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Meeting: 1492nd meeting (March 2024) (DH)

Communication from NGOs (Georgian Young Lawyers' Association (GYLA), European Human Rights Advocacy Centre (EHRAC)) (24/01/2024) concerning the TSINTSABADZE group of cases 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.

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Réunion : 1492e réunion (mars 2024) (DH)

Communication d'ONG (Georgian Young Lawyers' Association (GYLA), European Human Rights Advocacy Centre (EHRAC)) (24/01/2024) relative au groupe d'affaires 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.

DH-DD(2024)136: Rule 9.2 Communication from NGOs in TSINTSABADZE v. Georgia.
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Rule 9 (1) and (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)

DGI
24 JAN. 2024
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Georgian Young Lawyers' Association (GYLA)

European Human Rights Advocacy Centre (EHRAC)

24 January 2024

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EXECUTIVE SUMMARY

1. The **Georgian Young Lawyers' Association** (GYLA) and the **European Human Rights Advocacy Centre** (EHRAC) present this communication pursuant to Rule 9(1) and Rule 9(2) of the Rules of Committee of Ministers to draw attention to the inadequacies in the execution of the European Court of Human Rights' 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 1492nd CM-DH meeting (March 2024).

2. The present communication provides the Committee of Ministers with updates regarding the individual measures in the following cases: *Edzgveradze v. Georgia (no. 59333/16)*; *Ochigava v. Georgia (no. 14142/15)*. The communication also addresses four key problems at the national level that go to execution of general measures: (1) the deepening of the criminal subculture in the penitentiary establishments; (2) concerns regarding the Special Investigation Service; (3) shortcomings of involvement of victim in criminal proceedings and observation of the ongoing investigation; (4) lack of legal safeguards from torture and ill-treatment.

3. Given these problems have remained unresolved for a number of years, this submission also refers the CM to the previous Rule 9.2 communications of 2020[1]-2022 in this group made by GYLA and EHRAC.[2] This communication also broadly refers to the 2023 Rule 9(2)[3] communication submitted also by GYLA and EHRAC. 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.

4. In summary:

   (i) all key challenges remain unresolved before the investigative authorities;

   (ii) the reform adopted to strengthen the investigative body has still not been implemented;

   (iii) serious concerns remain regarding the independence of the Special Investigation Service.

5. Finally, it is worth noting that, in 2023 Georgian Young Lawyers' Association provided the Parliament of Georgia with reports regarding the execution of individual and general measures of the cases of the European Court of Human Rights, including the *Tsintsabadze Group of Cases*; nevertheless, no meetings have been held. It is worth mentioning that GYLA asked to participate in meetings, however, no response has been provided. No information has been provided whether such a meeting had already taken place or not, therefore, GYLA remains in the informational vacuum in this regard.

I. Information on the Execution of Individual Measures

1. *Edzgveradze v. Georgia* (no. 59333/16)

6. On 20 January 2022, the European Court of Human Rights delivered its judgment in the case of *Edzgveradze v. Georgia (no. 59333/16)*. The ECtHR declared a violation of the procedural aspect of Article 2 (Right to life) of the Convention, finding that no effective investigation was carried out into M.M's suicide which had taken place the day following his questioning by police as a witness in a case involving the victim's friend. Prior to dying by suicide, he had alleged that he had been subjected to verbal and physical abuse by the police officers, who, according to him had forced him to give

[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, [27.12.2023]

[2] Communication from NGOs (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), available at: https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)141E, [27.12.2023]

[3] Communication from NGOs (The Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (21/04/2023) in the case of the Tsintsabadze group v. Georgia (Application No. 35403/06), available at: https://hudoc.exec.coe.int/?i=DH-DD(2023)556E, [27.12.2023]

a statement incriminating his friend. GYLA has represented the interests of the family of the deceased at domestic proceedings as well as at the ECtHR.

7. According to the Court, *"the criminal investigation left unanswered potentially decisive questions, namely whether M.M. was indeed taken to a separate room and, if so, what happened there. Furthermore, the most notable gap of the investigation was the fact that it did not offer any hypothesis as to why an individual with no prior suicidal intentions, psychological issues, or any other apparent problems would commit suicide following an encounter with the police."*[4] The Court concluded that the investigation lacked thoroughness, and although the investigation into M.M.'s death had been pending for more than two years and eight months, no investigative measures were taken between November 2014 and March 2016.

