Office.

The proposed procedure for the dismissal of the professional staff of the State Inspector's Office is of particular note, which provides for a different regulation from the currently applied one and puts the staff in a clearly unequal position compared with other public officials, and is discriminatory in its content. The job guarantees for professional public servants are important for the effective functioning of the State.

We would like to especially note that the State Inspector's Office has been established as an independent state body that effectively and transparently exercises its powers. Since November 1, 2019, the Public Defender's Office has been actively monitoring the activities of the State Inspector's Office, requesting information and studying criminal cases. We have always indicated in our reports that the investigations conducted by the State Inspector's Office met the requirements of timeliness, thoroughness and accuracy.

We, as a parliamentary oversight body, are ready to provide more information to the Parliament of Georgia regarding the activities of the State Inspector of Georgia. The results of our observations show that the State Inspector's Office needs to be strengthened and not divided, both in the legislative and budgetary directions.

The draft law initiated in the Parliament of Georgia does not offer any novelty in the content, just indicating that two new bodies will be created instead of the State Inspector's Office and the investigative jurisdiction will only slightly be increased. At the same time, there is nothing new in terms of dependence on the Prosecutor's Office (which is one of

the big challenges today). On the contrary, according to the bill, the employees of the Prosecutor's Office will no longer be covered by the investigative mandate of the State Inspector's Office.

It is especially alarming to see the hastened discussion of the bill. According to the Rules of Procedure of the Parliament, this type of procedure makes it possible to adopt the bill in all three readings in just a week. When it comes to the abolition of an independent institution that operates properly and effectively, and in the absence of prior consultation with stakeholders or a body accountable to the Parliament (including the Public Defender), it is clear that the purpose of the legislative change is to influence the functioning of an independent body.

The Public Defender of Georgia calls on Members of Parliament of Georgia to refrain from adopting the draft law. At the same time, we call on the diplomatic missions and international organizations accredited in Georgia to be fully involved in this process as much as possible in order to avoid the adoption of the draft law that would worsen the protection of human rights in Georgia.

Given that we are dealing with a completely unprecedented case of abolition of an independent state body, we call on the President of Georgia, in case the bill is adopted, to use the opportunity to apply to the Parliament with motivated remarks and/or to the Constitutional Court of Georgia.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE
Avenue de l'Europe
F-67075 Strasbourg Cedex
Tel. +33 (0)3 88 41 20 00
www.coe.int

DGI
21 JAN. 2022
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Commissioner for Human Rights



DECLARATION

# The Georgian Parliament should reject draft legislation undermining the independent functioning of the State Inspector's Service

STRASBOURG | 28/12/2021

I call on the



Georgian Parliament to refrain from adopting, in an expedited manner and without proper consultation with the relevant stakeholders, the draft law aiming at the abolition of the State Inspector's Service which is an independent institution responsible for personal data protection and investigation of certain crimes committed by law enforcement officials. This draft legislative proposal also provides for the dismissal of the State Inspector and all those employed by the Service. If adopted, this draft law can only weaken the independent functioning of the national human rights protection mechanisms in Georgia.

U.S. Embassy in Georgia

# U.S. Embassy Statement on the Ruling Party's Rushed, End-of-Year Legislation

Last week, the ruling party undermined government accountability by abolishing the State Inspector Service, which is mandated to investigate police abuse and protect data privacy, undermined the independence of individual judges by amending the Law on Common Courts, and undermined faith in the judiciary by appointing yet another Supreme Court judge using a flawed selection process. No credible reasons were provided to the public for why these actions needed to be rushed through without appropriate consultations.

The lack of transparent discussion or analysis of the amendments is particularly troubling. Whether intended or not, the ruling party sent the message that independent oversight of the government or dissenting voices, even when prescribed by law, will be answered with retaliation, discipline, and dismissal.

The United States supports Georgia's sovereignty and stability every day through our long-standing security cooperation and economic development programs. Strong democratic institutions and adherence to the rule of law are Georgia's best defenses against Russian aggression. Steps that weaken democratic institutions, such as the judiciary or independent oversight agencies, damage Georgia's aspirations for NATO and European Union membership, and undermine the basic freedoms that are the foundation of Georgian culture and society.

This is the official website of the U.S. Embassy in Georgia. External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein.

NEWS

# UN Human Rights office concerned by possible abolishment of State Inspector's Service in Georgia




The UN Human Rights office also says that the independence of national human rights mechanisms should be ensured in the country. Photo: devex.com.

