ILL-TREATMENT PREVENTION IN POLICE WORK

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Human Rights Education and Monitoring Center (EMC)
2019

This report is prepared by the "Human Rights Education and Monitoring Center (EMC)" with the financial support of the "Open Society Foundations" (OSF). Opinions expressed in this report may not express the position of the donor. EMC is responsible for the content of this material.

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Circulation: 150

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Summary

Introduction

Effective response to crimes of ill-treatment committed by law enforcement officers and imposing criminal liability on perpetrators has been a major challenge for the justice system for years. The state impunity with regards to such cases has found its basis in the legal system, making it critical necessity to prevent ill-treatment at the legislative level, including the establishment of an institutionally independent investigation mechanism.

The problems with regard to investigating abuse of power by police officers or other crimes against persons under their control, should be considered in the legislative and practical context, along with institutional independence.

This document will analyze the factors inducing ill-treatment by the law enforcement officials on the basis of a discussion of the uniform problems in relation to the criminal proceedings conducted by the organization. There have been 6 criminal cases in the practice of the EMC on alleged cases of abuse against subjects under the control of police officers from 2017 to date, in which law enforcement officials allegedly mistreated 16 citizens. Analysis of these cases reveals gaps of an identical nature in legislation and practice. Prevention of ill-treatment is significantly complicated by the lack of responsibility to document the police-citizen relations, the lack of documenting communication through technical means, the ineffectiveness of special training and retraining in the prevention of abuse of power, and other circumstances.

After analyzing factors behind the state's ineffective response to the problem of ill-treatment, in light of the legislation in place, taking into consideration international standards and the best practice of different countries, legislative amendments will be proposed, with a view to overcome the existing problems faced by the state in addressing or preventing the cases of ill-treatment.

Methodology

Problems with regard to the investigation of cases of ill-treatment by the police officers in Georgia is analyzed in the document in light of the ongoing cases conducted by the organization, which cover criminal cases of alleged ill-treatment by various police units throughout Georgia from 2017 to date. Public information and the analysis of the legislation covering ill-treatment have also been used as additional tools to address the uniform problems raised in these cases.

Analysis of legislation

Relevant legislative acts and legislative amendments aimed at combatting ill-treatment were analyzed is preparation of this document. Particular attention was paid to institutional changes and legislative gaps in the exercise of policing or investigation powers, which increase the risks of ill-treatment by the police officers in various situations.

Public Information

For the goals of the document, different statistical information, internal regulations, information regarding technical equipment of the police officers and the policing units, storing the received information, guidelines for ensuring the exercise of procedural rights by the detainees, as well as information regarding the training and retraining courses for the police officers on ill-treatment, received from the Ministry of Internal Affairs and the Prosecutor's Office, in a form of public information, has been analyzed.

Much of the requested information was provided by the Ministry of Internal Affairs, but we did not receive information on some of the issues, including the use of video cameras by police units, and the police communications radio system.

International practice

With the expert involvement, the relevant international standards, identified by the Committee against Torture or other organizations, in a framework of specific documents, in order to effectively address legislative or practical problems in the country in the field of preventing ill-treatment.

This document outlines some of the best practices regarding the factors behind the use of force by law enforcement officials in several countries, relevant to Georgian context, including Slovenia, Great Britain, Ireland, and Germany.

Findings and Recommendations

The following problematic issues were identified based on the analysis of the gaps in legislation and practice in the field of preventing ill-treatment:

- The Ministry of Internal Affairs does not have a unified guidance document on the prevention of the excessive use of force by law enforcement officers, covering all important legal and practical issues related to the rights and needs of a person under police control;

- Protocols on the detention of persons detained under administrative or criminal grounds do not ensure a complete reflection of information on alleged ill-treatment;

- In contrast to the judges' increased authority under the Criminal Procedure Code in terms of the prevention of ill-treatment, the Administrative Code, in case of the alleged ill-treatment of a person detained on administrative grounds, does not clearly define the powers of a judge – to address the investigation authority to start investigation.

- Legislation on communication with family members of persons detained under administrative law does not require law enforcement to produce appropriate documentation;

- The log of detainees brought to the police station includes details of the time spend at the station, information about the injuries, details about the transfer to a detention facility, but does not record similar data on persons brought to the police station under different status;

- The request for access to a lawyer by a detained person is not documented by the law enforcement, which, in practice, makes it impossible to determine the actual time of the detainee's request addressed to the police and to ensure that law enforcement has provided access to the lawyer;

- The legal basis for transferring a person to a police station after detention is often unclear; The maximum length of time a detainee is held at a police station is not defined and this may lead to the violation the rights of persons under police control;

- From police officers, only the patrol police are equipped with video surveillance cameras, they are authorized to turn on the video surveillance cameras during police activities, although the use of this technical means is not required by applicable law;

- Internal Regulations of the Ministry of Internal Affairs do not regulate the use of personal mobile phones by police officers during the exercise of their powers, which in practice results in the arbitrary use of phones by the law enforcement officers;

- The case of interference by a police officer in the recording of a policing / investigation activity by a citizen through private cell phone in not clearly defined in the legislation, as a ground for imposing liability on a law enforcement officer;

- Internal and external perimeters of the police building and territorial structures of the police, as well as police cars are not properly equipped with video cameras; There is no surveillance equipment installed in the internal spaces intended for the communication with the citizens at police stations;

- Training and retraining police officers once every five years is not sufficient for the purpose of preventing ill-treatment.

To eliminate problems in legislation and practice, EMC puts forward the following recommendations:

To the Ministry of Internal Affairs:

- Develop uniform guidelines for the law enforcement on arrest, detention and restraining procedures, which will consistently outline all subsequent actions of the police officer and the corresponding legal safeguards starting from the initial stage;

- For the prevention of ill-treatment, elaborate a comprehensive detention protocol, which will describe all the circumstances from the moment of the arrest of a person to their transfer to the temporary detention center, including the exact time the detainee was read their rights, signs of injury, disease signs, timing and reasons for holding a detainee in the police facility, details about communication with family / friends and a lawyer, providing detainee with food, information about the provision of medical aid and details about communication with third parties;

- Include in the register of detainees accurate information about the detainee's request for a lawyer and actions taken by the law enforcement to ensure access to the lawyer;

- In the event of transfer of a person to the police station to complete the administrative detention protocol, the law enforcement officer should be instructed to indicate such a reason in the detention protocol, in detail;

- Similar to the patrolling officers, equip law enforcement officers, who are in contact with the citizens, with body cameras;

- The use of body cameras when communicating with the citizen should be an obligation for the law enforcement; The rules for keeping the data obtained through such technical means, on a central level, for a reasonable time period, should be legally defined;

- Elaborate rules for the use of alternative technical means and storage of the data when a law enforcement officer is in contact with a civilian, and video cameras are not available for objective reasons. Clearly define the inadmissibility of police officers' use of their personal mobile phones for official record keeping.

- Interference by the police in recording police / investigative actions by a citizen on a mobile phone should become the basis for a disciplinary action;

- Equip all areas of the police station, where the citizen is transferred and investigative / policing / operative activities are conducted, with video surveillance cameras. Define the rules for storing the video footage on a central level, for a reasonable period;

- Equip a vehicle, which is used to transport a detainee, with a technical recording equipment.

- Record the exact time of entry to and exit from the police station of a person under any status, their health status / injuries (if there are any), the reason for entering the police station; Establish control over the accuracy of documenting this information to prevent police arbitrariness;

- Provide comprehensive, regular and effective police training to prevent violence and ill-treatment during arrest or police detention. Trainings for police officers shall include, in particular, specific theoretical and practical training on matters where the risk of ill-treatment of the citizen is high;

- Provide police training on interpersonal communication, nonviolent conflict management, and stress management on all the stages of arrest, detention, coercion, along with special training courses;

- In line with best practice, the Academy of the Ministry should develop a comprehensive practical course on the prevention of ill-treatment, which will cover theoretical, practical issues of questioning, detention and arrest

To the Parliament of Georgia

- Implement a fundamental reform of the Code of Administrative Offenses, which provides procedural safeguards based on the human rights of the detainees / charged persons;

- Amend the Code of Administrative Offenses of Georgia and provide the judge with the authority to address to the investigation authority with a request to initiate an investigation if the judge raises suspicions regarding alleged ill-treatment of an person detained on administrative grounds;

- The Code of Administrative Offenses of Georgia should regulate the issues of communication with the family of the person detained for the offense and the obligation of a law enforcement official to draw up appropriate documentation;

- Amend the Criminal Procedure Code to verify the lawfulness of a person's detention and establish an internal and / or administrative mechanism that will assess the lawfulness of a person's arrest within the first 48 hours; A similar legislative change should apply to a person, detained under administrative law, whose detention is longer than 12 hours;

- Limit the circle of law enforcement officers with administrative or criminal detention authority (except for cases when apprehending someone in the course of wrongdoing);

- Expand the mandate of the Legal Aid Service and ensure that provision of legal assistance to those charged with administrative offenses, is not solely depended on the financial capabilities of the person, the special circumstances of the cases, and sanctions for offenses;

- With regard to a person detained in criminal or administrative proceedings, the main rule should be to transfer that said person immediately to a temporary detention center. In exceptional cases, grounds for transfer to the police station should be specified in the law and the maximum time allowed for a detainee to be held at the police station should be regulated by law;

- Communication with a citizen, brought to the police station for operative, policing or investigation purposes, should be recorded with audio and / or video equipment, as a mandatory rule. Rules for storing the obtained data securely, for a reasonable time, should be defined.