8. Based on the judgment of the ECtHR, on 10 February 2022, GYLA sent a letter to the Office of the General Prosecutor of Georgia requesting reopening of the investigation. Given no investigative steps in the original investigation had been taken into alleged ill-treatment of the deceased[5], in this letter GYLA requested the investigation into this matter as well. As no response had been received to the mentioned letter, GYLA repeatedly addressed the Office of General Prosecutor of Georgia on 5 May 2022 and 21 June 2022. On 16 June 2022, GYLA was informed that, on 7 June 2022, the investigation into M.M.'s case had been reopened and on 8 June 2022 the classification of the crime changed and the investigation now covered Articles 115 (Incitement to suicide) and 333(1) (Exceeding official powers) of the Criminal Code of Georgia (CCG).

9. On 6 December 2022, GYLA, outlining the importance of the thorough investigation, requested updated information regarding the investigation and asked whether G.U. (the mother of the deceased) or Zizi Edzgveradze (the applicant and wife of the deceased) were granted the status of legal successor of the victim. According to the letter from the Public Prosecutor's Office in Tbilisi, by 4 May 2023, neither G.U. nor Zizi Edzgveradze had been granted this. On the next day, 5 May 2023, GYLA requested granting Zizi Edzgveradze the status of a legal successor of the victim and in 29 May 2023, this status was granted. In its judgment, the Court noted that Zizi Edzgveradze had not been able to effectively participate in the proceedings, on account of not having been granting the procedural status of a victim. Nevertheless, since the judgment of the ECtHR, it still took over one year for the Prosecutor's Office to grant Zizi Edzgveradze a legal status for participation in the investigation. Additionally, leaving letters from GYLA unanswered created an informational vacuum for her and caused further distress. The Committee of Ministers has emphasized the importance of victim status, stating *"without a formal procedural status a victim is deprived of other important procedural rights, such as, for example, the right to challenge decisions terminating investigations."*[6]

10. On 16 August 2023, GYLA again addressed the Public Prosecutor's Office in Tbilisi, asking for the full criminal case-file. It is noteworthy that the request was satisfied promptly and the materials were provided electronically. Nevertheless, since the renewal of the investigation, the materials only contain witness statements of the police officers who had been involved in the interaction with the deceased. Given the last witness statement had been obtained in June 2023, we cannot definitely provide information regarding any further developments since this date. According to the Government's Action Plan of April 2023, *"[o]ther investigative and procedural actions are being conducted in order to study the facts and circumstances specified in the decision of the Court*."[7] As the neither the Government nor the criminal case-file mentions specific investigative and procedural actions, we submit that taking two years to only obtain several witness statements, without undertaking any further investigative activities or nor obtaining evidence, does not constitute an effective investigation.

11. In addition, despite numerous requests from GYLA, there has been no information provided by authorities whether there have been any investigative steps taken to determine the applicability of Article 144[1] (torture) of CCG. It should be also noted that the Government do not mention the circumstances of Zizi Edzgveradze in relevant paragraphs on the involvement of victims.

[4] *Edzgveradze v. Georgia*, no. 59333/16, ECtHR, 20.01.2022, §43.
[5] (Article 144[1] (torture) of the Criminal Code of Georgia (CCG))
[6] The Committee of Ministers, 1468th meeting (5-7 June 2023) (DH) - H46-11 Tsintsabadze group v. Georgia (Application No. 35403/06), CM/Notes/1468/H46-11, 07.06.2023.
[7] Action Plan 1468th meeting (June 2023) (DH), Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06), 28.04.2023, para. 345.

2. *Ochigava v. Georgia* (no. 14142/15)

12. On 16 February 2023, the European Court of Human Rights delivered judgment on the case of *Ochigava v. Georgia (no. 14142/15)*. The ECtHR declared a violation of both the substantive and procedural aspects of Article 3 of the Convention on account of the applicant's ill-treatment, certain acts of which amounted to torture, and the lack of an effective criminal investigation thereof. GYLA has represented the interests of the applicant on a domestic level as well as at the ECtHR.

