



DISCIPLINARY LIABILITY SYSTEM
IN LAW ENFORCEMENT AGENCIES

(Review of General Inspectorate activities)

Disciplinary liability system

In law enforcement agencies

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Introduction

With the present document the Human Rights Education and Monitoring Center (EMC) continues to analyze the activities, institutional arrangement and practice of the General Inspectorates of the Ministry of Internal Affairs of Georgia (hereinafter MIA) and the State Security Service (hereinafter SSG). The document aims to assess the work of the disciplinary mechanism in the law enforcement system, its efficiency, the degree of fairness and transparency and the possibility of extending judicial control over it.

The disciplinary mechanism plays an important role in ensuring the accountability of the law enforcement officers for their actions. Due to the specific nature of the functions of law enforcement officers, in case of improper execution of their powers, the society may be at high risk. Consequently, it is important to have a disciplinary process, which in observance of fairness and impartiality principle, will serve the interests of all three parties - the officer, the society and the employer agency.¹

In 2015, the research² conducted by the EMC revealed institutional gaps that characterize the internal liability system in law enforcement agencies (the Ministry of Internal Affairs and the State Security Service were one agency at that time). Also, it has been revealed that extensive powers of law enforcement officers are not balanced by effective internal and external control mechanisms.

Given that the legislation has not sufficiently clear and defined procedures for disciplinary proceedings, the forms of internal structure of the General Inspectorates don't ensure their solid functional independence, there is a risk that the management of the agency might have insufficient influence on the outcome of the resolution of a particular disciplinary case. On the one hand, it can be expressed in manipulation of the officers by the procedure, in order to ensure the fulfillment of certain instructions. On the other hand, the vague and impaired system of disciplinary liability, may result in ineffective response to disciplinary misconduct, and a citizen affected in a particular case, has no effective means of protection from it.

Within the framework of the presented document there is an assessment of further control over the institutional arrangement, official inspection procedures and

¹ *Harvard Kennedy School- Program in Criminal Justice Policy and Management*, Police discipline: a Case for Change, p. 5.

² EMC, invisible power policy - analysis of law enforcement system, [available at: <https://emc.org.ge/2015/06/18/samartaldamcavi-sistemebis-kvleva/>, date of access, 10.09.2017]

activities of the General Inspectorates, which are based on the analysis of international standards.

Methodology

The methodology of the report is based on the following tools:

- Analysis of statutory framework;
- Secondary analysis of the existing researches;
- Requesting/analyzing public information
- Study of international standards;
- Workshops;
- Analysis of disciplinary cases reviewed by the EMC;
- Strategic proceedings in the courts of the first and the second instances.

It should also be noted that the provisions of the General Inspectorates of the Ministry of Internal Affairs and the State Security Service are substantially similar, therefore, the presented findings apply to the activities of the General Inspectorate of the MIA and the SSG.

Main findings

The research of the legislative and regulatory framework of the General Inspectorate, as well as the proceedings of particular cases in the General Inspectorate and the system of common courts, revealed the following key findings:

- The General Inspectorate does not enjoy sufficient functional independence;
- The official inspection is not based on clear, specific and consistent procedures: terms of inspections, necessary stages, rules of obtaining and evaluating evidence in the process of official inspection are not defined;
- The procedural guarantees for the realization of the rights and protection of the legitimate interests of the author of the application/notification are not provided: the involvement of the author of the application in the process of review is not ensured, the author of the application does not have any information about the measures taken by the General Inspectorate for examining the circumstances indicated in the application, in case of failure to confirm the fact of the disciplinary misconduct, the author of the application

will receive an unsubstantiated document, the procedure for the appeal of the results of the official inspection is not defined;

- The general courts system cannot provide effective control over the General Inspectorate activities.

Short review of the international standards

Accountability of the police should be a fundamental issue for the heads of police agencies. Policemen are public servants who have the power and in some cases, are obliged to use the physical force. The police has extensive powers and discretion of significant quality. Under the conditions of the immediate response, most of the services provided by them are subject to further study. Based on these circumstances, it is critical that the public trust the police and may raise the question of responsibility for the actions carried out by the police.³

In one of guideline documents of the United Nations, accountability is defined as the system of internal and external control and balance, which should aim at ensuring proper fulfillment of obligations and powers by policemen and the possibility of resting responsibility in the opposite cases.⁴

Accountability is a "unity of processes" in which different subjects share responsibility:⁵

1. Internal accountability is ensured by an effective chain of internal orders, which in turn includes reporting and internal disciplinary systems;
2. Accountability to the State can be divided according to three branches: accountability to the Government, specifically to the Minister of the Internal Affairs/Prime Minister, to the court system and to the law, to the representatives of the Parliament elected by people;
3. Public accountability involves any mechanism through which the police are directly or indirectly accountable to the public, including to the civil supervisory bodies and media;
4. Independent supervision is directed to any mechanism that does not represent any specific institution or organization, such as the National Institutes of Human Rights Protection, the Public Defender, the Police Complaints Commissions, etc.

³ *The National Institute of Justice, U.S. Department of Justice and the Program in Criminal Justice Policy and Management*, Police Accountability and Community Policing, p.1.

