

Committee of Ministers DGI-Directorate
General of Human Rights and Rule of Law

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

F-67075 Strasbourg Cedex France

E-mail: DGI-execution@coe.int

By mail

Communication of the Public Defender of Georgia

Tsintsabadze group v. Georgia (Application No. 35403/06)

Made 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

Contents

Introduction	3
The Penitentiary System	3
Informal rule in penitentiary establishments and lack of investigation	4
III-Treatment in the police system	6
Deficiencies in detecting and documenting ill-treatment	7
Challenges faced by the State Inspector's Service in terms of effectiveness and independence of the investigation process	8
Abolition of the State Inspector's Service	9
Conclusion	12

Introduction

1. The Public Defender of Georgia has an honor to submit the communication to the Committee of Ministers on the execution of judgments in the Tsintsabadze group v. Georgia (Application No. 35403/06), pursuant to 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.
2. Since at the time of preparing this communication, the Government has not submitted an action report we are deprived of the opportunity to respond to it and this submission mainly refers, but not limited, to the Committee of Ministers decision of 1-3 December 2020 and provides information on the implementation of general measures by the Government of Georgia in the course of the execution of the present judgements.

The Penitentiary System

3. There are still a number of significant challenges regarding fight against ill-treatment in the penitentiary system that the Public Defender has been addressing for years, both in the annual parliamentary reports and the special reports.
4. Unfortunately, the practice of transferring prisoners to de-escalation rooms was maintained during 2021, which the Public Defender assesses as ill-treatment.¹ On July 27, 2021, the Public Defender of Georgia filed a constitutional complaint with the Constitutional Court of Georgia, requesting that a number of normative acts governing the transfer of prisoners to the de-escalation room be declared unconstitutional.²
5. Effective complaint and inspection procedures are fundamental safeguards against ill-treatment in penitentiary establishments. In this regard PDO is concerned that similar to previous years, obstacles persist in terms of the exercise of the right to request/complaint.³ According to the results of the monitoring carried out by the members of the National Preventive Mechanism (hereinafter as NPM) in 2021, there are alleged cases when the hotline numbers of the inspection bodies and the Public Defender were blocked on the phone cards of the prisoners. According to the statements of the prisoners they often become the object of threats and intimidation because of complaints and phone calls addressed to the PDO. There are complaint boxes displayed in all penitentiary establishments visited in 2021, however, the boxes remain within the area of video monitoring, which allows the identification of a complainant. During visits to Establishments Nos. 3 and 6, members of the National Preventive Mechanism received reports about the censorship of confidential complaints sent to the Public Defender. According to them, in many cases, complaints are not sent to the addressees.
6. The Public Defender states that the influence of informal governance in the penitentiary establishments is the main factor that prevents prisoners from sending complaints to Public Defender. This is further confirmed by the study on the Influence of Criminal Subculture on the Management of a Penitentiary Institutions conducted by the non-governmental organization - Rehabilitation Initiative for Vulnerable Groups and International organization - Penal Reform International.⁴ It is stated in the study that when it comes to sending complaints

¹ PDO addressed this problem in Rule 9.2 - Communication (23/10/2020) in the TSINTSABADZE group of cases v. Georgia, available at: < <https://bit.ly/33zp8YQ> >

