

2018

**AUTHORITY OF LAW ENFORCEMENT  
BODIES AND VIOLENCE DURING THE  
DETENTION OF CITIZENS IN 2014-2018**



## ANALYSIS OF THE CASES PROCESSED BY HUMAN RIGHTS CENTER

This document analyzes the offences allegedly committed by law enforcement officers in 2014-2018; namely the cases refer to the violation of the rights by law enforcement officers in the course of their professional activities or/and during the detention of citizen. The 14 cases processed by the HRC revealed that police officers allegedly committed violence against citizens, tortured and inhumanly treated citizens and in most cases no legal consequences were received.

Human Rights Center calls on the Ministry of Internal Affairs and Chief Prosecutor's Office of Georgia to conduct comprehensive and impartial investigation into all cases in order to receive adequate legal consequences. The case analysis demonstrated ineffectiveness of the current investigative system, when they are working on the alleged crimes committed by law enforcement officers. Consequently, it is important to create an independent investigative mechanism in the country, which will investigate the cases of this category.

In majority of the cases processed by HRC, use of disproportionate power against citizens from the side of police officers during the detention was determined. Legal consequences were received only in 4 out of 14 cases. In two cases the investigation was dragged out and HRC appealed the European Court of Human Rights.

### Physical/psychological oppression on the detainees

The analysis of the cases processed by HRC demonstrated that through physical violence and verbal insulting the police officers compelled the detainees to sign preliminarily prepared confession statements. In most cases, investigation against police officers started for the abuse of professional power. The qualification was changed in one case and the investigation continued into torture, though no legal consequences so far.

The main problems are:

- dragged out investigation;
- lack of medical expertise in case files;
- Absence of victim status of the violence victims.

**HRC believes it is necessary to create independent investigative body which will more effectively and impartially investigate the crimes allegedly committed by law enforcement officers.**

**The Criminal Procedure Code of Georgia regulates the procedures, which shall guarantee the defense of human rights of the citizen during detention.** Article 170 of the CPCG determines the rights of the suspect. *“A person shall be considered arrested from the moment when his/her liberty of movement is restricted. From the time of arrest, a person shall be considered to be the accused.”<sup>1</sup>“A person is arrested: “with or without a court ruling based on urgent necessity.”*

When there is a ground of arrest, the authorized person is entitled:

- to clearly notify the arrested person of those grounds,
- explain which crime he/she is suspected of committing,
- to clearly notify him/her about his/her rights under the law;
- to inform him/her that he/she may use the services of a defence lawyer, remain silent and refrain from answering questions,
- not to incriminate himself/herself,
- and that everything he/she says can be used against him/her in court.

The officer is authorized to immediately deliver the detainee to the nearest police office or other law enforcement body.

### **Inadmissibility of the abuse of power**

In accordance to the Constitution of Georgia, life is an inviolable human right and shall be safeguarded by law. Human honor and dignity shall be inviolable. Torture, inhuman or degrading treatment, and the use of inhuman or degrading punishment shall be prohibited. Physical or mental coercion of a detainee or a person whose liberty has been otherwise restricted shall be inadmissible.

The law strictly determines that law enforcement officers shall use proportionate power against a person during detention.

*Human Rights Center below presents short summaries of the cases which were processed by the organization in the selected period of time. They reveal commitment of violence against the citizens from the side of authorized persons while detaining them in accordance to the criminal and administrative laws.*

- On March 26, 2015, Shida Kartli and Mtskheta-Mtianeti regional prosecutor’s office started a probe over the abuse of professional power by the officer of the

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<sup>1</sup> See the Criminal Procedure Code of Georgia

Shida Kartli regional department of the MIA. I.N claimed that on November 10, 2014, during the detention, police officer physically harassed him. The crime is punishable under the Article 333 of the Criminal Code of Georgia<sup>2</sup>.

- No final decision is made over the case as of now;
- I.N still does not have victim status;
- with regard to prolonged investigation, Human Rights Center sent application vs Georgia to the European Court of Human Rights;

➤ Since 2015, Tbilisi Didube-Chugureti prosecutor's office has been investigating the criminal case related with the violence committed by police officer against the detainee O.R in the police unit.