⁴ *UNODC, Handbook on Police accountability, oversight and integrity*, p.6, [available at:<http://www.unodc.org/>, access date: 08.09.2017]

⁵ *Ibid*, p. 12.

5. International supervision implies that police actions may become subject to consideration of international or regional agencies of human rights protection.

It is noteworthy that both strong, as well as weak sides are characteristic of the internal and external mechanisms of police accountability. Despite the fact that public trust to external systems of supervision is higher, revealing systematic police violations, without the support of the leading officials of the police system, requires more efforts from such mechanisms. On the other hand, internal mechanisms are effective only to the degree to which the police officials express their willingness to reveal violations in their respective agencies. According to the widespread opinion that police officials protect their employees, internal supervisory mechanisms deserve less trust in the society. The public trust is also threatened by non-transparent processes, due to which the access to the materials of the inspections carried out through internal mechanisms is associated with difficulties.⁶

Effective accountability, in turn, requires the existence of an appropriate system of complaints and review, which will be easily accessible to the public and examine the applications effectively.⁷

Although the accountability principle covers not only the complaints/applications review system, the effective mechanism that enjoys public trust is an important indicator of high accountability standards and helps the police reinstate or increase the public confidence index.⁸

Institutional arrangement

According to the Law of Georgia „On Police”⁹, the General Inspectorate of the Ministry carries out internal control over the policemen and other employees of the Ministry. According to the legislation, the General Inspectorate is independent in its activities and other structural subdivisions or officials of the Ministry, have no right to interfere with its activities. The General Inspectorate of the Ministry is directly accountable to the Minister, who carries out the official supervision on the basis of the rule established by the legislation of Georgia.

Furthermore, it is noteworthy that the General Inspectorate exists in the agency in the form of an ordinary department and is staffed by the Minister. At the same time, the conclusion prepared by the General Inspectorate is only a recommendation and the Minister is authorized not to take into consideration the mentioned conclusion

⁶UNODC, Handbook on Police accountability, oversight and integrity, p. 14, [available at: <http://www.unodc.org/>, access date: 08.09.2017]

⁷ *Ibid*, p.4.

⁸ *Ibid*, p.43.

⁹ Law of Georgia “On Police”, Article 57.

and make a decision of a different content. In addition, the Minister has no obligation to justify this decision. Thus, the final decision-maker in the case is not a collegial body, but a single political official.¹⁰

It should be taken into account that the General Inspectorate is accountable only to the Minister and there is no mechanism for external supervision over the activities of the General Inspectorate outside the system¹¹. In one of the reports¹² of the Council of Europe, in which the models of supervision of the police activities are reviewed, it is directly indicated, that there is no independent mechanism for external supervision in Georgia, which would review complaints/applications against the police.¹³

According to one of the UN guidelines, the existence of an independent, external body, which supervises the entire system of complaints against the police officer/police, is considered a good practice. This body shall have information on all the complaints/applications against the police and shall also be authorized to start an investigation on its own initiative without any complaint/application. The supervisory body must be able to intervene in the investigation process and also request repeated investigation if the police did not carry out a satisfactory examination of the circumstances of the case.¹⁴

Various forms of supervision over police activities are found in European countries. For example, in the Kingdom of Belgium the General Inspectorate is an external independent body existing within the Ministry of Internal Affairs, at federal, as well as at the local level, which consists of 6 organizational subdivisions (directorates). The first subdivision combines the General Inspector and his deputies, who in turn coordinate the remaining subdivisions and 4 decentralized offices. Their activities include proactive and reactive control, as well as drafting annual reports and action plans. The Permanent Committee of Police Monitoring (Comité P), which exists in the form of an expert body, helps the federal parliament to monitor police activities. As for the internal control, each police department has its own internal control department responsible for ensuring compliance of the daily activities of the police with the standards and established procedures and identifying unethical,

¹⁰ *EMC*, Political neutrality in the police system, p. 49 [available at: <https://emc.org.ge/2016/09/05/emc-128/>, access date: 08.09.2017]

¹¹ *EMC*, invisible power policy - analysis of law enforcement system, p.8 [available at: <https://emc.org.ge/2015/06/18/samartaldamcavi-sistemebis-kvleva/>, access date, 10.09.2017]

¹² *Byrne J., Priestley W.*, Report on Police oversight in the council of Europe Countries.

¹³ *Ibid*, p. 26.

¹⁴ *UNODC*, Handbook on Police accountability, oversight and integrity, p.36, [available: <http://www.unodc.org/>, access date: 08.09.2017]

unprofessional and criminal actions.¹⁵

The Ministry of Internal Affairs carries out comprehensive and systematic supervision of the activities of the police in the Republic of Slovenia. The Department of Complaints is functioning as a separate department. According to the legislation on the police, a person who believes that his/her rights and freedoms are unjustifiably violated may, within 30 days, fill out an application/complaint against the police, whose review procedure is strictly determined by the methodology that ensures its transparency. The Complaint Review Board consists of three members: a chairman, representatives of the society and police trade union. Members of the Board review applications/complaints and take the appropriate decision.¹⁶

Procedural vagueness of official inspections

Comparatively detailed regulations of the General Inspectorate of the Ministry of Internal Affairs are defined by the Regulations (hereinafter referred to as the Regulations) approved by the decree of the Minister of Internal Affairs.