Tweet
Tweet
Share
Print ()
Comments

Agenda.ge, 27 Dec 2021 - 16:26, Tbilisi,Georgia

The United Nations Human Rights office has called on the ruling Georgian Dream party to withdraw a bill proposing to replace the State Inspector's Service with two new agencies.

Several Georgian majoritarian MPs put forward a bill on December 25 based on which the State Inspector's Service would be replaced by two new agencies: the Special Investigation Service and the Personal Data Protection Service, which would be authorised to investigate offences committed by the authorities and to monitor personal data processing respectively.

**State Inspector's Service to be replaced by Special Investigation, Data Protection services (https://agenda.ge/en/news/2021/4054)**

The UN Human Rights office says that it is 'deeply concerned' by the proposal, noting that the Inspector's Service is an 'independent institution with a key role in torture prevention and privacy protection.'




It also says that the independence of national human rights mechanisms should be ensured in the country.

NGOs, the parliamentary opposition and State Inspector Londa Toloraia have criticised the bill stating that the government aims to influence the independent institution.

Toloraia called the initiative of the MPs a 'punishment of the service for its independence' earlier today and stated that she will protect the 'interests of the Service and each of its employees.'

**NGOs condemn possible replacement of State Inspector's Service by two other agencies (https://agenda.ge/en/news/2021/4057)**

NGOs said that the State Inspector's Service has been praised for its 'independence and impartiality' by international partners, noting that the body needs to be strengthened instead of being replaced.

The Georgian parliament adopted the law on the State Inspector's Service on July 21, 2018, and the Service began operations on November 1, 2019.

**State Inspector's Office fines Justice Ministry, Penitentiary Service for 'illegal release' of Saakashvili videos (https://agenda.ge/en/news/2021/3853)**

Per the bill, the State Inspector's Service is assigned to conduct the investigations with the supervision of the Georgian Prosecutor's office.

The State Inspector's Service has received a total of 5,523 notifications with eight police officers having been convicted over the last two years.

BACK (HTTPS://WWW.GOOGLE.COM/)

## RELATED NEWS



**Maaike van Koldam**
@MaaikevanKoldam

Concerned about initiative towards dissolving State Inspector's Office 🇬🇪, important #HumanRights institution, in a rushed manner leading to dismissal of all staff. Open & transparent process needed, broad consultation incl with @DPAofGeorgia itself. Trust & independence are key.

6:50 PM · Dec 28, 2021 · Twitter for iPhone



**Diégo Colas**
@ColasDiego

I share the concerns about the ongoing reform of 🇬🇪State Inspector @DPAofGeorgia. When dealing with key democratic checks + balances, we call for reforms to take place carefully, with wide consultations, with appropriate transitions, avoiding chilling effect on incumbents.



**Clare Allbless**
@ClareAllbless

Very worrying news regarding the sudden proposal to dismantle the State Inspector's Service @DPAofGeorgia. I hope any decision will be afforded the time, care and openness it requires, involving all relevant stakeholders. #independentinstitutions #HumanRights

3:45 PM · Dec 29, 2021 · Twitter for iPhone

**2** Retweets **1** Quote Tweet **3** Likes



**Petr Mikyska**
@mikyska_petr

We EU MS Ambassadors and CDAs had meeting w/ L. Toloraia yesterday. Circumstances of planned abolition of State Inspector´s Service, dismissal of all employees and timing of this rushed action are  worrisome, not helping to checks and balances system working properly.

11:27 AM · Dec 29, 2021 · Twitter Web App

**4** Retweets **5** Likes



**Dorota Dlouchy - Suliga** @DorotaDlouchy · 18h

#Georgia again quite worrying developments - the law that would abolish the State Inspector's Service under expedite procedure in the Parliament. EU was engaged in its creation& invested substantial resources in its development.



interpressnews.ge

EU Delegation responds to expedited procedures i...

As acting Head of the EU Delegation Asunción Sánchez Ruiz told Interpressnews, the process ...

2 2



**Giorgi Gogia** @Giorgi_Gogia · Dec 27

In highly controversial, nontransparent & possibly retaliatory move, during holiday break #Georgia's🇬🇪 parliament initiates reforms to dissolve State Inspector's office, independent body created in 2018 to investigate abuses committed by law enforcement. Would be a clear setback!



> **UN Human Rights** @UNHumanRights · Dec 27
>
> #Georgia: Deep concern over proposals for Parliament to abolish State Inspector's office, an independent institution with key role in #TorturePrevention & privacy protection. We call for the initiative to be withdrawn & to ensure independence of national human rights mechanisms.