- No final decision is made over the case so far;
- O.R still does not have victim status;

➤ In 2014, law enforcement officers intimidated D.B. Samegrelo-Zemo Svaneti regional prosecutor's office has been investigating the case since November 13, 2014 and the police officers are charged for the abuse of professional power.

- No final decision is made over the case so far;
- D.B still does not have victim status;

➤ On September 22, 2017, police officers arrested S.M under the charge of participation in the racketeering group and took him to the Vake-Saburtalo district police unit N5 in Tbilisi. As S.M reported, upon arrival in the police unit, he was intimidated in order to obtain his confession statement. The police officers demanded him to admit the crime, which he had not committed. The police officers physically and verbally abused him and forced to sign preliminarily prepared confession statement. The detainee refused to admit guilty and asked for defense but the police did not satisfy his request. In 2017 the investigation started into the abuse of professional power from the side of police officers but soon its qualification changed and the investigation continued into torture – punishable with the Article 144<sup>1</sup> of the Criminal Code of Georgia<sup>3</sup>.

The Public Defender also addressed the prosecutor's office to conduct effective, proper investigation and medical expertise into the violence fact on September 27, 2017<sup>4</sup>. The Minister of Internal Affairs Giorgi Mghebrishvili responded to the

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<sup>2</sup> <http://www.humanrights.ge/index.php?a=main&pid=18386&lang=eng>

<sup>3</sup> <http://www.humanrights.ge/index.php?a=main&pid=19357&lang=eng>

<sup>4</sup> <http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saxalxo-damcvelis-winadadeba-mtavari-prokurors-braldebulis-mimart-savaraudo-arasatanado-mopyrobis-fagtze-gamodziebis-dawyebis-shesaxeb.page>

Ombudsman's statement and stated that anybody shall be cautious when making statements about police officers<sup>5</sup>. He degraded the Public Defender's Institute and called it "Office justifying the criminals." On December 20, 2017, International Federation for Human Rights (FIDH) and Human Rights Center appealed the Government of Georgia over the growing number of allegations of cruel and humiliating treatment inflicted in places of detention in Georgia<sup>6</sup>. In the statement, the organizations expressed concern over ineffective investigation into the facts of torture and degrading treatment of citizens from the side of law enforcement officers. The address also mentions the case of S.M and criticizes the statement of the Minister of Interior and his approach towards the PDO.

**Human Rights Center calls on the Ministry of Internal Affairs to correctly analyze the recommendations of the Public Defender, international and local human rights organizations, to ensure timely, adequate and effective response to the facts of abuse of power by their officers in order not to turn the law enforcement system into the machine of torture, inhuman treatment and selfishness.**

- Regardless the recommendations of local and international organizations, the investigation into S.M's case is still ongoing;
  - There is no expertise conclusion in the case files; S.M still does not have victim status.
- On December 24, 2013, officers of the Rustavi city police unit N 3 of the MIA physically and verbally assaulted L.Sh during detention. Convicted L.Sh mentioned the names of the officers in the Rustavi police unit # 3 in his explanation letter to the prosecutor's office, who participated in his inhuman treatment. Regardless that, the investigation was not conducted comprehensively, the circumstances, evidence and witness statements were not adequately examined. On March 15, 2014, the supervisor prosecutor issued decree to terminate investigation into the criminal case. In 2016, HRC appealed the prosecutor's office and requested to start new investigation based on the newly found circumstances. The prosecutor's office satisfied the claim of HRC – the initial decree was annulled and the investigation resumed.
- HRC multiple times appealed the prosecutor's office over L. Sh's case to recuse the same investigator from the criminal case but all in vain;
  - L. Sh still does not have victim status.