General Inspectorate of the Ministry within its competence:¹⁷

- According to the rule, established by the legislation of Georgia, within the system of the Ministry reveals violation of “Police Ethics Code” and norms of “Disciplinary Regulations of the employees of the Ministry of Internal Affairs”, facts of unlawful acts and ensures adequate response;
- Controls financial-economic activities of the units in the system, checks the legitimacy and expediency of the management of material and financial resources;
- In the process of inspections carried out with the aim of identification and prevention of reasons facilitating facts of violation of the legislation by the employees of the Ministry, studies the obtained materials, performs analysis and submits the relevant recommendations to the Minister. As a result of the official inspection, drafts the relevant conclusion or statement;
- Performs other functions defined by the Regulations.

According to the Regulations of the General Inspectorate, the basis for conducting an official inspection is the information received on the misconduct and disciplinary misconduct committed by an employee of the Ministry (including operational information) written or oral applications of citizens and employees of the Ministry, in the form of complaints and reports, private judgments of the court (rulings),

¹⁵ *Institute Alternative*, Internal Control of Police – Comparative models, p. 10-11.

¹⁶ *Ibid*, p. 15

¹⁷ Decree N123 of the Minister of Internal Affairs of Georgia, on the approval of Regulations of the of the General Inspection (Department) of the Ministry of Internal Affairs of Georgia, Article 3.

notifications and materials received from state institutions and administrative authorities, as well as legal and natural persons, statements disseminated by mass media.

According to the information submitted by the Ministry of Internal Affairs to the EMC, from October 2013 through May 2017, official inspection has been carried out in the general Inspection on the basis of **15347 applications/complaints of citizens**, **10627** official inspections were based on the applications of the employees of the Ministry, the number of official inspections carried out on the basis of private court judgments is **16**, and **361** official inspections were carried out on the basis of the information received from the state institutions/administrative authorities.

Regulations generally include provisions on the procedure of the official inspection and indicate the possible way to solve only the conflict of interests and powers of the employees of the General Inspectorate: receive any information on the cases pending, without impediment enter the administrative and office buildings, facilities and subunits of the Ministry¹⁸.

The regulations do not specify a specific list of procedures by which the General Inspectorate should be guided when performing official inspection, the Regulations also do not contain the main guidelines of the inspection activities. Since the General Inspectorate has a role that is different from the role of other departments, specifically, performance of the internal control, it is not clear whether the principles set out in Article 8 of the Law of Georgia “On Police” apply to it.

While the Regulations of the General Inspectorate do not regulate and leave open many procedural and important issues, they do not indicate to the administrative legislation as one of the legal grounds of the activities.

It should be noted that the General Inspectorate of the Ministry of Internal Affairs within the framework of official inspections does not limit its activities by the regulations envisaged by the General Administrative Code (for example, terms of proceedings, investigation of all circumstances important for the case), but justifies the refusal to transfer the materials to the applicant or conduct a repeated official inspection by a particular article of the General Administrative Code of Georgia.

The process of review and making a final decision on applications submitted to the General Inspectorate of the MIA and SSG with the representation of the EMC has revealed the following shortcomings:

¹⁸ Decree N123 of the Minister of Internal Affairs of Georgia, on the approval of Regulations of the of the General Inspection (Department) of the Ministry of Internal Affairs of Georgia, Article 9.

The terms of the official inspections are not defined - although one of the grounds for conducting an official inspection is the written or oral application of a citizen, the Regulations do not define the timeframes for the review and official inspection. Consequently, the applicant does not know what period of time will elapse until the application is responded, or after the expiration of what period the citizen has the right to request a reply. According to the period of review of the application submitted to the General Inspectorate by the EMC, it can be said that the General Inspectorate does not have uniform terms for the official inspection. In case of two applications, the applicant receives a reply in approximately a month and a half and the Inspectorate investigated the circumstances mentioned in the third application for about two months and a half. As for the General Inspectorate of the State Security Service, the results of the official examination are notified to the applicant within one month from submitting the application.

Disregarding the issue of the representation during the official inspection - despite the fact that in the course of the proceedings, the applicant's communication with the General Inspectorate through a representative has never been limited, the Regulations of the General Inspectorate do not include any particular provisions on this issue;

Stages and necessary procedures of the official inspection, as well as their sequence and consequences are not defined - although the Regulations define the grounds for conducting an official inspection, they do not formulate the list of compulsory stages that the application/notification must pass before final decision on it. Proceeding from the text of the Regulations, it is also unclear whether the General Inspectorate has the obligation to start the official inspection on the basis of each notification if it is deemed to have discretionary power and proceeding from the circumstances indicated in the application/notification, makes a decision whether to start the inquiry or not.

There are no rules of obtaining evidence and their assessment in the process of the official inspection, the burden of proof is vague-the Regulations do not contain the standard of proof, on which the General Inspectorate should rely when making a final decision. It also does not include an indication that the General Inspectorate is obliged to carry out official inspections in a thorough, complete and objective manner. For example, from the materials of the official inspection submitted through the court by the Ministry of Internal Affairs, it is clear that in the preparation of the final statement the General Inspectorate relied on the explanations of only two police officers and no other additional evidence was found, which would or would not confirm violations indicated by the applicant. While the

police officer has no direct interest in the results of the official inspection, the explanations given by him should not be decisive in resolving the matter.

