



Special Report of the Public Defender of Georgia

Effectiveness of Investigation on Criminal Law Cases of Ill-treatment

The Report is prepared in accordance with Article 21 (g) of the Organic Law of Georgia

On the Public Defender of Georgia

2019

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Introduction

The lack of effectiveness in investigating the cases of ill-treatment is always emphasized in the annual Parliamentary Reports of the Public Defender of Georgia.¹ Variety of problems that according to the evaluation of the Office of the Public Defender are related to the process of investigation, are presented annually. The problematic situation is also provided in the recent reports prepared by non-governmental organizations.²

During the years 2015-2018, the Office of the Public Defender of Georgia received the total of approximately 1200 complaints/applications related to ill-treatment allegedly committed by the officials of law enforcement and/or penitentiary bodies. Out of these, in 276 cases, the Office of the Public Defender of Georgia addressed the Prosecutor's Office with a request to take further actions, whereas in 42 cases,³ the Prosecutor's Office was addressed with the proposal. The remaining applications/complaints were related to the protracted investigation and/or necessity of receipt of specific information on the progress of investigation, and therefore, the Office of the Public Defender assisted the applicants in obtaining the respective information.

During the year 2018, the Office of the Public Defender of Georgia submitted 5 proposals to the Prosecutor's Office regarding the commencement of investigation on the alleged ill-treatment committed by the policeman and 2 proposals regarding the commencement of investigation on the alleged ill-treatment committed by the prison employee. The Prosecutor's Office initiated investigation proceedings on all of these cases and such proceedings are still pending, however, for now, no one has been declared as a victim or accused.

The quantity of proposals submitted by the Public Defender on alleged cases of ill-treatment by years

	2015	2016	2017	2018	Total
For Policemen	10	7	10	5	32
For Prison Employees	5	3	0	2	10
Total	15	10	10	7	42

¹ 2015 Parliamentary Report of the Public Defender, pg.402–426; 2016 Parliamentary Report, pg.364–376; 2017 Parliamentary Report, pg.81–90; 2018 Parliamentary Report, pg.98–108.

² *inter alia*, The Gaps of 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.

³ The Public Defender may address the Prosecutor only where the analysis of information and documents raises justified doubt that a specific person was subject to ill-treatment. In cases where there are no sufficient materials, however, there is information about possible ill-treatment, the Public Defender addresses the Prosecutor's Office for taking further actions.

Notably, in none of these 42 cases did the investigation identify the perpetrator (no guilt was established).

After July 7, 2013, the Prosecutor's Office of Georgia was the sole body responsible for investigating the crimes committed by law enforcement officials, as well as criminal prosecution.⁴ Previously, such cases were investigated by the investigation units of respective bodies and therefore, the number of revealing the perpetrators was low. Unfortunately, the situation has not changed following the transfer of this authority to the Prosecutor's Office. The number of allegedly accused persons revealed on the basis of proposals of the Public Defender still equals to zero.

In 2014, the Public Defender of Georgia prepared Special Report on the Practice of Investigation of Alleged Crimes Committed by Law Enforcement Officials, Regulations and International Standards on Effective Investigation. One of the main recommendations of the Report was to prepare amendments to the respective legal acts of Georgia in order to establish independent investigation mechanism.

The Public Defender of Georgia, together with the non-governmental organizations operating in Georgia, as well as international experts, was actively advocating for the establishment of independent investigation body that would investigate alleged crimes committed by law enforcement officials and carry out criminal prosecution. It is noteworthy that Coalition for Independent and Transparent Judiciary, which presented joint position of non-governmental organizations on this topic, clearly emphasized the necessity of such mechanism.⁵ The necessity and relevance of creating an independent investigation mechanism was addressed in the Report of 2013 by Thomas Hammarberg⁶, the Report of 2017 by Human Rights Watch on Georgia⁷, as well as the Reports of 2017-2018 by Amnesty International on Georgia.⁸

In the Report from 2018, the European Committee for the Prevention of Torture emphasized the gaps of effective investigation, including that the initial investigation actions are carried out by the investigation units of those ministries where the alleged perpetrator is employed, whereas the Prosecutor's Office only gets involved at a later stage once the case is subject to high level of public interest or disseminated *via* media. Furthermore, the Committee refers to the delay in obtaining the evidence, the problems with qualifying the actions (the investigation commences under Article 333 of the Criminal Code of Georgia and not under Articles 144¹-144³ of the same), the short period for

⁴ Up to that time, they were entitled to carry out investigation independently, but this would require taking individual decision on each case.

⁵ Available at the web-site: < <https://bit.ly/31gkBTY> > [last seen on 08.04.2019].

⁶ Thomas Hammarberg, Georgia in Transition - < <https://bit.ly/2kz2fKy> > [last seen on 08.04.2019] 2013. pg.23.

⁷ Available at the web-site: < <https://bit.ly/2WuQ7k0> > [last seen on 08.04.2019].

⁸ Available at the web-site: < <https://bit.ly/2Ww2RGU> > [last seen on 08.04.2019].

maintaining prison video recordings (5 day period)⁹ and refers to the necessity of protecting significant evidence; at the same time, the alleged perpetrators are not removed/suspended from their office and no measures are implemented in order to protect the victims from coercion aiming for the victim to change the testimony or pressure; according to this Report, irrespective of the referrals made by the Public Defender and non-governmental organizations, none of the law enforcement officials or prison employees have been subject to sanctions.¹⁰

On July 21, 2018, the Parliament of Georgia adopted the Law on State Inspector. The Public Defender of Georgia welcomed the adoption of this Law and noted that the latter was a step forward for investigating the cases of ill-treatment. At the same time and unfortunately, however, it was further noted that the Law does not fully address existing challenges.¹¹ One of the main problems identified was that the State Inspector will not have the authority to investigate the crimes committed by the Minister of Internal Affairs and the Head of State Security Service. Furthermore, the operation of the State Inspector will be impeded by Article 33 of the Code of Georgia on Criminal Procedure, which authorizes the General Prosecutor to obtain the case from one body and transfer to the other without complying with the requirements of investigation hierarchy. Accordingly, due to such regulation, there is a possibility that the investigation may be conducted by the body the representatives of which have allegedly committed the crime. Third and the major problem is maintaining of the function of the procedural management and supervision of the Prosecutor's Office of Georgia over the investigation carried out by the State Inspector.

Since the investigation of ill-treatment remains problematic during the years and the dynamics does not change, we considered it necessary to review certain criminal law cases and collect more detailed information about existing problems and challenges, within the scope of our competence, and present the same to the public. **The purpose of this research is to identify specific gaps existing in the process of investigation of alleged crimes committed by the law enforcement officials and employees of penitentiary system.**

We believe that conducting the proper investigation in compliance with the requirements of human rights standards is the precondition for effective accountability of the state bodies. This is an additional remedy for ensuring that all questions are answered and there are no doubts in the public with respect to human rights violations and particularly, among alleged victims. Simultaneously, effective investigation is important for protecting the reputation of law enforcement officials and

⁹ It should be taken into account that under the Order No.403 of the Minister of Justice of Georgia dated May 13, 2019, the period for keeping the video recordings made in penitentiary institutions has been extended to 30 days, however, this rule will become effective step by step: starting from July 1, 2019 to January 1, 2021.

¹⁰ See 2018 Report of the European Committee for the Prevention of Torture (CPT), published in May 2019, regarding the outcome of the visit of September, 2018, paras. 13-15. <<https://rm.coe.int/1680945eca>> [last seen on 08.04.2019]

¹¹ This issue is addressed in more details in 2017 Parliamentary Report of the Public Defender of Georgia, pg.85-87.

their legal interests, as each improper and incomplete investigation raises doubts and therefore, decreases the trust towards them.

When assessing the effectiveness of investigation, we also take into consideration, that, naturally, not all cases may result in identifying the perpetrator. The obligation of effective investigation is not solely the obligation of reaching a certain result; it implies the necessity of carrying out effective measures¹².

We hope that this research will facilitate effective investigation of alleged cases of ill-treatment and criminal prosecution by the General Prosecutor of Georgia and in the future, by the State Inspector.

Methodology

For the purposes of this Report, “ill-treatment” means the acts of torture, inhuman or degrading treatment, as defined under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the court practice of the European Court of Human Rights¹³.

The subject of the Report is to evaluate the effectiveness of investigation on ill-treatment cases through:

- Review of the merits of specific criminal law cases;
- Comparison of the investigation actions carried out in reviewed cases with established best practices of effective investigation¹⁴.

The present Report is limited to the results of review of specific criminal law cases for which the investigation was terminated by the end of 2017. Unfortunately, under the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender has no access to materials of criminal cases for which the investigation is still pending and therefore, irrespective of the necessity, such cases were not reviewed¹⁵.

¹² Decision of the European Court of Human Rights dated January 8, 2009, *Barabanshchikov v. Russia*, para.54.

¹³ Debra Long, 'Guide to Jurisprudence on Torture and Ill-treatment, Article 3 of the European Convention for the Protection of Human Rights', Association for the Prevention of Torture, 2002, p.26-27, available at the web-site: <https://www.apt.ch/content/files_res/Article3_en.pdf>[last seen on 08.04.2019].

¹⁴ Eric Svanidze, 'Effective Investigation of Ill-Treatment', CoE, 2014, 2nd Edition, available at the web-site: <<https://rm.coe.int/16806f1a3>> [last seen on 08.04.2019].

¹⁵ Since this limitation impedes the performance of its constitutional mandate by the Public Defender, in November, 2018, the Public Defender addressed the Parliament of Georgia with a legislative proposal and requested access to the investigation materials of pending cases related to crimes on ill-treatment and violation of the right to life. This proposal was not supported by the Human Rights and Civil Integration Committee of the Parliament of Georgia.

The Office of the Public Defender of Georgia reviewed total of 38 completed criminal law cases. Out of these, 18 terminated cases are those for which the investigation started on the basis of the request of the Public Defender in 2013-2017, whereas on remaining 20 cases, the investigation was commenced by the investigation body in various years, without the referral of the Public Defender, and the termination occurred in 2017 (see Chart No.1).

The representatives of the Public Defender reviewed the case materials in territorial units of the Prosecutor's Office. The allocation of terminated cases in the regions and Tbilisi is as follows (see Chart No.2 and Chart No.3):

- **For 18 terminated cases, upon which the investigation started with the request of the Public Defender,** the investigation was carried out by the Prosecutor's Office in Tbilisi on 7 cases; by the General Prosecutor's Office on 7 other cases; 2 cases were investigated by Kvemo Kartli Regional Prosecutor's Office; 1 case was investigated by Tbilisi Isani-Samgori District Prosecutor's Office; and 1 case - by Kutaisi Regional Prosecutor's Office.
- **For 20 terminated cases, upon which the investigation was commenced by the Prosecutor's Office on its own,** the Prosecutor's Office in Tbilisi investigated 7 cases; the Prosecutor's Office of Autonomous Republic of Adjara investigated 4 cases; Samegrelo-Zemo Svaneti Regional Prosecutor's Office investigated 4 cases; 2 cases by the Regional Prosecutor's Office of the Western Georgia; 2 cases by Kvemo Kartli Regional Prosecutor's Office; 1 case by Shida Kartli and Mtskheta-Mtianeti Regional Prosecutor's Office.