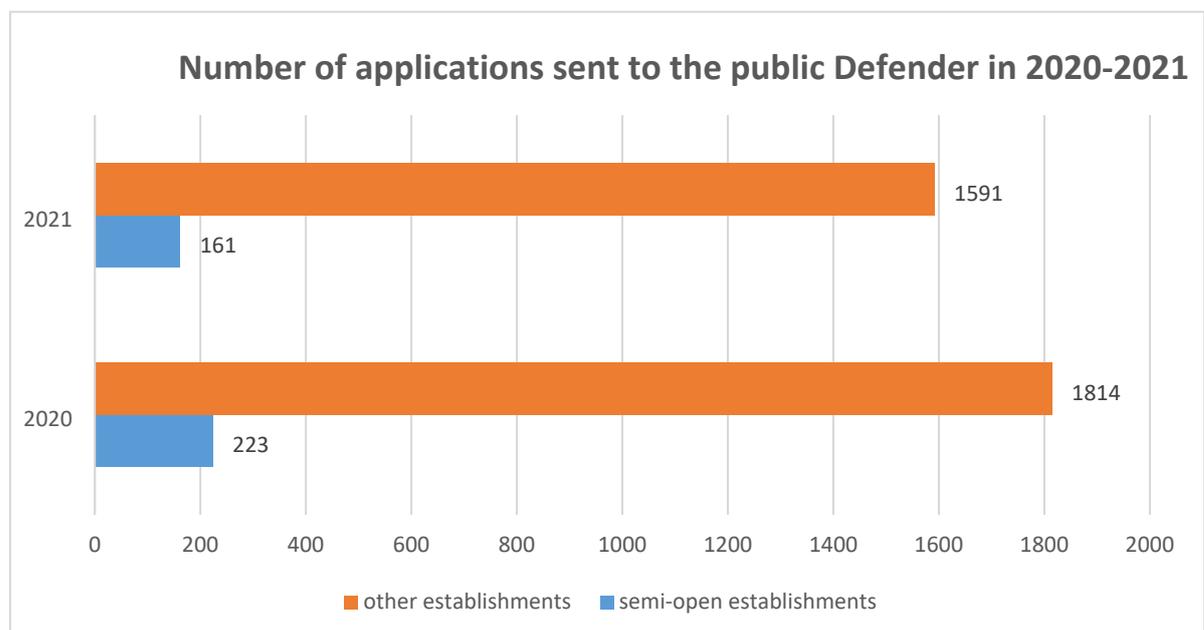
² Constitutional claim of the Public Defender of Georgia, 27 July 2021, N1637.

³ For more detailed information on this issue see Rule 9.2 - Communication of PDO in the case of Amiridze v. Georgia (Application No. 15351/09), available at: < <https://bit.ly/3owceCU> >

⁴ Influence of Criminal Subculture on the Management of a Penitentiary Institution p.48, Available in Georgian at: < <https://bit.ly/2MJr8oU> > Main findings of the report is available in English at: < <https://bit.ly/3amXiif> >

from institutions, according to informal subculture rules, writing a complaint is not considered “a good tone”. Also, complaints are separated according to the content. As reported by the respondents of the above study there is a relatively loyal attitude from the “prison watchers” towards the complaints related to the criminal case. Complaints which concern the situation in the penitentiary institution, are more strictly controlled and perceived as a deteriorating, the general situation”.⁵

7. It should be underlined that, over the years, the number of applications sent to the Public Defender’s Office from prisoners placed in semi open prisons, reduces gradually. In 2021, Public Defender received only 161 applications, from semi-open facilities (these facilities are being governed by criminal subculture leaders), while almost half of the total population of prisoners are placed in this type of establishment. The diagram below shows the numbers of applications received from semi-open and other establishments in 2020-2021:



Informal rule in penitentiary establishments and lack of investigation

8. In our previous communication dated 23.10.2020 Public Defender addressed the issue of informal governance within penitentiary establishments. Hereby we would like to reiterate that the mentioned problem is ongoing.
9. Similar to the previous years, managing penitentiary establishments by resorting to the informal rule remains a serious challenge in terms of protecting prisoners from violence. Administrations of penitentiary establishments delegate powers to informal leaders (the so-called watchers) and rule the establishments informally with their help that implies silencing prisoners, prohibiting them from discussing problems and maintaining an imaginary order in the establishments. This problem is also discussed in the study published by NGOs in 2020, which is already mentioned in the para. 6 above.
10. Further, problems related to the informal rule in the penitentiary establishments became evident, among others, on 31 October 2020 and later on 14 January 2021 in Ksani penitentiary establishment no. 15. A group of prisoners first obstructed the staff members of the Public

⁵ Ibid.