Overview of the Context

The problem of torture, inhuman or degrading treatment in Georgia has not been systematically practiced in recent years, however, effectively combating ill-treatment remains one of the major challenges in the country. Independent, impartial, effective and timely investigation of the crimes allegedly committed by the police officers, under the jurisdiction of the Prosecutor's Office, is not conducted, which is explained by institutional and legislative reasons.[1]

The Public Defender speaks annually about the problematic nature of this issue within the mandate of the National Mechanism for the Prevention of Ill-treatment. For example, PD's 2013-2017 reports on the State of Human Rights and Freedoms, covering issues concerning investigation of the cases of ill-treatment, note that 72 statements were sent to the Prosecutor's Office on starting the investigation against police offices in cases of alleged ill-treatment, in none of the cases has the PO office initiated prosecution proceedings.[2] According to internal statistics by the human rights organizations, more than 50 cases of ill-treatment have been reported in 2017-2019 and relevant reports have been sent to the Prosecutor's Office, however not a single verdict has been issued, so far.[3]

Prior to November 1, 2019, it was the responsibility of the Prosecutor's Office of Georgia to initiate investigations and prosecutions in cases of ill-treatment allegedly committed by the law enforcement officials.[4] In 2018, Prosecutor's Office started investigations into the facts of torture and ill-treatment by officers of the Ministry of Internal Affairs of Georgia in 367 criminal cases, out of which 13 persons were prosecuted. According to the same data for 9 months of 2019, in connection with the alleged ill-treatment, investigations have been initiated in 237 cases, and of these cases criminal proceedings have been initiated against a total of 6 persons.[5]

1 See the coalition's assessment on creating State Inspectorate Office, available at:https://bit.ly/2XBjuyg.

2 Public Defender's Report of 2017 on the State of Human Rights and Freedoms in Georgia, p.11

3 See the coalition's assessment of the postponement of Independent Investigation Mechanism, available at: https://bit.ly/2Xzr2BQ.

4 Order N34 of the Minister of Justice of Georgia of 8 July 2017 on the Determination of the Investigative and Territorial Investigative Subordination in Criminal Cases.

5 Letter N13 / 71009 of the General Prosecutor's Office of Georgia, dated October 8, 2019.

Number of investigations and prosecutions against the Law Enforcement Officers, initiated by the Prosecutor's Office in 2018-2019

Article	2018		Until September 19, 2019	
	Investigation	Persons Charged	Investigation	Persons Charged
Total	367	13	237	6
Exceeding official powers (CCG Article 333)	332	12	227	3
Abuse of Official powers (CCG Article 332)	0	1	0	2
Torture (CCG, Article 144^1)	14	0	1	0
Degrading treatment (CCG, Article 144^3)	21	0	9	1

The challenges in relation to the institutional independence of investigations into alleged human rights abuses by the law enforcement officials have been evident over the years, which has been reflected in a low number of investigations of these crimes and the prosecution of perpetrators.[6] Ineffective response of the Prosecutor's Office to ill-treatment criminal cases prompted the request of the Public Defender, international and nongovernmental organizations to establish an independent investigative mechanism equipped with a criminal prosecution function, which came into force on November 1, 2019.

6 Reports of the Public Defender of Georgia of 2014-2017 on the State of Protection of Human Rights and Freedoms in Georgia.

I. Legislative Amendments to Prevent Ill-Treatment

In terms of the effectiveness of the state's response to crimes committed by law enforcement officials when dealing with citizens, fragmented, though significant, changes have been made in 2018 to a number of procedural and institutional issues. Particular emphasis should be placed on enhancing the role of the judge in the investigation of ill-treatment and the introduction of judicial control over the recognition of the victim status in the investigation proceedings, as well as the creation of an institutionally independent body responsible for investigating ill-treatment.

The purpose of this chapter is to evaluate recent legislative and institutional changes in criminal justice in relation to crimes committed by the law enforcement system.

1. Independent investigation mechanism

Creating an independent investigative mechanism to tackle the problem of impunity for crimes committed by the law enforcement has been a constant demand of local and international organizations for years. In order to combat the systemic shortcomings, in as early as 2015, civil society, with the participation of the Public Defender, also drafted a bill to establish an independent investigative mechanism equipped with investigative and prosecutorial functions.[7] The need for an institutionally independent investigative body is highlighted in the Association Agreement, signed between Georgia and the EU in June of 2014, and the accompanying 2014-2016 Association Agenda.[8]

After lengthy discussions with the authorities and civil society in various formats, Parliament finally adopted the Law on State Inspector Service on 21 July 2018, which, among other tasks, assigned investigative powers to the State Inspector in relation to the crimes of ill-treatment. The agency became the successor of the Personal Data Protection Inspector Service and encompassed additional investigative authority over the crimes committed by the law enforcement officials.[9] According to the transitional provision of the legislation, the law was to be enacted by January 1, 2019, however authorization of investigative powers of the Office of the State Inspector has been postponed four times since July 21, 2018, and finally November 1, 2019 was set as a new deadline for the

7 See Coalition and Public Defender's assessment of independent investigative mechanism, available at: https://bit.ly/2rhPyuW.

8 See the 2015 National Action Plan for the Implementation of the Association Agenda between Georgia and the European Union, available at:: https://bit.ly/35nrKon.

9 See the Coalition's Assessment on Creating a State Inspector Office, available at: https://bit.ly/34ntPQU.

initiation of the investigation service. The reason for the postponement was a lack of consideration by the Georgian government to allocate funds necessary for staffing and logistics in the state budget.[10]

Despite legislative shortcomings related to the independence and mandate of the State Inspector Service, taking all the steps necessary for the law to take effect from January 1, 2019 - was a major responsibility of the state to address systemic problems in cases of ill-treatment. The repeated delays in the investigation has left many criminal cases unanswered, where alleged criminal activity of law enforcement officials could have been identified. The urgent need for a timely and effective operation of the State Inspector's Office became even more clear in light of the alleged crimes committed by the law enforcement officers amidst the protest near the Parliament building on June 20-21, 2019 and during and after the detention of the protest participants. The General Prosecutor's Office of Georgia is investigating the aforementioned under Article 333, para. 3 (b) of the Criminal Code of Georgia, which, provided that the timely launch of an independent investigative mechanism could be ensured, would have been a competence of the State Inspector Service.

The creation of an independent investigative mechanism for the state to respond appropriately to the cases of ill-treatment has been welcomed by the general public. However, the mandate of the Office of the State Inspector to investigate crimes committed by law enforcement officials is limited, in accordance with the law, which raises questions about its effectiveness. It is problematic that it is not in the competence of the Office of the State Inspector to investigative a crime allegedly committed by the Minister of Internal Affairs, the Prosecutor General and the Head of the State Security Service. [11] Limiting the investigation mandate of the Office of the State Inspector with a list of offenses prescribed by law was also critically assessed. To be more specific, investigative jurisdiction of the State Inspector Service applies to crimes of alleged torture, threat of torture, degrading or inhumane treatment committed by the law enforcement officers as well as cases of abuse of official powers or exceeding official powers, committed using violence or a weapon, or by offending the personal dignity of the victim. Investigative jurisdiction of the agency applies to criminal law cases on using coercive means during questioning, other crimes committed by the representatives of law enforcement body, which caused the death of a person under the effective control of the state.[12] Actions beyond the aforementioned offenses, which may also involve some form of coercion by a law enforcement official, are automatically excluded from the jurisdiction of the agency.

10 See Explanatory note on the Draft Law of Georgia on Amendments to the Law on State Inspector Service, available at: https://bit.ly/336srRj.

11 Law of Georgian on the State Inspector Service, article 3

12 Law of Georgian on the State Inspector Service, article 19

A problematic issue related to the effectiveness of the independent investigation service was equipping the State Inspector Service with solely investigation capacity, without the authority to initiate criminal prosecution, considering that the applicable criminal procedural law provides for more intensive and extensive prosecutorial supervision, and the prosecutor in practice takes a leading role in the process of investigation.[13]

An additional factor impeding the effective operation of an independent investigative mechanism may be the exclusive authority of the Prosecutor General provided by the Code of Criminal Procedure to bypass the investigative authority, remove a case from one investigating authority and transfer it to another.[14] The law does not provide sufficient safeguards against such interference in the investigative activities of the Office of the State Inspector Service. The Law on State Inspector Service provides for the right of the State Inspector to submit a substantiated proposal to the Prosecutor General if it comes to their attention that any investigating authority is investigating a case falling within the Inspector's investigative jurisdiction, and the said case was transferred to the investigating agency through the abovementioned exclusive authority of the General Prosecutors. The Prosecutor General shall review the appeal of the Inspector within 24 hours upon the submission of a written appeal by the State Inspector, although the law does not provide for any mechanism to control the decision taken by the Prosecutor General. Thus, the legislation does not, on the one hand, limit the possibility for the Prosecutor General to refer a case, falling under the competence of the state inspector, to another investigative body. On the other hand, it is problematic that the Prosecutor General, at his/her own discretion, again considers the written request of the State Inspector to change the decision to transfer the criminal case to another investigating body, without the possibility of external control, and makes the final decision.