Chart No.1

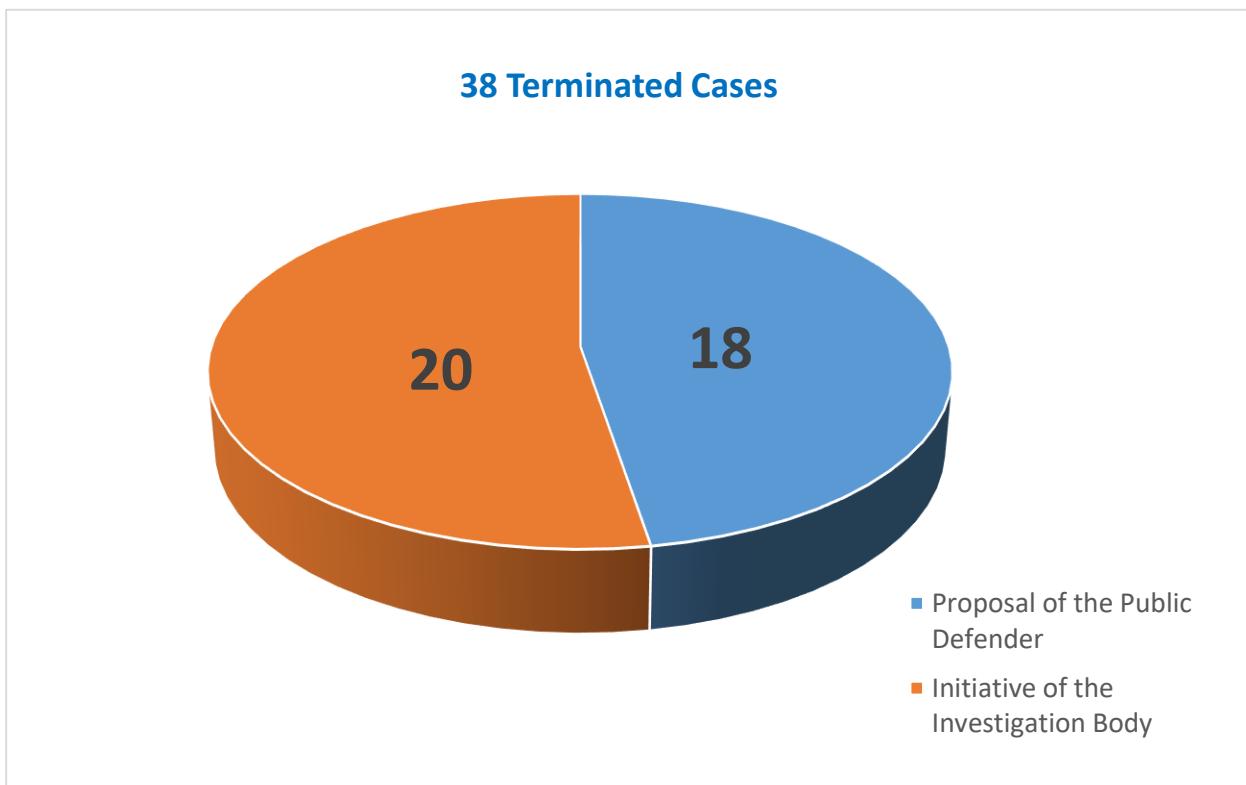


Chart No.2

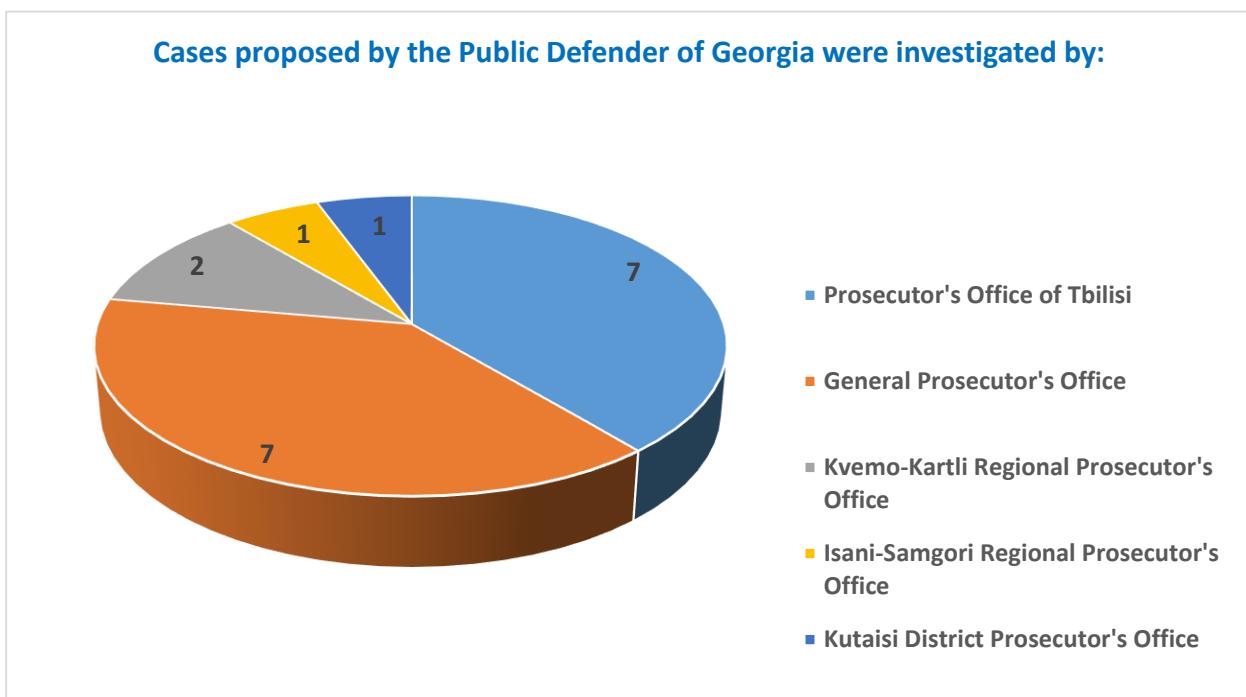
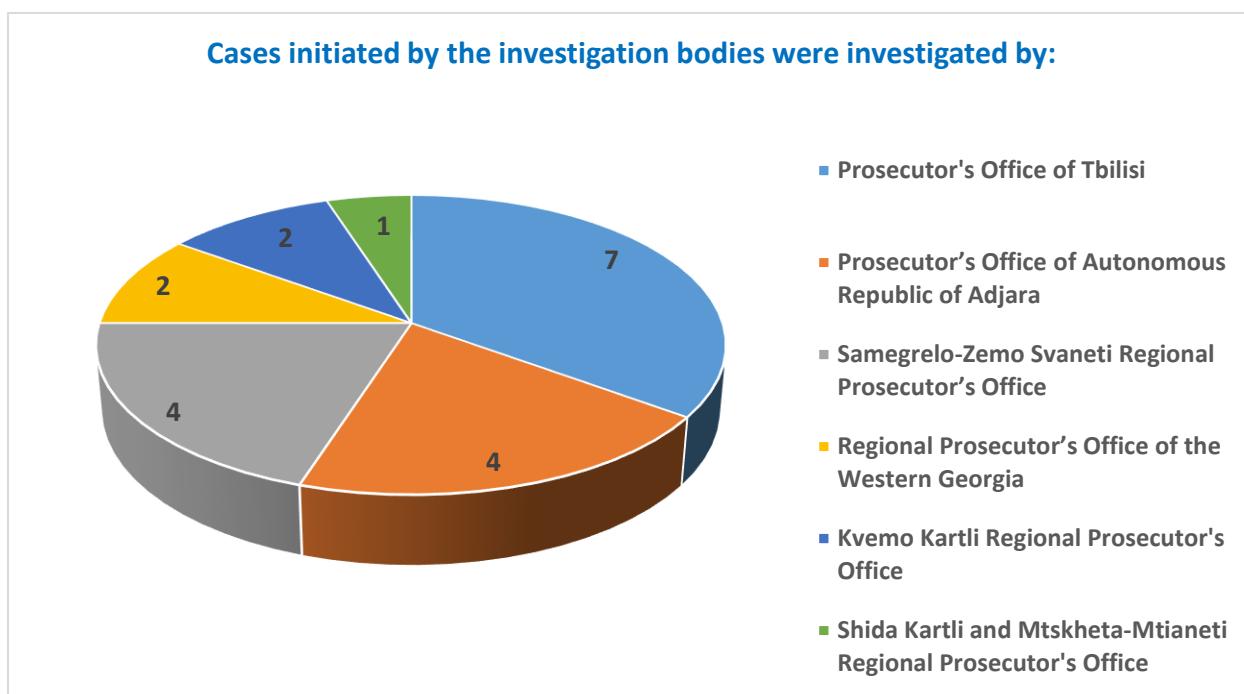


Chart No.3



For the purposes of evaluation of the effectiveness of investigation, we have relied on the criteria that derive from international standards of effective investigation. The effectiveness of investigation has been evaluated in the following ways:

- **Independence and impartiality** – the persons involved in the investigation and decision-making, cannot be the representatives of the same state body, the activities of which are subject to investigation. The same applies to persons participating in specific investigation actions¹⁶, medical experts for the court¹⁷ and supervising prosecutors¹⁸. The practical aspect is taken into account for evaluating the independence and not only hierarchy or institutional connections.¹⁹ The persons responsible for the investigation must be impartial.²⁰ They should not be involved in the investigation directed against the alleged victim.²¹

¹⁶ Decision of the European Court of Human Rights dated January 26, 2006, *Mikheev v. Russia*, para.116 – related to the people involved in the procedural action of bringing the witnesses.

¹⁷ Court-appointed medical expert should be formally and factually independent – Decision of the European Court of Human Rights dated January 8, 2009, *Barabanshchikov v. Russia*, para.62.

¹⁸ Decision of the European Court of Human Rights dated May 15, 2007, *Ramsaha and Others v. Netherlands*, para.62-3.

¹⁹ Decision of the European Court of Human Rights dated June 1, 2004, *Altun v. Turkey*, para.74.

²⁰ Decision of the European Court of Human Rights dated May 19, 2004, *Toteva v. Bulgaria*, para.63.

²¹ Visit of the National Committee for the Prevention of Torture in Albania, from May 23 to June 3, 2005, CPT/Inf (2006) 24, para.50.