Defender's Office from observing the process of the exercise of the right to vote and in second occasion prevented them from talking to the establishment's physician. It is also noteworthy that, on 4 December 2020 and 13 January 2021, in establishment no. 8 a prisoner threatened the staff members of the Public Defender's Office and requested them to discontinue their visit to the prison.

11. In all of these cases the attacks were directly or indirectly organized by the prison administration. It should be underlined that the Public Defender managed to inspect the video-footages reflecting the visit of the representatives of the Public Defender in Ksani penitentiary establishment no. 15 on 14 January 2021 mentioned above. The recordings show that before and after the entry of the representatives of the PDO into the facility, the deputy director of the facility, had active communication with a certain group of prisoners. The same group of prisoners come close to the Ombudsman's representatives to obstruct and threaten their activities, while the leadership of the administration closely monitors the developments and does not interfere in the process. Following this, the Public Defender made a statement that she was temporarily suspending preventive visits to the territory of penitentiary institutions.
12. In the opinion of the Public Defender, the manifestation of aggression by privileged prisoners against the institution of the Public Defender in such a form and scale demonstrates the repressive and violent methods of the informal rules faced by non-privileged prisoners. This also shows that the enforcers of the informal rule enjoy support from the administration. This demonstrates the level of repression the individual prisoners are subjected to on a daily basis.
13. In May 2021, the European Committee against Torture paid an ad hoc visit to Georgia to inspect the situation in semi-open penitentiary institutions. Following the visit,⁶ it was publicly announced by the Minister of Justice that the representatives of the Public Defender's Office would not face any problems in carrying out their activities. As of today, such attacks have not taken place since January 2021.
14. In 2020, the Public Defender's Office examined those few cases where the prosecutor's office had instituted investigation based on prisoners' applications alleging commission of crimes by the criminal subculture leaders and representatives of the administration acting as their protector or complicit by omission. The Public Defender's Office scrutinised eight such cases in 2020 and presented the relevant findings to the public.⁷
15. The purpose of this examination was to assess to what degree the authorities investigate alleged criminal incidents related to the criminal underworld; how timely and comprehensive the investigative actions are and to what extent they identify possible perpetrators and alleged incidents that fall under the Criminal Code.
16. PDO's examination of the mentioned cases revealed that prosecutorial authorities of Georgia discharge their powers inadequately and their investigative actions are punctuated with serious shortcomings.
17. Despite reported crimes (threats, beatings, extortion, economic crimes, abuse of power, etc.) and the duty to start an investigation, the prosecutor's office would refuse to institute proceedings and refer the issue to be examined by the Inspectorate General of the Ministry of Corrections.⁸ The latter having no investigative powers would limit its activities to an official enquiry. It should be pointed out that the investigative jurisdiction of the Inspectorate General, considering the institutional independence, did not include investigation of alleged incidents of crime committed by the staff of the penitentiary establishments/penitentiary service. This

⁶ The 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) is not public yet.

⁷ 2020 Report on the Activities of the Criminal Justice Department of the Office of the Public Defender of Georgia, available only in Georgian at: < <https://bit.ly/3rHPGBI> >

⁸ Currently, the Monitoring Department of the Special Penitentiary Service of the Ministry of Justice.

approach of the prosecutor's office failed to give prisoners a sense of security and the willingness to cooperate with the investigation.