To improve investigation activities of the State Inspector Service, amendments were made to the issues regulating investigation organ's communication with the supervising prosecutor. The time limit for the Deputy State Inspector, in charge of the activities of the investigation service, to address the prosecutor with the recommendation to start investigation proceedings, on the basis of the court ruling, in frames of a specific cases, has been increased. The time limit set for the investigation organs, setting the time period by when the investigation organs was to address the supervising prosecutor with an argumentative request to add concrete evidence to the list of evidences, was also terminated.[15] These changes for effective implementation of investigative or procedural actions should be positively assessed.

13 The coalition's assessment on the creation of the State Inspector Service, available at: https://bit.ly/33cvRC4.

14 Article 33 (6) (a) of the Criminal Procedure Code of Georgia.

15 See Explanatory note on the Draft Law of Georgia on Amendments to the Law on State Inspector's Service, available at:: https://bit.ly/2OvJ97y.

With the additional legislative changes, the State Inspector's Investigation Service was equipped with the power to carry out operative-investigation activities. In spite of the need to fundamentally reform operative activities in the criminal justice field and the general ambiguity of the role of operatives in the investigation, the State Inspector's Investigation Service, in its capacity, was equated with other investigation bodies.

2. Increasing the role of the judge

For detecting and responding to ill-treatment in a timely and proper manner particularly important is the role of those who have been in primary contact with a detainee or a person whose freedom is otherwise restricted. In this regard, changes were made to the legislation in order to respond effectively to the alleged ill-treatment of a person under state control. To be specific, the judge was authorized to address the investigation authority to initiate an investigation if the accused / convicted person had raised allegations of torture, inhuman or degrading treatment or if the judge himself/herself had doubts about the matter. In order to ensure the adequate protection of a life and health of a person in a penitentiary establishment, a judge has been authorized to issue special order that may include any special measure related to the security of a person in a penitentiary institution.[16]

In order to effectively combat ill-treatment, it was necessary to increase the role of the judge in the criminal proceedings. However, the judicial authority to refer to the investigating organs did not apply to the possible incidence of violence by a law enforcement officer against a person detained for an administrative offense. It is also appropriate to extend the authority of a judge in such cases to prevent ill-treatment, as cases of alleged ill-treatment of persons detained for administrative offenses are often common in practice.[17] In the framework of the existing study, in the 5 out of 6 cases administered by the EMC, persons subject to administrative detention were allegedly victims of violence by the police.

Thus, for the prevention of ill-treatment, it is appropriate to include in the Code of Administrative Offenses a record granting similar authority to a judge to address the investigation body to start investigation, which is provided by the legislative amendment in the criminal proceedings.

16 Article 191[1] of the Criminal Procedure Code of Georgia

17 Reports of the Public Defender of Georgia for 2017-2018 on the State of Human Rights and Freedoms in Georgia.

3. Victim Status

The purpose of preventing ill-treatment is to protect the rights of persons under state control. Victims of torture, degrading or inhumane treatment are also primarily interested in conducting an effective investigation and prosecuting the offender. Accordingly, legislation should ensure that this person is involved in the investigation, which includes effective provision of information on the progress of the investigation, the possibility to identify the deficiencies of the investigation, and the right to have access to the evidence.

Obtaining the status of the victim in the course of the investigation is the only way to gain these rights.[18] Based on the cases administered by the EMC, it may be argued that the practice of granting victim status to victims of ill-treatment is not uniform and the recognition of a person as a victim is often refused in order to restrict their access to the case file.

Prior to the Constitutional Court's decision of December 14, 2018,[19] the Criminal Procedure Code recognized the possibility of appealing a prosecutor's decision to deny the victim status, with the exception of serious offenses, one time, by filing a complaint to a higher prosecutor. Thereafter, the rule of recognizing the victim status under the criminal procedure code was changed several times, and finally, according to the current version, the refusal to recognize the victim status, in crimes under the investigative jurisdiction of the State Inspector, can be subject to filing a one-time appeal to the court.[20]

In addition, as amended by the Criminal Procedure Code, [21] the victim of cases falling under the investigative jurisdiction of the State Inspector has, unlike other categories of offenses, been granted a right the appeal the refusal of the investigation authority to start the criminal prosecution proceedings to the court. Along with the introduction of judicial control over the granting of victim status, this amendment is also a positive step towards transparency in the investigation of ill-treatment.

18 According to Article 56 of the Criminal Procedure Code of Georgia, access to investigative materials is only available to a person only after being identified as a victim.

19 Citizens of Georgia - Khvicha Kirmizashvili, Gia Patsuria, Gvantsa Gagniashvili and Ltd "Nikani" v. Parliament of Georgia (Constitutional Claims 291229, №1242, №1247 and №1299), in accordance with the disputed norms in the case, the prosecutor's denial to grant the victim status or terminate the resolution on the victim status in ნაკლებად მძიმე და მძიმე დანაშაულით could not be appealed in the court. The Constitutional Court of Georgia has indicated that granting victim status is a prerequisite for access to important rights under the criminal proceedings. Accordingly, a person has increased interest in appealing the prosecutor's decision regarding the victim's status to the court. In view of the above, the Constitutional Court held that, on the one hand, the interest of appealing the Prosecutor's decision to the court and, on the other hand, the need for protection from discrimination in this relationship was greater than the good protected by this norm - the prevention of court backlog.

20 Article 56 para. 5 of the Criminal Procedure Code of Georgia.

21 Law of Georgia on Amendments to the Criminal Procedure Code of Georgia, July 21, 2018 № 3276.

4. Change of the rule of the primary medical examination of the detainee

One of the key factors for effective response to cases of ill-treatment is the proper recording of injuries to the person's body and timely provision of information to the law enforcement. In the case of detainees, injuries are documented on the one hand by providing relevant information in the detention protocol, and on the other, by subsequent medical examination of the detainee after their transfer to the temporary detention facility.

The Rules of Procedure of the Temporary Detention Facility of the Ministry of Internal Affairs of Georgia has undergone changes regarding the procedure of the first medical examination of the detainee in the temporary detention facility.[22] According to the Ombudsman's recommendations, [23] the Internal Regulations stipulate the obligation of a temporary detention physician to report to the Prosecutor's Office of Georgia and the General Inspection of the Ministry in case of suspicion of torture and ill-treatment. This power granted to medical staff in temporary detention facilities guarantees a more timely and effective response to the alleged fact of ill-treatment.

22 Order N423 of the Minister of Internal Affairs of Georgia of August 2, 2016 on the Approval of the Regulations and the Rules of Procedure of the Temporary Detention Facilities of the Ministry of Internal Affairs of Georgia, article 6

23 Reports of the Public Defender of Georgia of 2014-2015 on the State of Protection of Human Rights and Freedoms in Georgia.

II. Safeguards against torture and ill-treatment

In the law enforcement system, combatting ill-treatment can be ensured by providing minimum guarantees of legal protection for detainees. Such legislative safeguards include effective access to information about the reasons for detention (in an understandable manner/language) and procedural rights, access to counsel, access to medical care, and the right to notify family members about the detention.

In addition to the proper exercise of these rights, important means of protecting against ill-treatment are the documentation of a citizen's registration and communication (with audio / video recordings) by a law enforcement officer at the moment of their transfer to the police station.

This chapter will analyze the key factors of excessive use of force in Georgia, as well as review international standards and examples of best practices in different countries, based on which appropriate recommendations will be proposed.

1. Documenting detention

Current legislation recognizes a person's subjection to the police control on a number of grounds, which includes different procedural safeguards for the protection of human rights. In reviewing measures to prevent ill-treatment, a detailed description of the circumstances of a person's deprivation of liberty, consistent documentation of detention and post-detention is an important factor. The Ministry of Internal Affairs does not yet have a single guideline on detention procedures and the provision of minimum legal guarantees, covering all important legal and practical issues concerning the rights and needs of a person under police custody. According to information provided by the Ministry of Internal Affairs, the development of a document on standard operating procedures for detention is an ongoing process.[24]

Current legislation envisages arresting a person for committing a crime or administrative offense and therefore provides different procedural safeguards for detention. The total length of criminal detention is 72 hours, which obliges law enforcement officers to charge a person within the first 48 hours, and within 24 hours, the person is required to appear in court.[25] The law does not provide for any internal mechanism for assessing the

24 MIA letter dated 7 October 2019, MIA 41902661905.

25 Part 1 of Article 196 of the Criminal Procedure Code of Georgia.

lawfulness of detention within the first 48 hours of a person's arrest. The detention on administrative grounds, is a rule, short and it usually lasts 12 hours.[26]

In case of detention on administrative or criminal grounds, a record shall be drawn up concerning the detention of a person, stating the reason for the detention, the exact time, place, information on the use of force and injuries of the detainee, as well as the details regarding those involved in the act of detention. In both cases, the content of the record is confirmed by the police officer and the detainee with the signature. The latter is authorized to refuse to sign the record of detention and to make a note on the document.[27]

With respect to the accused and the person detained under administrative law, a record of detention shall be drawn up in accordance with the law at the place of detention. The Criminal Procedure Code, in this respect, clearly states the obligation of the law enforcement to immediately complete a detention protocol at the place of detention, and if there is an objective reason that the document cannot be drafted at the place of detention, the officer is obliged to detail the said reasons in the detention protocol and there is a possibility to fill in detention protocol at the police station or other law enforcement agency[28]. Unlike criminal procedural law, in cases of administrative detention, reasons for inability to fill in a detention protocol and grounds for transfer to a police station are not indicated, [29] which in practice often results in the transfer of the detainee to the police station without fair grounds and leads to the arbitrariness of the law enforcement.