13. With its latest Action Plan in April 2023, the Government of Georgia informed the Committee of Ministers that the investigative jurisdiction of the Special Investigation Service (SIS) had been extended to all crimes related to violation of the European Convention or any of its protocols established by a final judgment of the Court.[8] This was also met with interest by the Committee of Ministers in the decision.[9] In the notes, the Committee further outlined the following: *"It remains to be seen how effectively the SIS will be able to deal with all its competencies bearing in mind among others the functions entrusted to it in 2021, some of which go beyond investigation of serious human rights violations committed by state agents."*[10] The Committee should be informed that these legislative amendments took place on 30 November 2022 and came into effect immediately after its publication.[11]

14. On 2 November 2023, after the Government had made its commitment to expanding the jurisdiction of the SIS, GYLA addressed the SIS to open the investigation into this case, outlining that according to the judgment of the ECtHR, *"the applicant consistently and convincingly stated before the domestic authorities that not only the seven convicted prison officers but also a number of other senior prison officers had participated in his ill-treatment in Gldani Prison, but the role of those additional perpetrators was not elucidated."*[12] Nevertheless, the request remains unanswered and, as such, it is practically impossible to assess whether this case can show whether the SIS effectively investigate cases arising from violations of the Convention.

II. Information on the Execution of General Measures

1. Deepening criminal subculture in Georgian prisons

15. The existence of a criminal subculture within Georgian penitentiary facilities poses a major challenge and forms the central source of threats of further violations of human rights in the Georgian prisons. Although the existence of the criminal subculture and its influence is confirmed by various national[13] and international bodies[14], the Government of Georgia is reluctant to acknowledge it. It is noteworthy that the criminal subculture not only threatens prisoners but also can be used as a means to silence them and hide systemic violations in the penitentiary facilities. GYLA and EHRAC have raised the issue of criminal subculture in the previous submissions, however, no progress has been made either in acknowledging or in resolving the issue at hand.

16. The criminal sub-culture is a tool used to control prisons. The criminal authorities keep order between the inmates together with the prison administration.[15] The administration actively cooperates with the "informal leadership" and uses them to "regulate relations" with inmates.[16] Therefore, if the state continues to turn a blind eye to the influence of the criminal subculture in prisons, the systemic issue cannot be resolved. The reluctance of the Government to accept

[8] Action Plan 1468th meeting (June 2023) (DH), Communication from Georgia concerning the case of Tsintsabadze v. Georgia (Application No. 35403/06), 28.04.2023, para. 352
[9] The Committee of Ministers, 1468th meeting (5-7 June 2023) (DH) - H46-11 Tsintsabadze group v. Georgia (Application No. 35403/06), CM/Del/Dec(2023)1468/H46-11, 07.06.2023, para. 6.
[10] The Committee of Ministers, 1468th meeting (5-7 June 2023) (DH) - H46-11 Tsintsabadze group v. Georgia (Application No. 35403/06), CM/Notes/1468/H46-11, 07.06.2023.
[11] See the Legislative Amendments to the law of Georgia "On Special Investigation Service", available in Georgian <https://info.parliament.ge/file/1/BillReviewContent/317870?> [09.01.2024]
[12] *Ochigava v. Georgia*, no. 14142/15, ECtHR, 16.02.2023, §59.
[13] Parliamentary Report of the Public Defender of Georgia 2022, 51.
[14] Report to the Georgian Government on the ad hoc visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 May 2021; 16.06.2022, §12.
[15] Parliamentary Report of the Public Defender of Georgia 2022, 51.
[16] *ibid*, 12. Also see, Report to the Georgian Government on the ad hoc visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 May 2021; 16.06.2022, §§ 20, 29.

the existence of the issue evolves the impunity, putting prisoners into a more vulnerable position. Therefore, effective steps need to be taken to eradicate it and adequately investigate all complaints.

2. Concerns regarding the Special Investigation Service of Georgia (SIS)

17. The Venice Commission ('VC'), while assessing the SIS in its opinion of 16 December 2023, also referred to the CM meetings on the Tsintsabadze Group of cases.[17]

18. The Venice Commission further referred to[18] the EU Accession of Georgia and stated that on 8 November 2023, the European Commission recommended[19] that Georgia would gain the status of a EU candidate country if a number of steps would be taken,[20] particularly, that Georgia should inter alia review the legislation on the Anti-Corruption Bureau, the Special Investigation Service and the Personal Data Protection Service.[21] Additionally, a number of VC's further recommendations and conclusions are set out in the following sections.

2.1. Independence of the SIS

19. It also should further be noted that, as also has been emphasized by the VC,[22] functionally the SIS is still legally and practically dependent on the Prosecutor's Office while acting upon its investigative mandate. The conduct of all major investigative actions defined by the Criminal Procedure Code of Georgia, such as seizure and search, request for electronic information, covert investigative actions, etc., is still fully dependent on the prosecutor's office.