Involvement of the author of the application is not provided in the process of reviewing the application - the Regulations do not specify the role of the author of the application in the process of the official inspection, there is no norm that would regulate the communication of the General Inspectorate and the applicant after submitting the application. Is the General Inspectorate obliged to invite the author of the application for explanations for the purpose of clarifying the circumstances mentioned in the application? The Regulations of the General Inspectorate do not give any clear answer to this question and the practice of the General Inspectorate either. In two cases, the General Inspectorate did not invite applicants and other persons with relatively detailed information, and in one case, the author of the application, as well as the person who directly witnessed the events mentioned in the application were invited for explanations. As for the General Inspectorate of the State Security Service, the applicant was invited to give an explanation and also a telephone conversation was held with the applicant's family member who was threatened for the purpose of influencing the applicant. It is problematic that during the official inspection, the General Inspectorate of the SSG did not contact the employee of the SSG whose alleged misconduct was the subject of the proceedings and did not receive detailed information from him on the important details related to the case.

The author of the application does not possess the information on the measures taken by the General Inspectorate to investigate the circumstances indicated in the application - the General Inspectorate of the Ministry of Internal Affairs is not obliged to notify the applicant about the actions carried out during the official inspection. In respect of the materials of the official inspection, in all three cases the General Inspectorate refused to hand over the official inspection materials to the applicant, and the grounds for refusal was Article 99 of the General Administrative Code of Georgia and it was defined that the information requested by the applicants was an internal document. In contrast to the General Inspectorate of the Ministry of Internal Affairs, the State Security Service provided the materials of the official inspection, but as within the scope of the inspection, the General Inspectorate of the SSG spoke only to the applicant and the applicant's family member, from whom we had a written consent for transfer of the protocol of the telephone conversation, we cannot assert that the General Inspectorate of the SSG has the practice of transferring the materials of the official inspection.

As a rule, it is not easy for the author of the application to file an application/notification to the authorized agency against the law enforcement officer and the author might have to overcome many barriers, such as practical, psychological and emotional. If the applicant fails to understand the results of the examination of the circumstances indicated in the application, it can cause demoralization, frustration and loss of trust towards the law enforcement agency. Therefore, it is important to establish a special procedure for information of the applicant about the progress of the investigation. In some countries this activity is entrusted to a particular person.¹⁹

In case of unconfirmed facts of disciplinary misconduct, the author of the application will receive an unsubstantiated document containing only one sentence - according to the Regulations a relevant statement or a conclusion is drawn up on the results of the official inspection, approved by the head of the General Inspectorate. Proceeding from the text of the Regulations, it is not clear in what cases a conclusion is drawn up instead of a statement. Consequently, there is a reasonable assumption that the conclusion is made when the General Inspectorate recommends to impose a disciplinary penalty on a particular employee, and the statement is drawn up, when no misconduct is revealed as a result of the investigation. The General Inspectorate of the Ministry of Internal Affairs did not reveal any fact of misconduct during the official inspections conducted on the basis of submitted applications. The applicants received the information without any justification. Consequently, they do not know what circumstances the General Inspectorate relied on when preparing the final document. As for the conclusion prepared by the General Inspectorate, even though based on one of notifications made by the EMC on the hot line of the General Inspectorate, according to the information of the Ministry of Internal Affairs of Georgia, the employees were imposed a disciplinary penalty, the General Inspectorate refused to convey the conclusion to the applicant.

While the privacy criterion in most cases requires that the applicant does not have access to full information, the public confidence will increase if certain information about the course of the investigation/examination or the important circumstances for the decision-making will become available for the author of the application.²⁰

