

Independence of the Judiciary; Institutional settings and the reforms of the Prosecutor's Office and of the Ministry of Interior, Problem of Effective Prevention and Investigation of human rights abuses, Torture and ill treatment in prisons

Submitted for UPR of Georgia (2015) by Georgian Young Lawyers' Association (GYLA), Human Rights Education and Monitoring Center (EMC), Penal Reform International (PRI), Georgian Center for the Rehabilitation of Torture Victims (GCRT)

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1. Judiciaryⁱ

1.1. The High Council of Justice

1.1.1. The most important body charged with the function of judicial administration is the High Council of Justice (hereinafter the HCoJ). It is vested with broad area of powers: selection, appointment, organization of qualification exam of judges, evaluation of judges, including during the probation period, initiation of disciplinary proceedings and bringing (as well as supporting) disciplinary charges against judges before the disciplinary board,ⁱⁱ preparation of legislative proposals for further judicial reform, etc.ⁱⁱⁱ These broad powers are not however balanced by adequate standards of accountability and transparency. The law does not oblige the HCoJ to provide justification for its decisions, transparency of the HCoJ's activities remains problematic in practice, and these factors increase the risk of arbitrariness and subjective decision-making. Decisions of the HCoJ regarding selection of judges and other matters of judicial administration (e.g., disciplinary issues) are not subject to judicial scrutiny.

1.1.2. Number of important issues related to the rules and procedures of the HCoJ's work are left unregulated by the laws and by-laws, which further leaves a wide room for arbitrariness (especially as far as the HCoJ's chairperson and the secretary are concerned).^{iv} There is no provision regulating the issue of conflict of interest and procedures of (self)-recusal of the HCoJ members during the decision-making process.

1.1.3. In contradiction to the Venice Commission Recommendations, the probation period for judges, introduced in the Constitution in 2010, was further enshrined in the legislation. This was done despite a negative assessment and fears from local civil society organizations, that taking into consideration the local context, probation term would create a high risk to judicial independence in Georgia.^v

1.2. The System of Disciplinary and Criminal Responsibility of Judges

1.2.1. The system of disciplinary responsibility of judges contains significant flaws; it fails to provide for fair and transparent procedures, does not clarify the difference between a *disciplinary offence* and a *legal mistake*. One of the most problematic grounds of

disciplinary responsibility is “inappropriate execution of judicial duties”. The meaning of this concept is not sufficiently clear and precise and thus - prone to abuse.^{vi} The practice of disciplinary responsibility of judges is further inadequate to address this risk.

- 1.2.2. The draft law on Disciplinary Responsibility of Judges initiated by the Ministry of Justice is a step forward; however it covers only part of the problems in this system.
- 1.2.3. The Chief Justice has an exclusive power to give permission for initiating a criminal case against an acting judge, which gives rise to unhealthy relations inside the judicial system.

1.3. Other Important Issues

- 1.3.1. Case assignment system needs to be reformed into an automatic system so that court chairpersons have no power to influence this process according to their subjective considerations.
- 1.3.2. It is of utmost importance to strengthen the human rights-based education of future judges in the High School of Justice.

1.4. The Problem of Miscarriages of Justice

- 1.4.1. In previous years judicial independence and a low public trust towards the judiciary was a severe problem in Georgia. Hundreds of allegations of miscarriages of justice emerged after the change of political power following the 2012 elections.
- 1.4.2. Although almost three years have passed since then, the absence of a mechanism to address the issue of miscarriages of justice committed before elections of 2012 remains an important problem. Although there might be different ideas on the type of the commission or about the mandate, composition or other elements of the mechanism with similar functions, it is evident that instances of violation of law resulted from unlawful and unsubstantiated court judgments remain to be problematic so far.
- 1.4.3. The Parliament of Georgia itself acknowledged this problem, when on December 5, 2012 issued a resolution on political prisoners and undertook the obligation to establish for those individuals “a legislative mechanism to exercise the right to fair trial.” Though, the scale of the problem is greater than only politically motivated imprisonments.
- 1.4.4. The issue of illegal prisoners is also linked to the gaps of justice system and the problem has not been exhausted through the amnesty implemented by the Parliament. Letters submitted to GYLA from penitentiary establishments reveal that a considerable number of individuals being in prisons so far consider themselves as illegal prisoners. Some have been even sentenced to lifetime imprisonment. Furthermore, as reported, thousands of complaints have been filed to the Chief Prosecutor’s Office of Georgia demanding investigation of the problems of justice system, as well as to respond to alleged offences involving state officials that took place in previous years (illegal imprisonment, unlawful deprivation of property, problematic plea bargain procedures, etc.).
- 1.4.5. No effective investigation was conducted so far on these issues. Without effective investigation of these allegations, the court system remains incapable of reviewing the cases anew. For many individuals, establishment of an adequate legal mechanism to address this issue is practically the only way for reviewing their cases and for ending illegal imprisonment.^{vii}
- 1.4.6. Furthermore, it is important to set up a mechanism for revision of life-imprisonment at regular intervals, as required by international standards.