18. In terms of investigations conducted by prosecutorial authorities, numerous shortcomings were identified even in those cases where an investigation was launched. It should be underlined that an investigation was instituted only with regard to the incidents that resulted in either death or torture of a prisoner. In a number of cases, actions imputed to both prisoners and prison staff were categorised under lenient provisions of the Criminal Code.
19. In most cases, the investigation completely overlooked the possible involvement of the prison staff in the crime even though it had been alleged by the main actors of the case and even by some officials of the penitentiary system that prison staff were involved.
20. Our study showed delays in investigative actions and collecting evidence that made it impossible to obtain certain information. Furthermore, in these cases, the investigative authorities did not question CCTV operators who carry out 24-hour surveillance of the prison territory. They did not look at the incidents involving the movement of unauthorised individuals around the prison and failed to obtain cell tower data confirming the movement. This and other investigative actions would make it possible to verify the information adduced by witnesses.
21. The case files showed that the inactivity of the penitentiary system towards the existence of the criminal underworld and its influences is rarely assessed from a legal point of view. The investigative authorities did not even question high-ranking officials of the penitentiary system (apart from prison administration) and failed to conduct necessary investigative actions in this regard. This was despite the fact that a representative of the penitentiary system alleged that staff members and the management of the then Penitentiary Department were responsible for granting privileges to the so-called prison watchers.
22. Based on the foregoing, the PDO concludes that the abolition of the criminal subculture-based governance model is a critical issue for the protection of human rights in penitentiary establishments. As a result of the state's direct and indirect support, informal governance creates a violent environment in institutions and affects a large number of prisoners on a daily basis.

III-Treatment in the police system

23. In 2021, detainees continued to speak about cases of physical and psychological violence after the arrest by law enforcement officials. This was especially problematic in the cases of detentions carried out under the provisions of the Code of Administrative offences.
24. Timely access to a lawyer and informing families about the detention of persons is problematic. The family members and lawyers of the persons detained during the protests were informed about the whereabouts of the detainees after a long period of time, or were not informed at all. Consequently, lawyers were unable to visit their defendants in a timely manner, interview them, and agree on a defense strategy. In some cases, unfortunately, the Ministry of Internal Affairs also did not provide timely information to the Public Defender's Office.
25. As in previous years, the lack of an obligation to use body cameras by patrolling inspectors remains a challenge. Another problem is the fact that the premises of police stations where the detainee/citizen is staying are not fully covered by the video surveillance system.
26. Audio-video recording of interrogations is an important guarantee for the prevention of ill-treatment. Public Defender has been recommending to ensure uninterrupted audio and video recording of questioning of an arrested person in pilot mode for years.
27. The CoE Committee of Ministers also called on the authorities to strengthen safeguards for the prevention of torture, notably by exploring the possibility of extending audio/video recording of arrested or detained persons' communications with law enforcement agents, including interrogations and questioning. According to CPT, electronic recordings should be

kept securely for a reasonable period, made available to the detained persons concerned, and/or their lawyers, and accessible to representatives of international and national monitoring bodies.⁹ In contrast, under Georgian law, an audio-video recording of the interrogation/questioning of arrested persons in police stations is not mandatory and falls within the discretion of the police. Interviews conducted with arrested persons and lawyers in 2021 showed that audio or video recording of questioning carried out in police stations is not observed.¹⁰