- **Expediency** – investigation and further proceedings should be carried out in an expedient and reasonably fast manner. In this case, the period for acting on the matter should be taken into account, as well as, the period for responding to the complaint, the timing for commencement of investigation and carrying out the inquiries.²² The timing for carrying out the medical inspection and expertise should also be taken into account.²³
- **Diligence**– during the process of investigation of ill-treatment all reasonable steps should be taken for investigating the possible fact. The law enforcement officials should do everything for collecting the necessary evidence, including, inquiries with the alleged victim are necessary, collection of testimonies of eyewitnesses, also, if possible, expert evidence and medical records, that describe the situation, as well as reasons for injuries.²⁴ When the victim declares that he/she can identify the perpetrator, respective investigation actions should be carried out, including, detections.²⁵ It is necessary to collect the testimonies of all persons who may have information about the incident.²⁶ The information should be evaluated diligently and should be compared with each other, similarly, the trustworthiness of evidence should be assessed and it should be substantiated why one testimony prevailed over the other.²⁷
- **Competency** – the investigation bodies should have competence and opportunity to establish the facts and punish respective responsible persons.²⁸ The investigation bodies should be able to request suspension of authority of alleged responsible persons.²⁹ In this respect, the Istanbul Protocol additionally requires to carry out certain measures for protecting the alleged victim, to convince the latter to be actively involved in the process.³⁰
- **Involvement of the Victim in the Proceedings** – investigation of ill-treatment by all means requires respective level of transparency and public accountability. In this respect, involvement of the alleged victim in the proceedings provides sufficient guarantee.³¹ The latter should be entitled to request carrying out of specific actions during the proceedings, also, legal aid should be available, so that there is a possibility to appeal the actions and

²² Decision of the European Court of Human Rights dated January 26, 2006, *Mikheev v. Russia*, para.109.

²³ Ibid., para.113.

²⁴ Decision of the European Court of Human Rights dated June 3, 2004, *Bati and others v. Turkey*, para.134.

²⁵ Decision of the European Court of Human Rights dated April 6, 2000, *Labita v. Italy*, para.72.

²⁶ Decision of the European Court of Human Rights dated June 25, 2013, *Grimalovs v. Latvia*, para.115.

²⁷ Decision of the European Court of Human Rights dated January 8, 2009, *Barabanshchikov v. Russia*, para.46.

²⁸ 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para.34.

²⁹ Decision of the European Court of Human Rights dated December 13, 2005, *Koutropoulos v. Greece*, para.54.

³⁰ Istanbul Protocol, para.80.

³¹ 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para.36.

inactions of investigation bodies.³² The alleged victim should be provided with the opportunity to review the case materials.³³

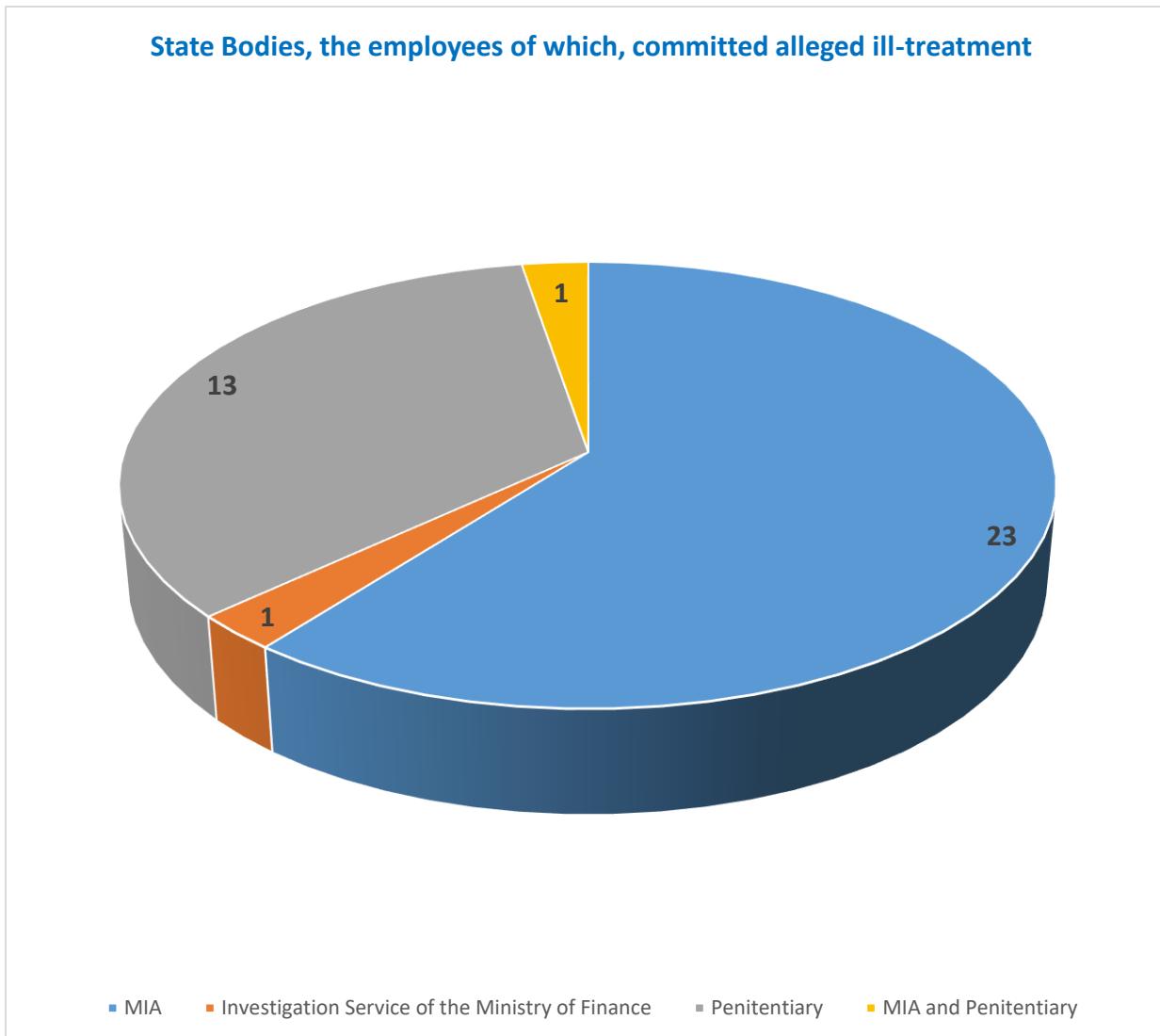
³² Decision of the European Court of Human Rights dated February 23, 2006, *Ognyanova and Choban v. Bulgaria*, para.115.

³³ Decision of the European Court of Human Rights dated February 5, 2009, *Khadisov and Tsechoyev v. Russia*, para.122.

Research Outcome

The Office of the Public Defender of Georgia reviewed 38 completed criminal law cases in total. Out of these 38 cases, 23 were related to the alleged ill-treatment committed by the employees of the Ministry of Internal Affairs, 1 – related to the alleged ill-treatment committed by the employees of the Investigation Service of the Ministry of Finance of Georgia, 13 cases were related to the employees of the penitentiary system, whereas in 1 case – the objections were raised against the policemen (MIA), as well as the employees of the penitentiary system (See Chart No.4).

Chart No.4



Multiple cases of qualifying with general provision, instead of a specific one, were identified. There were number of cases where investigation actions were delayed, not performed or carried out in a low quality manner. The involvement of the alleged victim in the investigation proceedings is practically not identified. The investigation does not offer the victim such security measures that would stimulate full-scale cooperation with investigation. Also, in multiple cases, the investigation did not attempt to obtain neutral and objective evidence.

All reviewed criminal law cases were terminated without prosecution of the alleged perpetrator. In none of the cases was the alleged victim declared as a victim.

Reference should also be made to additional trends identified during the course of review of the cases. In particular, starting from 2016, there is a tendency for the alleged ill-treatment facts to be investigated by the Prosecutor's Office, instead of the bodies towards which the allegations of the ill-treatment are made. Following the receipt of the information about alleged ill-treatment, the Prosecutor's office reacts swiftly and commences investigation in a timely manner. It is a positive development that in none of the cases where there was an allegation about the crime committed by the police employee, the expertise was not carried out in the Ministry of Internal Affairs. Recently (2017-2018), the cases of qualification by specific provisions has enhanced comparably.³⁴ The increase of archiving of the video recordings made in the penitentiary system to up to 120 hours³⁵ has facilitated obtaining of the video recordings on alleged ill-treatment occurred in the penitentiary system.

We hereby present the basic trends identified from the case review according to the elements of the effective investigation standard.

Independence and Impartiality

The analysis of cases reviewed by the Office of the Public Defender with respect to independence and impartiality of the investigation revealed that in majority of cases the investigation is started and further fully carried out solely by the Prosecutor's Office. This was the situation with 28 cases out of 38. However, we have identified the following gaps in 10 cases:

- **In one of the cases, the investigation was commenced by the Prosecutor's Office, however, on the same day, for the purposes of further investigation; the case was transferred to the General inspection of the Ministry of Internal Affairs. Although, the employees of MIA were accused of alleged ill-treatment**

³⁴ This practice is further confirmed by the cases considered by the Office of the Public Defender of Georgia that were not reviewed for the purposes of this research.

³⁵ Order No.35 of the Minister of Penitentiary and Probation dated May 19, 2015, Article 15(2).

On July 1, 2014, the investigation commenced³⁶in the General Inspection of the Ministry of Internal Affairs, Office of the General Prosecutor of Georgia, the Central Criminal Police Department and the Department of Management of Investigation of the Patrol Police Department, on the basis of crime foreseen under Article 332(1) of the Criminal Code of Georgia. On the same day, on the basis of the Resolution of the Deputy General Prosecutor of Georgia, this criminal law case was transferred to the General Inspection of the Ministry of Internal Affairs of Georgia for investigation. The Resolution provides that: in order to ensure expedient, full, effective and full-scale investigation of the case, it is reasonable to transfer the case to the General Inspection of the Ministry of Internal Affairs of Georgia for investigation.

On December 26, 2014, the Public Defender of Georgia addressed the General Prosecutor on ensuring the effective investigation (it was requested, inter alia, to transfer the case to the Prosecutor's Office for guaranteeing institutional independence). Under the Resolution of the Deputy General Prosecutor, dated January 30, 2015, the case was transferred to the Investigation Unit of the Prosecutor's Office of Tbilisi. However, all investigation actions on this case were already carried out by the General Inspection of the Ministry of Internal Affairs of Georgia. Practically no actions were carried out after the case was transferred to the Prosecutor's Office of Tbilisi for investigation.

- **In 5 cases, the investigation was commenced by the body, the employees of which were accused of alleged ill-treatment and only transferred to the Prosecutor's Office for investigation at a later stage**

Situation No.1. *In one of the cases³⁷, the major part of the investigation was carried out by the Investigation Department of the Ministry of Penitentiary and Probation and was transferred to the Kvemo Kartli Prosecutor's Office at a final stage. This occurred irrespective of the fact that the case was related to the death of the prisoner in prison and the alleged perpetrators were the employees of the penitentiary institution.*

The investigation commenced on August 15, 2016. On September 19, 2016, the Public Defender of Georgia addressed the General Prosecutor of Georgia and presented the expert report prepared by the invited independent expert.