20. On 17 November 2022, the Constitutional Court of Georgia adopted a decision by which it declared invalid the cancellation of the State Inspector's position and the dismissal of the State Inspector and his/her deputies without offering equivalent positions or without payment of fair compensations.[23] The Constitutional Court found that the dismissal of the State Inspector and her deputies was not the least restrictive means of achieving a legitimate goal.[24]

21. The Venice Commission stated that none of the conditions mentioned in Article 9 of the previous law on the State Inspector's Service were present in the case of dismissal of the former State Inspector and her deputies.[25] Additionally, the precedent of dismissing the head of an independent body by changing the law, contradicting the exhaustive list of permissible grounds for dismissal, carries a serious threat for the independence of that body, even if compensation for the dismissal is proposed.[26] The Venice Commission also emphasizes that "*the independence of important human rights institutions is not a personal prerogative of its postholders and the mere payment of compensation may, therefore, not redress the negative effect of the early dismissal for the independence of the given body. Moreover, such an approach may have a chilling effect for the wider public and potential beneficiaries of the service and seriously undermine its authority*".[27] The VC concluded that, in the case of an institution in the domestic system enjoying some kind of

[17] European Commission for Democracy Through Law (Venice Commission), CDL-AD(2023)044, *Georgia - Opinion on the Law on the Special Investigation Service and on the Provisions of the Law on Personal Data Protection Concerning the Personal Data Protection Service* ['Venice Commission Opinion'] (15-16 December 2023), §§ 14-16, available at - https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)044-e [09.01.2024].
[18] Venice Commission Opinion, §§ 17-19.
[19] European Commission, Georgia Report 2023 (europa.eu), p. 13, available at - https://neighbourhood-enlargement.ec.europa.eu/georgia-report-2023_en [09.01.2024].
[20] Ibid., p. 14.
[21] Priority 4 focuses on providing adequate resources and safeguarding the independence of the new SIS and PDPS, as well as the adoption of laws by the Georgian Parliament to enhance the investigative powers of the SIS and improve social protection for the personnel of the PDPS. It also focuses on strengthening the independence of the Anti-Corruption Agency bringing together all key anti-corruption functions to rigorously address high-level corruption cases.
[22] Venice Commission Opinion, §§ 76-86.
[23] Decision of the Constitutional Court No 1/9/1673, 1681 of 17 November 2022.
[24] Ibid, §§ 47, 65-69.
[25] Venice Commission Opinion, §§ 42-43.
[26] Ibid, § 43.
[27] Ibid, § 43.

autonomy or, *a fortiori*, being defined as "independent", "*replacing key office holders in such an institution under the pretext of a legislative reform appears to run counter to the Rule of Law*".[28]

22. Accordingly, in such an institution, where this kind of a political influence and threat of dismissal exists, not only is the independence of the latter under question, but impartiality in practice is also in question. The following incident illustrates this: On 12 July 2023, the head of the regional division of the Department of Human Rights Protection and Investigation Quality Monitoring of the Ministry of Internal Affairs, Goga Razmadze ('G.R.'), published an extensive post on a social network, where he spoke about the discrimination in the ministry and about humiliating and insulting treatment and being forced to give an explanation regarding his concerns he had shared about an email to the Deputy Minister of MIA by the deputy head of the General Inspection of the Ministry of Internal Affairs.[29]

23. The information contained in the post of G.R. indicated the existence of the elements of a number of crimes (such as Article 144[3] of the Criminal Code of Georgia (CCG) - Humiliation or inhuman treatment; Article 150 - Coercion; Article 156 - Prosecution; Article 335 – Providing explanation, evidence or opinion under duress), which, according to Article 19(1)(a) of the law "on the Special Investigation Service", falls under the investigative jurisdiction of the SIS. Notwithstanding this, the SIS did not initiate any reaction on its own accord based on this information. On 14 July 2023 G.R. applied to the SIS for the opening of an investigation.

24. On 28 July 2023 the SIS issued a statement where it indicated the following - '*In order to respond to the received statement, Goga Razmadze was summoned to the Special Investigation Service, who, while appearing at the agency with a lawyer, did not want to make explanations about the circumstances mentioned in the statement and did not want to participate in the interview*'.[30]

25. On 4 August 2023 G.R. applied to the head of the SIS and requested, *inter alia*, an assessment of the legality of the adopted decision by the investigator regarding G.R.'s application and the effective investigation of the alleged crime. Additionally, GYLA also applied to the Office of the General Prosecutor of Georgia to the Prosecutor of the Department of Procedural Management of Investigations in the Special Investigation Service requesting the initiation of an investigation of G.R.'s case, and mentioned that G.R. was ready to cooperate with the investigation.