Deficiencies in detecting and documenting ill-treatment

28. The mechanism for documenting cases of violence in penitentiary institutions is regulated by the Order N633 of the Minister of Justice of Georgia. The Public Defender commends the adoption of the Order N 633 on 30 November 2020, which sets new regulations aimed at increasing the effectiveness of the procedure for identifying, documenting and reporting cases of violence to the investigative authorities. The regulations determined the duty of a medical professional to notify directly the State Inspector of Georgia about alleged incidents of ill-treatment.
29. The Public Defender also commends another amendment determining medical professionals' duty to describe, photograph and report injuries to investigative authorities, irrespective of the prisoner's informed consent on these actions, whenever he/she suspects that the prisoner who is undergoing medical examination based on his informed consent, could have been subjected to torture or other inhuman treatment.
30. Despite positive developments, the Public Defender of Georgia states that the faulty practice of identifying and documenting incidents of alleged violence is still maintained. This practice is preconditioned by the absence of a confidential environment for doctor prisoner meetings. Inadequate qualifications of doctors and the lack of information should also be pointed out. Doctors fail to explain to prisoners the significance and purpose of documenting injuries.
31. According to information received from the Special Penitentiary Service, by the November 2021, doctors in penitentiary institutions registered only 28 cases in accordance with the above rule.
32. The Public Defender believes that the indicated mechanism of documentation is not properly used by the doctors of the establishments. This finding is based on the following data: in 2021 (January-November), 27 defendants entering the penitentiary establishments indicated that they had received injuries after the arrest, while 19 defendants indicated that injuries had been received at the time of the arrest. As it was stipulated above under para.31 in 2021, doctors in penitentiary institutions registered only 28 cases in accordance with the above rule thus 18 cases remained beyond proper attention.
33. It is noteworthy that, similar to 2019 and 2020 in 2021 doctors in penitentiary establishments did not document any cases where the alleged abuser would be an employee of the penitentiary institution. In all cases the documentation was carried out at the moment of a detainee being taken into the facility, when the detainee was indicating an employee of the Ministry of the Interior as the perpetrator of alleged torture and other cruel, inhuman or degrading treatment.

⁹ 28th General Report of the CPT, 2019, para. 81, available at: <https://bit.ly/3rBonoG> , Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, CAT/OP/POL/ROSP/1, 09.01.2020, para. 47.

¹⁰ In accordance with Article 287 of the Criminal Procedure Code of Georgia, video/audio recording is allowed during conducting investigative actions. The report of the Public Defender concerning the 2021 data will be published in April 2022.

Challenges faced by the State Inspector's Service in terms of effectiveness and independence of the investigation process

34. The Committee of Ministers is well aware that effective investigation of crimes of torture and ill-treatment by law enforcement officers remained a systemic problem for many years in Georgia. The Public Defender together with civil society of Georgia have been discussing the need for creating an independent investigative mechanism since 2015. The creation of such mechanism was recommended by a number of international expert bodies (the Commissioner for Human Rights of the Council of Europe, the EU Special Adviser on Constitutional and Legal Reform and Human Rights). Finally, in 2018 the State Inspector's Service was created to eliminate the problem of impunity of law enforcement officers for the crimes of ill-treatment. The service became operational on 1 November 2019. While the Public Defender welcomed the creation of the new investigative mechanism, we consistently referred to the number of shortcomings that needed to be addressed.¹¹ In addition, the State Inspector herself indicated that despite institutional independence, current legislation does not provide for sufficient guarantees of functional independence of the Service. Unlike other investigative bodies, certain power of the State Inspector's Service does not bring practical results.¹²
35. In its Decision dated 1-3 December 2020, at the 1390th meeting (DH), the Committee of Ministers invited the authorities to continue to update the Committee about the results of the work of State Inspector's Service (hereinafter SIS), as well as any legislative or other measures that may prove necessary to further enhance its independence and effectiveness.
36. **The Public Defender would like to inform the CM that instead of strengthening the independence and effectiveness of the SIS, on the contrary, on 30 December 2021 the Georgian Parliament adopted a bill abolishing the Service and dismissing State Inspector and her Deputies.** The Public Defender is extremely concerned with the recent changes to the SIS and finds them counter to the commitments taken by the Government of Georgia before the CM. The detailed argumentation on this issue will be addressed below under section: "Abolition of the State Inspector's Service".
37. Under the current law, the State Inspector's Service is largely dependent on the prosecutor in the investigation process. The requirement to obtain the prosecutor's consent for all important investigative actions limits the ability of the State Inspector's Service to conduct an independent investigation - hinders the independent determination of its direction, timely conduct of investigative/procedural action necessary for an effective investigation and collection of evidence.¹³ Consequently, the State Inspector's Service works without effective legislative leverage to investigate crimes committed by the employees of the law enforcement bodies.
38. In 2020, the State Inspector's Service submitted a legislative proposal before the Parliament addressing most of the challenges discussed above and reviewed in its report on the activities of the State Inspectors Service 2020.¹⁴ OHCHR of UN also provided support for the efforts of the Service to identify key obstacles to the effective investigation of allegations of ill-treatment and assisted in drafting recommendations aimed at addressing existing legislative gaps.