The detention record does not in any case contain additional information on the reason for contacting the detainee's family members, the route of his or her transfer, and the reason for their transfer. A separate procedural document from the detention protocol is filled in with the information on notifying family members regarding the detention of a person and in some cases details regarding transfer of a person from the place of detention to the police station are also included.

Under national law, procedural documentation related to the detention of a person under administrative or criminal grounds is essentially focused on the detention episode and the physical injuries of the detainee. The law does not envisage the existence of a single document reflecting the actions by the law enforcement agencies in relation to the person, during the first hours of detention

26 Article 247 of the Code of Administrative Offenses of Georgia specifies the holding of a person for 48 hours in the temporary detention facility in case of arrest during non-working hours.

27 Article 245 para. 5 of the Code of Administrative Offenses of Georgia.

28 Article 175 of the Criminal Procedure Code of Georgia.

29 Article 244 of the Code of Administrative Offenses of Georgia

Committee against Torture considers it important to draw up a comprehensive detention protocol to prevent ill-treatment. According to CAT, the record of detention should also include details, such as the exact time of familiarizing detainee with their rights, the signs of injuries, mental illness, information about contacting family / friends and a lawyer, providing food to the detainee and information about the interrogation time.[30] In terms of the content of information contained in the detention protocol, it is important to discuss the practice of the United Kingdom, which includes the elaboration of a comprehensive document with respect to any detainee brought to the police station. The protocol includes a description of the grounds for arrest, search warrants and items recovered from the search, the required level of control of the detainee (according to appropriate assessment levels), medical card and specific cell placement timing, medical service and treatment plan, information / justification of the use of force, factual data on providing the detainee with the legal acts (describing procedural rights of the detainees).[31] In addition to elaborating comprehensive detention protocol, in order to provide systemic and proactive monitoring of the police detention, in accordance with the international standard, it is important to separately record information in the law enforcement system, regarding the use of force and weapons, acts of violence between the detainees and other incidents, disciplinary actions used against the detainees during the police detention and while the stay of the detainees in the detention facility, information depicting entry to and exit from the police facility.[32]

National instruments for documenting detention, aimed at preventing ill-treatment, need to be refined in line with international standards and best practices. It is important, on the one hand, for the law enforcement agencies to develop a unified guideline on arrest and detention procedures that will consistently outline all subsequent actions and corresponding legal safeguards, starting with the initial stage of a first contact of a police officer with a person. Best practice in producing a comprehensive detention protocol, which outlines the legal and procedural issues related to person under the police control, as well as the details of access to medical care and communication with third parties, should also be considered.

2. System of communication with a lawyer / family members

Access to legal aid is one of the fundamental rights guaranteed by law. The legislation distinguishes the set of norms covering the involvement of a lawyer in administrative and criminal detention.

30 CPT, excerpt from 2nd general report [CPT/Inf (92) 3], published in 1992, § 40

31 Authorised Professional Practice, Detention and custody, available: https://bit.ly/2rf9kHK.

32 APT, police detention monitoring, pg. 148.

When arrested on criminal grounds, a person is immediately warned of his / her right to remain silent and to refrain from answering questions and to seek legal advice. The accused may, at his own discretion, choose or replace a lawyer, in cases prescribed by the law or in cases of social and material disadvantage – a lawyer will be appointed at the expense of the state.[33] Within three hours of the arrest, the prosecutor or investigator, under the prosecutor's instruction, is obliged to provide information to the family of the detainee on the detention, with the appropriate notification protocol reflecting precise timing of the notification.[34]

Person arrested for committing an administrative offense has similar procedural rights. Specifically, in this case, the detaining officer is obliged to immediately explain to the detainee the grounds for detention, the right to counsel and, if he wishes, the detainee should be given the opportunity to inform the family of the fact of his detention and whereabouts. [35] The law does not provide for any procedural document regarding the communication with the detainee's family on the commission of the offense, which, in practice, allows the arbitrary restriction of the exercise of this right.

For years, a particular problem for an administrative detainee has been access to a lawyer while in police custody. Although such arbitrariness has not been noticeable in law enforcement lately, informal "agreement" initiated by the law enforcement officials with the detainees to conduct processes without the involvement of a lawyer, "to avoid" further complication of the process and get non-custodial sentence in return, still deserves criticism.

Regarding the procedural guarantee of access to a lawyer, the existing legislative regulation is also problematic, which does not require to include information on the request of a lawyer by the detainee in the register of detainees. Accordingly, it is difficult to determine whether conducting case proceedings without the participation of a lawyer was the individual decision of the detainee or the result of the unlawful conduct of the police. Information to be included in the journal registering detainees at the Police territorial bodies, covers exact timing of the detainee entering police administrative building, data regarding injuries inflicted on the detainee and the reasons of the said injuries, as well as details regarding the transfer from the police building to the temporary detention facility. It is problematic that, according to the journal, it is not possible to determine whether a police officer offered the detainee to contact a lawyer, when the detainee was explained this right, and what position he had on the issue.

33 Article 38 of the Criminal Procedure Code of Georgia.

34 Article 177 of the Criminal Procedure Code of Georgia.

35 Article 245 of the Code of Administrative Offenses of Georgia.

Conducting administrative litigation proceedings for victims of ill-treatment without the involvement of a lawyer is also established in the practical experience of the organization, which is compounded by the problem of financial resources required for the lawyer involvement and the limited mandate of the free legal aid service in litigation cases. Assigned state attorneys-at-law may, on request, be provided to the persons with limited financial means, who may be subject to administrative imprisonment, lawyer is not already involved in the case, and the matter is of particular legal importance.[36] However, in case of people cannot afford a lawyer (those who are registered in the database of socially vulnerable families), the law does not provide free legal aid. In this respect, extending the mandate of the Legal Aid Service may be appropriate to prevent ill-treatment.

In addition, the analysis of EMC cases indicates that 12 out of 16 persons detained on administrative grounds in different regions, who were physically assaulted at police stations were "advised" by law enforcement to disengage lawyer in the proceedings to avoid further "complication" of the administrative process. For vulnerable detainees, such communication by the police is an additional psychological pressure, which is why detainees choose the strategy of confirming the position of the police regarding the offenses and choose to conduct speedy proceedings without a lawyer. As part of the investigation of the physical injuries of these persons, their "confession" of resisting police, leads to some distrust towards the victims by the police and their preconditioned attitudes regarding the nature of the injury.

The Committee on the Prevention of Torture, with regard to access to the right to protection, focuses on the guarantees provided by the law enforcement agencies. According to the committee, "access to a lawyer" should apply not only to "official suspects" but to all persons deprived of their liberty, including witnesses and anyone who is required to attend and / or remain in a police station for "informational conversation."[37]

The Committee also considers it important for the law enforcement to allow detainees, at the initial stage of detention, to notify their detention to a close relative or to a third party. According to the same recommendation, the details of the telephone communication of the detainee to third parties - the exact time, the identity of the communication recipient should be documented by the police officer and confirmed by the detainee's signature, which avoids the risks of arbitrariness in the police system. According to the standards of the CPT, the delay in notifying arrest must be recorded in writing, and confirmed by a senior police officer who is not related to the particular case of the detain-

36 Article 5 of the Law of Georgia on Legal Aid.

37 CPT Standards, excerpt from 12th General Report [CPT/Inf (2012) 15], Available: https://rm.coe.int/1680696a88.

ee.[38] In any case, the delay shall not exceed 18 hours.[39] An additional recommendation concerns allowing a detained person to speak directly with family members by making a phone call upon arrest, in the presence of a police officer, which is not mandatory for the law enforcement in accordance with the international standard, but is considered a good practice.[40]

Taking into account the above, strict recording of the details of the communication with the lawyer and the family in the law enforcement agencies, the obligation to draft the relevant notification document in case of the offense and the direct notification by the detainee will create better conditions for the use of legal guarantees in the national law.

3. First aid and decent conditions

One of the most important safeguards for the prevention of ill-treatment of persons under police control is holding them in the environment tailored to their needs, after the arrest. A person detained under criminal or administrative grounds should have access to medical care, needed toiletries and personal space.