1.4.7. Recommendations:

- Make sure that the powers of the HCoJ are balanced by appropriate guarantees of transparent and well-reasoned decision-making,
- Eliminate existing gaps in the legislation governing the work of the HCoJ;
- Make sure that the Law on Disciplinary Responsibility of Judges is in full compliance with international standards;
- Reform the case assignment system into an automatic system so that court chairpersons have no power to influence this process according to their subjective considerations.
- Strengthen the human rights-based education of future judges in the High School of Justice.
- Set up an adequate mechanism for reviewing alleged cases of illegal imprisonment and other forms of miscarriages of justice;
- Set up a mechanism for revision of life-imprisonment sentences at regular intervals, as required by international standards.
- Make sure that investigations and prosecutions for human rights violations committed before the elections of 2012 are carried out in an effective, transparent and objective way so that the due process rights of defendants - on the one hand, and the right of the victims to an effective remedy – on the other hand, are duly observed and respected.

2. Prosecutor's Office ^{viii}

2.1. The Prosecutor's Office of Georgia holds a dominant function in the criminal justice system^{ix} and is one of the key actors in the justice system. In view of this, it is of utmost importance to provide it with sufficient guarantees of institutional independence and political neutrality. To this end, appointment and dismissal processes of the Chief Prosecutor are key issues that need to be reformed.

2.2. At the moment, the Prime Minister holds an exclusive power to appoint and dismiss the Chief Prosecutor. The law does not prescribe specific criteria to be satisfied by the candidate for this office, furthermore the law does not specify any fixed term of office and the Chief Prosecutor can be dismissed by the Prime Minister at any time without any due process or the need to justify the dismissal by reference to any specific reason.

2.3. The practice of selection/appointment, evaluation, promotion and demotion of prosecutors is not based on clear and transparent procedures and merit-based criteria. The prosecutor's office is a highly centralized and hierarchical system with very limited, if any, room for autonomous decision-making by individual prosecutors.

2.4. Now, the government is working on the reform of the Prosecutor's Office. It is crucial that the reform is carried out in a comprehensive manner and necessary guarantees for independence and political neutrality are enshrined in the legislation.

2.5. Recommendations:

- Selection/Appointment procedure and criteria of the Chief Prosecutor needs to be reformed. The President should have the right to select the candidate, based on nominations by politically neutral expert group authorized to check compatibility of the candidate with the requirements of the law and recommend several candidates to the President; the final approval of the candidate should be the authority of the parliament;
- Grounds for removal of the Chief Prosecutor needs to be prescribed in the law, while her/his dismissal should only be possible via impeachment procedure in the parliament;
- Guarantees of individual prosecutor's autonomous decision-making should be strengthened. The system of more decentralization of decision-making should be introduced;
- System of selection/appointment, evaluation, promotion and demotion of prosecutors should be based on clear and transparent procedures and merit-based criteria;
- Prosecutor's disciplinary responsibility system needs to be reformed with observance of accountability and impartiality principles.

3. The Problem of effective prevention and investigation of human rights abuses^x

3.1. Recently, some positive trends are noticeable, namely, prosecution's motions about use of preventive measure became more substantiated, and courts have started to order alternative measures of pre-trial detention (e.g., bail), which was a practically unheard practice in previous years.^{xi} However, the frequent use of pre-trial detention still remains a problem and even raises questions as to its constitutionality in certain high-profile cases.^{xii}

3.2. Significant problems remain when it comes to proper application of investigative jurisdiction to specific cases, e.g., cases of alleged police offences are sent to the Ministry of Interior for investigation.^{xiii} Effective investigation of hate crimes also remains a problem.