In light of the expert opinion, the Public Defender of Georgia pointed out that probably neglect of official duty towards the prisoner was the case, in terms of providing the latter with medical services. Irrespective of this, the investigation was still carried out by the Investigation Department of the Ministry of Penitentiary and Probation and the case was transferred to the Kvemo Kartli Regional Prosecutor's Office only on July 7, 2017. By that time, the Investigation Department of the Ministry of Penitentiary and Probation has already completed all major investigation actions: inquiring with the witnesses, inspection of the place of incident, expertise, obtaining of the video recording.

³⁶ Criminal Law Case No. 074010714801, fact occurred in 2014.

³⁷ Criminal Law Case No. 073150816002, fact occurred in 2016.

Situation No.2. There was a case³⁸ where the investigation was again commenced by the interested body – the Investigation Unit of the Ministry of Penitentiary and Probation, and was further transferred to the Prosecutor’s Office upon request of the Public Defender. However, the Prosecutor’s Office still requested the interested body, the Investigation Unit of the Ministry of Penitentiary and Probation to perform certain investigation actions. In particular, in this case, the Investigation Unit of the Ministry of Penitentiary and Probation commenced investigation of the alleged act of self-injury towards the prisoner on July 28, 2015 (although the prisoners referred to alleged fact of ill-treatment). On July 30 of the same year, following the proposal by the Public Defender, the case was requalified and the investigation continued under Article 144³(1) of the Criminal Code of Georgia. In this case, together with investigators from the Prosecutor’s Office, the performance of investigation actions was assigned to the investigator of the Investigation Unit of the Ministry of Penitentiary and Probation.

Situation No.3. According to the evidence in the case file,³⁹ on March 29, 2014, the notice was sent from Institution No.7 to the Investigation Unit of the Ministry of Penitentiary and Probation, regarding the placement of the convicted G.O with injuries, whereas the prisoner referred to beating by the employees of the Institution No.8. On the same day, the Minutes regarding the external body injures were compiled, according to which the prisoner had injuries in the nose area, and on the subject of which the investigation started in the Investigation Unit of the Ministry of Penitentiary.

With a request of effective investigation on this case, later on, the Public Defender addressed the General Prosecutor’s Office and only after such request was made, from April 18, 2014, the investigation was carried out by the Prosecutor’s Office.

Situation No.4. In one case,⁴⁰ the investigation was separated from and conducted remotely from the existing investigation in the interested unit, where the basic investigation actions were already carried out by such institution and those were attached as evidence to a separated case. The case related to alleged ill-treatment of the prisoner and the Investigation Unit of the Ministry of Penitentiary and Probation was regarded as an interested entity. More specifically, on November 12, 2014, the investigation started on the attack of the employees of the penitentiary institution by G.Kh. On December 26 of the same year, under the Resolution of the Prosecutor, a case was separated from the case already investigated by the Investigation Unit of the Ministry of Penitentiary and Probation (attack on the employees of the institution by G.Kh., Article 378(1) of the Criminal Code of Georgia) under Article 144³ of the Criminal Code of Georgia. The separated case was investigated by the Prosecutor’s Office, however, starting from November 12, 2014 until December 26, all major investigation actions with respect to the case towards the convicted was carried out by the Investigation Unit of the Ministry of Penitentiary and Probation and attached as case materials to the investigation files on alleged ill-treatment to G.Kh.

³⁸ Criminal Law Case No. 0732807001, fact occurred in 2015.

³⁹ Criminal Law Case No. 074180414803, fact occurred in 2014.

⁴⁰ Criminal Law Case No. 073261214001, fact occurred in 2014.

Situation No.5. There was also a case⁴¹, where the investigation was sent between two entities at different times for carrying out the investigation, however, ultimately, the major part of the investigation activities was carried out by the interested entity, the MIA. In particular, on January 2, 2013, the accused person was placed in the Institution No.8 and the person was examined by the doctor externally. Injuries were detected on the body of the accused. Due to the fact that in violation of the principle of confidentiality, the medical inspection in the penitentiary institution was also attended by the detaining policemen, the accused indicated that the injuries happened before the detention. Afterwards, on January 8, the doctor still carried out inspection of the body of the prisoner and described the injuries. At that time, the prisoner noted that such injuries were made by the police. With 3 days of delay, on January 11, the institution informed the Investigation Unit of the Ministry of Penitentiary and Probation about this fact. On January 11, the Prosecutor's Office transferred the case for further investigation to MIA. The investigation commenced on February 1, 2013 by the Gori Regional Unit of MIA. For more than one month, until March 12, 2013, the investigation was carried out by MIA – the institution against which the prisoner had objections related to the alleged ill-treatment. From March 12, 2013, the investigation on this case was continued by the Shida Kartli and Mtskheta-Mtianeti Regional Prosecutor's Investigation Unit, certain investigation actions were carried out de novo, namely, inquiries were made with the employees of patrol police, however, without any results. The witness repeated the same testimonies, which were already available in the case materials collected by MIA. The prisoner G.K. was released from the penitentiary institution on January 22, 2013. In this period, no inquiries were made with the prisoner. According to the information acquired by the investigation later, G.K. died on July 3, 2014 and investigation is pending on this fact under Article 115 of the Criminal Code of Georgia. Also, no inquiries were made with this person from release before the death and no reason for the same is indicated in the case file.

- In 1 case, the investigation was not commenced from the beginning. Only internal inquiry started in the same institution, namely, the Ministry of Internal Affairs

The citizen declared that while in his house, the policemen physically abused him/her, namely, they threw him down and hit him/her with their legs, they also beat his/her mother. The applicant addressed the General Inspection of MIA, as well as the General Prosecutor's Office on April 24, 2017. Irrespective of this, initially, only internal office inquiry started in the General Inspection of the Ministry of Internal Affairs. Later on, based on the request of the General Inspection of MIA on May 18, 2017, the Prosecutor's Office started investigation on June 19, 2017 and materials collected based on the inquiries of the General Inspection were included in the case.⁴²

- In 1 case⁴³, the investigation was officially started by the Prosecutor's Office from the beginning, however, only after the investigator from MIA, during the course of informal proceedings, conversed with the alleged victim and obtained other evidence. The case was related to the alleged ill-treatment from employees of MIA

⁴¹ Criminal Law Case No. 011010213005, fact occurred in 2013.

⁴² Criminal Law Case No. 010190617802, fact occurred in 2017.

⁴³ Criminal Law Case No. 010110517801, fact occurred in 2017.

- In 2 cases,⁴⁴ the fact related to the alleged ill-treatment committed in the penitentiary institution. In these cases, the main investigation actions were carried out by the Prosecutor's office, however, in both cases, the Prosecutor's Office instructed performance of certain investigation actions to the interested entity – the Investigation Unit of the Ministry of Penitentiary and Probation
- 1 case⁴⁵ was investigated by the Investigation Unit of the Ministry of Penitentiary and Probation from the beginning to the end and was not transferred to the Prosecutor's Office for investigation purposes at any stage

It is noteworthy that in this case, the Public Defender of Georgia addressed the Prosecutor's Office with a proposal to start investigation on alleged ill-treatment, however, irrespective of such proposal, the Prosecutor's Office did not take into account this proposal, also, the case was not given the respective qualification that would be relevant in case of ill-treatment (the investigation started and continued under Article 378(1) of the Criminal Code of Georgia).

Expediency

For the purposes of effective investigation, the element of expediency implies the necessity to commence investigation immediately. Indeed, in 12 cases out of 38 reviewed cases, the investigation started immediately. In 15 cases the investigation started with 1 or 2 days of delay, which may not be a significantly damaging factor for effective investigation, however, there were number of problems identified apart from this delay (see Chart No.5):

- With respect to 11 facts, the investigation started with unreasonable delay

In 11 cases out of 38, the investigation started with several days of delay and in certain cases, even months. Namely, this concerns cases, where the investigation body was aware of the alleged fact of ill-treatment against the person, however, the Prosecutor's Office delayed commencement of investigation for an unreasonable period of time. For example, in one case, the investigation started after 3 month and 7 days;⁴⁶ in one of the cases investigation started in 2 month and 18 days after the fact occurred;⁴⁷ in the third case, after 1 month and 25 days;⁴⁸ in fourth case, irrespective of existence of proposal of the Public Defender about alleged fact of ill-treatment, the initiation of investigation [separation from the main case] was delayed by 1 month and 8 days.⁴⁹

⁴⁴ Criminal Law Case No.074080916803, fact occurred in 2016 and criminal law case No.0732807001, fact occurred in 2015.

⁴⁵ Criminal Law Case No.073091014002, fact occurred in 2014.

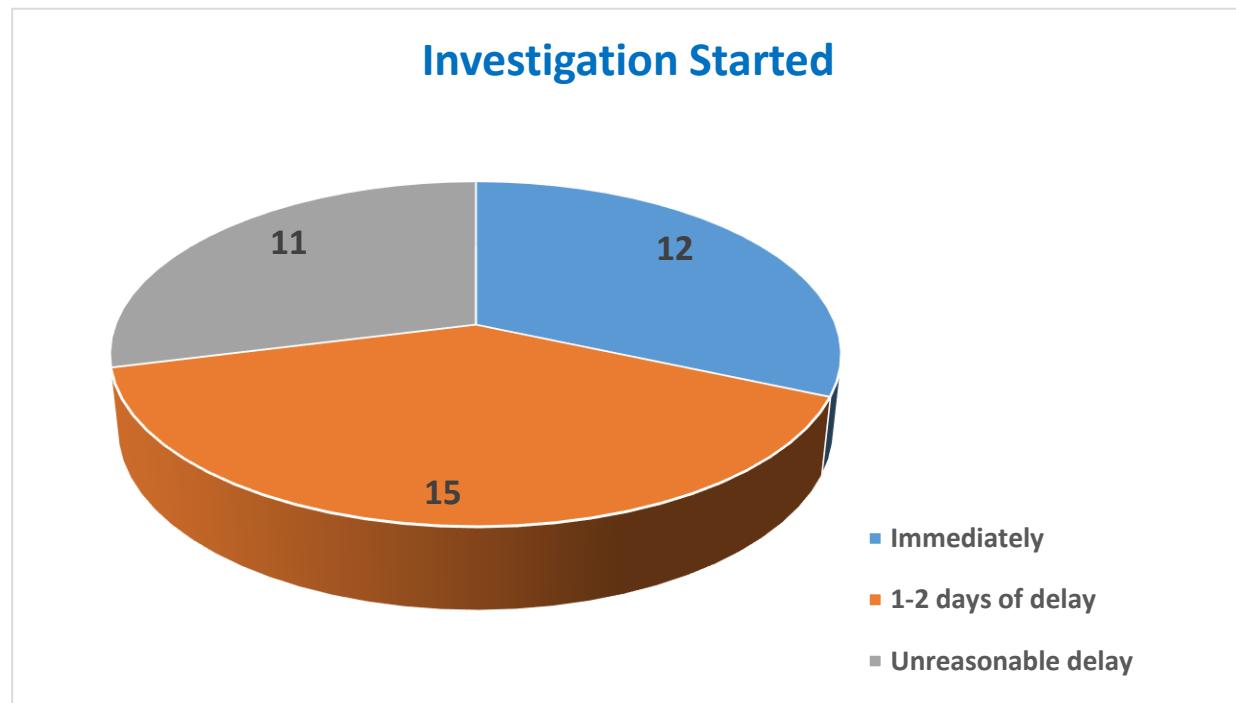
⁴⁶ Criminal Law Case No.010040214801, fact occurred in 2013.