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<sup>5</sup> <http://fortuna.ge/ar-minda-ombudsmenis-instituti-kriminalebis-gampravebel-kantorad-igces-giorgi-mghebrishvili/>

<sup>6</sup> <http://www.humanrights.ge/index.php?a=main&pid=19428&lang=eng>

- On August 14, 2014, eleven police officers beat G. Ts in the Vake-Saburtalo district police unit N 2 in Tbilisi. As reported by the victim, he entered the police office to ask the police officer-on-duty to return his mobile phone back, which the police had seized him during previous detention. Instead, eleven police officers beat him during 10 minutes. The police officers arrested G.Ts under the charge of attack on police officers to justify their violence. The police officers claimed that G.Ts attacked their office with knife at night and they had to take adequate measures to combat the attack. HRC defended the rights of G.Ts, who was acquitted by the court. Investigation is ongoing into the criminal case against police officers.
  - G.Ts still does not have victim status
  - none of the police officers was held responsible for the committed crime
  
- On January 13, 2016, in Akhaltsikhe, police officers broke into the house of K.Kh without any legal documents and used disproportionate power against T.B, K.Sh, N.A and K.Kh when detaining them<sup>7</sup>. Police officers physically assaulted K.Kh's underage son too. The officers were harassing the detainees both verbally and physically. Their beating and torture continued in the police unit too. The police officers tried to get confession statements from the detainees, which they achieved. When being placed in the temporary detention setting, the officers of the TDS refused to accept the detainees because they had injuries on the body and health problems. The detainees needed medical assistance. Samtskhe-Javakheti regional prosecutor's office started investigation into the violence against T.B, K.Sh, N.A and K.Kh – alleged abuse of professional power by the officers of the Samtskhe-Javakheti regional department of MIA. The investigation has been underway for two years without any results. It raises doubt that the investigation tries to protect alleged perpetrators.
  - The victims of violence still do not have victim status;

### **Violence from the side of police during the detention under the administrative law**

- On January 23, 2016, in Akhmeta, local police officers ruthlessly beat ethnic Kist A.Ts. The police officers insisted he was not wearing safety belt when driving a car but A.Ts denied. It caused controversy between the citizen and police officers. The officers arrested and beat A.Ts. They kept him in the temporary detention setting during several hours and then took to the Telavi district court. The court examined the case and based on the testimonies of the police officers found A.Ts guilty in the violation of the administrative law. Kakheti regional prosecutor's

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<sup>7</sup> <http://www.humanrights.ge/index.php?a=main&pid=19568&lang=eng>

office started investigation into the violence against A.Ts and abuse of professional power by police officers<sup>8</sup>.

- A.Ts still does not have victim status and the concrete offenders are not identified yet;
  - Human Rights Center sent application A.Ts vs Georgia to the European Court of Human Rights;
- Officers of the Kakheti police department of the MIA, late at night on May 21, 2015 arrested Tch.Tch and beat him. The incident happened in Vejini village, Gurjaani municipality when the young man was standing in front of his house together with his friends. As a result of physical assault Tch.Tch received multiple injuries and was placed in medical center. The court examined the administrative charge against him and found him guilty based on the testimonies of the police officers<sup>9</sup>. The court released Tch.Tch. with fine. Kakheti regional prosecutor's office started investigation into the abuse of professional power b police officers, who harassed Tch.Tch.
- *No final decision was made into the case;*
  - *Tch.Tch has not received victim status yet;*
- In October 2015, Gurjaani district police officers beat L.E during detention, who received injuries. The police officers took him to Kvareli temporary detention setting, where the administration did not accept him initially because of the injuries. L.E was accepted in the TDS after the medical emergency brigade examined him. The court examined the administrative charge against L.E and based on the testimonies of the police officers found him guilty in the violation of the administrative law<sup>10</sup>. Kakheti regional prosecutor's office commenced investigation into the abuse of professional power against police officers.
- L.E does not have victim status;
  - no decision was made over the case.

### The cases with tangible results

- On November 8, 2015, lawyer Giorgi Mdinardze was defending rights of a juvenile detainee in the Vake Saburtalo district police unit # 5 in Tbilisi. The lawyer suggested his client to enjoy the right to silence and the detainee obeyed. This fact irritated the head of the police unit and physically assaulted Giorgi Mdinardze<sup>11</sup>.