3.3. GYLA has documented a number of cases of ill treatment and abuse of power by law-enforcement officials. Speedy, effective and transparent investigations of cases of ill treatment and/or abuse of authority by law enforcement officials are often not the case.^{xiv} Investigations of the use of widespread torture, deprivation life, excessive use of force by law enforcement officials and other human rights violations committed before 2012, as well as accountability of perpetrators, further remains a problem.^{xv}

3.4. Domestic violence against women and inadequate state response to prevent and repress this problem remains one of the key challenges. In 2014 alone more than 20 women were killed by their husbands (partners);^{xvi} at least in some of these cases victims had reported the threats to the police, but their reaction was inadequate.^{xvii} The cases ended with fatal results.

3.4. Recommendations:

- The right to an effective remedy, *inter alia*, of the victims of torture, deprivation of the right to life, illegal imprisonment and other human rights violations committed before 2012, needs to be fulfilled.
- Independent investigation mechanism with the mandate to investigate allegations of human rights violations committed by law enforcement officials should be set up.^{xviii}
- Competence of prosecutors and investigators needs to be increased in the field of combating hatred motivated offences;

- Legislation and practice of combating domestic violence need to be critically analyzed and fastest measures need to be undertaken to eliminate the existing shortcomings, as well as implement pro-active policy of revealing and preventing violence.

4. Law Enforcement Agencies^{xix}

4.1. Due to legislative reforms implemented in the past, the Ministry of Interior is one of the most powerful, non-transparent and unaccountable state bodies in Georgia. The system suffers from concentration of unnecessarily broad powers. Unification of the independently functioning security services with the MIA years ago was reasoned by creating a unified and effective system. However, later the system united such human, informational and technological resources that became impossible either to control or to balance it. Moreover, such union of services created additional risk of uncontrolled exchange of information obtained with different rules and standards for police, investigative and security purposes.

4.2. Administration in MIA is based on hierarchy and centralization principle. It is headed by the Minister who is a political figure and a member of the political team. Therefore, the system has a strong political vertical and there is a risk of politicization of police, as well as possibility of undue interference in exercise of police functions.

4.3. Law enforcement system is prone to vague and non-transparent forms of administration. The Ministry is reluctant to release comprehensive information about number of individuals employed in the system and generally it is difficult to retrieve information timely and completely.^{xx} Internal Regulations of some key departments of the Ministry are confidential,^{xxi} while public and available documents are general and vague, which makes us think that such closed space is created deliberately and intentionally.

4.4. Since police operation is not regulated by only one law (Law of Georgia on Police), it is decisive to include regulations compatible with international standards in all acts regulating law-enforcement system, including counter-intelligence, public security and other acts which require enhancement of judicial control mechanism. In 2013, Georgia adopted the new Police Law, which along with progressive provisions envisaged some risky and vague regulations. Such formulation of police operations increased preventive function of the police unreasonably and created the risk of unjustified and risky intervention in private lives of individuals.^{xxii}

4.5. The General Inspection of the MIA still lacks sufficient guarantees of independence. Its activity is so vague and closed that gives no feeling of trust and impartiality. Procedure of fair review and guarantees for protection of parties (applicant, MIA employee) are not clear. Therefore, the system of internal accountability is ineffective. Moreover, investigation of alleged facts of MIA offences by the General Inspection creates clear conflict of interest, which contradicts various recommendations issued by different states. It should be noted that no independent mechanism was set up for investigation of alleged criminal offences of law-enforcement representatives that was recommendation of the UN Human Rights Committee.^{xxiii}

4.6. Recommendations:

- Security services should be separated from MIA and forms and limits of their cooperation with police and investigative agencies should be clearly regulated. Further, quality of judicial control on the activities of security services should be improved.
- With a view to safeguard the system from politicization, it is important to decentralize the form of administration and to reform the system of exclusive subordination on the Minister. Further, the role of local self-governance should be strengthened in terms of patrol police operation.

- Regulations of the Interior Ministry should be publicized and competences of MIA units should be clearly separated, with a view to avoid currently recorded duplication of functions.
- Revision of acts regulating police and security service activities, bringing them in compliance with international standards and enhancement of human rights protection guarantees, including quality of judicial control. Revision of the Police law adopted in 2013.
- Reform of the General Inspection ensuring its independence, including from MIA, and transparency; Setting up of the independent investigation mechanism which will be created by the Parliament and will be separated from current investigation and prosecution bodies.