¹¹ Special Report of the Public Defender of Georgia, "Effectiveness of the investigation of inhuman treatment cases", 2019, available at: < <https://rb.gy/bdsutp> >ps:4-5, 35.

¹² Report of the State Inspector's Service of Georgia 2020, available at: < <https://bit.ly/3eeba00> >

¹³ Ibid, p. 176.

¹⁴ Report of the State Inspector's Service of Georgia 2020, available at: < <https://bit.ly/3eeba00> >

39. In November, 2021 Government of Georgia submitted legislative initiative related to separation of investigative and prosecutorial powers to the Parliament of Georgia. State Inspector's Service negatively assessed the legislative bill.¹⁵
40. According to the assessment of the State Inspector's Service,¹⁶ the legislative amendments submitted to the Parliament of Georgia: fail to ensure the independence of the State Inspector's Service from the Prosecutor's Office, do not grant the Service authority to make a decision on carrying out important investigative actions independently from the prosecutor, fail to respond to the aim of the reform of separating the investigative and prosecutorial functions, while timely and complete separation of the investigative and prosecutorial powers is one of the essential preconditions for the effective functioning of the State Inspector's Service. The legislative amendments are not in full compliance with the recommendations issued by the Venice Commission regarding the mentioned reform.
41. The State Inspector's Service has also submitted its opinion concerning the legislative bill to the Parliament of Georgia proposing different regulations related to the separation of investigative and prosecutorial powers on certain legal issues concerning the Service.
42. The Public Defender believes that in order for the investigative body to be independent from the Prosecutor's Office, the latter should not have complete control over the investigation process. The Prosecutor General should not have the authority to withdraw a case from one body and transfer it to another without adhering to the investigative subordination requirements, etc.¹⁷

Abolition of the State Inspector's Service

43. **The Public Defender believes that the purpose of the recent legislative amendments adopted by the Parliament of Georgia is to influence the functioning of an independent body and assesses them as an important step backwards.** State Inspector Ms. Toloraia¹⁸ along with the civil society organizations¹⁹ in Georgia consider that these changes are a form of punishment of the SIS and the State Inspector for an independent and professional decisions taken by the service.
44. Unfortunately, Georgian authorities failed to present any arguments which would refute Public Defender's assessment and disprove existing assumption in Georgian civil society. The changes were also negatively assessed by the US Embassy²⁰ and the EU Delegation to Georgia.²¹
45. As regards recent developments around SIS:
On December 27, 2021 the Bureau of the Parliament of Georgia supported the expedited review of the legislative package concerning SIS. The draft law was prepared in a non-transparent manner and without prior consultation with stakeholders, even with the State Inspector herself. Within three days, on December 30, the Parliament of Georgia adopted the draft law.

¹⁵ Position of the State Inspector's Service Regarding the Key Aspects of the Legislative Initiative. Available at: <<https://bit.ly/3EyCCBX>>

¹⁶ Position of the State Inspector's Service Regarding the Key Aspects of the Legislative Initiative. Available at: <<https://bit.ly/3EyCCBX>>

¹⁷ Special Report of the Public Defender of Georgia, "Effectiveness of the investigation of inhuman treatment cases", 2019, available at: <<https://rb.gy/bdsutp>>ps:4-5, 35.

¹⁸ "This is a punitive operation, they are fighting against independent, professional employees", Kavkasia TV, video available: <<https://rb.gy/rkxm0x>> (2:38-2:50, 3:20-4:30); "This is an exemplary punishment for all employees - Toloraia on the dismissal of the state inspector", Formula TV, video available: <<https://rb.gy/pqg5pp>> .