Initial medical examination of a detainee is possible upon arrival in a temporary detention facility. In the view of the Public Defender, the practical challenge in this respect is to conduct a confidential medical examination, without the presence of the facility staff, with the participation of only a doctor and detainee. According to the standards of the Committee against Torture, medical examinations should be performed in full confidentiality, without the participation of the staff, beyond their area of their direct vision.[41]

The practice of ill-treatment reveals the practice of the law enforcement officers holding the detainee at the police facility before transferring the detainee to the temporary detention facility, which is often explained by the need to fill in the detention protocol. The leaflets and posters containing information on procedural rights of the persons detained on administrative or criminal grounds are not found in the police buildings, as opposed to the detention center,[42] therefore, problems might arise in terms of providing information regarding the procedural guarantees to the detainees, when they are held in the police custody for extended period.

38 ibid, § 43.

39 APT Police custody monitoring, p. 126.

40 Initiative Convention against Torture, Guarantees in the First Hours of Police Custody.

41 SPT, Report on the visit to the Maldives of the Sub-Committee on Torture (SPT),§112.

42 Public Defender's Report 2018 on the State of Human Rights and Freedoms in Georgia

Additionally, procedural rights and needs of detainees are not adequately provided in the police units, also in terms of infrastructure. In practice, detainees are often delayed for several hours in the common area of the police station, when other law enforcement officials, other than those involved in the detention, attend or establish relationships with the detainee. In practical experience, police efforts to negotiate with the alleged victims of ill-treatment, to refrain from reporting alleged violence or other abusive behavior, are particularly common in the territorial police organs.

An analysis of the criminal cases of ill-treatment administered by the organization shows that, out of the 16 police officers under police control, in the case of 12 administrative detainees, access to toilets, water and food was dependent on the "good will" of police officers. In all of the above cases, person was detained for an hour and a half to three hours in police building in a free space without video surveillance, and therefore, in no case was the police relations with the person of interest documented. In one case, a detained citizen was held for about four hours with a policeman who detained them in the yard of a police station. During this time, despite numerous requests, policemen did not allow the detainee to use the toilets, which led to the detainee urinating at the site and this resulting in putting the detainee in a degrading position.[43]

Proper conditions for the detainees under effective police control can be achieved through the immediate transfer of a detainee to a temporary detention facility, which would limit the relationship between the police and the citizen in informal areas free from external surveillance.

According to the guidelines of the Committee against Torture, in countries where cells are incorporated in police establishments, detainees must be provided with adequate toilets with appropriate conditions and adequate facilities for washing, to meet the minimum standard. They should have free access to drinkable water and provided with adequate nutrition, including at least one full dinner (eg something more nutritious than a sandwich) each day. Persons who remain in police custody for 24 hours or longer should be allowed exercise daily in the fresh air, when possible. " [44] Although in the case of Georgia, temporary detention cells are not set up at the police station, it is important that the appropriate conditions are provided to persons subject to police control, in the police stations.

43 A.D. case

44 SPT, Report on the visit to the Maldives of the Sub-Committee on Torture (SPT), §§112, 47.

4. Holding a detainee in the police car or at the station

The more time a citizen is under police control, the significantly increased the risk is of psychological or physical pressure and violence. Being in the environment that ensures the necessary standard of guaranteeing the rights of a citizen after arrest is a precondition for constructive communication with a law enforcement official. Practice of ill-treatment also shows that there is a high risk of physical or verbal abuse by law enforcement in the neutral environment free of video surveillance – police custody or a police car, before the detainee is placed in a temporary detention setting.

Particularly problematic in this respect is the existing legislation, which does not recognize the obligation of a police officer to transfer a detainee to a temporary detention setting, right away ,where the conditions for ensuring the detainee's procedural rights, medical examination, and technical equipment of the facility are substantially better. Therefore, direct transfer of a detainee in a temporary detention setting may be an important factor in preventing ill-treatment.[45]

The law requires the detaining officer to bring the detainee to the nearest police station or other law enforcement agency during criminal and administrative detention. This means that the law enforcement officer is not obliged to transfer the person deprived of his or her liberty to a temporary detention facility immediately. As a basis for bring in the detained person to the police custody, law enforcement officers often refer to the need to fill in the detention protocol at the administrative building of the police, which, in criminal or administrative detention, is permissible if there are objective reasons,[46] However, in practice, this reason is referenced, without any justification. Instead of transferringthe detainee to the police station, the detention protocol can also be completed at the temporary detention facility.

An impeding factor in the transfer of a detainee to a temporary detention facility is that the internal regulations of the detention facility provide for the submission of a written application by a representative of the competent authority as a precondition for receiving the detainee, aside of the detention protocol. The application should contain the personal data of the person to be detained, the grounds for detaining the person, the request for his placement in detention, information on the staff of the detaining authority who will escort the detainee to the detention facility.[47] The detainee shall not be placed in a

45 The Public Defender's Recommendation from the 2018 Report on the State of Human Rights and Freedoms in Georgia.

46 Part One of Article 175 of the Criminal Procedure Code of Georgia, Article 244 of the Code of Administrative Offenses of Georgia.

47 MIA letter dated November 8, 2019, MIA 61902998517.

temporary detention isolator without the written application, in accordance with this rule, which results in his / her transfer to a police station for drafting the written application.

The problem is also that before transferring the detainee to the temporary detention setting, the maximum time for a detainee to be held in the police custody is not specified. Such legislative regulation is often abused by the law enforcement, as evidenced by the analysis of ill-treatment cases. The practice of delaying the drafting of a protocol on the detention by the police to keep the detainee in the police custody and the practice of violence against the detainee in this setting is evident in the criminal cases administered by the organization. Therefore, the issues related to the grounds for transfer of detainees to the police station and the length of the delay in this setting need to be clearly regulated.

It is noteworthy that at the time of the detainee's arrival at the police station, the territorial police authorities keep a "register of persons detained at the interior ministry organs" and a "register of detainees transferred to the temporary detention facility", identifying the detainees, the existence of the injuries and the reason for the detention, as well as the timing of bringing the detainee to policy facility and transferring them to the temporary detention facility[48]. The applicable procedure only records data on persons brought to the police station as detainees, but does not include documentation of any other relationship between the police and the citizen, such as the presence of a witness or a persons to be interrogated at the police station. In addition, the responsibility for completing the data on detainees is exercised by on call employee at the Ministry's structural units and territorial authorities, the overall responsibility for controlling the quality is on the chief of the on duty staff.[49] Therefore, it can be said that the control over the accuracy and correctness of the data related to the detainees in the register books of the detainees at the territorial authority does not go beyond a specific police unit, which, if there is such an interest, makes it easy for law enforcement to manipulate.

An analysis of criminal cases related to ill-treatment showed that detention in a police station lasted from two to three hours on average in each case, according to the records of the detainees' registry. Given that the questioning / interrogation of detainees at the police station was not undertaken and the transfer served only the purpose to complete the administrative detention protocol, which consists only of a few lines, this length of time used to hold a detainee at the police station is unreasonable even when the real

48 Annexes N6 and N7 approved by the Order of the Minister of Internal Affairs of Georgia N605 of August 8, 2014 on Approval of the Rules of Procedure of the Organization of the on duty Devisions of the Ministry of Internal Affairs of Georgia.

49 Ibid, article 4.

reason for the holding the detainee at the station was to draft a detention protocol and not to exercise unlawful influence.

When transferring a detainee from a place of detention to a police station when a person is in police custody without any supervision, the risk of ill-treatment by law enforcement is also highlighted in international standards concerning detention.[50] In order to reduce such risk, law enforcement authorities are required to record the day and hour of each transfer and to include in the record of detention.[51] The transfer of a person deprived of his liberty may not be a form of punishment.[52] However, to avoid escaping during detention, the use of handcuffs is permitted as a precautionary measure, but equipment may not be used to inflict pain. Handcuffs should be taken off, as soon as these risks are no longer present.[53]Despite the absence of a mandatory international standard, video-recording in police cars is also considered important by the Torture Prevention Association and International Penal Reform.[54]

To ensure compliance of national standards and practices with these standards, it is recommended that unnecessary delays of the detainee at the police station is prevented, and in case of his / her transfer to the police station, the appropriate grounds and length of delay should be recorded in writing. However, taking into account existing practice, it is appropriate for the law to prescribe immediate transfer of a person to the temporary detention setting, where the protection of human rights is relatively high.

4.1 Questioning of a person under police custody

The risks of ill-treatment of a person by the law enforcement are particularly high during the questioning stage. Therefore, consideration should be given to possible tools for preventing the psychological or physical violence at the police station during questioning.

The questioning of the person in the police unit is voluntary in the frames of investigation. Person is explained about the right to have a lawyer, at their own expense, the voluntary provision of information and the imposition of criminal liability for the provision supply of false information. The obligation to testify as a witness arises only before

50 UN Minimum Standard Rules for the Treatment of Prisoners (Mandela Rules) and the United Nations Principle on the Protection of All Persons Arrested or Imprisoned in Any Form (Set of Principles)

51 Mandela rules, rule 7.

52 Torture Prevention Association (APT). "Police Detention Monitoring - A Practical Guide" (2013), p.116

53 ibid, 47-48.