⁴⁷ Criminal Law Case No.010250817802, fact occurred in 2017.

⁴⁸ Criminal Law Case No.010190617802, fact occurred in 2017.

⁴⁹ Criminal Law Case No.073261214001, fact occurred in 2014.

Chart No.5



- In 15 cases, the problem of significant delay in performance of investigation actions was identified

Understandably, the persons carrying out the investigation have individual approach, strategy, tactics and technique towards investigating each case. It is impossible to conduct identic investigation for all cases, since the process of investigation is dynamic and the person carrying out the investigation determines investigation actions that should be a priority, as well as the follow-up. However, the review of 38 cases revealed the delays in carrying out such main investigation actions, that may significantly and negatively affect the results of case investigation, and legitimate purpose or reason for such delay was impossible to identify from the case files. There were also cases where the investigation was already initiated, however, in practice, investigation actions were carried out only after the Public Defender addressed the Prosecutor's Office with a proposal to commence investigation, namely, investigation actions, such as, inquiries with the victim, witnesses and alleged perpetrators.⁵⁰

Investigation of cases of ill-treatment, due to the nature of the crime, should be carried out immediately, in order to avoid destroying of evidence, coercion towards the witnesses and victims, so

⁵⁰ Example, Criminal Law Case No.041300315801, fact occurred in 2015.

that this does not further cause obtaining of distorted information about the case. For example, if the person is detained, and has been subject to alleged ill-treatment in the penitentiary institution and he/she has not been interrogated in limited time period and/or no measures of security were implemented, he/she may be subject to additional pressure and intimidation from the alleged perpetrators, and therefore, the prisoner might not cooperate with the investigation and not provide real information.

Particular significance is given to the collection of neutral evidence,⁵¹ including, for the purposes of objective investigation of the case, video recordings and expert opinions have remarkable value. Therefore, it is logical that the primary task for the person carrying out the investigation would be performance of investigation actions in order to obtain such evidence. Unfortunately, during the review of cases, the problem of performance of investigation actions with the delay of months and in certain cases years was identified.

For illustration purposes, we have included the following cases below:

Situation No.1. There was a case⁵², where not only the investigation started late, namely, the notice was given on March 30, 2015 and the investigation started on April 10, but also the real investigation action was not carried out for 6 month, until October 10, 2015, so until the Public Defender sent a proposal regarding the commencement of investigation on September 29, 2015. There was a case⁵³ where initially investigation actions were carried out with intervals of several days; however, afterwards, no investigation action was carried out for approximately a year. Several investigation actions were carried out later, after which the investigation was suspended for approximately 1 year.

Situation No.2. There was an interesting case, where investigation actions were carried out on the daily basis for the case of criminal prosecution of a specific person by MIA in the period of January 14-17, 2017, however, for the purposes of separated case (regarding the alleged fact of ill-treatment), the process was quite delayed: in several days only 1 investigation action was performed, as a result of which with an internal of 2 month only policemen were interrogated. The case was related to the alleged excess of power by the policemen with firearms.⁵⁴

Situation No.3. Delayed interrogation of policemen was detected also in other cases, where the policemen were denounced of ill-treatment. Namely, from the time of interrogating the alleged victim, appointing the medical expert and receipt of medical documents, the interrogation of policemen occurred in 1 year. No investigation actions were carried out in between this period.⁵⁵

- Gaps related to expertise were also identified, which were revealed in terms of impossibility to carry out expertise due to unreasonable actions of investigation and late appointment of

⁵¹ The evidence is neutral if it excludes all elements of partiality or subjectivity and objectively confirms or rejects the fact.

⁵² Criminal Law Case No.041300315801, fact occurred in 2015.

⁵³ Criminal Law Case No.074150415801, fact occurred in 2015.

⁵⁴ Criminal Law Case No.088170117901, fact occurred in 2017.

⁵⁵ Criminal Law Case No.010130716804, fact occurred in 2016.

expertise, which in turn, caused disappearance of track of alleged ill-treatment and decrease in quality

Situation No.1. *There was a case, where investigation actions were carried out with 10 and 29 day intervals, however, comparably problematic was the fact of delayed interrogation of the alleged victim. The investigation started on November 8, 2017, the alleged victim was interrogated on December 27, as he/she left Georgia on November 12. This information is available from the interrogation minutes of his/her brother M.P. from November 14. It was important for the investigation body to interrogate N.P in short period of time after commencement of investigation. Four days passed from the start of investigation until the travel, which is sufficient time for interrogation. Notably, the case materials do not contain information about an attempt from the investigation bodies to invite the alleged victim for interrogation. Lastly, unreasonable delay for interrogation of the victim by the investigation excluded the possibility to conduct expertise on injuries made to the victim in person.⁵⁶*

Situation No.2. *The citizen declared that while in his house, the policemen physically abused him/her, namely, they threw him down and hit him/her with their legs, they also beat his/her mother. The mother confirmed the fact of physical violence. The applicant addressed the General Inspection of MIA, as well as the General Prosecutor's Office on April 24, 2017. The investigation started on June 19, 2017, with almost two month delay, due to this fact the possibility to appoint the expert for detecting the injuries lost its relevance and the expert was not appointed.⁵⁷*

Situation No.3. *In one of the cases, where the investigation started on the basis of the proposal from the Public Defender of Georgia, the expertise was appointed with the delay. The Public Defender addressed the Prosecutor's Office on April 16, 2014 and indicated that the prisoner was allegedly subject to physical violence on April 7 in the Penitentiary Institution No.8. Based on the proposal, the investigation started on April 18. However, irrespective of this, considerable amount of time has passed from the date of occurrence of alleged fact of ill-treatment and it was critically important to conduct expertise in a timely manner, so that the alleged track of crime would not be deleted. The expertise was appointed on April 22 (after 4 days). Delayed performance of expertise, posed risks of disappearance of track of ill-treatment and/or decrease in the level of injuries.⁵⁸*

Diligence

When evaluating diligence of investigation, the following gaps were identified:

- Not all investigation actions are carried out during the course of investigation. Generally conducted investigation actions are inquiries and court appointed medical expertise to establish the level of injuries caused to the alleged victim
- The problem of superficial and incomplete inquiries was identified. In a number of cases important questions were not asked and not all possible people were interrogated. In most of

⁵⁶ Criminal Law Case No.083081117801, fact occurred in 2017.

⁵⁷ Criminal Law Case No.010190617802, fact occurred in 2017.

⁵⁸ Criminal Law Case No.074180414801, fact occurred in 2014.

the cases, the information provided by the policemen or respective prison employees is not verified with other neutral evidence or there is no attempt to complete such information with objective sources

Situation No.1. In one case,⁵⁹ when interrogating the employees of the patrol police, no questions were asked about whether or not the office car has a video camera, where or not they had arm cameras and if the video recording was carried out.

Situation No.2. In several cases, not all policemen were interrogated who may have had information about the fact.⁶⁰

Situation No.3. In one case,⁶¹ the employees of the Public Defender of Georgia were testifying before the Prosecutor's Office about the ill-treatment, however, the investigation body was not mainly interested in the physical violence of prisoners by the employees of penitentiary institution, but rather the structure of the office, issues of subordination and rules for case consideration.

Situation No.4. One of the prisoners declared that before starting the relocation he was ill-treated by the employees of escort and also referred to the witness of this fact. The investigator met the witness for the purposes of the interview, the minutes compiled on such meeting provide that the witness was not sober and therefore, could not be interrogated. Apart from this, the investigation attached the medical document to the case file, where reference is made to gastroenterological research; however, it is not clear what the link of this document with the case is. Also, no other attempts were made to interrogate this witness, irrespective of the fact that such witness should have probably be one of the main witnesses.⁶²

- Interesting trend was observed with respect to interrogation that the alleged victims of ill-treatment in many cases withdraw information about their ill-treatment and refer to completely different source of injury – due to falling down or before the detention. In cases where there is no physical trace of injury they declare that statements were made due to emotional anxiety. In such case, the objective observer might be interested in what was the reason for withdrawing the objection: whether the real reason is anxiety or other motive as indicated or this is the result of “arrangement” or certain illegal influence.⁶³
- In none of the cases was identification carried out although the neutral witness (such as the representative of the Public Defender of Georgia) or victim referred to such possibility

Situation No.1. For example, in one of the cases⁶⁴, the investigation was underway on the basis of the proposal of the Public Defender. According to the facts of the case, two representatives of the Public Defender, employee of the Office and the member of the Special Prevention Group, an expert, witnessed ill-treatment of the prisoner

⁵⁹ Criminal Law Case No.083081117801, fact occurred in 2017.

⁶⁰ For example, Criminal Law Case No.010040214801, fact occurred in 2013.

⁶¹ Criminal Law Case No.073121114004, fact occurred in 2014.

⁶² Criminal Law Case No.074180414803, fact occurred in 2014.

⁶³ Detailed discussion on this matter is presented in the Section on Competency.

⁶⁴ Criminal Law Case No.010271213801, fact occurred in 2013.

in the Penitentiary Institution No.8. The employee of the Office of the Public Defender has not seen the act of physical violence as such, however, the expert declared during interrogation that he witnessed the beating of the prisoner and also named one of the participants and also stated that could identify the others. Irrespective of this, the investigation body has not conducted identification procedure with the participation of the expert.

Situation No.2. *In another case⁶⁵, the victim referred to being ill-treated before transfer to the isolator of temporary detention. Namely, the victim states that the policemen hit him with the iron keys in the forehead area 3 or 4 times. There were tracks of blood on the clothes. The accused described the appearance of the policemen. The victim named three people. One of them was named; whereas other two were physical described and the victim stated that he could identify them. Irrespective of this, no identification was carried out.*

Situation No.3. *In third case,⁶⁶ according to the explanation of the citizen, in the night of October 27-28, 2013, he/she was beaten by the policemen upon detention, also after detention in the car and also in the building of the Old Tbilisi Police District Department. He was beaten by 5 people and could identify one. The witness was interrogated on this case, who declared that he saw how this person was beaten by several people in the street and after discovered that these were policemen. The witness also saw beating in the police department and could name the policemen. Irrespective of this, no identification with the participation of the victim or the witness was carried out.*

- In some cases the place of incident was not surveyed

Situation No.1. *In one of the cases,⁶⁷ the investigation started on April 22, 2014 by the General Prosecutor of Georgia upon the request of the Public Defender, according to which on April 12, 2014, the employees of the Institution No.8 and the head of the regime physically insulted the prisoner and threatened the prisoner with rape.*

On May 6, 2014, the Public Defender addressed the General Prosecutor's office with a proposal again, since the prisoner declared at meeting with the representative that in April, during the visit of the Prosecutor to him/her, the Prosecutor was accompanied by the director of the institution and its deputies, therefore, the prisoner was subject to psychological pressure, which became the reason for the refusal to give testimony.