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<sup>8</sup> <http://www.humanrights.ge/index.php?a=main&pid=18645&lang=eng>

<sup>9</sup> <http://www.humanrights.ge/index.php?a=main&pid=18297&lang=eng>

<sup>10</sup> <http://www.humanrights.ge/index.php?a=main&pid=18543&lang=eng>

<sup>11</sup> <http://www.humanrights.ge/index.php?a=main&pid=18514&lang=eng>

The police officers arrested the lawyer and took him into the working room of the chief police officer. The latter physically and verbally assaulted Giorgi Mdinardze. The lawyer was with shackles when being beaten. His underage client also witnessed this fact. Tbilisi prosecutor's office arrested the head of the Vake-Saburtalo district police unit Lasha Kvirkvaia for the harassment of the lawyer Giorgi Mdinardze in November 2015. The Tbilisi City Court found the former head of the Vake-Saburtalo district police unit N 5 Lasha Kvirkvaia guilty only in the abuse of professional power and acquitted him in the charge on violence. On December 29, 2015 the accused person was freed under the bail – 10 000 GEL. The Tbilisi Appeal Court upheld the decision of the first instance court. Human Rights Center criticized the decision of the Court and believes that it creates threat to human rights defenders when they visit police units to perform their professional duties, which may become subjects of physical violence from the side of police officers.

*With the assessment of FIDH and Human Rights Center, this case once again demonstrated that prosecutor's office incorrectly qualifies the facts of abuse of excessive power and perpetrators are punished only for the "abuse of professional power," that hides the violence facts committed by officers and discharges them from responsibilities. Besides that, the lawyers, whose inviolability is guaranteed under the law, become subjects of physical assaults during the implementing their professional duties, that demonstrates the scope of the problem in comparison to other ordinary citizens<sup>12</sup>.*

*US State Department also mentioned the case of the lawyer Giorgi Mdinardze in its country reports on human rights<sup>13</sup>.*

The prosecutor's office appealed the judgment of the Tbilisi Appellate Court in the Supreme Court. On October 26, 2018, the Supreme Court determined the violation of the Article 333 Part 3 – "b" of the CCG and imposed 5-year-imprisonment on Lasha Kvirkvaia. In addition to that, Lasha Kvirkvaia is deprived of the right to hold an official position for one year. After the ruling was announced, Kvirkvaia was arrested in the courtroom.

HRC positively evaluated the final decision of the Supreme Court, however dragged out litigation process into many cases is still a significant challenge, particularly when police officers are suspected in alleged violence and inhuman treatment acts.

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<sup>12</sup> <http://www.humanrights.ge/index.php?a=main&pid=19428&lang=eng>

<sup>13</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

- On April 4, 2015, four police officers in Kaspi physically assaulted Z.P. The police officers pushed Z.P into car nearby his house and took to the cemetery, where they beat him<sup>14</sup>. Before the incident, one of the police officers had verbally insulted the wife of the victim, what was protested by Z.F. The police officers assaulted him because of his protest. After the incident, all four police officers had their professional authority suspended and Shida Kartli and Mtskheta-Mtianeti regional prosecutor's office started criminal case against them. A month later, the prosecutor's office declared Z.P victim but criminal prosecution against the four police officers was going on during one year. In October 2017, the Gori district court found the three former police officers guilty in the physical assault of Z.P. In accordance to the guilty judgment, each convict had to pay fine in the amount of 2 000 GEL. Currently, the Tbilisi Appellate Court is examining the case.
  
- In May 2015, police officers in plain cloth beat and verbally insulted A.A in Guramishvili Avenue in Tbilisi<sup>15</sup>. The prosecutor's office did not start investigation into the case. General Inspection of the MIA, having examined the case, in September 2015 rebuked the police officers for the incident.
  
- As reported by M.O and D.P, on June 5, 2016, Didube-Chugureti district police in Tbilisi insulted them and psychologically oppressed them to obtain their confession statement. General Inspection of the MIA started examination of the fact based on the application of M.O and D.P. As a result, the police officers received only warning.

*With the processed cases, HRC once again underlines that in order to ensure comprehensive investigation of the crimes allegedly committed by law enforcement officers, it is necessary to create the independent investigative mechanism to eradicate the faulty, systemic problems.*

*Human Rights Center*

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<sup>14</sup> <http://www.humanrights.ge/index.php?a=main&pid=18491&lang=eng>

<sup>15</sup> <http://www.humanrights.ge/index.php?a=main&pid=18274&lang=eng>