54 Penal Reform Inernational : Video recording in police custody Addressing risk factors to prevent torture and ill-treatment, available : https://bit.ly/2KLdk9C, p.1.

the court.[55] The investigating authority makes a decision on the use of a voice or image recording technique during the interview, and the person being interviewed is warned in advance.[56]

The Laws on Police and Operative-Investigation Activities also provide for the summoning and interrogation of a person at a police station. The policing instruments in the two laws mentioned above are identical in content. The purpose of both provisions is to summon a person to the police to interview the person if the police officer believes that the citizen possesses the information needed for perfoming policing functions. When summoning a person, in the form of a police measure, holding of a citizen at a police station shall not exceed 4 hours. At the same time, the summoned person should be informed that appearing in the police and leaving the police unit is voluntary.[57]

In the scope of operative activities, the purpose of interviewing a person by an operating officer or investigator is to obtain information about a specific case or a person. In this case, questioning is voluntary and the person is not warned of criminal liability for giving false testimony or refusing to give testimony. The investigating officer or investigator is required to report on the questioning, which is not disclosed to the person who is questioned. Given the conspiratorial nature of the operative work, the lack of legal guarantees, and the fact that the person performing the operative functions is not even required to present himself to the citizen, there is a risk that the citizen may disclose information that will be used in the future against him, in violation of the principle of self-incrimination.

Regarding the creation of legal safeguards for a person in effective police control, it should be emphasized that operative and policing measures are used as a repressive tool, in practice. Unlike minimum legal safeguards provided during the administrative or criminal detention of a citizen, when a person is summoned to a police station under a policing or operative measure, it is often the case that a person is not warned that appearing to the station and reporting information to the police is on a voluntary basis and questioning of a person is related to the suspicion that the said person had committed a crime.[58] Additionally, due to the lack of procedural mechanisms, it is difficult to determine the contextual and other aspects of citizen-law enforcement communication. For example, the rule of administering a special journal at a police territorial authority at the time of arrest does not apply to contact with a citizen on the basis of policing or oper-

55 Article 113 (1) of the Criminal Procedure Code of Georgia.

56 Article 113 (9) of the Criminal Procedure Code of Georgia.

57 Article 21 of the Law of Georgia on Police.

58 Such cases concerning three persons were reported

ative measures. There is no record of the timing of a persons' entering and leaving the police premises, no bodily injuries of a citizen are checked and recorded after arriving and leaving the police station, the time of the summoning a person to the police unit and the person is being held at the police unit is not recorded and there is not obligation for the police to file any documentation.

Due to the lack of minimum human rights protection standards in the legislation, the application of these provisions in cases of ill-treatment is particularly evident in the territorial police units. Violent acts committed by police officers against civilians were carried out in the context of operative activities in one of the cases administered by the EMC. One of the two citizens taken to the police station for operative interrogation later died by suicide, while the other reported physical abuse by the police. In the course of the investigation into the aforementioned case of ill-treatment, the documents reflecting the actions of the police officers within the operative measure,[59] were not obtained by the investigation even after two years.

Thus, it can be said that the measures of questioning the citizens on different legal grounds at the police station do not even provide for the minimum legislative guarantees of protection against ill-treatment.

Considering the high risk of physical or psychological pressure on a citizen, international standards on interrogation at the police station, including UN Special Rapporteur on Torture, focus on developing tools and guidelines for the prohibition of torture and ill-treatment.[60] From a procedural point of view, providing accurate and reliable information about a person's status and rights prior to the questioning is critical. Authorized authorities may not "have an informational conversation with a person" in order to bypass the legal safeguards accompanying the suspect's interrogation." Any person who has a legal obligation to attend or remain in a questioning facility shall enjoy the same rights as enjoyed by the suspect. From a procedural point of view, providing accurate and reliable information about a person's status and rights prior to the questioning is critical. Authorized authorities may not "have an informational conversation with a person" in order to avoid the legal safeguards accompanying the suspect's interrogation." Any person who has a legal obligation to attend or remain in a questioning facility shall enjoy the same rights as the suspect enjoys. Regarding the duration of the questioning, the UN Special Rapporteur's report noted that except in exceptional circumstances, strict national regulations should be elaborated to ensure that the detainee is not subjected

59 Report, form N12, which served to identify the personal information and circle of acquaintances of the questioned persons.

60 UN Special Rapporteur on Torture, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/71/298) 2016

to questioning for more than two hours without a break and is provided with adequate breaks, and every 24 hours is given continuous eight-hour interval, which will be free from questioning and any other kind of actions related to the investigation."[61]

One of the key tools for preventing ill-treatment during a police interrogation, according to the UN Special Rapporteur, is continuous audio-video recording and safe keeping of records. The report calls for the law enforcement to use "every reasonable effort" to fully record the process of questioning the detainee. In the event of impossibility of audio or visual recording under objective circumstances, and in case of refusal by the person who is being interviewed, it shall be indicated in writing. The UN Special Rapporteur, in the case of questioning the suspect, considers it mandatory to provide at least audio recording. In the case of limited financial resources, video recording should be used primarily for suspects, vulnerable victims.[62]

In order to minimize the risk of ill-treatment and the introduction of good practice, during investigative or policing measures in relation to the citizen, it will be important to establish a practice of continuous audio-or video-recording in the law enforcement system. At the same time, it is important to record details of a person's visit to a police station during a policing and operative inquiry.

5. Documenting communication between the police and a citizen through technical means

Under the current law, interaction between a citizen and a police officer may be based on an investigative, policing or operative measure. For these purposes, the Patrol Police Department, Public Order Enforcement Officers, as well as Central Criminal Police Officers and Police Department Officers under the Ministry's territorial authorities have an intensive relationship with the citizen.[63] In the event of an incident involving police contact with a citizen, the main challenge is to obtain a neutral witness or evidence of the incident.

An analysis of the cases of ill-treatment administered by EMC shows that in the case of violence and alleged ill-treatment of a citizen, the investigating authority, on the one hand, has the information from police officer, and on the other hand, a completely different position on the subject from the citizen's point of view. Obtaining other evidence of a citizen's injuries,

61 ibid, §§ 85-89.

62 UN Special Rapporteur on Torture, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/71/298) 2016

63 Regulation of the Ministry of Internal Affairs of Georgia approved by Resolution N337 of December 13, 2013 of the Government of Georgia

such as a neutral witness's testimony or a video camera recording, is largely impossible. In this regard, documentation of police communication with citizens through technical means, including audio / video recording, is often crucial for the prevention of ill-treatment.

5.1 Video recording with body cameras

The Ministry of Internal Affairs does not specify the obligation for its subordinate staff to record the interaction with citizens. The special rule for recording a police officer's interaction with a citizen is established only in the context of special police control, so-called raids, in accordance with the Law of Georgia on Police. Any other contact with the citizen during policing, operative or investigation action, can be established bypassing the use of technical means.

For the purposes of ensuring public order and security, when responding to the violent act, in order to ensure the protection of the rights of citizens and police officers, a patrol police officer has the authority to conduct video-audio recording using technical means when patrolling, for a comprehensive, complete and objective examination of the case. Patrol police are equipped with shoulder video cameras that allow continuous video recording for up to 12 hours, and the date and time is stamped on the video recording.[64] An amendment to the ordinance of the last year changed the rules for storing data captured on a shoulder video camera while patrolling, and imposed an obligation to store video recordings from the body cameras, attached to the Patrol-Inspector's uniform, on a special server for a 30 day period.[65]

Despite the positive changes, the optional rule of video recording remains unchanged. The discretionary content of this regulation is problematic in practice, because even if a citizen insists, the patrol-inspector may, at his discretion, decide to turn on the body camera. In this regard, it is important to consider the experience of the United Kingdom, in particular Northern Ireland, which does not impose the obligation on the law enforcement to carry body camera or camera on dashboard of a patrol car, but most police stations use it in some circumstances. Specifically, cameras have a built-in system to prevent arbitrary discontinuation of video recording, which records the date and time of turning on and off the camera.[66]

64 MIA letter dated October 29, 2019 from MIA 51902888374.

65 Order of the Ministry of Internal Affairs Order No. 1310, of December 15, 2005 "On Approval of the Instructions for Patrol Police Service by the Ministry of Internal Affairs of Georgia", article 12[1].

66 Hungarian Helsinki Committee, "Investigation of Police Misconduct in Europe", Comparative Study in 7 EU Countries, 2017, p. 118.

Besides authorizing the use of body video cameras by patrol officers, the legislation does not recognize the use of technical means by other police forces (Central Criminal Police Officers or Ministry Territorial Staff). For law enforcement officials, the absence of this important tool for abstaining from excessive use of force is particularly problematic in practice, as criminal police and territorial police officers have daily intense contact with citizens. For example, in criminal cases administered by EMC, allegations of ill-treatment in all cases are against detectives or district inspectors at the territorial organs of the Ministry of the Interior.

Vehicles, used by the police departments and divisions, are also not equipped with technical means,[67] and therefore, contact between citizens and police officers is not documented, this, in the frames of investigation of cases of ill treatment is challenging for establishing factual circumstances of the case.