There was no attempt to archive and obtain the video recordings in the case; the investigator did not survey the place of incident.

Situation No.2. *According to the case file,⁶⁸ on March 19, 2015, the police employees were moving by car in Kutaisi, on Nikea Street, near the territory of the School No.40, where they requested three citizens standing on the car track to move away, this was followed by an argument and the citizens were detained under Article 353 of the Criminal Code of Georgia.*

The temporary detention isolator of Imereti detected the injuries on the bodies of the detained. The notice was sent to the Prosecutor's Office about the injuries of the detained on March 19, 2015. According to this notice,

⁶⁵ Criminal Law Case No. 004060815801, fact occurred in 2015.

⁶⁶ Criminal Law Case No. 010040214801, fact occurred in 2013.

⁶⁷ Criminal Law Case No. 074220414801, fact occurred in 2014.

⁶⁸ Criminal Law Case No. 041300315801, fact occurred in 2015.

the detained declared that the injuries were caused by the police employees during the detention (the minutes describing the external review and injuries was sent).

Practically, none of the investigation actions regarding the alleged crime of the law enforcement officials were carried out in due course, whereas the witnesses were interrogated with six month delay. The case materials do not contain information about the attempt to obtain video recordings, irrespective of the fact that the detention occurred in the territory adjacent to the public school, where video cameras might be placed.

No survey of the place of incident was carried out, even for the purposes of describing the video cameras or potential witnesses, the place of incident. No attempt was made to obtain the video recordings from cameras placed in the street or near the school area.

- **In one case,⁶⁹ the route of moving of policemen was not verified based on telephone lines**

The citizen declared that the employees of Financial Police met him at Tbilisi International Airport and made him stay at the airport for a couple of hours, then took him in uncertain direction contrary to his will, when he was subject to psychological pressure. Afterwards, he/she was taken to the building of the Ministry of Finance, where they made him/her stay for a long time and he/she was still subject to psychological violence.

The route of moving of policemen was not checked according to the telephone lines to verify the accuracy of statements made by the citizen.

- **In certain cases, no search and seizure was carried out**

***Situation No.1.** This investigation action had to be carried out to obtain certain objects - the key and the handcuffs (the accused indicated that the police hit him with the key, whereas the policemen claimed that the accused committed self-injury with handcuffs). After obtaining these objects, the biological expertise had to be carried out to identify the traces of DNA of the accused. Also, commission expertise had to be carried out to determine whether it was possible for the accused to get injuries on the body with such objects. However, since no search and seizure was performed, it was impossible to conduct follow-up investigation actions.⁷⁰*

***Situation No.2.** In one case,⁷¹ the prisoner referred to the ill-treatment carried out by the employees of the Penitentiary Institution No.8, which was revealed in the following: he was lying on the floor on the belly, the leg was bent in the knee and the handcuffs were tied to so called leg cuffs, notably, during the interrogation, the employees confirmed that handcuffs and so called leg cuffs were used together. The minutes compiled in the institution also referred to the use of both, however, the investigation body did not observe that such use of special means in such a way (use/tying of handcuffs and so called leg cuffs together) was not allowed under the law. Therefore, no search and seizure was ordered for such objects.*

- **There was a case where the investigation action was not carried out with due diligence**

The Prosecutor's Office was investigating the case on the basis of the proposal of the Public Defender. The employees of the Public Defender were cooperating with the investigation and providing the investigation with information about the alleged ill-treatment in the Penitentiary Institution No.8. The employees noted that they

⁶⁹ Criminal Law Case No.010230617801, fact occurred in 2017.

⁷⁰ Criminal Law Case No.004060815801, fact occurred in 2015.

⁷¹ Criminal Law Case No.073091014002, fact occurred in 2014.

heard the noises of the prison administration and prisoners fighting. In parallel, they saw two prisoners in the bathroom of the so called smart zone of the Penitentiary Institution No.8. in blood and with injuries, in partially wet state. One of them was lying on the floor, with hands and legs tied together with handcuffs and with the so called leg cuffs, behind his back, with bended knees. The management of the prison and other employees were nearby.

The representatives of the Public Defender explained during the interrogation that the fact of tying up in such a manner was in itself ill-treatment and even so, with the alleged physical violence.

The investigation body was somewhat interested in discovery of the so called leg cuffs. The search was conducted with the participation of one of the representatives of the Public Defender. At that point, the investigators asked the prison administration to refer to the place where the search could be conducted. The prison administration, naturally, referred to the place, where legal special means were kept and of course, no leg cuffs were presented.

The investigation body considered the check of one specific closet, as indicated by the prison administration, as necessary and considered that the search of the Penitentiary Institution No.8 was complete.⁷²

- In 13 cases the investigation body could have acquired relevant video recordings, that would be the most reliable and neutral evidence for the case, but failed to do so. None of the cases contain the document that would at least confirm the attempt to obtain the video recordings.⁷³ Also, people that were responsible for surveillance of video cameras were not interrogated, employees of so called remote control rooms, that may have information relevant for the crime, and such information even without existence of video recordings (for example, in cases where such videos are deleted/damaged), could present information that could be identical to the one taped. The tendency of attaching the video recordings to the case and the context of using: generally, video recordings are not obtained when possible; the obtaining of such materials happens only in cases where the crime is not recorded. Similarly, attempts to obtain the video recordings are present only in such cases where it was impossible to obtain the video due to the fact that no video camera was placed at the place of incident. For objective observer, such picture may be caused in order to create the element of diligence of investigation artificially. (See Chart No.6).

Below we have included several cases for illustration purposes:

Situation No.1. In one case,⁷⁴ the investigation was pending in Anaklia, about the ill-treatment of the person detailed during the Jam Fest entertainment event. The Prosecutor's Office addressed the Security Police with a

⁷² Criminal Law Case No.073121114004, fact occurred in 2014.

⁷³ Where the case would contain the document (the letter, request, motion) that would show that the investigation body addressed respective subject in order to obtain the video recordings, however, the recordings were not obtained due to objective reasons (for example, due to technical flaws of the video camera), neutral observer, including, the Public Defender, would be assured that the investigation body was really willing and attempted to conduct effective investigation and obtain neutral evidence, however, obtaining of evidence was impossible because of the reasons beyond the control of the investigation. This would exclude the liability of investigation in relation to failure to obtain evidence.

⁷⁴ Criminal Law Case No.083030817801, fact occurred in 2017.

request to obtain video recordings from the place of detention, however, received a response from the Security Police that no such video cameras existed. Notably, however, the Prosecutor's Office did not attempt to obtain video recordings from specific two cafes that were located in the area adjacent to the place of detention.

Situation No.2. *In one case,⁷⁵ the Prosecutor's Office did not address the Ministry of Internal Affairs in order to obtain the video recordings from car cameras or arm cameras of the policemen, where the matter concerned the ill-treatment of the person during the detention by the patrol police employees. No such request was made in the context where there was high likelihood that the patrol police and patrol employee would be equipped with video and arm video cameras.*

Situation No.3. *There were cases, when the fact of ill-treatment occurred in a public place, where there is a high likelihood of video cameras, however, in none of the cases where the attempts to obtain video recordings identified: there was also one case⁷⁶ in the territory adjacent to Kutaisi Public School, in the street; another case⁷⁷ in Tbilisi, in the car station of Ortachala, third case⁷⁸ – in Tbilisi Airport. The attempt to obtain the video recordings is not identified in any of these cases.*

Situation No.4. *In penitentiary institutions, mostly, video recordings are obtained on cases of ill-treatment when the recording does not contain the crime, however, in other similar cases, where there is high likelihood⁷⁹ of existence of video recording, even attempts are not recorded. There were number of cases like this. Notably, in one of such cases,⁸⁰ 199 CDs of video recordings were reviewed and studies and no crime was recorded, which deserves a positive evaluation. At the same time, in none of the similar cases, irrespective of the possibility, no video recording was obtained or attempts made.⁸¹*

Situation No.5. *Attempts to obtain video recordings were there in several cases; however, no video recording was obtained for different reasons. Mostly, such tendency was detected when requesting the videos from penitentiary institutions,⁸² or police systems, where no video recording was found due to various reasons. For example, the Ministry of Internal Affairs failed to provide video recordings in one of the cases⁸³ where request was made to archive/keep video recordings from the territory of administrative building of the border police and detention of foreign citizens, as there were no video cameras.*

⁷⁵ Criminal Law Case No.083081117801, fact occurred in 2017.

⁷⁶ Criminal Law Case No.041300315801, fact occurred in 2015.

⁷⁷ Criminal Law Case No.010110817802, fact occurred in 2017.

⁷⁸ Criminal Law Case No.010230617801, fact occurred in 2017.

⁷⁹ The high likelihood of existence of video recording may be determined by surveillance of the place of incident or interrogation of the witness or the victim, as a result of which, the person carrying out the investigation may learn that there might be recordings relevant for the case.

⁸⁰ Criminal Law Case No.088220917801, fact occurred in 2017.

⁸¹ For example, Criminal Law Case No.010271213801, fact occurred in 2013, Criminal Law Case, fact occurred in 2014.

⁸² For example, Criminal Law Case No.073261214001, fact occurred in 2014.

⁸³ For example, Criminal Law Case No.0422291117801, fact occurred in 2017.

- In none of the cases⁸⁴ were the secret investigation actions, checking the content of communication by telephone or other means carried out. The analysis of the reviewed cases reveals that the victim mostly refers to the ill-treatment by the group (policemen or employees of the penitentiary system) or to other public officials who witnessed the crime. (See Chart No.6).

Chart No.6



- Other problematic cases were also identified, which impeded the effectiveness and diligence of investigation and that was caused by the actions of specific state entities:
 - There was a case⁸⁵, where the court appointed medical expertise was protracted at LEPL Levan Samkharauli National Forensics Bureau for approximately 9 month;
 - In one case,⁸⁶ the injuries were not recorded in the medical inspection act at the temporary detention isolator, by the person with high medical education and due to this, the expert was not in a position to determine the level of body injury
 - In a third case,⁸⁷ the investigation started on the basis of the notice received from the temporary detention isolator. However, due to unclear reasons, the isolator sent information to the Prosecutor's Office about the injuries of the detained person with one week delay
 - Similar flaws were identified in the Penitentiary Institution No.8, where the doctor detected multiple body injuries on the prisoner when placing to the institution. The prisoner indicated that these were made by the police. However, the institution informed the investigation body on this matter with three days of delay⁸⁸

⁸⁴ Reference is made to cases where the legislation allowed/allows for the possibility to conduct similar secret investigation actions.