5. Ill-treatment^{xxiv}

5.1. Torture and degrading treatment was widespread in Georgian prisons before the elections of 2012.^{xxv} No significant steps have been taken by the current government to effectively investigate and prosecute offenders, or to provide compensation and rehabilitation to victims. According to government officials, a number of cases have been investigated and prosecuted, in respect of other cases they refer to difficulties in investigating cases (obtaining evidence, etc.) committed several years ago. It is evident however that state effort to investigate cases of torture is often not sufficient. At least in some cases state's failure to comply with its due diligence obligation in carrying out effective investigation is obvious (medical expertise has not been conducted, co-inmates of an alleged victim have not been questioned, alleged perpetrators have not been questioned, etc.)^{xxvi} On the other hand, often lenient sentences applied to those who have been charged with torture and other forms of ill-treatment raise questions as to their compatibility with the state's international obligations.^{xxvii}

5.2. No state-funded rehabilitation or compensation programs are in place for torture victims. Although torture victims are able to claim damages by initiating civil lawsuit, this is only possible if the case of torture has been proved in a criminal case. In addition, for filing a civil suit, torture victims (like other citizens) have to pay court fees, which they are often not in a position to do.

5.3 Due to state efforts to eliminate ill-treatment in prisons, the problem has decreased significantly but has not been eliminated. A number of cases of suicide and/or deaths in questionable circumstances,^{xxviii} ill-treatment, etc. raise concerns. Effective investigation of these cases remains a problem.^{xxix}

5.5. Based on the letters GYLA received from inmates in recent years the following types of problems can be further identified: physical and verbal abuse inside the prison and during the transfer of inmates from one prison to another, retaliation and threats in response to complaints filed by the prisoners, or punishment (denial of certain hygienic items, religious items) of prisoners who complain. Sometimes inmates complain to GYLA or relevant authorities, but later on deny his initial complaint (for unknown/ suspicious reasons). Complaints also refer to inadequacy of health-care services in prisons and some lack of attention to their health problems from the prison administration and medical staff.

5.6. One of the concerns for GYLA, PRI and partner NGOs is that we are not granted access to prisons for monitoring purposes.^{xxx} Exclusive power of monitoring is vested in the National Preventive Mechanism.

5.7. Prison management is still one of the important challenges in Georgian penitentiary system. One of the significant issues is widespread subcultures in the custodies with informal rules and leaderships, and such prisoners enjoying unofficial privileges. Failure to manage these sub-cultures efficiently has exacerbated inter-prisoner violence and given rise to concerns over security of inmates.

5.8. Training of prison staff, including prison directors and deputy directors, is one of the challenges. It is highly recommended to involve them in appropriate training programs to raise awareness about prisoners' rights and prison management issues.

5.9. Research conducted by Penal Reform International South Caucasus Regional Office in 2014 shows that there are limited educational and rehabilitation programs provided in the penitentiary system and allocation of infrastructure and resources by the authorities are not sufficient.

6. Halfway House ^{xxxi}

6.1. The concept of a "half way house" is a novelty to the Georgian criminal justice system, penitentiary establishments that so far operated in the country were only closed-typed and semi-open typed establishments, therefore country had no experience in running and managing such a facility until now. This is the reason for a number of impediments facility is facing today. In January, 2014 the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), together with its partner organization Federation Global Initiative on Psychiatry welcomed opening of halfway house and agreed to respond to the request of the National Probation Agency to support the functioning of halfway house and introduce programs and procedures in the facility. During the implementation period, GCRT saw the full picture of achievements and challenges, within the system, hence organization can name some of the challenges halfway is experiencing, improving which is necessary for further effectiveness of the establishment:

- in addition to having postponed opening of the facility, which was delayed due to the ongoing building renovation and lapses in regards to the staff selection, the system is experiencing lack of professionals who will be able to run the facility accordingly, as well as facility lacks job division and distribution of functions for the personnel. Training and supervision of personnel is essential for facilities effective functioning and success.

- through, educational and rehabilitation programs are being implemented at halfway, what system needs is establishing multidisciplinary approaches, which will be oriented directly on inmate, focusing on inmate's needs/ problems and goals.

- involving family members of halfway house residents and introducing holistic methods in regards to inmate re-socialization/rehabilitation will fine-tune the facility.

- residents of halfway are restricted to visit some locations within the facility's territory, which sends incorrect message, while facility like halfway needs to send opposite message.

- major concern is the gap between the penitentiary facilities and halfway house establishment. Staff of penitentiary establishments does not hold sufficient information in regards to halfway house guidelines and requirements in order to pass the information to inmates.

6.2. All of these matters need to be addressed adequately in order to avoid jeopardizing the functioning of the halfway house.