26. On 10 August 2023 the SIS released a statement, calling on G.R. to cooperate with the investigation.[31] In response to this statement GYLA published the following statement in response - '*The statement is nothing but an attempt to mislead the public, since no investigation has been initiated. Therefore, naturally, Goga Razmadze cannot cooperate with the investigation, which has not yet started*'.[32]

27. The reluctance of the Special Investigation Service to investigate the case of G.R. calls into the questions the independence and impartiality of the SIS. The SIS wrote to G.R. that, due to the fact that he had not agreed to participate in an interview (which was supposed to have been conducted informally), and due to the fact that there had been absence of signs of crimes,[33] the case was transferred to the General Inspection of MIA. This is the very same body whose head was the alleged perpetrator of the crime against G.R., such that any investigation patently fails the test of independence or impartiality. Further, Article 100 of the Criminal Procedure Code of Georgia states that "*When notified of the commission of a crime, an investigator, prosecutor shall be obliged to initiate an investigation*". The existing Georgian legislation does not consider an interview as a necessary procedural action before the initiation of an investigation. Thus the fact that G.R. refused to participate in the interview should not have prevented investigation by the SIS. We

[28] Ibid, § 46. See also, Venice Commission, CDL-AD(2021)012, *Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption* (19-20 March 2021), §§ 29-30, available at - https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e [09.01.2024].
[29] See, the post of Goga Razmadze, 12.07.2023, available at - https://www.facebook.com/goga.razmadze.77/posts/6950419024987800?ref=embed_post [10.01.2024].
[30] See, the statement of the Special Investigation Service, 28.07.2023, available at - https://sis.gov.ge/en/article/statement-of-the-special-investigation-service-regarding-the-goga-razmadze-case/349 [10.01.2024].
[31] See, the statement of SIS, 10.08.2023, available at - https://sis.gov.ge/en/article/the-special-investigation-service-appeals-to-goga-razmadze-to-cooperate-with-the-investigation/353 [10.01.2024].
[32] See, the statement of GYLA, 10.08.2023, available at - https://gyla.ge/ge/post/saia-ekhmaureba-specialuri-sagamodziebo-samsakhuris-ganckhadebas-romelic-sazogadoebis-shecdomashi-shemyvania#sthash.wDYxsiNV.dpbs [10.01.2024].
[33]The Latter conclusion was reached in the background of G.R. having provided a detailed account of everything that had occurred and even the legal argumentation regarding the elements of crime existing in the case, however, all of this had been disregarded by the SIS and not even considered.

recommend that the Government take effective steps to enhance the legal, institutional, and practical independence and impartiality of the SIS.

2.2. SIS attempts to avoid core obligation to initiate prompt investigation

28. On 5 December 2023, the SIS presented a draft of an internal policy document named 'Recommendations about Receiving Information on Possible Crime' to civil society members. This document will have a binding effect on SIS employees if it is adopted. The mentioned policy document allows SIS to evade the obligations outlined in Article 100 of the Criminal Procedure Code of Georgia, which mandates the initiation of an investigation. According to the document, the initiation of an investigation will be dependent on the volume and sufficiency of information, even in cases when the information contains general signs of a crime. It is a subjective assessment whether information has the requisite "volume," or "sufficiency." Naturally, the fulfillment of such an important obligation as the initiation of an investigation cannot depend solely on this assessment by individuals, especially when the Criminal Procedure Code of Georgia (CPCG) does not provide the possibility of appealing against the non-initiation of an investigation.

29. Unfortunately, this document is not in compliance with domestic legislation and undermines a key principle of the modern Georgian CPCG—the unconditional obligation of the investigative body to commence an investigation when a notification about a possible crime is filed. It is noteworthy that internal policy documents serve as a reflection of how human rights are exercised in reality. Misinterpretation of the norms outlined in this policy document poses grave dangers to the rights guaranteed under Article 2 and 3 of the European Convention, and it goes against the spirit of the judgments of the ECtHR.