⁸⁵ Criminal Law Case No.010130716804, fact occurred in 2016.

⁸⁶ Criminal Law Case No.010130716804, fact occurred in 2016.

⁸⁷ Criminal Law Case No.010230317801, fact occurred in 2017.

⁸⁸ Criminal Law Case No. 011010213005, fact occurred in 2013.

- There was a case where the confidentiality of communication between the prisoner and the doctor was violated by the police, which with high likelihood excluded the opportunity for the prisoner to refer to the real source of injuries (ill-treatment from the police). The case contained the minutes of external inspection by the doctor compiled at the time of placement in the Institution No.8, which was also witnessed by the police employee who detained the prisoner. The minutes describe the injuries of the prisoner, and the source of injuries is stated to be before the detention. Later, this prisoner informed the doctor that injuries were made by the police.⁸⁹

Competency

In this respect, it should be noted that:

- In none of the cases is it possible to identify who initiated and took responsibility for a specific investigation action, whether or not the investigator determined the investigation strategy independently or whether the investigation was performed with active involvement/mandatory instructions from the prosecutor. It is impossible to determine the level of participation of the prosecutor and the investigator. In none of the cases were the written instructions of the prosecutor or different written position/complaint of the investigator to the superior prosecutor regarding the improper instruction given by the supervising prosecutor identified.
- Dozens of cases where the qualification happened based on the general provision instead of a specific one were identified.⁹⁰ Namely, in 30 cases out of 38, the investigation was carried out under Article 333 and not under the specific provisions on ill-treatment.⁹¹ Only in 5 cases the investigation was carried out under Article 144¹ of the Criminal Code of Georgia. One case was investigated under Article 115, 1 case under Article 118 and 1 case under Article 378 (see Chart No.7).
- In none of the cases special measures of protection were used towards the victim. There are no documents confirming in any of the cases that the Prosecutor offered and at least tried to understand the position of the victim towards the use of special measures of protection (see Chart No.8)
- Only in one case⁹² a measure of security was used, namely, the Prosecutor's Office requested transfer of the victim prisoners to other penitentiary institution due to the interest of investigation and the same was carried out. Such actions or similar security measures were not carried out in any of the reviewed cases, towards the alleged victim in the penitentiary system

⁸⁹ Ibid.

⁹⁰ Notably, according to the Letter No.13/34580 of the General Prosecutor of Georgia dated May 25, 2017, the Prosecutor's Office has prepared a recommendation regarding the qualification, which is not public up till now.

⁹¹ Criminal Code of Georgia, Articles 144¹-144³.

⁹² Criminal Law Case No.0732807001, fact occurred in 2015.

to ensure its physical and emotional security. Performance of such security measures ensures proper participation of the alleged victim and effective investigation, since intimidation of the victim or its manipulation otherwise substantially increases the risk of modifying the complaint and therefore, may substantially impede the process of investigation. Such position of the victim will impede collection of other evidence, which, in the end, is the main stimulator for terminating the investigation (see Chart No.8).

- In 12 cases⁹³, the alleged victims of ill-treatment were under the supervision and influence of the same employees of the penitentiary system towards which the objections of ill-treatment existed. No attempt is recorded from the side of the Prosecutor's Office to protect alleged victims, so that they can objectively and openly cooperate with investigation (see Chart No.8).
- Since criminal prosecution was not commenced in any of the cases against any person, no dismissal of the alleged perpetrators from their offices (jobs) was carried out under Article 159 of the Criminal Code of Georgia and no suspension of the office has occurred under Article 55(2)(g) under the Law of Georgia on Public Service (see Chart No.8).

Chart No.7

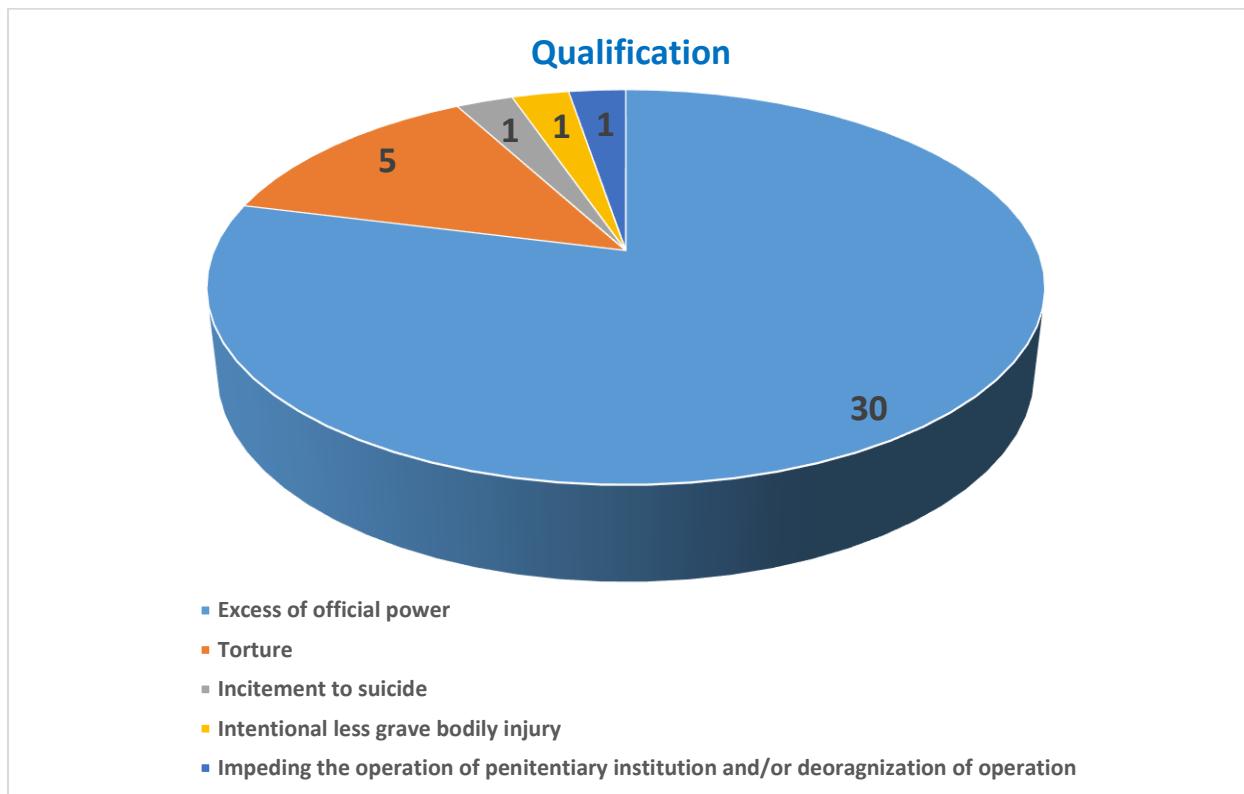
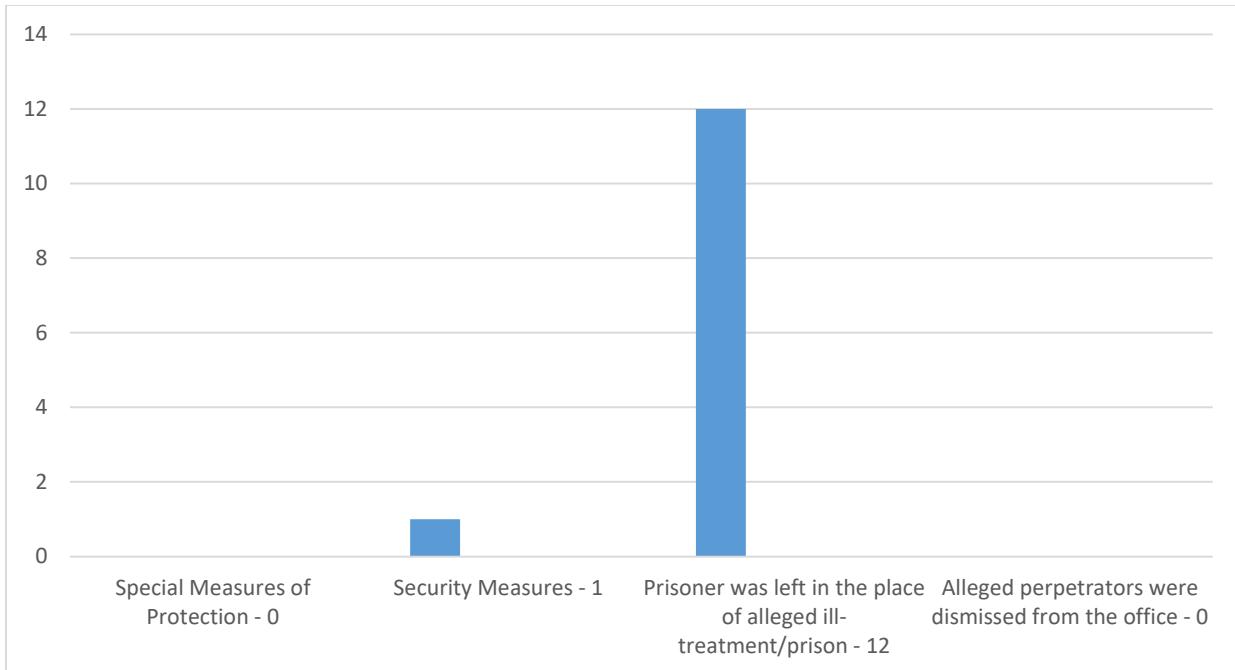


Chart No.8

⁹³ In one of these cases, it was identified that during the course of investigation, at one stage, the prisoner was transferred to other institution; however, this has not occurred due to the request of the investigation body.



Involvement of the Victim in the Proceedings

The following should be noted under this aspect (see Chart No.9):

- **In none of the cases out of 38 was the victim declared as an injured party**

It is important to note that under the Code of Georgia on Criminal Procedure,⁹⁴ the resolution on declaring the person as an injured person is made by the Prosecutor based on its own initiative or the application of the person. In case of a refusal to satisfy the application, it is possible to address the superior prosecutor, whereas appeal in the court was possible only where investigation was pending for cases of particularly grave crimes.

On December 14, 2018, the Constitutional Court of Georgia made a decision (N2/12/1229,1242,1247,1299) and satisfied the claim and declared that the above provision of the Code of Georgia on Civil Procedure was unconstitutional against Article 14 and Article 42(1) of the Constitution of Georgia (the version effective until December 16, 2018), as this provision limited the right of appeal of the decision of the Prosecutor regarding the declaring of the status of the injured party in the court in cases of less grave and grave crimes. The Constitutional Court of Georgia explained that by obtaining the status of the injured party, the victim acquires certain procedural guarantees during the criminal proceedings, has information about the conduct of the case and also has remedies for controlling the prosecution.⁹⁵ The Court also noted that if there is no possibility to

⁹⁴ Code of Georgia on Criminal Procedure, Article 56(5).