7. Recommendations:

- Carry out effective and timely investigations into the cases of ill-treatment of prisoners committed both before and after the elections of 2012;
- Take steps to ensure the right to rehabilitation and compensation of torture victims;

- Grant NGOs regular access to prisons for monitoring purposes (for announced as well as unannounced visits);
- Undertake measures to eradicate informal rules and leadership in prisons;
- Provide trainings for prison staff to raise awareness with respect to prisoners' rights and prison management issues;
- Undertake measures to improve the system of halfway houses.

ⁱ This part of the Report was prepared by Georgian Young Lawyers' Association (GYLA) and Human Rights Education and Monitoring Center (EMC)

ⁱⁱ Article 47 of the Law on Common Courts

ⁱⁱⁱ See Articles 47 and 49 of the Law on Common Courts

^{iv} https://gyla.ge/uploads/publications/2013/The_High_Council_of_Justice_monitoring_report_2013.pdf; see also https://gyla.ge/uploads/publications/iusticiisumarlesisabWosmonitoringis233angariSi_ge.pdf

^v See Opinions of the Coalition for Independent and Transparent Judiciary Regarding the Draft Law Prepared by the Ministry of Justice at <https://gyla.ge/eng/news?info=1744> and http://www.coalition.org.ge/article_files/210/Coalition%20for%20an%20Independent%20and%20Transparent%20Judiciary.pdf (both, GYLA and EMC are members of the Coalition)

^{vi} <http://emc.org.ge/2014/07/30/1894/>

^{vii} see at: <https://gyla.ge/eng/news?info=1863>; see also <https://gyla.ge/eng/news?info=2419>

^{viii} This part of the report was prepared by GYLA and EMC

^{ix} As per para. 1, Article 1 of the Law of Georgia on Prosecutor's Office, these are: conduct of criminal prosecution, procedural guidance at the stage of investigation, conduct of investigation to the full extent where so provided by law, participation as a party in criminal proceeding and support of State Prosecution and etc.

^x This part of the report was prepared by GYLA

^{xi} GYLA's trial monitoring report, pp. 15-16, <http://gyla.ge/uploads/publications/6-GEO.pdf>

^{xii} see at: <https://gyla.ge/eng/news?info=2448>

^{xiii} see at: <http://emc.org.ge/2014/12/03/peticia-parlaments/>

^{xiv} see at: <https://gyla.ge/eng/news?info=2436>

^{xv} see e.g., <https://gyla.ge/eng/news?info=2444>

^{xvi} <https://gyla.ge/eng/news?info=2307>

^{xvii} <https://gyla.ge/eng/news?info=2403>

^{xviii} see: <http://gyla.ge/geo/news?info=2154>

^{xix} This part of the report was prepared by EMC

^{xx} MIA letter #2359575 of November 21, 2014

^{xxi} Regulations of the following departments are considered confidential by March, 2015 period: State Security Agency; Counter-intelligence Department; Counter-terrorist Center; Special Operations Center

^{xxii} see at: <http://gyla.ge/geo/news?info=1775>; <http://gyla.ge/legislature/upload/policia%20daskvna.PDF>; <http://emc.org.ge/2013/09/25/emc-police-law/>

^{xxiii} para. 12, Summary opinions of the UN Human Rights Committee about IV periodic report

^{xxiv} This part of the report was prepared by GYLA and Penal Reform International (PRI)

^{xxv} Practices of Torture and Inhuman Treatment of Prisoners in Georgia, Open Society Georgia Foundation, 2014, available at http://www.osgf.ge/files/2014/publications/OSGF_Report_ENG_PRINT.pdf (GYLA and PRI were co-authors of the report).

^{xxvi} GYLA applied to ECHR for ineffective investigation of cases of ill-treatment (2015), available at <https://gyla.ge/eng/news?info=2444>

^{xxvii} See at: <https://gyla.ge/eng/news?info=1723>; see also <https://gyla.ge/eng/news?info=1644>

^{xxviii} See e.g. <https://gyla.ge/eng/news?info=1678> ; <https://gyla.ge/eng/news?info=2052>

^{xxix} See e.g., <https://gyla.ge/eng/news?info=2057>

^{xxx} See on this issue <https://gyla.ge/eng/news?info=1678>; see also <https://gyla.ge/eng/news?info=1906>

^{xxxi} This part of the report was prepared by Georgian Center for the Rehabilitation of Torture Victims (GCRT)