There is no international standard obliging law enforcement to use body cameras. However, restrictive factors, flexible resolution of complaints and criminal proceedings, as well as improved accountability and transparency in the law enforcement system are considered to be the benefits of the use of body cameras. Interference with one's personal life (especially when using cameras in private homes) and large amounts of data storage, access and destruction of the information by the police, are cited as risks.[68]

Due to the lack of internationally recognized standards for regulating the use of body cameras, it is interesting to review the best practices of individual countries. The US Department of Justice has developed recommendations for the use of body cameras.[69] The document focuses on the need to develop a unified policy on the use of body cameras at police agencies, which defines issues such as the circle of law enforcement officers authorized to operate body cameras, the location, the rules for turning on and off the equipment. The document also includes data storage regulations. According to the recommendations, in case of insufficient resources, road and patrol police should be given the priority of carrying body cameras. Police officers will be required to turn on body cameras in response to all calls and disputes related to the public order, until the incident is over, or the supervisor has issued an order to stop filming. According to the same document, the police officer should inform the citizen about the recording. As for the Footage obtained by the police, it is recommended to download the data from the cameras at the end of each shift, classify the video footage according to the type of the accident /

67 MIA letter dated October 29, 2019 MIA 51902888374.

68 Special Rapporteur's Report on Out-of-Court, Simplified and Arbitrage Enforcement, Use of Information and Communication Technologies to Ensure Right to Life, A / HRC / 29/37, §§ 55-57, available at: https://bit.ly/3381Xij.

69 USA, Department of Justice, Implementation of the Portable Body Camera Program: Recommendations and Experiences p. 37-46, available at https://bit.ly/349D6vW.

incident and storing the data for a specific period (60-90 days), in accordance with the elaborated policy. The records may be periodically review by the supervising officer, for the purposes of internal oversight to assess the effectiveness of the officer.

The reflection of the aforementioned approaches to international policymaking standards and best practices in Georgian policing will create effective safeguards to prevent ill-treatment and respond to such crimes. It is especially necessary to change the non-mandatory nature of the use of body cameras. Keeping in mind the intensity of the contact with the citizen, it is also important to equip other police units step by step with this technical measure, as well as to develop a unified standard for storing the obtained data.

5.2 Use of Mobile Phones

Investigations of ill-treatment show recordings made on mobile phones depicting communication between the police officer and the citizen. Both parties (both policemen and citizens) are actively using this equipment in practice.

The right of police officers to film the process of exercising their authority with a personal mobile phone, the rules for further storage and use of data are not regulated at the level of law and by-law. Accordingly, the video recording of the exercise of his or her official duties, by the police officer, with their personal mobile phone, raises the risks of selective use of this leverage in a particular situation. Even if the information recorded on a police officer's mobile phone is beneficial for the citizen, there is no legal guarantee of the lawful use / disclosure of data obtained by law enforcement to the citizen. The decision to store, disseminate, delete such data in an uncontrollable manner is also made by the person who obtained it. It is noteworthy that in one of the cases of ill-treatment administered by the organization,[70] a police officer recorded a communication with a citizen under his control by means of his personal mobile phone, but later declined to submit this record to the investigating officer and indicated that it had been accidentally deleted. In the second case, the cellphone footage was selectively and episodically shot after the incident with the detained person, and later publicly disseminated to discredit the detainee.[71]

A citizen's use of his cellphone to record contact with the police largely depends on whether law enforcement will give him the actual opportunity to do so and the matter is not regulated. As an example of good practice with regard to video recording of police

70 V.M. case

71 Z.R. case

actions by citizens, we can consider Northern Ireland, where the introduction of the audio-visual system in the law enforcement is of particular importance. A police officer has no right to stop a citizen from videotaping the interaction with the law enforcement or erasing the record.[72] The seizure of a recording device by a police officer is permitted only in exceptional cases, but the seizure must be substantiated by reference to that particular circumstance. Removing any material from the seized devices is a serious misconduct by the police.[73]

Therefore, due to the frequent practical use of cellphone video recording by both parties in the interaction between police officers and citizens, it is appropriate to elaborate legislation in this regard on the basis of good practice.

5.3 Equipping indoor and outdoor perimeter with video cameras

Equipping police stations with indoor and outdoor video surveillance cameras is another effective tool for the prevention of ill-treatment that is of particular interest to investigation in cases of allegations of ill-treatment.

An analysis of the criminal cases administered by the organization shows that police departments, largely record the entrance to the building, with a surveillance video camera (the area where there is an operative on duty). In none of the cases of ill-treatment administered by the EMC, in which citizens reported being subjected to violence in a police administration building, was a video surveillance camera installed in the questioning room, or the place where police officers would come in direct contact with the citizen, at the police station. The camera installed at the entrance to the police station, only allowed to record exact timing of the law enforcement officers and detainees entering and leaving the building, when the alleged instances of violence in these police departments took place in areas free of video cameras.

Despite our requests for public information on details of indoor and outdoor perimeter video cameras at police units of the Ministry and the agency did not provide this information. Public Defender's 2018 report, based on the information provided by the Ministry of Interior, criticized the police departments' (mis) use of internal and external perimeter cameras to cover all areas, the problematic aspect was also indoor surveillance, where cameras were positioned only at the entrance of the building, leaving the persons, under the supervision of the law enforcement, deprived of their liberty, without

72 Hungarian Helsinki Committee p. 68.

73 ibid pg. 119.

control. The term of data storage of a video surveillance system located on the premises of the Ministry of Internal Affairs depends on the characteristics of the technical means, though they can be stored for a period of no less than 14 days and up to three years.[74]

Regarding surveillance cameras at police stations, electronic monitoring of most of the police units, including the on duty unit, electronic monitoring of the corridors leading to the cells, is considered good practice. Such a pilot project in Dublin, Ireland, where most police stations are monitored by cameras, was welcomed by human rights monitors and the Committee against Torture.[75] Surveillance cameras should monitor the developments in the establishments, prevent violence by and among detainees, and provide safeguards against torture and ill-treatment, as well as protect high-level police officials from false accusations.[76]

In spite of the effectiveness of the use of electronic resources for the prevention of ill-treatment, the implementation of this technique should also focus on the protection of the privacy of detainees in the law enforcement system, which precludes video recording in specific areas, such as toilets or shower zones. Video recording should not be carried out in places where there is a meeting with lawyers or medical examinations. Surveillance cameras in „wake-up" cells, or in areas where detainees are examined when naked, may be the subject of debate.[77]

With this in mind, for the prevention of violence against persons under effective control of the law enforcement officers in police units, special attention should be paid to equipping the premises of the police building, where policing / investigative activities are conducted with citizens, with video surveillance. It is also important for law enforcement to engage with citizens in the spaces where such technical means are provided.

74 MIA letter dated October 29, 2019 from MIA 51902888374.

75 CTI, Guarantees in the First Hours of Police Detention, UNCAT, Implementation Tool 2/2017, p. 7.

76 APT, PRI; Video Surveillance in Police Custody, (2015), p, 1, available at:https://bit.ly/34bRzHT.

77 ibid, p. 3.

6. Training and retraining to prevent excessive use of force

Policing must be based on the respect for human rights and fundamental freedoms, taking into consideration the principles of legality and proportionality.[78] One of the most effective instruments of human rights protection should be the police, an institution created by the state, which will take preventive and repressive means to protect public safety and constitutional lawfulness within the scope of its powers under the law.[79] The use of force by the police, as delegated by the state, may be a threat to human rights in the absence of human rights related knowledge and lack of relevant practical skills. An important tool against disproportionate, unlawful conduct of police officers is a qualified human rights-based training within the law enforcement system. Training in this regard implies police officers' knowledge of the scope of one's policing powers, on the one hand, and the rights of others, on the other hand, while having the practical skills necessary to safeguard these rights in critical situations.[80]

The analysis of criminal cases of ill-treatment also often requires an assessment of the proportionality of the use of force by the police, in a conflict situation between a police officer and a citizen. The requirement of proportionate and necessary use of police or restrictive measures is enforceable in practice if the police officer is capable of managing aggressive behavior or resistance by the citizen.

Based on the ill-treatment cases administered by the organization, it can be argued that when detaining the citizen, the law officer's lack of theoretical or practical skills to manage anger or resistance from the citizens is one of the important factors leading to a physical injury of the citizen and other legal violations. Therefore, this chapter will focus on the theoretical and practical training of police officers in the protection of fundamental human rights and freedoms.

78 Article 8 of the Law of Georgia on Police.

79 Turava, Paata, "Compliance of the Regulations of Georgian Police Activities with European Human Rights Standards ", in the collection of articles: Human Rights and Legal Reform in Georgia, p. 119-138, 2014.