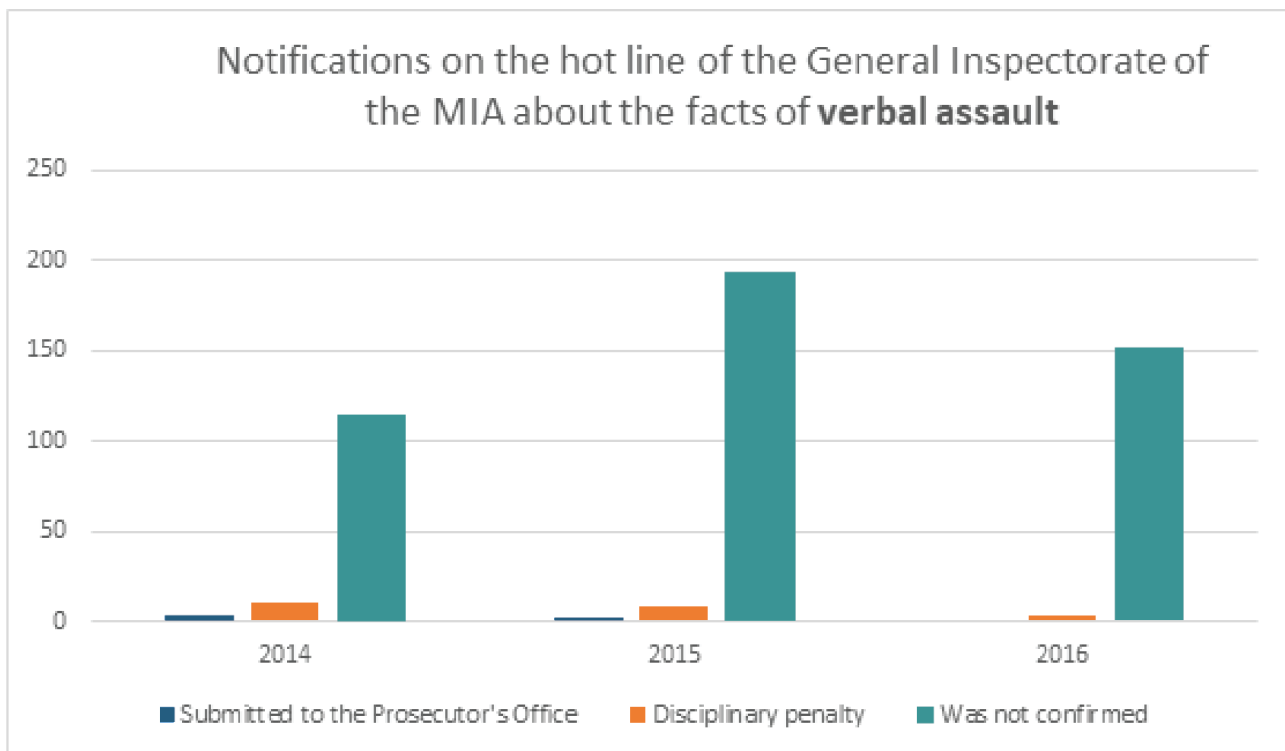
In general, it is considered to be a good practice to maintain statistics on complaints against the police, their essence and consequences. In many cases, the police tries

¹⁹UNODC, Handbook on Police accountability, oversight and integrity, p. 36, [available at: <http://www.unodc.org/>, access date: 08.09.2017]

²⁰*Ibid*, p. 36

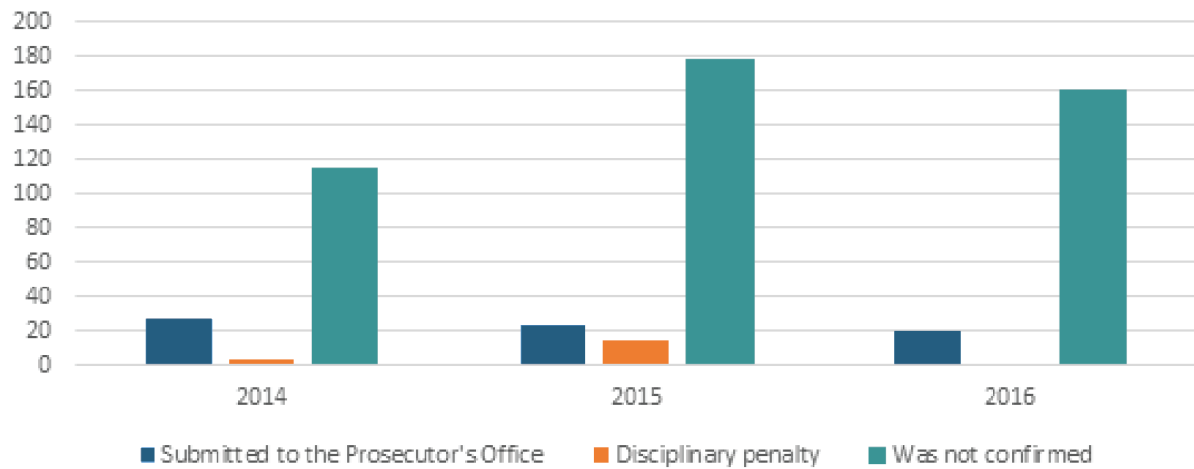
to conceal such cases from the media. The fact proves the contrary: ensuring transparency, including areas, containing challenges, failures and mistakes, shows that the police are interested in taking care of its legitimacy and thereby increases the public trust²¹. It is noteworthy that on the web-page of the Ministry of Internal Affairs of Georgia, the statistical data about the activities of the General Inspectorate is not available, and as a result of requesting public information, the EMC received a reply after a few months interval.

The below proposed tables reflect the statistics of review and statistics of decision-making on the notifications recorded on the hot line of the General Inspectorate of the Ministry of Internal Affairs (126) and applications received in the inspection.