¹⁹ "Fate of the State Inspector's Service", AjaraTV, video available: <<https://rb.gy/zqhqus>>

²⁰ Statement of the US Embassy, available at: <<https://rb.gy/piyqsp>>

²¹ EU Delegation responds to expedited procedures in the Georgian Parliament relating to the State Inspector's Service and the Judiciary, available at: <<https://rb.gy/c9yyyd>>

46. Given the scale of the bill (several hundred pages of the full legislative package), it is clear that work on it began long before it was initiated. The Public Defender maintains that adoption of the bill consisting of more than two hundred pages related to the reform of important state institution within 3 days, without explanation for the need to adopt the changes in such a rush (Parliament failed to explain why it was necessary to implement this reform in an expedited manner) is not in line with the rule of law and democratic principles.
47. In accordance with the legislative changes, the State Inspector's Service and the position of State Inspector will be abolished from March 1, 2022. Two independent state agencies are established: (1) the Special Investigation Service and (2) the Personal Data Protection Service. Prior to the amendments, oversight of personal data protection and the exercise of independent investigative powers were carried out under a single mandate - the mandate of the State Inspector.
48. According to the law, the positions of the State Inspector and her deputies are vacated, and the staff of the Service, if they wish, will be appointed to equal positions in the newly created services. It should be underlined that the law adopted by the parliament does not envisage any substantial novelty regarding investigative functions of the Special Investigation Service. It is true that under the changes, the investigative jurisdiction of Special Investigation Service is only slightly increased compared to the State Inspector's Service, though there is nothing new in terms of dependence on the Prosecutor's Office (while the dependence on the Prosecutor's Office was one of the big challenges for the State Inspector's independence). On the other hand, certain crimes committed by the prosecutors do not fall into the mandate of the new Special Investigation Service.²²
49. It should be underlined that prior to the amendments the SIS was an independent state body and its Head - State Inspector was elected for a 6-year term by the Parliament of Georgia. With the adoption and entry into force of the draft-law the Parliament of Georgia terminated a term of office of a Head of an independent state body elected for a fixed period and that will have a chilling effect in future on other state bodies. Each independent state body will be under fear that if their opinions are not in line with the interests of authorities, their institutions simply will be abolished.
50. According to the explanation of the members of the Parliament, the purpose of the legislative changes is to regulate the mandate of the state agency with two functions (personal data protection and the investigation of crimes). The changes aim to eliminate the conflict of interests between the mentioned functions; that the resulting two entities will be stronger and more appropriately suited to the work;
51. It should be underlined that similar arguments were raised by the civil society with the Parliament back in 2019 in the process of establishing the State Inspector's Service. However, then the same ruling political force did not find this argument relevant to take into consideration and refused to establish the Inspector's Service separately. By the decision of the Parliament the SIS was established as a successor of the former Personal Data Protection Inspector. **It is not clear what is the ground for the Parliament today to change the initial decision thus clear signs of arbitrariness are at place. It is important to note that the existence of conflict of interest between these two functions in the work of the State Inspector's Service could not be confirmed even by the members of the Parliament or any other stakeholder.**
52. The draft laws prepared by the Parliament do not/cannot strengthen the two newly created services and do not provide guarantees for the independence of their leaders; the new law fails to improve personal data protection state in Georgia and the draft law on Personal Data

²² Public Defender's Statement on Attempt to Abolish State Inspector's Office, 27.12.2021, available at: < <https://rb.gy/npuzhi> >

Protection being in line with European standards, has not been considered by the Parliament of Georgia for more than 2 years. This is a very bad precedent when the head of an independent service, a person elected for a 6-year term, is dismissed without prior warning or a reasoned argument with respect to her professional activities.²³