2.3. Exclusion of High-ranking officials from the jurisdiction of the SIS

30. The independence and impartiality of the SIS is further undermined with the exclusion of high-ranking officials from its jurisdiction, which will be analyzed in this section. Article 19(1) of the Law of Georgia on Special Investigation Service ('SIS Law') provides that the investigative jurisdiction of the SIS applies to particular crimes[34] if they have been committed by a representative of a law enforcement body, or by an officer or a person equal to him/her. Article 3(1)(h) (Definitions of terms) of the amended SIS Law stipulates that for the purposes of this Law, the term "representative of the law enforcement body" shall mean an employee of the Prosecutor's Office,[35] an employee of the Ministry of Internal Affairs (except for the Minister him or herself), employee of the State Security Service (except for the head of the Service), an employee of the special law enforcement structural division of the Defence Forces, an employee of the investigation division of the Ministry of Justice, an employee of the special division of the Special Penitentiary Service – the State Sub-agency under the Ministry of Justice, an employee of the investigation service of the Ministry of Finance. However, there is significant concern that this law excludes high ranking officials including the Chief Prosecutor, prosecutors, and senior law enforcement figures.

31. The VC stated that the authorities justified the exclusion of the Chief Prosecutor due to the regulations of Article 48 of the Constitution of Georgia, which designates the Chief Prosecutor as an "impeachable" official. The process for impeachable officials is as follows: The Constitutional Court assesses whether there has been a violation of the Constitution or signs of crime by the official in question, and provides its conclusion to Parliament. If the Constitutional Court's finding confirms a violation of the Constitution or signs of criminal behaviour, the Parliament discusses and votes on the impeachment. As the VC was informed by the authorities '*following impeachment, any investigative body can investigate in respect of the Chief Prosecutor, as the individual will no longer hold public office*'.[36]

32. However, the VC finds this Constitutional provision too vague as it does not specify which body shall gather the evidence (either in the initial investigation or the investigation itself) in such cases and the VC also indicated that if the

[34] Criminal Code of Georgia, Article 1441 – Torture, Article 1442 – Threat of torture, Article 1443 – Humiliation or inhuman treatment, Article 332 (3) (b) – Abuse of official powers using violence or a weapon; Article 332 (3) (c) – Abuse of official powers by offending personal dignity, Article 333 (3) (b) – Exceeding official powers using violence or a weapon, Article 333 (3) (c) – Exceeding official powers by offending personal dignity of the victim, Article 335 – Providing explanation, evidence or opinion under duress, Article 378 (2) – Coercion of a person placed in a penitentiary institution into changing evidence or refusing to give evidence, and coercion of a convicted person in order to interfere with the fulfilment of his/her civil duties.
[35] Except for the Chief Prosecutor of Georgia and a prosecutor of a structural unit carrying out Procedural Supervision of Investigation at the Investigation Division of the SIS of General Prosecutor's office.
[36] Venice Commission Opinion, § 89.

investigation function remains within the jurisdiction of the Prosecutor's Office, this will trigger a conflict of interest. As for the head of the State Security Service of Georgia, who also remains beyond the jurisdiction of the SIS,[37] the Constitution does not outline impeachment procedures at all, which further strengthens the conclusion that the prior dissolution of the State Inspector's Service was not in accordance with the Rule of Law and this procedure had major political undertones.

33. In view of this, akin to the CM's previous findings on the Tsintsabadze Group of Cases, the Venice Commission concluded that '*excluding senior law enforcement figures from the definition of "representatives of the law enforcement body" risks undermining the effectiveness of the SIS*'.[38] The Venice Commission thus recommends extending the jurisdiction of the SIS to encompass crimes related to serious human rights violations allegedly committed by high-ranking officials.[39]

34. The Venice Commission also outlined that, pursuant to SIS Law, all prosecutors are excluded from the remit of the SIS in respect of several serious crimes,[40] and more so, that some of these crimes might be connected to their professional activities. According to the VC, *"these regulations are problematic, especially in the light of the provision of the amended SIS Law (Article 19(2)), according to which it is the prosecutor who, after conducting urgent investigative actions, shall decide on remit the case to the SIS."*[41]

35. The Venice Commission also found it problematic that, according to Article 19(1)(d) of the amended SIS Law, new crimes in the jurisdiction of the SIS[42] do not mention that these crimes may be committed by a representative of a law enforcement body. According to the Venice Commission, such an approach *"will inevitably divert the focus of the SIS from its primary remit: effectively investigating crimes involving law enforcement. The newly mentioned crimes in Article 19(1)(d) of the amended SIS Law are typically within the purview of other law enforcement bodies, like the police, and do not align with the primary role of the SIS".*[43]

36. We recommend that the Government reconsider the scope of the jurisdiction of the SIS to include high-ranking officials, as well as broaden the crimes applicable to law enforcement bodies.