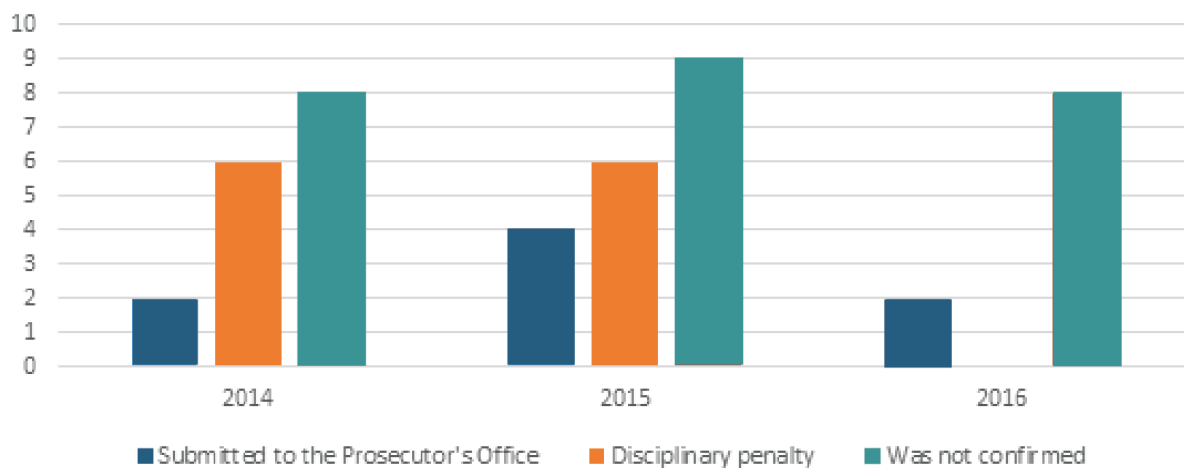


²¹ Ibid, p. 46

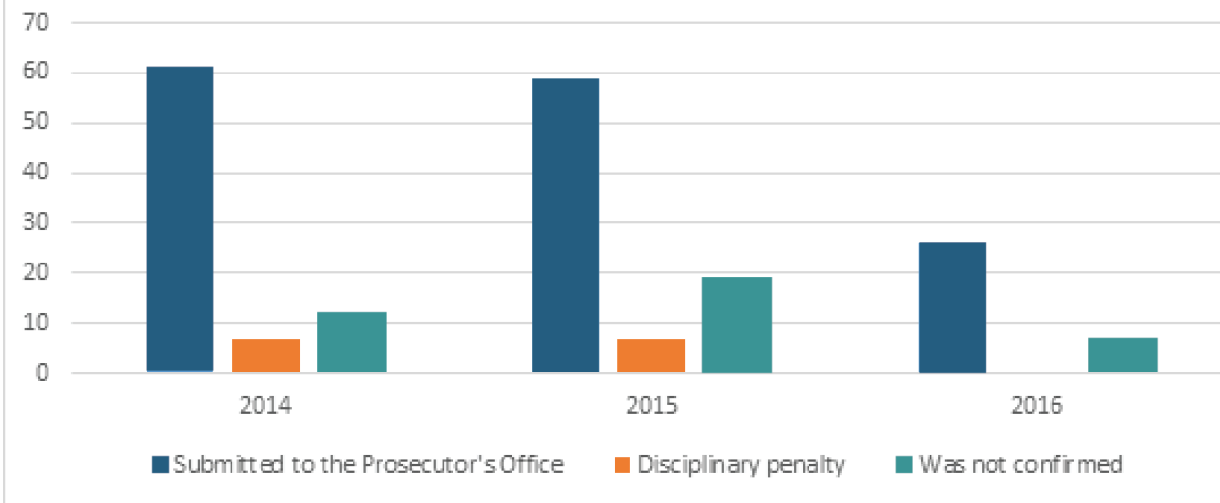
Notifications on the hot line of the General Inspectorate of the MIA about the facts of physical assault



Applications received in the General Inspectorate of the MIA on the facts of verbal assault



Applications received in the General Inspectorate of the MIA on the facts of physical assault



The procedure for appealing the results of the official inspection is not determined - the statement on the results of the official inspection submitted to the applicant does not include reference to the appeals mechanisms. The rule of appealing is not specified in the Regulations of the General Inspectorate of the Ministry of Internal Affairs. In the written communication with the General Inspectorate regarding the terms and procedure of the appeal, the agency expressed the following position: "Since the fact of disciplinary misconduct by the employees of the Ministry of Internal Affairs has not been confirmed, no conclusion and order has been prepared. Due to the above, the term of appeal is not defined.²²" Based on the explanation of the General Inspectorate, only the decision on which the conclusion and order are drawn up is subject to appealing and in this case, of course, the subject interested in the appeal is a police officer, who shall be subjected to a disciplinary penalty based on the conclusion and the order. Consequently, the interest of the author of the application/complaint to appeal the negative consequences of the official inspection and to continue the dispute with the aim of full investigation of facts indicated by him in the application have been neglected. The applicant received a different reply from the head of the General Inspectorate of SSG, who indicated that the claim could have been initiated for an

²² Letter №MIA 91601608264 of General Inspection of the Ministry of Internal Affairs of Georgia.

action or inaction, which does not imply issuing an individual administrative-legal act²³.

One of the guidelines of the United Nations indicates to the possibility of appealing the decision: if the application is deemed unreasonable and unsubstantiated, the author of the complaint should have the opportunity to appeal the decision.²⁴

Although employers and employees represent the main parties in the disciplinary process, the interest of the third party, specifically the public interest to these processes, is important due to the non-standard nature of the law enforcement system. Consequently, disciplinary proceedings in law enforcement agencies should vary from the existing procedures in the Ministry.

Consequently, disciplinary proceedings in law enforcement agencies should differ from the procedures existing in the Ministry.