53. In addition, it should be underlined that the State Inspector's Service has been established as an independent state body that effectively and transparently exercises its powers. Since November 1, 2019, the Public Defender's Office has been actively monitoring the activities of the State Inspector's Service, requesting information and studying criminal cases. We have always indicated in our reports that the investigations conducted by the State Inspector's Service met the requirements of timeliness, thoroughness and accuracy.
54. Based on the abovementioned, the Public Defender states that the rule of law and democracy, as fundamental principles of the Council of Europe, were ignored during the adoption of the legislative changes. The law passed in a non-transparent manner and without proper review, on the basis of which the head of a state body independent of the government - in this case the state inspector - is dismissed, contradicts the Constitution of Georgia, as well as violates the positive obligations of prohibition of ill-treatment and protection of the right to privacy based on the Constitution of Georgia and the European Convention on Human Rights.²⁴
55. According to the case law of the Constitutional Court of Georgia, early termination of the term of office of an independent body is possible only in exceptional cases, when this action is a necessary and only effective means of achieving the relevant legitimate aim.²⁵ The element defining the essence of the position of the State Inspector is the degree of independence from the executive and/or legislative branch of government, which can be limited only in exceptional cases for the legitimate aim of improving the management of the service. According to the Constitutional Court of Georgia, such a special case can occur only when the relevant norms are so flawed that they contradict the purpose of a specific state position and their change is an urgent need. The absence of such circumstances is proved by the fact that the law only slightly changed the legislation regulating the State Inspector's Office.

Conclusion

Taking into account a completely unprecedented case of abolition of an independent state body-SIS, we urge CM to adopt an Interim Resolution at the upcoming DH meeting in March 2022 when resuming consideration of the present case and urge the Government of Georgia to introduce solid guarantees for institutional, hierarchical and practical independence of the Special Investigation Service, which will be established based on the new law from 1 March, 2022. One such guarantee would be to give the current State Inspector and her deputies the possibility to be appointed to equal positions in the newly created service. According to the new law such possibility exists only in relation to the staff of the Service, excluding State Inspector Ms. Toloraia and her deputies.

In order to effectively execute Tsintsabadze Group cases, PDO reiterates the following recommendations to the Government of Georgia:

- With the view of addressing the problem of the criminal underworld and its informal rule in penitentiary establishments, to develop a strategy for overcoming the criminal underworld;

²³ Statement of the State Inspector's Service, 13.01.2022, available: < <https://rb.gy/acqf0sj> >

²⁴ Public Defender's Statement on Attempt to Abolish State Inspector's Office, 27.12.2021, available at: < <https://rb.gy/npuzhi> >

²⁵ Judgement №1/2/569 of the Constitutional Court of Georgia dated April 11, 2014 on the case of "Citizens of Georgia – David Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Gogvadze, Giorgi Meladze and Mamuka Pachuashvili versus the Parliament of Georgia."

- Publish the report of the CPT to the Georgian Government on its ad-hoc visit to Georgia in 2021 for the purposes of public scrutiny and accountability;
- Ensure effective implementation of the Order no. 633 of the Minister of Justice of Georgia Approving the Procedure for Documenting Injuries of Accused and Convicted Persons Sustained as a Result of Alleged Torture and Other Cruel, Inhuman and Degrading Treatment;
- Amend the rule approved by the Order N633 of the Minister of Justice of Georgia of November 30, 2020 and to define the obligation of a doctor to describe the indicated injuries and send a notification to the State Inspector's Service in cases when the accused/convict does not consent to the medical examination upon admission to the penitentiary institution or upon his/her removal from the institution;
- Ensure uninterrupted audio and video recording of questioning an arrested person in several police agencies in a pilot mode;
- Install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person willing to give a statement has to stay.
- Take into consideration the opinion of the State Inspector's Service concerning the draft law related to separation of investigative and prosecutorial powers which was submitted by the Government of Georgia to the Parliament of Georgia
- Ensure the independence of Special Investigation Service from the Prosecutor's Office – so as the Special Investigation Service has the authority to make decisions on investigative actions independently of the Prosecutor.