3. Shortcomings of the involvement of victims in criminal proceedings and observation of the ongoing investigation

37. As has been underlined in the previous Rule 9 communications by GYLA and EHRAC, the appropriate participation of the victims/their next of kin in the criminal proceedings is still a challenge in Georgia. Since the previous submission of GYLA and EHRAC, the situation has not improved, and current practice still indicates that in the absolute majority of cases, victims are still not effectively involved in the proceedings especially if the alleged crime is attributable to law enforcement authorities. GYLA and EHRAC reiterate the previously submitted communications to the CM regarding the challenges for the victim involvements in the criminal proceedings and respectfully refer the CM to

[37] Ibid, § 90.
[38] Ibid, § 91.
[39] Ibid, § 93.
[40] Article 108 – Intentional killing, Article 109 – Intentional killing under aggravating circumstances, Article 111 – Intentional murder in a state of sudden, strong emotional excitement, Article 113 – Murder exceeding the self-defence limits, Article 114 – Murder exceeding the degree required for seizing a perpetrator, Article 115 – Incitement to suicide, Article 116 – Killing by negligence, Article 117 – Intentional infliction of serious harm to health, Article 118 – Intentional infliction of less serious harm to health, Article 120 – Intentional infliction of minor harm to health, Article 121 – Intentional infliction of serious or less serious harm to health in the state of sudden and strong emotional excitement, Article 122 – Infliction of serious or less serious harm to health by exceeding the self-defence limits, Article 123 – Infliction of serious or less serious harm to health by exceeding the degree necessary for seizing an offender, Article 124 – Infliction of serious or less serious harm to health by negligence, Article 126 – Violence, Article 1261 – Domestic violence, Article 137 – Rape, Article 138 – Another action of a sexual nature, Article 139 – Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature, Article 143 – Unlawful imprisonment, Article 144 – Taking a hostage, Article 150 – Coercion, Article 1501 – Forced marriage.
[41] Venice Commission Opinion, § 92.
[42] Those are the crimes provided for by Articles 153-159 of the Criminal Code of Georgia. Notably, Encroachment upon freedom of speech; Unlawful interference with the journalist's professional activities; Unlawful interference with the performance of divine service; Persecution; Disclosure of personal or family secrets of information on private life or of personal data; Violation of the secrecy of private communication; Violation of secrecy of personal correspondence, phone conversations or other kinds of communication.
[43] Venice Commission Opinion, § 96.

them.[44] It is noteworthy that despite the expressed concern of the Committee of Ministers[45], no improvements have been achieved in this regard. In particular, the latter shortcomings concern the following:

- Deficiencies related to granting of a victim status (Misinterpretation of norms by prosecutorial authorities; Protracted procedures related to the granting of a victim status; Unsubstantiated court decisions related to granting victim status);

- Deficiencies related to exercising victims' rights;

- Improper access to criminal case materials;

- Victims are not entitled with the right to request reclassification of the offence.

These are expanded in GYLA/EHRAC's previous Rule 9s and we refer the CM to these.

38. We recommend that more needs to be done to enhance the status and involvement of victims in the criminal process.

4. Lack of legal safeguards from torture and ill-treatment

39. GYLA/EHRAC reiterate that there is a lack of legal safeguards to prevent ill-treatment and respectfully refer the CM to their previous submissions. Since the previous Rule 9s, the situation still has not improved. Accordingly, in order to prevent and investigative ill-treatment, it is critical to make and protect all relevant electronic records of police interactions and keep them for a reasonable amount of time, and provide access of these records to the detainee, their lawyer, domestic and international monitoring organizations, as well as investigative bodies.[46] Domestic regulations related to video recordings constitute a systemic problem not only for police stations but also for prisons. The lack of video camera recordings is a systemic issue that requires immediate government attention. Video camera recordings serve various essential purposes:

- They provide individuals with a greater sense of security during video camera surveillance, especially when they are in vulnerable positions in closed facilities (such as prisons, detention facilities, police stations, interrogation rooms, etc.)

- The presence of cameras is a deterrent factor for the police officer or penitentiary officer from committing a crime.

- The presence of a camera can increase the amount of notifications on the presence of systemic violations. According to Article 373 of the Criminal Law Code of Georgia, false accusations (False denunciation) constitute a crime and the existence of video recordings accessible to victims may encourage them to inform the Special Investigation Service about the crimes committed against him. Currently, such victims may be threatened with criminal liability for allegedly false accusations if investigations are not conducted effectively.