80 Schicht Günter, Menschenrechtsbildung für die Polizei, Available: https://bit.ly/2satSlf.

6.1 Training and retraining of police officers on the prevention of ill-treatment

The system of the Ministry of Internal Affairs establishes a different educational benchmarks for accepting personnel of different ranks. The prerequisite for a junior specialist position is full general education. For middle level specialist position, higher education or complete secondary education is necessary. It is also compulsory for those with general education to attend specialized vocational education / training courses at the Academy of the Ministry.[81]

The Academy of the Ministry defines the content of the curriculum for special professional education course, for those who want to become policemen, and qualification courses for active staff. The Academy has developed a basic program that prepares trainees for the profession of Public Order Enforcement officers, investigators, patrol inspectors and district inspectors by providing taining in various areas of law. Training lasts up to four to five months.[82] A promotion and qualification program is in place, within the Academy, to support the further professional growth of existing staff.

As part of the basic program, there are 24 academic hours dedicated to teaching human rights related issues at the Academy. The course focuses on legislative safeguards for the proper treatment of detainees and the provision of basic rights. The course also includes national and international law on the prohibition of torture and ill-treatment, the right to liberty and security, the State's positive and negative obligations in respect of the prohibition against torture, national and international standards in relation to the rights of the detainees, including obligation to provide information about the grounds for detention.[83] Given the scope of the issues mentioned and the limited time available, it is difficult to assume that the training and preparation in the field of human rights is comprehensive.

Along with the theoretical teaching of human rights, the students of the Academy are trained in the peculiarities of communication with different groups of society. The curriculum, consisting of a total of 30 academic hours, covers anger and aggressive behavior management, as well as recommendations for effective communication with citizens with aggressive behavior. Six academic hours are devoted to conflict management and negotiation skills, and a separate lecture is devoted to interaction to vulnerable community groups (14 academic hours), including training for communicating with homeless persons or persons under the influence of substances.

81 Article 12 of the Law of Georgia on Police.

82 See Police Academy curriculum, available at:https://bit.ly/33eGJiN.

83 MIA letter dated 7 October 2019, MIA41902661905.

In the frames of the basic training program, limited time and resources, dedicated to the learning oriented at interrelation between the policing and the protection of human rights, can be balanced out, if, in parallel with the performance of official duties, the theoretical and practical skills will be refined through periodic training courses according to the specifics of the functions of the police officers. According to the current regulation, the middle-level managers at the Patrol Police Department and Operative Unit of the Ministry,[84] as well as Detective Investigators, District Inspector-Investigators, Public Order Law Officers are required to undergo retraining courses every five years. In case of failure to pass the retraining course, the person is dismissed from the position.[85] The mandatory 5-year interval for retraining fails to increase staff qualifications and help them adjust to legislative or institutional changes in various areas.

Along with the basic training program, the Academy has a substantially different promotion and qualification programs for the MIA staff, which provides qualification programs for investigators and detectives, a training course for the promotion of the Patrol Police Officers and a program for Public Order Officers, according to the profile of the staff. In 2018, 140 employees of the Ministry were sent to the promotion courses and 1250 employees were sent to different courses to increase qualification.[86]

The duties of different police officers vary according to their functions in society. Thus, it is important that the training disciplines also focus on the training needed to perform the specific functions of the law enforcement officials. In this respect, the Ministry's training and retraining programs are not substantially identical. For example, it is notable that, given the intensity of the relationship with citizens, the training of the Public Order Officers and patrol inspectors focuses on the development of communication skills, and in the case of criminal investigators, the priority is on theoretical and practical preparation for investigative activities. However, it is advisable that the training courses are distinguished more clearly for the specific law enforcement circles, which will facilitate staff-oriented training according to their investigative, operative or policing activities.

Training courses focused on the prevention of ill-treatment are not offered in the academy. The current staff training course differs for investigators and those performing operative functions, although mixing preventive and investigative functions is a major

84 N995 (31-12-2013) According to Article 77 of the Order, it includes the posts of the Head and the Deputy Head of the Criminal Police Department, Head and Deputy Chief of the Territorial Authority, Head and Deputy Head of the Division, Patrol Police Officer Head of 20 person squad, Shift Head, Head of the Division and the Deputy Head

85 Order N995 of the Minister of Internal Affairs of Georgia, dated December 31, 2013 "On Approval of the Procedure of Service in the Ministry of Internal Affairs of Georgia", Article 771

86 MIA letter dated October 29, 2019, MIA 31902884952.

problem in practice. [87] In the framework of the qualification training program, MIA employees performing operative tasks are offered courses to deepen their knowledge of the material and procedural aspects of criminal justice, while their human rights education is largely general. In addition, the training of investigators focuses on the practical knowledge of conducting and documenting specific investigative actions. While training of the operative personnel, along with criminal justice matters, is focused on the acquiring practical skills on detention and use of force.

Qualification training program at the Academy of the Ministry of Internal Affairs

MIA Staff	Human Rights	Practical training for prevention of abuse of power / Communication with the public
Investigators	✓ General Overview of Human Rights in National and International Legal Framework (6 academic hours)	-
Promotion Program for the District Senior Inspector-Investigators, District Inspector-Investigators	✓ Legal basis for the use of force ✓ Contextual scope of certain rights (18 academic hours) ✓ Case-law of the European Court (6 academic hours)	✓ Training in tactical prep., fire arms and special equipment (24h) ✓ Physical restraint methods (10 hours - practical training on detention methods and the use of force when resisting arrest)
Patrol Police Officers Promotion Training Program	✓ Managerial training	✓ Effective communication with the public
Training Course for Acting Officers to be prepare for Public Order Officer program	✓ Human Rights and Police (18 Academic Hours) ✓ Review of Individual Rights Training on International Organizations	✓ Anger / conflict management training ✓ Communication with vulnerable groups

A separate qualification training program for the Ministry staff concentrates on the use of firearms and special equipment at the Academy. The training is a 6-day course, covering the legal bases and principles of the use of force, the personal safety of the police officer, the basic aspects of the insurance of the enjoyment of the right to life and assembly. According to the module, the program is essentially focused on improving the practical

87 „Human Rights Education and Monitoring Center (EMC)", Analysis of the Investigation System, 2018, p. 32.

skills of firearms use, but does not include the training required for other means of physical restraint. Such an approach is problematic because the principle of proportionate and necessary use of restraining measures authorizes police officers to use firearms in extreme cases. Within the course, it would be advisable for staff to receive thorough theoretical and practical training on alternative, less intrusive means, practices, and methods of proportional use of force.

According to a report by the UN Special Rapporteur on Torture and Inhuman Treatment [88] comprehensive, regular and effective police training is a necessary aspect of preventing violence and ill-treatment during arrest or police detention. According to the document, trainings for police officers should include specific theoretical and practical training on issues where the risk of ill-treatment is high when used in relations to the citizens. In particular, law enforcement officials should be familiar with international and national detention law, differentiated use of force strategies and tactics of de-escalation, safeguards to ensure the protection of a third party (family members, passers-by, witnesses). The report also points to the need for the theoretical and practical training of investigators on detention, post-arrest procedures, use of situational exercises, recording and reviewing of the questionings.[89] Concerning the detention, the report focuses on the use of force and other restraint devices and the importance of dealing with detainees with a humane approach. According to the same document, in addition to special training courses, police officers should also be trained in interpersonal communication, nonviolent conflict management and stress management at all of the above stages.[90]

In the field of police professional training, the United Kingdom is an example of good practice, where the main component of law enforcement training is 'detention'. The course covers all aspects of arrest and detention, including registration of the detainee, care of the detainee and release from detention. In addition, on-the-job training and systematic training on the experience with regard to the instances of the death of the detainee or unintentional bodily harm is considered to be an important component of police training. Senior officials plan the trainings of the police officers after conducting training needs analysis exercise as part of the annual personal development review process.[91]

88 UN Special Rapporteur on Torture, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/71/298) 2016, § 56.

89 UN Special Rapporteur on Torture, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/71/298) 2016, § 56.

90 APT, Police Custody Monitoring, p. 164.

91 Authorised Professional Practice, Detention and custody, available: https://bit.ly/2pGqPjD.

In view of the above, it is important to focus on trainings in the academia with particular emphasis on the use of force, arrest standards and practical skills of police officers. The current regulation on mandatory police training with 5-year intervals fails to meet the best practice standard for intensive law enforcement training. Additionally, as in the United Kingdom, it is advisable for the Academy to have a comprehensive practical course on the prevention of ill-treatment, which covers theoretical, practical issues of inquiry, detention, and arrest.

III. Conclusion

In terms of addressing the problem of impunity for ill-treatment, there have been positive changes in the legislation over the recent years, including the introduction of a State Inspector Service as an independent investigative mechanism, increasing the role of the judge in preventing ill-treatment. However, there is still a need for taking necessary steps. The current institutional, legislative, and organizational structure of the law enforcement system requires complex changes to eliminate the factors contributing to ill-treatment.

The procedural legislation on administrative offenses, which is particularly problematic in cases of ill-treatment, in the absence of standards ensuring the protection of basic rights, should be fundamentally changed. Equipping police institutions, police cars, and law enforcement with adequate technical means remains a challenge, which is an important tool in preventing ill-treatment of persons subjected to the police control.

In addition, special attention should be paid to the elaboration of a unified strategy on the use of force by the Ministry of Internal Affairs, intensive training and retraining of the law enforcement on the issues such as protection of human rights, communication with citizens and utilizing practical restraining measures.