Inefficient judicial control

All branches of the government, executive, judiciary and legislative authorities play an important role in the accountability of the police. The state accountability in relation to the police means the formation of the framework within which the police should act. Each branch has its own responsibility. The legislative body is responsible for determining the framework principles, the executive is responsible for the performance and the judiciary for the assessment of accuracy of implementation of the framework regulations. The role of a judge whom the final word rests with, is very special in defining whether the police acted in accordance with the legislative regulations.²⁵

According to the Law of Georgia "On Police", the state control of the policemen and other employees of the Ministry is carried out on the basis of parliamentary, presidential, governmental, financial control and prosecutor's supervision, in accordance with the rule established by the legislation of Georgia. It is problematic that the mentioned record does not include a reference to the judicial system as a state branch performing external control.

According to the Regulations of the General Inspectorate, a statement, as well as a conclusion issued by the inspection is a recommendation document and therefore does not meet one of the elements of the individual administrative legal act, is not directed to the origin of the immediate legal consequence, by unilateral and

²³ Letter №1609749 of General Inspection of the State Security Service of Georgia.

²⁴ *UNODC*, Handbook on Police accountability, oversight and integrity, p.35, [available at: <http://www.unodc.org/>, access date: 08.09.2017]

²⁵ *Ibid*, p. 103.

compulsory power. Taking into account this explanation and the circumstances, that neither the appropriate regulatory framework nor the one-sentence unsubstantiated document define the procedure for appealing, for a person interested in the court appeal, it is not clear within what period of time and what kind of appeal should be submitted to the court and whether the case is subject to the review by the court.²⁶

Within one month after the submission of the statement by the General Inspectorate, the EMC applied to the Administrative Cases Panel of Tbilisi City Court with regard to 4 cases and requested through the Court the transfer of the materials of the official inspection of the General Inspectorate and assignment of a repeated official inspection.

The court accepted the lawsuit for hearing, but at the preparatory sessions the proceedings were suspended. At this stage, the review of a private complaint has been completed in one of the cases. The Court of Appeal did not satisfy the private complaint and upheld the decision of the first instance.

It is interesting that within the framework of the first claim-the transfer of materials, the defendant submitted the materials of the official inspection without examination of the issue, at the preparatory session to the plaintiff party. Consequently, if at the first preparatory session of the Court, without any discussion of this issue the MIA deems it possible to transfer the materials, the initial refusal of the General Inspectorate is problematic and unsubstantiated.

The first and second instance courts ruled that the statement, as well as the conclusion issued by the General Inspectorate are so-called interim acts, which cannot be appealed due to their legal nature. Thus, such conclusion, as well as the statement should be assessed by the head of the administrative body and end with the issuance of the legal act within the appropriate proceedings²⁷. It is noteworthy that in the circumstances of such interpretation, the court restricts the possibility of the citizen to appeal the statement of the General Inspectorate through the Court.

The text of the Regulations of the General Inspectorate of the Ministry of Internal Affairs, as well as of the State Security Service, finishes with the provision under which the relevant certificate or conclusion is prepared on the results of the official inspection approved by the head of the General Inspectorate. The Regulations do

²⁶ By requesting public information from Tbilisi City Court, the EMC requested the number of lawsuits and the results of the case review where the general inspection of the Ministry of Internal Affairs was indicated as the defendant and the claim was to perform a repeated official inspection or to provide the materials of the official inspection. According to the information provided by Tbilisi City Court, statistics are not maintained according to the subject of dispute and therefore the request was not satisfied.

²⁷ Judgment of March 21, 2017 of the Administrative Cases Panel of the Tbilisi Court of Appeals.

not define further steps to approve the statement or conclusion. Based on the explanations received from the written communication with the Ministry of Internal Affairs, it is clear that the conclusion that contains the recommendation about the application of a disciplinary penalty may result in the issuance of a decree, but in case of the statement no further document is adopted by its approval. Consequently, there is a reasonable assumption that the statement, proceeding from its essence is not a so-called interim act, as it is not followed by the issuance of a legal act and thus the review of the application/complaint submitted by a person is completed.

The explanation of the first and second instance courts is also problematic, according to which the claim of a re-assignment of the official inspection exceeds the scope of review by the Common courts according to the rule of the Administrative proceedings and the dispute does not derive from the legislation of the administrative law, consequently, is not subject to the court review.²⁸