⁹⁵ Decision of the Constitutional Court of Georgia, dated December 14, 2018 (N2/12/1229,1242,1247,1299), Section 23.

avoid the violation of the right or the possibility/legal measure to remedy the violated right, the possibility to benefit from such right would become questionable.⁹⁶

Therefore, for now, the injured party may address the Prosecutor with a request to acquire the status for any category of crime,⁹⁷ appeal the decision with the Superior Prosecutor and the rejection from the Superior Prosecutor may be further appealed in the court.

After obtaining the status of the injured party, the latter will have a right to receive information about the conduct of investigation and get familiar with criminal case materials, unless this contradicts the interests of the investigation.⁹⁸

At this stage, the Public Defender of Georgia has not researched the number with which the statistics of recognizing the victim as an injured party has increased after the court remedy is available, however, we hope that the decision of the Constitutional Court will facilitate the Prosecutor's Office to better understand the importance of granting the status of the injured party to the victim in a timely manner and will be more oriented on the purpose of involving the injured party in the process of investigation.

- Only in 2 cases, the alleged victim requested conduct of a specific investigation action. Out of which, the investigation body satisfied request in 1 case.

In one case, the declarations made by alleged victim about investigation actions were taken into account, but partially. Namely, the request to interrogate prisoners from the same cell were taken into account by the investigation and the roommates of alleged victim were interrogated, however, identification of respective persons that was also requested by the alleged victim, was not taken into account⁹⁹

- The factor following the lack of status of the injured person was that practically in none of the cases was the alleged victim provided with the opportunity to review the case materials, which excluded the possibility to conduct investigation actions with a request of such victim.

For example, in one case, the victim and its attorney addressed the Prosecutor's Office with an application requesting information about the case nine times, and got a refusal on each such request.¹⁰⁰ There was one case where the alleged victim met the Prosecutor in the Penitentiary Institution and offered to review case materials. The attorney reviewed the material that was confirmed by the signature.¹⁰¹ There was also another case where the attorney of the alleged victim reviewed the case materials.¹⁰² In a third case, the case materials were made available to the brother of a victim prisoner.¹⁰³

⁹⁶ Ibid., Section 24.

⁹⁷ Criminal Code of Georgia, Article 12.

⁹⁸ Code of Georgia on Criminal Procedure, Article 57(1)(h).

⁹⁹ Criminal Law Case No.073091014002, fact occurred in 2014.

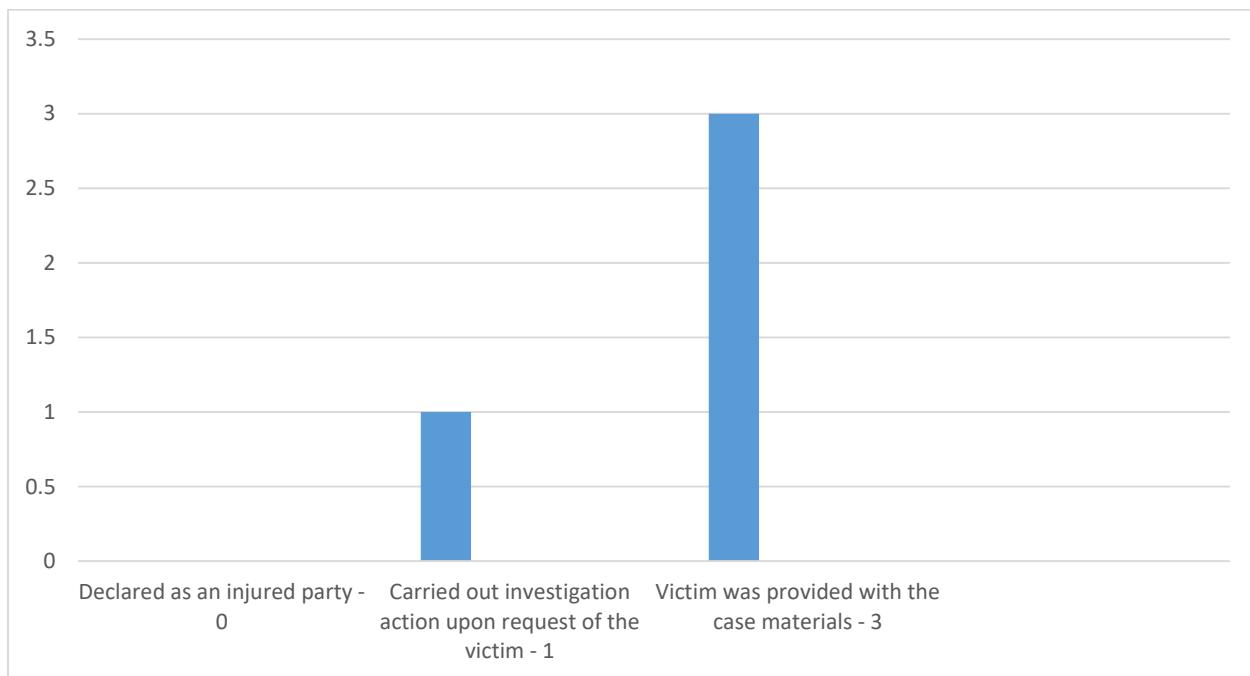
¹⁰⁰ Criminal Law Case No.074150415801, fact occurred in 2015.

¹⁰¹ Criminal Law Case No.073280715001, fact occurred in 2015.

¹⁰² Criminal Law Case No.010230317801, fact occurred in 2017.

¹⁰³ Criminal Law Case No.073150816002, fact occurred in 2016.

Chart No.9



Conclusion

This Special Report once again demonstrated one of the most important challenges in the investigation system of a country that is conduct of effective investigation in ill-treatment cases. Unfortunately, the problems existing with respect to effective investigation during the course of the years are mostly still present and this definitely represents a concern for the Public Defender.

Due to this, the Public Defender awaits creation of independent investigation mechanism – operation of the investigation functions of the Office of the State Inspector with great hope. The past years have shown that without functioning of independent investigation mechanism the positive obligation of the state to conduct effective investigation will not be ensured.¹⁰⁴

It is noteworthy that the European Committee for Prevention of Torture¹⁰⁵ shared the comments¹⁰⁶ of the Public Defender of Georgia regarding the functions of the Office of the State Inspector and expressed concerns about the fact that investigation of the alleged crimes of high ranking officials by

¹⁰⁴ Since up to now no sufficient financial resources were allocated, there are risks of postponing or incomplete implementation of the investigation functions of the mechanism. Therefore, on May 10, 2019, the Public Defender of Georgia addressed the Prime-Minister of Georgia with recommendation No. 15-5/5275 regarding the allocation of necessary financial resources for the Office of the State Inspector to start functioning.

¹⁰⁵ In May 2019, the Report of the European Committee for Prevention of Torture (CPT) regarding the outcome of visits carried out in September 2018 was published, paras.13-15. <<https://rm.coe.int/1680945eca>> [last seen on 08.04.2019]

¹⁰⁶ See 2017 Parliamentary Report of the Public Defender of Georgia, pg. 85-87.

the Office was excluded by law. Additionally, the Prosecutor's Office maintains full control over the process of investigation, the resolution on termination of the investigation is taken by the Prosecutor, the appeal of which is only possible with the Superior Prosecutor and not before the court.

We believe that this Special Report, with gaps identified in practice and prepared recommendations, will serve as a preventative guideline for the Prosecutor's Office, as well as for the Office of the State Inspector in the future and will assist investigation structures in analysis of problems existing with the investigation and taking effective steps to enhance the practice. The monitoring of the state's performance of its positive obligation regarding the ill-treatment cases and investigation of such cases still stays as one of the main priorities of the Public Defender.

It is important for the investigation bodies to pay attention to the gaps that are identified in this Report. The necessity to conduct thorough and diligent investigation is of particular importance and for that matter, the investigation bodies must:

- Obtain relevant video recordings in all possible cases
- Provided that it is impossible to obtain video recordings, include the document in the case file confirming their attempt (request, letter, motion) to obtain the video; also, the document/minutes explaining the reasons on why was it impossible to obtain the video
- Interrogate the persons responsible for video monitoring, especially in cases where the period for maintaining the video recordings has expired and it is impossible to attach the recordings to the case
- Conduct identification where the victim or the witness refers to the identifying features of the alleged perpetrator
- The Place of incident should be protected immediately and surveillance should be carried out
- Telephone lines should be checked to establish the route of movement of alleged perpetrator(s), where this is relevant for factual circumstances of the case
- Carry out relevant secret investigation actions
- Carry out full-scale searching and seizure where necessary
- To use all possibilities to obtain neutral evidence
- To interrogate witnesses on all matters and completely
- In case where the victim withdraws the objection about ill-treatment, all measures should be used to identify if there were illegal actions/coercion/threat against the victim, which caused change of the position

Apart from this, we believe that the investigation should satisfy the requirements of competency in terms of effective investigation and carry out the following:

- Qualify cases under special provisions, according to the standards established by the European Court of Human Rights

- Instructions of the Prosecutor about performance of investigation actions and/or determination of investigation tactics should be made in writing and attached to the case
- Prosecutor's Office, while considering the position of the victim, should discuss the appropriateness of using special measures of protection in all cases of ill-treatment
- In all cases where the victim is a prisoner, the investigation body should discuss the carrying out of security measure and should address special penitentiary service in all relevant circumstances
- Alleged perpetrators should be released from the office/suspended or they should be distanced from the victim, so that the victim is not under the effective control of the perpetrator

All the above-mentioned will be a good possibility to conduct the investigation on cases of ill-treatment effectively and avoid the cases of human rights violations.

Apart from the above gaps identified in the Report, the Public Defender considers that certain issues should be decided on an institutional level. For that matter, we have included respective recommendations. Compliance and future implementation of these will create better regulatory framework and exclude human rights violations during the process of investigation of ill-treatment cases.

Recommendations

To the Parliament of Georgia:

- To separate functions of investigation and criminal prosecution on a legislative level;
- To amend Article 33(6)(a) of the Code of Georgia on Criminal Procedure so as to exclude the authority of the General Prosecutor of Georgia or the person authorized by the latter, to obtain the case, irrespective of investigation hierarchy, from one investigation body and in violation of the principle of institutional independence transfer the same for investigation to a different body
- To amend Article 33(6)(c) of the Code of Georgia on Criminal Procedure so as to exclude the authority of the Prosecutor to request conducting of a specific investigation action from investigation body, where there is a doubt about the employee of such body being involved in ill-treatment
- To outline the types, basis and procedures of security measures that may be used by the Prosecutor towards the victim prisoner in the Code of Criminal Procedure

To the General Prosecutor's Office:

- For the General Prosecutor's Office¹⁰⁷ to come up with the mechanism that would make it possible to check the expediency of the investigation/monitoring and in case of delayed investigations, raising of the issue of responsibility of persons that caused delay in investigation
- To provide the Public Defender with the Recommendation regarding the Qualification adopted by the Prosecutor's Office that is not public available.

¹⁰⁷ Also, by the State Inspector Office after the investigation functions become effective.