IV. Recommendations for execution of individual and general measures

40. The signatory NGOs Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC) refer the Committee to their recommendations set out in their submission of 21 April 2023 concerning the case of Tsintsabadze Group v. Georgia (Application No. 35403/06). Furthermore, we wish to draw the Committee's attention to the following recommendations:

With regard to the Individual Measures

[44] Communication from NGOs (The Georgian Young Lawyers' Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (21/04/2023) in the case of the Tsintsabadze group v. Georgia (Application No. 35403/06), available at: https://hudoc.exec.coe.int/?i=DH-DD(2023)556E, [27.12.2023]
[45] The Committee of Ministers, 1468th meeting (5-7 June 2023) (DH) - H46-11 Tsintsabadze group v. Georgia (Application No. 35403/06), CM/Del/Dec(2023)1468/H46-11, 07.06.2023, para. 7.
[46] 28th General Report of the European Committee for the Prevention of Torture, 2019, para. 81, available in English: , [Last viewed: 11.01.2022]. Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, CAT/OP/POL/ROSP/1, 11.01.2022. Para. 47, [10.01.2024].

***I. Edzgveradze v. Georgia** (no. 59333/16)*;

- The authorities should promptly undertake all necessary investigative measures to remedy the deficiencies outlined above and, where appropriate, to bring charges against those responsible.

- The Government should also ensure that sufficient information is provided to the next of kin and their representatives regarding the progress of the investigation and that they are effectively involved in the pending investigation.

***II. Ochigava v. Georgia** (no. 14142/15)*

- The Special Investigation Service should effectively resort to its new responsibility to investigate the cases where the violations had been found by the European Court of Human Rights.

- The Special Investigation Service should not disregard the letters of the applicant and promptly respond to their letters/requests.

With regard to the General Measures

I. Growing criminal subculture in Georgian prisons

- All the necessary measures should be carried out in a timely manner to reduce the level and influence of criminal subculture and tackle the 'informal governance' in Georgian prisons, including by engaging with civil society and other stakeholders. To that end, a plan and a 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;

II. Concerns regarding the Special Investigation Service of Georgia (SIS)

- The Special Investigative Service should refrain from adopting any internal policy document that could undermine the standards of the rights protected by Articles 2 and 3 of the Convention;

- The responsibility of the high-ranking officials should be included under the jurisdiction of the SIS;

- The independence of the SIS should be guaranteed both in law and in practice;

- The Georgian authorities should continue reforms to enhance the legal, institutional, and practical independence and impartiality of the SIS.

III. Shortcomings of the involvement of victims in criminal proceedings and observation of the ongoing investigation

- The Georgian Government should take immediate steps to address the issues related to the misinterpretation of norms from prosecutorial authorities and protracted procedures related to the granting of a victim status;

- The Georgian Government should ensure that victims are provided with copies of criminal case materials, as required by the Constitutional Court of Georgia, rather than limiting access to materials within the building of the investigative body;

- The authorities should grant the Public Defender of Georgia the authority to promptly and without any hindrance review the materials concerning investigations relating to allegations of improper treatment and/or violation of the right of life;

- The Georgian authorities should undertake further steps and enhance their efforts in order to eliminate the problems relating to incorrect classification of offenses involving ill-treatment;

- The Georgian authorities should provide victims with the right to appeal prosecutors' decisions on the reclassification of offenses. The Government should ensure that victims have access to an independent body that can review prosecutors' decisions and provide a means of redress if a decision is deemed unfair or inappropriate.

IV. Lack of legal safeguards from torture and ill-treatment

- The Georgian Government should adopt and implement regulations for electronic recording of police interactions with citizens, including the use of body cameras and in-car cameras. The regulation should also include provisions for the storage of recorded material for a reasonable period of time and access to the recorded material by relevant parties, such as detainees, lawyers, monitoring organizations, and investigative bodies.

- The Georgian Government should improve video infrastructure in police stations, detention facilities, and prisons. The government should equip all police facilities, detention facilities, and prisons with video infrastructure to ensure full coverage of the detainee's movement areas. The Government should also ensure the proper storage and preservation of video recordings for a reasonable amount of time.

- Legislative amendments should be passed in order to establish the obligation of patrol police officers and criminal police officers to record with cameras fixed on their uniforms the whole period of their interactions with citizens, starting from the point of arrest through to their admission to a temporary detention isolator. The Government shall ensure that the whole process of interviewing citizens is recorded by an audio/video system.

- The Georgian Government should create an electronic system that gathers all relevant statistical information from relevant bodies (Investigative Authorities, MIA, Prosecutor's Office, Courts, Penitentiary facilities and etc.) with respect to the obligations that arise from the obligations under Articles 2 and 3 of the European Convention and grant proper access to the relevant national and international institutions.

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