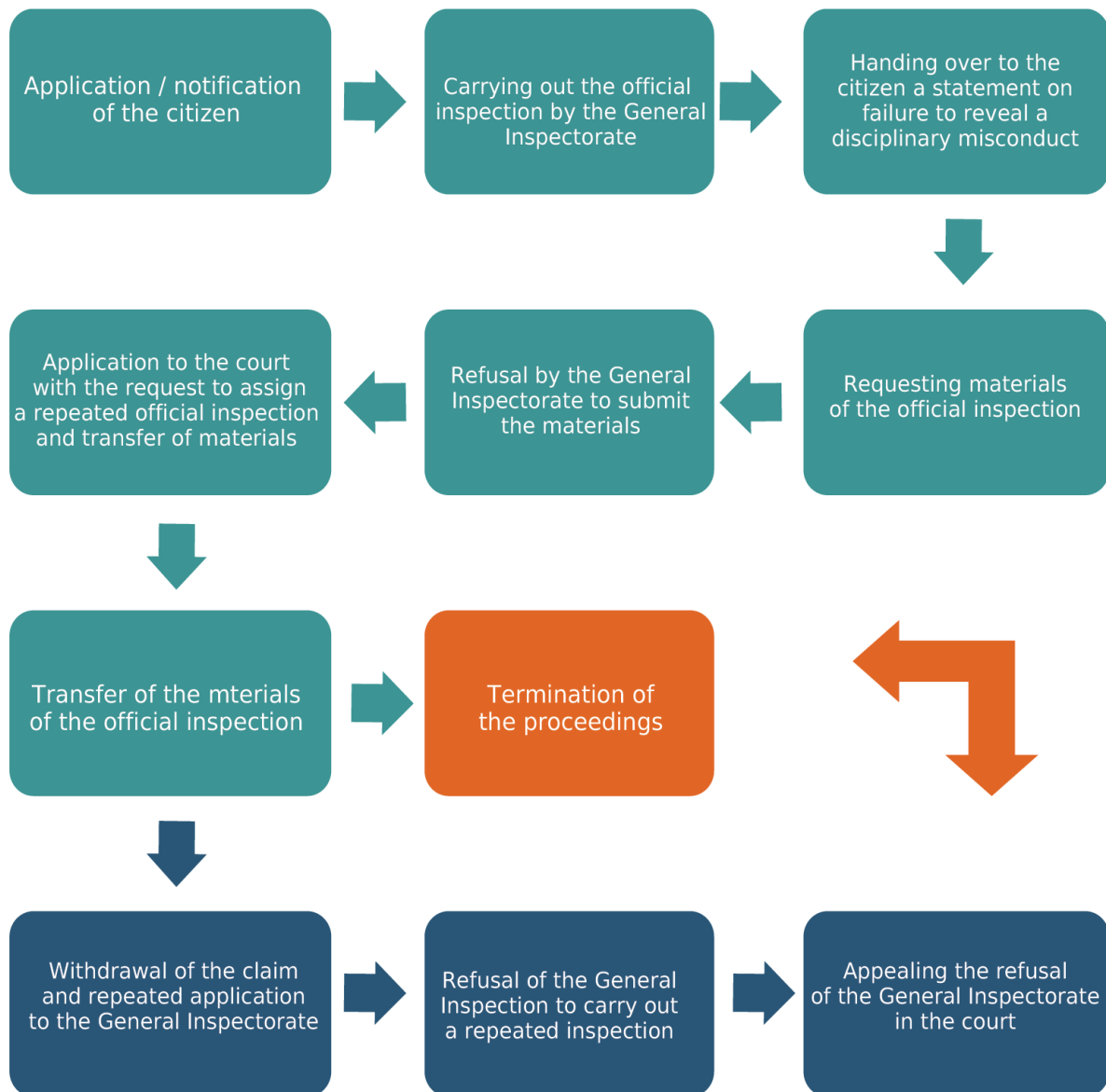
One case was different. At the preliminary hearing, the defendant transferred to the plaintiff party the materials of the official inspection, where several significant deficiencies were found, but the court did not let the parties discuss these deficiencies to substantiate a repeated official inspection, it offered to withdraw the claim and repeatedly apply to the General Inspectorate taking into account the identified deficiencies. The Court explained that, if the General Inspectorate would refuse to conduct a repeated official inspection, this refusal should be appealed in the court.

The plaintiffs shared the judge's explanation, withdrawn the claim and repeatedly applied to the General Inspectorate of the MIA. While the statement clearly stated what deficiencies were identified on the basis of the examination of the official inspection materials, the General Inspectorate did not satisfy the application and refused to carry out the repeated official inspection. The plaintiffs repeatedly appealed to the court, and this time requested to invalidate the refusal of the General Inspectorate and assign a repeated official inspection.

It is problematic that the Court of the first instance also does not consider the case when the refusal of the General Inspectorate to perform a repeated official inspection is subject to review of the Administrative Panel of the Court. The Court clarified that the refusal of the General Inspectorate is informative, therefore, the court considered it impossible to initiate proceedings on the invalidity of the

²⁸ Judgment of November 15, 2016 of the Administrative Cases Panel of the Tbilisi City Court.

document of this category²⁹. The EMC will continue the dispute over this issue through submission of a private claim to the Court of Appeals.



Conclusion and recommendations

It is clear that when submitting an application to the General Inspectorate, the person is not equipped with appropriate guarantees and procedural powers, it cannot be balanced by the judiciary, which cannot see what role it may have in the dispute of a citizen and the General Inspectorate.

Consequently, for the purpose of adequate protection of citizens' interests, for full examination of applications and notifications, for the extension of judicial control

²⁹ Judgment of July 17, 2017 of the Administrative Cases Panel of Tbilisi City Court.

over the activities of the General Inspectorate, for transparency and gaining public trust, an in-depth reform of the General Inspectorate is required, which should include the following issues:

- Creating a new concept of the General Inspectorate to ensure the independence of the Service;
- Regulation of the General Inspectorate activities with clear and concrete procedural norms (including terms, stages, standard of proof, forms of obtaining evidence) and so on;
- Ensuring engagement of the author of the application/notification in the examination of the application and informing about the circumstances identified during the official examination;
- In case of verification of misconduct, supply the substantiated document to the applicant;
- Setting up an effective mechanism for appealing the results of the official examination in the court and including in the legal act;
- Proactive publication of statistical data on the activities carried out by the General Inspectorate.